TUSTIN LEGACY
DISPOSITION AND DEVELOPMENT AGREEMENT

CORNERSTONE I

by and between

CITY OF TUSTIN

and

FLIGHT VENTURE LLC

DATED: November 15, 2016

TABLE OF CONTENTS

Page

1. Subject and Purpose of Agreement; Parties; Applicable Requirements. - 1 -

1.1 Background Regarding MCAS Tustin. - 1 -
1.2 Description of Development Parcels; Subdivision. - 2 -
1.3 Purpose of Agreement. - 3 -
1.4 Parties to the Agreement. - 5 -
1.5 Federal Requirements Applicable to Tustin Legacy. - 6 -
1.6 Local Requirements Applicable to Tustin Legacy. - 6 -
1.7 Not a Development Agreement. - 6 -
1.8 ENA Deposits, City Transaction Expenses and Independent Contract Consideration. - 7 -
1.9 Definitions; Attachments. - 8 -

2. Prohibition Against Transfers and Transfer of Control. - 9 -

2.1 Importance of Developer Qualifications. - 9 -
2.2 Transfers and Transfers of Control. - 9 -
2.3 Remedies for Improper Transfers or Transfers of Control. - 23 -
2.4 Changes. - 23 -

3. Representations and Warranties. - 23 -

3.1 Developer's Representations and Warranties. - 23 -
3.2 Developer Covenants Regarding Representations and Warranties. - 26 -
3.3 City Representations and Warranties. - 26 -

4. Conveyance of Property from City to Developer - 28 -

4.1 Conveyance of Property. - 28 -
4.2 Purchase Price. - 29 -
4.3 Payment of Purchase Price. - 30 -
4.4 Escrow and Joint Escrow Instructions. - 37 -
4.5 Investigation; Property Conveyed "As-Is." - 37 -
4.6 Covenants; Preconditions to Close of Escrow. - 43 -
4.7 Guarantor Illiquidity Event. - 49 -

5. Developer's Due Diligence Investigation. - 51 -

5.1 Due Diligence Period. - 51 -
5.2 No Financing Contingency. - 52 -
5.3 Termination of Agreement. - 52 -
5.4 Limited License. - 53 -
5.5 Indemnity. - 53 -
5.6 Review of Certain Records and Materials. - 54 -
5.7 Communications with City and Third Parties. - 54 -

6. Title; Survey. - 55 -

6.1 Survey by Developer. - 55 -
6.2 Permitted Exceptions. - 55 -
6.3 Supplemental Title Reports. - 55 -
6.4 ALTA Policy; Endorsements. - 56 -

6.5 Mandatory City Obligations with Respect to Title. - 57 -
7. Close of Escrow. - 57 -
7.1 Time and Place of Close of Escrow. - 57 -
7.2 Conditions Precedent to Phase 1 Property Close of Escrow - 58 -
7.3 Conditions Precedent to Phase 2 Property Close of Escrow - 64 -
7.4 Additional Closing Requirements. - 69 -
7.5 Procedures for Conveyance. - 70 -
8. Development of the Property and Additional Covenants of Developer and City - 72 -
8.1 Scope of Development. - 72 -
8.2 Timing and Conditions of Project Development. - 74 -
8.3 Land Use Matters. - 75 -
8.4 Design Approval. - 77 -
8.5 Financial Status. - 80 -
8.6 Project Budget Statement - 80 -
8.7 Backbone Infrastructure Improvements - 80 -
8.8 Development Covenants. - 82 -
8.9 City Rights of Access - 83 -
8.10 Disclaimer of Responsibility by City and Exculpation - 83 -
8.11 Local, State and Federal Laws. - 84 -
8.12 Liens, Taxes and Assessments. - 85 -
8.13 Non-Compete Covenant - 85 -
8.14 City Park Completion. - 87 -
8.15 City's Activities on Development Parcels. - 88 -
9. Certificate of Compliance. - 88 -
9.1 Certificate of Compliance Defined. - 88 -
9.2 Conditions Precedent for Phase 1 Parcel Certificate of Compliance - 89 -
9.3 Conditions Precedent for Phase 2 Parcel Certificate of Compliance - 90 -
9.4 Conclusive Presumption. - 91 -
9.5 Not Evidence - 91 -
9.6 City Obligations. - 92 -
9.7 Effect of Certificate of Compliance; Termination of Agreement - 92 -
10. Indemnification and Environmental Provisions - 93 -
10.1 Developer's Indemnification for Non-Environmental Matters - 93 -
10.2 Developer's Environmental Indemnification. - 94 -
10.3 Duration of Indemnities. - 95 -
10.4 Claim Response. - 95 -
10.5 Release Notification and Remedial Actions. - 96 -
10.6 Conflict with Section 330 and Other Federal Government Obligations - 97 -
10.7 Insurance and Indemnification - 97 -
11. Insurance. - 98 -
11.1 Required Insurance. - 98 -
11.2 General Insurance Requirements. - 101 -

12. Covenants and Restrictions. - 102 -
12.1 Prohibited Uses. - 102 -
12.2 Maintenance Covenant. - 102 -
12.3 Landscape Installation and Maintenance Agreement and Roadway and Utility Easement Agreement. - 104 -
12.4 Duration of Covenants. - 104 -
12.5 Obligation to Refrain from Discrimination. - 105 -
12.6 Deed Restrictions/Covenants Running with the Land. - 105 -
12.7 Priority of Agreement and Special Restrictions. - 105 -
13. CC&Rs. - 105 -
14. Potential Defaults and Material Defaults. - 106 -
14.1 Potential Defaults. - 106 -
14.2 Material Defaults. - 106 -
14.3 Due Diligence Information; Products. - 107 -
15. Nonoccurrence of a Condition at Close of Escrow. - 108 -
15.1 Failure of a Condition to Phase 1 Property Close of Escrow Absent a Default. - 109 -
15.2 DEFAULT OF DEVELOPER RESULTS IN FAILURE OF PHASE 1 PROPERTY CLOSE OF ESCROW. - 110 -
15.3 FAILURE OF PHASE 2 PROPERTY CLOSE OF ESCROW. - 112 -
15.4 Failure to Close; Default of City. - 113 -
16. Remedies for Defaults After the Close of Escrow. - 116 -
16.1 General Remedies. - 116 -
16.2 Lien Rights. - 116 -
16.3 Right of Repurchase. - 117 -
16.4 Right of Reversion. - 119 -
16.5 Cooperation of Developer. - 125 -
17. Mortgages and Mortgagee Protection. - 126 -
17.1 Transfers to Permitted Mortgagee. - 126 -
17.2 Acknowledgment by City of Permitted Mortgagee. - 129 -
17.3 Change in Loan Documents. - 129 -
17.4 Initial Notice. - 129 -
17.5 Foreclosure Transfers. - 129 -
17.6 Mortgagee Protections. - 130 -
17.7 Failure of Permitted Mortgagee to Cure. - 132 -
17.8 Condemnation or Insurance Proceeds. - 132 -
17.9 Loss Payable Endorsement to Insurance Policy. - 132 -
17.10 Subordination Agreement. - 133 -
17.11 Constructive Notice and Acceptance. - 133 -
17.12 Bankruptcy Affecting the Developer. - 133 -
17.13 Notice and Cure Rights of City. - 134 -

18. General Provisions. - 134 -

18.1 Applicable Law; Consent to Jurisdiction; Service of Process. - 134 -
18.2 Legal Fees and Costs. - 134 -
18.3 Memorandum of DDA; Modifications or Amendments. - 135 -
18.4 Further Assurances. - 135 -
18.5 Rights and Remedies Are Cumulative; Limitation on Damages. - 136 -
18.6 Notices, Demands and Communications between the Parties. - 137 -
18.7 Delay. - 138 -
18.8 Conflict of Interest. - 141 -
18.9 Non-liability of City Officials and City or Developer Employees. - 141 -
18.10 Consents and Approvals. - 141 -
18.11 No Real Estate Commissions. - 142 -
18.12 Date and Delivery of Agreement. - 142 -
18.13 Constructive Notice and Acceptance. - 142 -
18.14 Survival of Covenants. - 142 -
18.15 Construction and Interpretation of Agreement. - 143 -
18.16 Time of Essence. - 144 -
18.17 Fees and Other Expenses. - 144 -
18.18 No Partnership. - 144 -
18.19 Binding Effect. - 144 -
18.20 No Third Party Beneficiaries. - 144 -
18.21 Counterparts. - 144 -
18.22 Duplicate Originals, Entire Agreement and Waivers. - 145 -
18.23 Confidentiality. - 145 -
18.24 Proprietary and Governmental Roles; Actions by Parties. - 146 -
18.25 Performance of Acts on Business Days. - 147 -

TUSTIN LEGACY
DISPOSITION AND DEVELOPMENT AGREEMENT
FOR CORNERSTONE 1

THIS TUSTIN LEGACY DISPOSITION AND DEVELOPMENT AGREEMENT FOR CORNERSTONE 1 (the "**Agreement**") is entered into as of November 15, 2016 (the "**Effective Date**") by and between the CITY OF TUSTIN, a municipal corporation of the State of California (as more fully defined in Section 1.4.1, "**City**"), and FLIGHT VENTURE LLC, a Delaware limited liability company (as more fully defined in Section 1.4.2, the "**Developer**"). The City and Developer and their respective successor and assigns are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**." The Parties agree as follows:

1. **Subject and Purpose of Agreement; Parties; Applicable Requirements.**

1.1 **Background Regarding MCAS Tustin.**

1.1.1 Pursuant to the Defense Base Closure and Realignment Act of 1990, (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended (the "**Base Closure Law**") the Federal Government (defined below) determined to close the Marine Corps Air Station-Tustin ("**MCAS Tustin**") located substantially in the City of Tustin. In 1992, the City was designated as the Lead Agency or Local Redevelopment Authority for preparation of a reuse plan for MCAS Tustin in order to facilitate the closure of MCAS Tustin and its reuse in furtherance of the economic development of the City and surrounding region. The MCAS Tustin Reuse Plan developed in accordance with this procedure was adopted by the City Council of the City of Tustin on October 17, 1996 and amended in September, 1998 (the "**Reuse Plan**").

1.1.2 A Final Environmental Impact Statement/Final Environmental Impact Report for the Disposal and Reuse of MCAS Tustin (the "**Final EIS/EIR**") and Mitigation Monitoring and Reporting Program for the Final EIS/EIR were adopted by the City on January 16, 2001. In March 2001, a Record of Decision was issued by the United States Department of the Navy (hereinafter, "**Navy**") approving the Final EIS/EIR and the Reuse Plan. Subsequently, a Supplement to the Final EIR/EIS and various addenda to the Final EIS/EIR were approved by the City.

1.1.3 In May 2002, the Navy and the City entered into that certain Agreement between the United States of America and the City of Tustin, California for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin dated as of May 13, 2002 (the "**Memorandum of Agreement**"), pursuant to which the Navy agreed to convey approximately 1,153 acres of MCAS Tustin to the City. On May 13, 2002, a total of approximately 977 acres, including portions of the Development Parcels (as hereinafter defined) which are the subject of this Agreement, were conveyed by the Navy to the City by quitclaim deed in accordance with the provisions of the Memorandum of Agreement. The additional acreage was made subject to a ground lease by the City from the Navy and portions thereof, including the remaining portions of the Development Parcels, were subsequently conveyed by the Navy to the City pursuant to quitclaim deed. The approximately 1,153 acres of MCAS

Tustin located within the City of Tustin and either conveyed by the Navy to the City or subject to ground lease between the Navy and the City are referred to in this Agreement as "**Tustin Legacy**".

1.1.4 On February 3, 2003, the City adopted an ordinance approving the "MCAS Tustin Specific Plan/Reuse Plan" setting forth the zoning and entitlement framework for future development of Tustin Legacy, which has been subsequently amended. The intent of the Specific Plan (as defined below) is to conform to and implement the Reuse Plan and the City's General Plan.

1.1.5 The City desires to effectuate development of Tustin Legacy through the sale and development of such property in accordance with applicable federal and local requirements. The City intends that Tustin Legacy shall be developed in accordance with all City requirements, including implementing redevelopment plans, the Reuse Plan and the Specific Plan. To this end, pursuant to the Disposition Strategy for the Master Development Footprint adopted by the City Council in April, 2011 (the "**Disposition Strategy**"), which authorized the City to directly market portions of Tustin Legacy to potential end business users in order to more specifically direct and accelerate development absorption, the City initiated a marketing initiative including retaining CBRE to identify potential office developers.

1.1.6 In response to the City's marketing initiative, Lincoln Property Company Commercial, Inc., a Texas corporation ("**LPCC**"), submitted a business proposal on March 9, 2015 for purchase and development, in two phases, of approximately 37.4 acres of land within Disposition Area 4 of the Disposition Strategy, within an area of Tustin Legacy referred to by the City as "Cornerstone I." On June 2, 2015, the City Council selected LPCC, an Affiliate of which is the "Operating Member" of Developer under the Original Joint Venture Agreement (as "**Operating Member**" is defined therein) for exclusive negotiations with respect to such property and the conditions under which the Developer would undertake implementation of its business proposal with respect to each phase, and entered into the ENA.

1.2 **Description of Development Parcels; Subdivision.**

1.2.1 The real property described by Disposition Package 4 that is the subject of this Agreement consists of approximately 39.7 acres of land located in the City of Tustin, County of Orange, California and is comprised of a portion of Parcel I-D-1 and all of Parcel III-D-5 as described in the Navy transfer documents and as a "Portion of Reuse Plan Disposition Site 6", "Portion of Reuse Plan Disposition Site 7', and "Portion of Reuse Plan Disposition Site 6 & 7; portion of Carve-Out 3" in the Reuse Plan. Such property has been subsequently reparcelized, and as of the Effective Date, is owned in fee by the City.

1.2.2 As part of the transactions contemplated herein, the City has Recorded pursuant to the Subdivision Map Act and the City Code, Parcel Map No. 2015-168 subdividing the land described in Section 1.2.1 into the following parcels as further depicted on Attachment 2B:

(a) Parcel "A" comprised of approximately 0.966 acres which shall be retained by the City and upon which the public right-of-way portions of Flight Way (as the same may be renamed pursuant to application to the City filed by Developer) will be constructed;

(i) approximately 38.74 acres as legally described on Attachment 2A and depicted on Attachment 2B (collectively the "**Development Parcels**") which the City proposes to sell to Developer and Developer proposes to purchase from the City in accordance with the terms of this Agreement, and which is further divided as follows:

(ii) One (1) parcel totaling in the aggregate approximately 17.543 acres, referred to on Attachments 2A and 2B as Parcel 1 and herein as the "**Phase 1 Parcel**"; and

(iii) One (1) parcel totaling in the aggregate approximately 21.195 acres, referred to on Attachments 2A and 2B as Parcel 2 and herein as the "**Phase 2 Parcel**".

Prior and as a condition to the Phase 1 Property Close of Escrow, the above described land shall be further subdivided pursuant to Vesting Tentative Tract Map No. 18003 ("**Subdivision Map**") that Developer shall process, pursuant to the Subdivision Map Act and the City Code, into twenty-one (21) legal lots as further depicted on the Subdivision Map attached as Attachment 3A.

1.2.3 Pursuant to the terms of this Agreement, the City intends to establish by declaration of Special Restrictions certain covenants, conditions and restrictions with respect to the Property, and thereafter, to convey the Development Parcels to Developer in two closings in accordance with the terms and conditions of this Agreement. The Phase 1 Parcel comprises the portion of the Development Parcels to be conveyed at the Phase 1 Property Close of Escrow (as defined below) and the Phase 2 Parcel comprises the portion of the Development Parcels to be conveyed at the Phase 2 Property Close of Escrow (as defined below). Developer shall Record a phased final map prior to the conveyance of each Phase. The Phase 2 Property Close of Escrow shall in all events take place subsequent to the Phase 1 Property Close of Escrow.

1.3 **Purpose of Agreement**.

1.3.1 **Purpose**. The purpose of this Agreement is to (a) effectuate the Reuse Plan and the Specific Plan, in accordance with the terms and conditions set forth therein and in the Memorandum of Agreement and the Federal Deeds, through disposition and development of portions of Tustin Legacy as further described in this Agreement and (b) provide for the sale and conveyance of the Property (as defined below), for the maintenance and use of the Property and certain related improvements by the Developer and for the construction of the Project by the Developer on the Property, in accordance with the Disposition Strategy for the Master Developer Footprint adopted by the City Council in April 2011 and the terms and conditions of this Agreement.

1.3.2 **Project Definition**. This Agreement further provides for development on the Development Parcels by Developer of the "**Project**" to consist of construction, installation, maintenance and use of up to 870,000 GBA of development, which Improvements

(as defined below) shall be designed and constructed as further set forth in Article 8 and the Scope of Development and shall include the following:

(a) the Horizontal Improvements (which shall be divided into the Phase 1 Horizontal Improvements (which include the Minimum Horizontal Improvements), and the Phase 2 Horizontal Improvements), to include private in-tract infrastructure and public on-site and off-site infrastructure improvements more fully described on Attachment 8 and/or depicted on Attachment 9; and

(b) the "**Vertical Improvements**" to be constructed in two phases, defined as follows and in the Scope of Development attached as Attachment 8:

(i) the "**Phase 1 Vertical Improvements**" all of which shall be constructed on the Phase 1 Parcel, containing no less than 369,500 GBA of commercial development (the "**Minimum Phase 1 Vertical Improvements**"), which shall, as to each Building constructed, include the core and shell, exterior staircases and balcony systems and common restrooms but shall exclude the requirement to construct any other tenant improvements and shall meet the following requirements:

(A) each of buildings A1, A2, B and C (large campus) and any two or more of buildings E, F, G and H (small campus) as depicted on the Site Plan attached as Attachment 3B, which shall in the aggregate be comprised of not less than 358,000 GBA of Office Uses; and

(B) approximately 11,500 GBA located in a stand-alone building containing Food Hall Uses ("**Food Hall Building**") depicted as building D-1 on the Site Plan attached as Attachment 3B; and

(C) parking as required by City Code, of which not less than 50% of City Code-required parking shall be contained in parking structures to be constructed by Developer.

In addition to the foregoing, the Phase 1 Vertical Improvements may include up to 15,000 GBA of Retail Uses (excluding the Food Hall Building), provided that the amount of Retail Uses in both Phase 1 and Phase 2 (in addition to the Food Hall Building in Phase 1) shall not exceed 15,000 GBA in the aggregate. In no event shall the total Vertical Improvements in Phase 1 exceed 390,440 GBA.

With respect to the Minimum Phase 1 Vertical Improvements, if within eighteen (18) months following the later of (1) issuance of a certificate of occupancy for the Food Hall Building and (2) completing utility lines for and installation of major kitchen fixtures for Food Hall Uses, the Food Hall Building is not fifty percent (50%) leased, then the Food Hall Building may be used for any other Office Uses or Retail Uses (subject to the overall caps on Office Uses and Retail Uses set forth above); and

(ii) the "**Phase 2 Vertical Improvements**" all of which shall be constructed on the Phase 2 Parcel as a second phase of the Project which shall, as to each Building constructed, include the core and shell, exterior staircases and balcony systems and

common restrooms but shall exclude the requirement to construct any other tenant improvements and shall meet the following requirements and containing:

(A) not less than 400,000 GBA of Office Uses (comprising the "**Minimum Phase 2 Vertical Improvements**"); and

(B) parking as required by City Code of which not less than 50% of City Code-required parking shall be contained in above or below-ground parking structures to be constructed by Developer.

In addition to the foregoing, the Phase 2 Vertical Improvements may include up to 15,000 GBA of Retail Uses, provided that the amount of Retail Uses (excluding the Food Hall Building) in both Phase 1 and Phase 2 do not exceed 15,000 GBA in the aggregate. In no event shall the total Vertical Improvements in Phase 2 exceed 479,560 GBA.

1.3.3 **Benefits**. The disposition of the Property, the development and Completion of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the citizens of the City and the health, safety and welfare of its residents, and are in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

1.4 **Parties to the Agreement**.

1.4.1 **City**. The City is a municipal corporation of the State of California. The City has been recognized as the Local Redevelopment Authority by the Office of the Secretary of Defense for the former Marine Corps Air Station, Tustin, for purposes of the Base Closure Law. "**City**" as used in this Agreement shall mean the City of Tustin and each assignee or successor to the City's rights, powers and responsibilities. The City Council shall have the right, in its sole discretion, to assign its rights and obligations to any agency or instrumentality of the City, provided that in the event the City exercises such right to assign any of its proprietary obligations, such assignment shall not relieve the City of any responsibility for its governmental obligations, if any, under this Agreement. The principal office of the City and mailing address is 300 Centennial Way, Tustin, California 92780.

1.4.2 **Developer**. As of the Effective Date, Developer is a Delaware limited liability company. Whenever the term "**Developer**" is used in this Agreement, such term shall have the meaning set forth in Attachment 1. As of the Effective Date, the principal office and mailing address of Developer is c/o Lincoln Property Company Commercial, Inc., 915 Wilshire Blvd., Suite 2050, Los Angeles, CA 90017. Flight Venture LLC specifically excluding any Transferee or successor or assignee thereof, is the "**Initial Developer**". Developer shall have the right, solely in accordance with the provisions of Section 2.2.2(a), (b), (f), or (g) or Section 2.2.3(b) and the other terms and conditions set forth in this Agreement, to assign its rights and obligations under this Agreement and the Other Agreements with respect to development of Phase 1 or Phase 2 to a Phase Transferee.

1.4.3 **Relationship of City and Developer**. The Parties acknowledge and agree that the relationship of the City and Developer is neither that of a partnership nor that of a joint venture. Notwithstanding any provision of this Agreement, Developer is not, and shall not

be deemed to be, the agent of the City for any purpose, and shall not have the power or the authority to bind the City to any contractual or other obligation. Prior to each Close of Escrow, with respect to portions of the Property not yet acquired by Developer, Developer may only characterize itself to third parties as the prospective purchaser and/or developer of the Property. Developer shall not at any time hold itself out to the City or to any other third party as an agent of the City, and shall not, by any act or omission, mislead any third party into believing, or allow any third party to continue in the mistaken belief, that Developer is an agent of the City or has the power or authority to bind the City to any contractual or other obligation.

1.5 **Federal Requirements Applicable to Tustin Legacy**.

1.5.1 **Federal Economic Development Conveyance**. The Parties acknowledge and agree that this Agreement is entered into as part of an economic development conveyance of Tustin Legacy to the City pursuant to the Base Closure Law, the Memorandum of Agreement and the terms and conditions of the Federal Deeds, including the Environmental Restriction pursuant to California Civil Code Section 1471 contained therein. Notwithstanding any provision to the contrary contained in this Agreement, this Agreement is and shall be subject to the terms and conditions of the Memorandum of Agreement and the Federal Deeds and the rights, obligations and remedies of the Federal Government thereunder, and nothing contained in this Agreement shall be construed in a manner that is inconsistent with the rights, obligations and remedies of the Federal Government thereunder.

1.5.2 **Memorandum of Agreement and Federal Deeds**. Notwithstanding anything in this Agreement to the contrary, if any provision of this Agreement contradicts, modifies or in any way changes the terms of the Memorandum of Agreement or the Federal Deeds, the terms of the Memorandum of Agreement and Federal Deeds shall prevail and govern.

1.6 **Local Requirements Applicable to Tustin Legacy**.

This Agreement is subject to all Governmental Requirements, including the General Plan, the Specific Plan, the City Code, the Reuse Plan and any redevelopment plan applicable to the Property; provided, however, that the City acknowledges that, concurrently with the execution of this Agreement, City and Developer are entering into a Development Agreement (the "**DA**") relating to the Property and that any provisions of this Agreement requiring Developer or the Property to comply with any Governmental Requirements imposed by the City relating to entitlements or development of the Property shall be subject to the terms of the DA and in the event of any inconsistency between such Governmental Requirements and the DA, the Governmental Requirements required to be imposed pursuant to the DA shall control.

1.7 **Not a Development Agreement**.

This Agreement is not a development agreement as provided in Government Code Section 65864 and, as further set forth in Section 8.3.4, is not a grant of any entitlement, permit, land use approval, or vested right in favor of Developer, the Project or the Property. The City shall use good faith efforts, within applicable legal constraints and consistent with applicable City policies, to take such actions as may be necessary or appropriate to effectuate and carry out this Agreement in a timely and commercially reasonable manner.

1.8 **ENA Deposits, City Transaction Expenses and Independent Contract Consideration**.

1.8.1 **ENA Deposits and ENA Transaction Expenses**. Pursuant to the ENA, LPCC has paid to the City deposits totaling Eight Hundred Thousand Dollars ($800,000.00) (the "**ENA Deposit**") to be used by the City to pay "City Transaction Expenses" as defined therein and City staff costs incurred in negotiating this Agreement (the "**ENA Transaction Expenses**").

1.8.2 **City Costs Deposit; Independent Consideration**. Upon the execution of this Agreement by the Parties, the funds remaining in the ENA Deposit shall be the "City Costs Deposit", provided that Developer shall, as a condition to the effectiveness of this Agreement, deliver to the City additional funds sufficient to bring the City Costs Deposit to $100,000.00 (the "**City Costs Deposit**"). The City Costs Deposit shall be deposited by the City in an account in a bank or trust company selected by the City. If any interest is paid on such account, such interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer obligations hereunder. One Hundred Dollars ($100.00) of the City Costs Deposit shall be retained by the City as "**Independent Contract Consideration**". Until the earliest to occur of (a) the Phase 2 Property Close of Escrow, (b) the Phase 2 Property Outside Closing Date, (c) expiration of the Option without it being exercised or (d) termination of this Agreement, if at any time the amount of funds in the City Costs Deposit account (including interest accrued thereon) is depleted below Fifty Thousand Dollars ($50,000), Developer shall be required to pay to the City each time an additional Fifty Thousand Dollars ($50,000) which shall be credited to the City Costs Deposit, and deposited by the City into the City Costs Deposit account to be applied to City Transaction Expenses in accordance with the provisions of Section 1.8.3.

1.8.3 **Payment of Transaction Expenses**. Developer shall pay (a) all ENA Transaction Expenses incurred prior to the Effective Date and remaining unpaid as of the Effective Date and (b) all DDA Transaction Expenses incurred by the City during the term of this Agreement, whether arising with respect to matters or incurred by the City prior to or following each Close of Escrow (collectively, the "**City Transaction Expenses**"). The City Costs Deposit has been established to fund the City Transaction Expenses and may be used by the City for such purpose, and shall be depleted accordingly. Immediately upon incurring any City Transaction Expenses or receipt of an invoice from third parties for same, subject to complying with the requirements of Section 1.8.4, the City shall have the right to deduct the amounts due it on account thereof from the City Costs Deposit. In addition, to the extent then unpaid, at each Close of Escrow or at the earlier termination of this Agreement, the City shall be entitled to deduct from the City Costs Deposit the payment of all City Transaction Expenses then unpaid and Developer shall, as a condition to Close of Escrow and subject to Section 1.8.4, pay the full amount of City Transaction Expenses incurred by the City to and including the date of such Close of Escrow. Within thirty (30) calendar days following the earliest of (w) the Phase 2 Property Close of Escrow, (x) the Phase 2 Property Outside Closing Date, (y) expiration of the Option without it being exercised, or (z) the termination of this Agreement, the remaining amount of the City Costs Deposit then held by the City, if any, shall be promptly returned by the City to Developer, provided that the return of such funds shall not terminate the obligations of Developer to pay in accordance with Section 1.8.4 all City Transaction Expenses arising or

incurred prior to issuance of the Certificate Compliance for its respective portion of the Project. Subject to the terms of Section 1.8.4, Developer shall pay the outstanding amounts due with respect to City Transaction Expenses to the City within thirty (30) calendar days following receipt of an invoice from the City therefor, provided that the City shall first apply the amount of the City Cost Deposit, if any, then held by it in satisfaction of such invoice, and shall reflect the amount of such credit on the invoice.

1.8.4 **Payment of City Transaction Expenses; Exclusions from City Transaction Expenses**. Absent manifest error, the determination of costs, expenses, and fees constituting City Transaction Expenses shall be made by the City in its sole discretion, and Developer shall receive written notices from the City setting forth amounts constituting City Transaction Expenses and related non-confidential documents evidencing such expenses. If Developer reasonably objects to any such amounts and the City agrees, in its sole discretion, that such objection is reasonable, the City shall cooperate with Developer to investigate such amounts and to seek an appropriate adjustment or reduction in such amounts. The determination of the City Manager shall be final with respect to any amounts due. Notwithstanding anything to the contrary in this Agreement, the City and Developer hereby acknowledge and agree that the City Transaction Expenses do not include: (a) any fees or deposits required of Developer for processing entitlement applications; (b) any fees or costs for complying with provisions of CEQA or its State CEQA implementing regulations or other matters identified in Sections 8.3.6 or 8.3.8; (c) any costs to review or approve any applications or submittals by Developer to the City in connection with the Project; (d) the Development Costs, Project Fair Share Contribution or any other development impact fees, exactions or other costs imposed as conditions of approval with respect to the Entitlements or pursuant to the Other Agreements; (e) the marketing fees set forth in Section 8.7.4; or (f) any other matters in this Agreement that expressly require Developer to pay, at its sole cost, for expenses incurred in connection with this Agreement that are not otherwise duplicative of other fees to be paid to the City in connection with the Phase 1 Project and/or Phase 2 Project. The obligation of Developer to pay for the City Transaction Expenses pursuant to this Section 1.8 shall not diminish or limit Developer's obligation to pay for any of the costs in the preceding sentence.

1.9 **Definitions; Attachments**.

1.9.1 **Definitions**. Capitalized terms used in this Agreement, including in the Attachments attached hereto, unless otherwise defined in this Agreement, shall have the respective meanings specified in the Glossary of Defined Terms attached hereto as Attachment 1. Unless otherwise indicated, references in this Agreement to articles, sections, paragraphs, subsections, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Agreement and all attachments and schedules referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

1.9.2 "**Substantially in the Form and Substance.**" Wherever used in this Agreement, the term "substantially in the form and substance" shall mean that the referenced document, when compared to the previously approved form of document, is consistent in all material respects, and none of the modifications in the referenced document materially diminish a Party's rights or materially increase such Party's obligations thereunder, as determined by the Party for whose benefit the condition is written, in its sole discretion.

2. **Prohibition Against Transfers and Transfer of Control**.

Any purported Transfer that does not comply with the requirements of Article 2 shall, at the election of the City, be null and void and such Transfer shall be a Material Default under this Agreement as of the date of the Transfer by the violating party, in accordance with the provisions of Section 14.2.3.

2.1 **Importance of Developer Qualifications**.

Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Project and not for speculation in land holding. Developer further recognizes that the qualifications and identity of LPCC and the Affiliate of LPCC which is the party with the Operating Rights and Responsibilities with respect to Initial Developer, and of Alcion Real Estate Partners Master Fund III, L.P., the sole owner of Initial Developer's managing member, and which is an Affiliate of Alcion, are of particular concern to the City and community and in light of the following:

(a) The importance of the development of the Development Parcels and Tustin Legacy to the general welfare of the community;

(b) The fact that a Transfer of Control is for practical purposes a transfer of rights and obligations under this Agreement or the Property; and

(c) That it is because of the qualifications and identity of Initial Developer's Key Employees and Initial Developer's Controlling Persons that the City is entering into the Agreement with Developer.

2.2 **Transfers and Transfers of Control**.

2.2.1 **Restrictions on Transfers**. For the reasons set forth in Section 2.1, Developer, on behalf of itself and all Successor Owners, acknowledges and agrees as follows:

(a) Any Transfer or Transfer of Control in contravention of this Article 2 shall be a Material Default under this Agreement in accordance with Section 14.2.3 and no Person shall acquire any rights or powers under this Agreement except as set forth in this Article 2.

(b) Except as set forth in Section 2.2.2 with respect to Permitted Transfers, prior to the Recordation of a Certificate of Compliance for each Phase (or, if applicable, Building Pad), any Transfer or Transfer of Control with respect to such Phase (or, if applicable, Building Pad) shall be invalid and shall have no force or effect unless such Transfer or Transfer of Control is authorized pursuant to and has been approved by the City in accordance with the requirements of Section 2.2.3, 2.2.4, 2.2.5, 2.2.8 or Article 17, which approval may be granted or withheld in the City's sole discretion.

(c) Notwithstanding any Transfers and/or Transfers of Control, Developer on behalf of itself and each Successor Owner agrees that: (i) neither Initial Developer nor any subsequent Developer shall be released with respect to the Ongoing Matters or for any

other matters for which it remains liable pursuant to Sections 2.2.2(a) and 2.2.2(b), and (ii) unless it is released by the City as set forth in Section 2.2.3(a)(iv) or as otherwise set forth in this Agreement or agreed to by the City in writing, Initial Developer and each subsequent Developer shall remain fully liable for its obligations under this Agreement and the Other Agreements for such period as it is Developer under this Agreement and for the Additional Liability Period and also shall remain liable with respect to each and every term of this Agreement expressly surviving termination of this Agreement for the period described herein.

2.2.2 **Permitted Transfers**. The following Transfers and Transfers of Control are "**Permitted Transfers**", and shall not be subject to the City's prior written consent or otherwise subject to the requirements of Sections 2.2.3:

(a) Any Transfer of the entirety of Developer's interest in the Project to a Developer Affiliate or any Transfer of the entirety of Developer's interest in Phase 1 or Phase 2 individually to a Developer Affiliate; provided that except as set forth in Section 2.2.2(f), unless such Transfer is approved by the City in its sole discretion, there shall be no Transfer of Developer's interest in Phase 1 or Phase 2 to a Developer Affiliate resulting in separate Control or ownership of Phase 1 and Phase 2 until each of the following has occurred: (1) the Phase 1 Property Close of Escrow has occurred, (2) the Minimum Horizontal Improvements have been Completed, and (3) the Option shall have been exercised; and provided further that, in all cases, Developer shall provide the City with written notice of such transaction not less than thirty (30) calendar days prior to the proposed Transfer and shall provide, no later than ten (10) calendar days following such Transfer, (x) an original certificate executed by the chief financial officer or other appropriate authorized officer of the Transferee in favor of City as to the matters set forth in this Section 2.2.2, and (y) an original certificate executed by the chief financial officer or other appropriate authorized officer of the Transferor that the conditions set forth in the applicable portion of this Section 2.2.2 have been satisfied and reaffirming the ongoing obligations of Transferor under this Agreement and the Other Agreements, notwithstanding such Permitted Transfer, and each of the following shall apply and be satisfied:

(i) the City shall be entitled to look to the Transferor prior to such Transfer (with the right, but not the obligation, to additionally look to the Initial Developer if Initial Developer remains a Developer Affiliate of Transferor, and/or to the last Developer approved in writing by the City) to fully comply with this Agreement as though there had not been a Transfer (and each such Person shall remain fully liable under this Agreement), and to cause the Developer Affiliate to comply with this Agreement;

(ii) An Affiliate of Alcion is the Controlling Person of the Developer Affiliate that is the Transferee and LPCC (or an Affiliate of LPCC), or another Person approved by the City in accordance with Section 2.2.7, has the Operating Rights and Responsibilities;

(A) if previously executed, the applicable Joint Venture Agreement(s) and Guaranty(ies) for each Phase shall remain in full force and effect following such Transfer without any defaults thereunder and without any modifications thereto other than modifications that have been consented to by the City in its sole discretion and if not

previously executed, Developer shall deliver Joint Venture Agreements for each of Transferor and Transferee meeting the requirements of Section 4.6.2;

(iii) Developer shall not be in Potential Default or Material Default under this Agreement at the time of such Transfer;

(iv) the Transferee at the time of the Transfer shall have expressly assumed for itself and its successors and assigns, and for the benefit of the City, by instrument substantially in the form and substance of the instrument attached hereto as Attachment 16A or Attachment 16B as applicable, and otherwise in a form acceptable to the City in its sole discretion, acknowledged and Recorded, all the rights and obligations of Developer under this Agreement and the Other Agreements arising from and after the date of such Transfer and the Transferee shall agree to assume and to be subject to all the conditions and restrictions to which Developer is subject by reason of this Agreement and the Other Agreements; and

(v) the Transferee shall certify in writing for the benefit of the City as to the truth and correctness, as of the effective date of the assignment, of the representations and warranties set forth in Section 3.1 to the knowledge of its specified Developer Knowledge Parties.

(b) Any Transfer of Control by Developer to a Developer Affiliate or any Transfer of Control with respect to Developer's interest in Phase 1 or Phase 2 individually to a Developer Affiliate; provided that except as set forth in Section 2.2.2(f), unless such Transfer of Control is approved by the City in its sole discretion, there shall be no Transfer of Control with respect to Phase 1 or Phase 2 to a Developer Affiliate resulting in separate Control or ownership of Phase 1 and Phase 2 until each of the following has occurred: (i) the Phase 1 Property Close of Escrow has occurred, (ii) the Minimum Horizontal Improvements have been Completed and (iii) the Option shall have been exercised, and provided further that Developer or Developer Affiliate shall provide the City with notice of such Transfer of Control, which shall include a certification that all of the conditions set forth in this Section 2.2.2(b) have been satisfied: (x) an Affiliate of Alcion is the Controlling Person of the Developer Affiliate, and LPCC (or an Affiliate of LPCC) or another Person approved by the City in accordance with Section 2.2.7, has the Operating Rights and Responsibilities; (y) if previously executed, the applicable Joint Venture Agreement(s) and Guaranty(ies) for each Phase shall remain in full force and effect following such Transfer of Control without any defaults thereunder and without any modifications thereto other than modifications that have been consented to by the City in its sole discretion and if not previously executed, Developer shall deliver Joint Venture Agreements for each of Transferor and Transferee meeting the requirements of Section 4.6.2, and (z) Developer shall not be in Potential Default or Material Default under this Agreement at the time of such Transfer of Control.

(c) Any Transfer pursuant to a Space Lease; provided that such Transfers shall be subject in all cases to Section 2.2.4;

(d) Any Transfer of portions of the Property to the City and/or grants of easements in the Property to the City, to any public or quasi-public entity or to any utility, as

necessary or desirable for the development of the Project, or to a property owners association in accordance with the CC&Rs;

(e) Any temporary license or other grant of access rights in a Parcel or any portion thereof to the City or to a Developer Affiliate and/or to any other third party, as necessary or desirable for the development of the Property; and

(f) Notwithstanding the provisions of Section 2.2.2(a) and (b), Developer shall have the right to carry out a Transfer and/or a Phase Transfer to a Developer Affiliate as a Permitted Transfer following the Phase 1 Property Close of Escrow but prior to Completion of the Minimum Horizontal Improvements and/or exercise of the Option if and only if: (i) the Developer Affiliate to which the Transfer is proposed is Controlled by an Affiliate of Alcion or the Person assuming control pursuant to a Transfer of Control is an Affiliate of Alcion (such that each of Phase 1 and Phase 2 will be held by Developer or a Developer Affiliate Controlled by an Affiliate of Alcion); (ii) the Transfer or Transfer of Control otherwise meets the requirements of Section 2.2.2(a) or (b), as applicable, (iii) the proposed Controlling Person or Transferee as applicable, submits to the City, for approval by the City in its sole discretion, with respect to a Phase 2 Transfer, a revised Phase 2 Financing Plan meeting the requirements of Section 4.6.1 and, with respect to a Phase 1 Transfer, a revised Phase 1 Financing Plan meeting the requirements of Section 4.6.1, and (iv) the Developer and Transferee demonstrate, to the satisfaction of the City in its sole discretion, that the conditions in Section 4.6.2(b), (c), (d) and (e), as applicable, of this Agreement are satisfied as to each of Phase 1 and Phase 2, provided that (A) prior to the Transfer, the Transferee shall be obligated to provide information to the City concerning its proposed Guarantor and the then-current Net Worth and Liquidity and the Net Worth and Liquidity anticipated at the time at which the Guaranty would be given and additional information required by Section 4.6.2(b)(iv) or (c)(iv) as applicable to assure that the Guarantor meets the Minimum Liquidity Standards, but shall not be obligated to provide a Guaranty at the time of the Transfer unless the Guaranty would otherwise then be required to be provided pursuant to this Agreement (and City's review of such information shall not be deemed to be City's approval of Guarantor, which approval shall be provided, if at all, at and as a condition to the Close of Escrow for the relevant Phase) and (B) with respect to the requirement to evidence funding for Development Costs pursuant to Section 4.6.2(d), each of Transferor and Transferee (or their respective Controlling Persons) shall demonstrate to the City that it or its Equity Investor currently has, and has provided Developer with a binding contractual commitment to invest, sufficient equity to fund the entire amount identified as the equity contribution of Developer shown under the applicable Phase 1 Financing Plan or Phase 2 Financing Plan approved by the City, including the amounts described in Section 4.6.2(d)(i) through (iv), provided that in no event shall the amount described in this clause (iii) with respect to Phase 1 or Phase 2 individually be required to exceed One Hundred and Fifty Million Dollars ($150,000,000.00), (iv) with respect to any Transfer or Transfer of Control prior to the Completion of the Minimum Horizontal Improvements, the Phase 1 Developer provides assurance to the City of Completion of the Minimum Horizontal Improvements, which assurance may be provided through bonds, guarantees, cash collateral, or other instruments or means satisfactory to the City in its sole discretion. The City approvals under this Section 2.2.2(f) are in each case delegated by the City to the City Manager or the City Manager's designee.

(g) Prior to the Phase 1 Property Close of Escrow, Developer intends to Transfer all of its right, title, and interest in this Agreement, the Project, and the Property to Flight Phase 1 Owner LLC, a Delaware limited liability company, of which Flight Venture LLC, a Delaware limited liability company, is the sole member, and to satisfy each of the conditions and requirements set forth in Section 2.2.2(a) with respect thereto. Upon satisfaction of each of the applicable conditions and requirements set forth in Section 2.2.2(a) and (f), the City acknowledges that such Transfer shall be a Permitted Transfer under this Agreement.

(h) The Transfer to a Qualified Foreclosure Purchaser or to the applicable Permitted Mortgagee (or an affiliate thereof) (either, an "**Approved Foreclosure Transferee**"), in connection with a Foreclosure of any Parcel (which foreclosed Parcel, together with all of Developer's right, title, and interest in and to this Agreement and all other documents and agreements related hereto to the extent of such Parcel is hereby referred to as the "**Foreclosed Collateral**"); provided that such Transfer shall not release the Approved Foreclosure Transferee from the obligations of this Agreement or the Other Agreements and such Approved Foreclosure Transferee and all other Transferees acquiring from and after a Foreclosure shall thereafter hold such Foreclosed Collateral subject to and shall assume and, unless otherwise specifically stated in Article 17 or any Subordination Agreement then in effect between City and the applicable Permitted Mortgagee, shall be obligated to comply with all requirements of this Agreement, including without limitation, restrictions on Transfers and Transfers of Control otherwise contained in this Agreement.

2.2.3 **Provisions Applicable to Transfers and Transfers of Control Other than Permitted Transfers**. Except for Permitted Transfers described in Section 2.2.2, prior to any Transfer or any Transfer of Control, Developer shall comply with the requirements of this Section 2.2.3 and prior to the Recording of a Certificate of Compliance for a Phase or Building Pad, Transfers and Transfers of Control affecting that Phase or Building Pad that are not addressed by this Section 2.2.3 are prohibited except with respect to a Transfer to any Pad Transferee that is an End User in accordance with Section 2.2.3(c) or Space Tenants in accordance with Section 2.2.4 or a Construction Loan that is secured by a Permitted Mortgage in accordance with Sections 2.2.8 and 17. Section 2.2.3(a) shall apply with respect to Transfers of Initial Developer's or any subsequent Developer's entire interest in Phase 1 and Phase 2 of the Project; Section 2.2.3(b) shall apply solely with respect to Transfers of either the entirety of Phase 1 or the entirety of Phase 2 (other than those portions Transferred to Pad Transferees that are End Users or Space Tenants) resulting in a division of ownership between Phase 1 and Phase 2; Section 2.2.3(c) shall apply with respect to Transfers of Building Pads to Pad Transferees, Section 2.2.4 shall apply with respect to Transfers of Leasable Space to Space Tenants pursuant to a Space Lease, and Section 2.2.8 shall apply with respect to Transfers that are Mortgages. References below to Transfers of the Project or any Phase of the Project shall apply to and include Transfers of Developer's interests in any of this Agreement, the Improvements, the Property and/or the Project, or the portions thereof applicable to a Phase. Nothing in this Section 2.2.3 shall limit or release a Transferor's liability during any applicable Additional Liability Period.

(a) Transfer of Entire Interest. Prior to Recordation of a Certificate of Compliance and subject to the provisions of Section 9.7, the following shall apply with respect to Transfers of the entirety of any Developer's interest in the Project and/or Transfer of Control by

Developer (but shall specifically exclude Transfers governed by Section 2.2.3(b)) and notwithstanding any other provision of this Agreement, Developer shall not Transfer any portion of its interest in the Property, the Project, the Improvements or this Agreement less than the entirety thereof except pursuant to Section 2.2.2, this Section 2.2.3(a) and Section 2.2.3(b), 2.2.3(c), 2.2.4, 2.2.5 or 2.2.8 or Article 17:

(i) Prior to any Transfer or Transfer of Control governed by this Section, Developer shall obtain the prior written consent of the City to such Transfer or Transfer of Control, which consent shall be granted or denied in the City's sole discretion.

(ii) In order to provide the City with information necessary to inform its right to consent to a Transfer or Transfer of Control pursuant to this Section, Developer shall provide to the City at least twenty (20) Business Days prior to the date of any proposed Transfer or Transfer of Control:

(A) The names of the proposed Transferee and its principals or the new Controlling Person, as applicable;

(B) All of the material proposed terms of the Transfer or Transfer of Control;

(C) In the case of a Transfer, current audited financial statements of the proposed Transferee (or financial statements certified by the chief financial officer or other appropriate authorized officer or authorized representative of the proposed Transferee, if the proposed Transferee does not have audited financial statements);

(D) In the case of a Transfer of Control, current audited financial statements of the proposed new Controlling Person (or financial statements certified by the chief financial officer or other appropriate authorized officer or authorized representative of the proposed new Controlling Person, if the proposed new Controlling Person does not have audited financial statements);

(E) The names of all Persons who Control the proposed Transferee or the new Controlling Person, as applicable;

(F) In the case of a Transfer, a certificate of the proposed Transferee describing other real estate projects developed by, leased by, or sold by the proposed Transferee in California over the preceding five (5) year period, the dates of involvement by the proposed Transferee with such projects and the success of the projects, such certificate to be made by the manager, president or other Person with appropriate authority from the proposed Transferee to do so;

(G) In the case of a Transfer of Control, a certificate by the proposed new Controlling Person describing other real estate projects developed by, leased by, or sold by the proposed new Controlling Person in California over the preceding five (5) year period, the dates of involvement by the proposed new Controlling Person with such projects and the success of the projects, such certificate to be made by the manager, president or other Person with appropriate authority from the proposed new Controlling Person to do so; and

(H) Such other relevant information as the City may request in its sole discretion in connection with its consent rights under this Agreement (including information analogous to the information described in Sections 4.6.1 through 4.6.6, 8.5.1, and 8.5.2 of this Agreement), which may include evidence that the proposed Transferee or proposed new Controlling Person has sufficient financial capacity to perform the obligations of Developer under this Agreement.

(iii) The proposed Transferee at the time of the Transfer shall have expressly assumed for itself and its successors and assigns, and for the benefit of the City, by instrument in substantially the form and substance of the instrument attached hereto as Attachment 16A, or otherwise in a form acceptable to the City in its sole discretion, acknowledged and Recorded, all the rights and obligations of Developer under this Agreement and the Other Agreements arising from and after the date of such Transfer and the proposed Transferee shall agree to be subject to all the conditions and restrictions to which Developer is subject by reason of this Agreement and the Other Agreements with respect to the assigned interests in the Project, and shall certify in writing for the benefit of the City as to the truth and correctness, as of the effective date of the assignment, of the representations and warranties set forth in Section 3.1 to the knowledge of its specified Developer Knowledge Parties.

(iv) Upon a Transfer of all of Developer's interests in the Project pursuant to this Section 2.2.3(a) to a Transferee approved by the City, in the City's sole discretion, and the provision by the Transferee of the following items, Developer shall be released from its obligations under this Agreement and the Other Agreements arising from and after the date of such Transfer; provided that in no event shall Developer be released with respect to the Ongoing Matters:

(A) An assumption in writing by a Transferee of all obligations of the assignor under this Agreement and the Other Agreements (including the obligations to deliver a Phase 1 Joint Venture Agreement and/or a Phase 2 Joint Venture Agreement, as applicable, in form and substance acceptable to the City in its sole discretion and to otherwise comply with the requirements of Section 4.6, as applicable) pursuant to an Assignment as described in Sections 2.2.3(a)(iii); and

(B) A Guaranty made by a Person with assets meeting the requirements of the City and sufficient, in the determination of the City in its sole discretion, to secure the development, construction and maintenance obligations of Developer under this Agreement, which shall be in the form and substance of the instrument attached hereto as Attachment 14 or otherwise in a form acceptable to the City in its sole discretion and meeting the requirements of Section 4.6.3.

(b) Transfer of a Phase. Notwithstanding anything in this Agreement to the contrary, until Recording of the Certificate of Compliance for the Phase of the Project proposed to be Transferred, any Transfer resulting in a division of ownership between Phase 1 and Phase 2, including (i) Transfer by a Developer of its interest and/or ownership in Phase 1, the Phase 1 Project, the Phase 1 Provisions and, if then acquired by the Transferor, the Phase 1 Property including the Improvements constructed or to be constructed thereon, (ii) Transfer by a Developer of its interest and/or ownership in Phase 2, the Phase 2 Project, the Phase 2

Provisions, including the Option if applicable, and/or the Phase 2 Property and Improvements thereon if then acquired by the Transferor, and/or (iii) Transfer of Control of Developer or any Developer Affiliate ("**Phase Transfer**" and the Property, interests and obligations so Transferred, the "**Transferred Phase**") shall (A) meet the requirements of Section 2.2.2 as determined by the City in its sole discretion or (B) require the prior written consent of the City, which may be granted or denied by the City in its sole discretion. Until issuance of a Certificate of Compliance for the affected Property and interests, unless expressly permitted by this Section 2.2.3(b) or Sections 2.2.2, 2.2.4, 2.2.5 or 2.2.8 or Article 17, no Transfer of less than the entirety of Developer's interest in and to a Phase shall be permitted by this Agreement. Any Phase Transfer shall be carried out in accordance with the requirements of this Agreement, including by execution by the Phase Transferor and the Phase Transferee of an agreement in substantially the form and substance of the Assignment and Assumption Agreement attached hereto as Attachment 16B or as otherwise approved by the City in its sole discretion ("**Phase Assignment**"), pursuant to which the Phase Transferee shall assume all of the Phase Transferor's right, title and interest in and to the Transferred Phase and shall agree to comply with the terms of this Agreement and the Other Agreements with respect to and perform all obligations of Developer thereunder with respect to the Transferred Phase including construction of the Improvements thereon, use and maintenance of the Project, the Property and the Improvements located thereon and all matters related thereto. Except as otherwise permitted in accordance with Section 2.2.2(f) or otherwise approved by the City in its sole discretion, in no event shall Developer carry out a Phase Transfer at any time prior to occurrence of each of the following: (x) the Phase 1 Property Close of Escrow, (y) the Completion of the Minimum Horizontal Improvements and (z) exercise of the Option. Any Phase Transfer pursuant to Section 2.2.3(b)(B) shall be made only in accordance with the following requirements:

(i) The City shall have provided its prior written approval, in its sole discretion, to the Person proposed as the Phase Transferee ("**Approved Phase Transferee**"), and in order to provide the City with information necessary to inform its right to consent to a Transfer of the foregoing interests to a Phase Transferee, the Phase Transferor and the proposed Phase Transferee shall provide to the City, not less than twenty (20) Business Days prior to the date of the proposed Transfer, the biographies of the principals of the proposed Phase Transferee and any proposed Phase 2 Equity Investor and Phase 2 Guarantor and any proposed new Phase 1 Equity Investor and Phase 1 Guarantor, the information described in Section 2.2.3(a)(ii)(A) through (H) with respect to the proposed Phase Transferee, including an updated Financing Plan as described in Section 4.6.1, and the information required by Sections 4.6.2 and 4.6.6;

(ii) The City's approval rights with respect to the proposed Phase Transferee and the proposed Transfer to such Person shall include the rights to:

(A) Assure that the Phase Transferor and the proposed Phase Transferee have met all requirements of this Agreement with respect to such Transfer, including execution of the Phase Assignment and to be advised whether or not Phase Transferor and the proposed Phase Transferees are Related Parties;

(B) Confirm the financial capacity of the proposed Phase Transferee, the Phase 2 Equity Investor and the Phase 2 Guarantor and any proposed new Phase 1 Equity Investor and Phase 1 Guarantor;

(C) Approve the Phase 2 Financing Plan, the Phase 2 Joint Venture Agreement, the Phase 2 Equity Investor and, if the Phase Transfer is with respect to Phase 1, also approve all revisions to the Phase 1 Financing Plan, the Phase 1 Joint Venture Agreement, the Phase 1 Equity Investor and the Phase 1 Guarantor, and all information provided by the proposed Phase Transferee pursuant to the applicable provisions of Sections 4.6;

(D) Approve the Phase 2 Guarantor(s) and the Phase 2 Guaranty and any new Phase 1 Guarantor(s) and Phase 1 Guaranty pursuant to Section 4.6.3, and

(E) Approve the terms of the Transfer, including the terms of the conveyance agreements and all documents executed in connection therewith by the Phase Transferor and Phase Transferee in order to ensure that the same are consistent with the Financing Plan, the Phase 1 Financing Plan and the Phase 2 Financing Plan approved by the City in accordance with Section 4.6 and the requirements of this Section 2.2.3(b).

(iii) The entirety of Developer's interest in this Agreement with respect to either the Phase 1 Project or the Phase 2 Project shall be concurrently Transferred to the Approved Phase Transferee, together with all right, title and interest of Phase Transferor in and to the Transferred Phase, provided that the Phase 1 Obligations shall in all events remain the obligation of the Phase 1 Developer.

(iv) The Parties agree that Phase Transferor shall assign and Phase Transferee shall assume all rights and obligations of Developer related to the Transferred Phase and the Improvements existing or to be constructed thereon, and those additional corresponding rights and obligations under this Agreement and the Other Agreements, including the following:

(A) Phase Transferee, by Phase Assignment acknowledged and Recorded, shall assume from and after the date of such Transfer the rights and obligations of the Developer under this Agreement and the Other Agreements with respect to the Transferred Phase and the Improvements now or thereafter to be constructed thereon, including the obligations to construct and Complete, in connection with Phase 2, the Minimum Phase 2 Improvements or in connection with Phase 1, the Minimum Phase 1 Improvements, except that the Phase 1 Developer (whether Transferor or Transferee) shall retain the Phase 1 Obligations (it being further understood that except in the case of a Transfer pursuant to Section 2.2.2(f), the Minimum Horizontal Improvements for the Phase 1 Parcel must have been completed prior to the date of such Phase Transfer), and with respect to the foregoing, shall be subject to all of the other terms and conditions of this Agreement, as further provided in such Phase Assignment;

(B) Phase Transferee shall have agreed in writing for the benefit of the Phase Transferor and the City that Phase Transferee's development of the Transferred Phase and the acquired Property shall be in full compliance with the then-existing Entitlements and the Approved Plans unless otherwise approved by the City in its sole discretion;

(C) as a condition precedent to each Close of Escrow and to each subsequent Transfer to a Phase Transferee (other than a Space Lease), the Controlling Person of the Approved Phase Transferee or, if such Controlling Person is not approved by the City as the Guarantor for the Transferred Phase, another Person approved by the City in its sole discretion as Guarantor for the Transferred Phase in accordance with Section 4.6, shall deliver to the City a Guaranty for the Transferred Phase.

(D) For avoidance of doubt, unless otherwise agreed by the City in its sole discretion, upon the execution and delivery of the Phase Assignment, Phase Transferee shall be deemed to have assumed and shall be obligated to comply with and perform: all obligations of the Developer of the Transferred Phase under this Agreement and the Other Agreements with respect to the Transferred Phase including all requirements of each of the provisions of this Agreement and the Other Agreements that are imposed upon "Developer", with respect to the Project, the Property, the Improvements now or to be constructed thereon, but in such event only with respect to the Transferred Phase.

(E) Upon (1) the Transfer of all of Phase Transferor's interests in either Phase 1 or Phase 2 to an Approved Phase Transferee, the execution and delivery of the Phase Assignment, including an assumption in writing by the Phase Transferee of all of the obligations of Developer with respect to the Transferred Phase as set forth in the Phase Assignment, (2) provision of an executed Joint Venture Agreement by which the Phase Transferee is governed for the Transferred Phase, (3) compliance with the requirements of this Section 2.2.3(b) and Section 4.6, and (4) delivery of an executed Phase 1 Guaranty by the Phase 1 Guarantor if such Transfer relates to Phase 1 and takes place concurrently with or following the Phase 1 Property Close of Escrow, or delivery of an executed Phase 2 Guaranty by the Phase 2 Guarantor if such Transfer takes place concurrently with or following the Phase 2 Property Close of Escrow, then, except as set forth below, the Phase Transferor shall automatically be released from the obligations of Developer under this Agreement and the Other Agreements with respect to construction and Completion of the Improvements on the Transferred Phase and with respect to the other obligations expressly assumed by the Phase Transferee under the assignment instrument; provided that, notwithstanding the foregoing or the assumption of obligations by the Phase Transferee, the Phase Transferor shall not be relieved of any of its other obligations under this Agreement and the Other Agreements and specifically, and without limitation shall not be relieved or released from the Ongoing Matters and/or, in its capacity as Phase Transferor with respect to Phase 2, from the Phase 1 Obligations, which shall remain the obligations of the Transferor for so long as the Transferor owns the Phase 1 Property or any portion thereof and shall be binding on each Successor Owner of the Phase 1 Property or any portion thereof that is not an End User unless and until each such Person is expressly released in writing by the City.

(c) **Transfer to Pad Transferees that are End Users**. With respect to Transfers of Building Pads to Pad Transferees that are End Users (whether by sale or Ground Lease) occurring following the Close of Escrow with respect to a Phase and prior to the issuance of a Certificate of Compliance for such Phase or for such Building Pad (but specifically excluding a Transfer of the entirety of the Property or any Phase, pursuant to Section 2.2.3(a) or (b)), the following covenants and restrictions shall apply and further provided that no Transfer of one or more Building Pads comprising less than the entirety of a Phase may be made to a Pad

Transferee that is not an End User prior to issuance of a Certificate of Compliance for the applicable Building Pad (other than Permitted Transfers described in Section 2.2.2):

(i) In the case of any Transfer pursuant to this Section 2.2.3(c), the City shall (A) be provided advance written notice of (A) the identity of the End User to confirm that such End User would not be engaging in a Prohibited Use, (B) the terms of the Ground Lease or Transfer Agreement and all other Transfer documents proposed to be executed by Developer and Pad Transferee, to confirm that they comply and do not conflict with the terms and requirements of this Agreement and the Other Agreements, and (C) the building type, size and use of the Vertical Improvements to be constructed on the Building Pad. If the Pad Transferee shall be responsible for construction of Improvements upon the Transferred Building Pad, then not less than twenty (20) Business Days prior to the Transfer, the Developer shall provide to the City, and the City shall have the right to approve or disapprove in its sole discretion, evidence of the financial capacity of the proposed Pad Transferee to finance and construct such Improvements.

(ii) Developer shall cause to be made available to the City at least fifteen (15) Business Days prior to the date of any such proposed Transfer the following:

(A) the name of the proposed End User with respect to a Building Pad;

(B) current audited financial statements of the proposed Pad Transferee or financial statements certified by the chief financial officer or other appropriate authorized officer of the proposed Pad Transferee if the proposed Pad Transferee does not have audited financial statements or a net worth letter from the certified public accountant from the proposed Pad Transferee;

(C) such other relevant information as the City may reasonably request to the extent necessary to evidence that the proposed Pad Transferee intends to operate a business that is not a Prohibited Use, and to perform those obligations of Developer under this Agreement assigned to the Pad Transferee with respect to the Building Pad;

(iii) Pad Transfers to Pad Transferees shall not be valid or of force or effect unless:

(A) the sale agreement or Lease with the Pad Transferee prohibits use of the Building Pad for Prohibited Uses;

(B) if requested by Developer or the Pad Transferee, the Pad Transferee and Developer shall have executed in favor of the City a written agreement substantially in the form and substance of the Pad Transferee Non-Disturbance and Attornment Agreement agreed to by City and Developer pursuant to Section 12.3 or in such other form as is agreed to by the City in its sole discretion, which shall, among other things, acknowledge the City's rights under this Agreement; and

(C) City has provided its prior written consent to those items and Transferees for which it has a right of consent pursuant to this Section 2.2.3(c).

(iv) Provided that each of the conditions in Sections 2.2.3(c)(i) through (iii) are satisfied, then at the request of Pad Transferee: (A) prior to execution by Developer and the Pad Transferee of a Ground Lease or Transfer Agreement, the Pad Transferee and the City shall, at the request of either such party, enter into a letter agreement attaching the City Non-Disturbance and Attornment Agreement and (B) the City shall, upon execution and delivery of such City Non-Disturbance and Attornment Agreement by Pad Transferee and Developer execute such agreement; provided that in each case, the City Non-Disturbance and Attornment Agreement shall not be effective until the date of legal Transfer of the Building Pad by Developer to the Pad Transferee;

(v) Developer shall retain all of its obligations under this Agreement relating to the Transferred Building Pad and the construction of the Improvements, including the Minimum Horizontal Improvements, payment of all Development Costs and performance of the maintenance and indemnity obligations set forth in this Agreement with respect to such Building Pad, and all Ongoing Matters; provided that Developer may assign to the Pad Transferee its maintenance obligations for such Building Pad; provided that such Developer shall not be relieved of such obligations due to any assignment;

(vi) Developer shall use commercially reasonable efforts to cause the Transfer Agreement or Ground Lease or a declaration of special land use restrictions comparable to that recorded by the master developer of the Campus at Playa Vista development ("**SLUR**"), as applicable, to include the following provisions (which shall be subject to modifications reasonably requested by Developer and Pad Transferee, provided that such modifications do not have a material adverse effect on the City as determined by the City in its sole discretion) as remedies in favor of Developer, in the event that any Pad Transferee or any successor in interest to all or any portion of such Pad Transferee's rights with respect to the Building Pad shall: (A) default under the covenants, conditions and restrictions set forth in the applicable Quitclaim Deed, the Special Restrictions or the CC&Rs or (B) fail to occupy the Building Pad within the time period required for such occupancy by the Transfer Agreement or Lease;

(vii) If the Pad Transferee holds: (A) a leasehold interest in the Building Pad and Improvements have not yet been Completed on such Building Pad, Developer shall use its commercially reasonable efforts to cause the recordation of a SLUR or to include in the Ground Lease a right of Developer, either (1) to terminate the applicable Ground Lease or (2) to buy out such leasehold interest (provided that such lease may include one or both of the foregoing remedies, in Developer's discretion) or (B) the fee interest in such Building Pad and Improvements have not yet been Completed on such Building Pad, Developer shall use its commercially reasonable efforts to cause the recordation of a SLUR or to have (1) a written option or (2) other legally enforceable right to purchase such fee interest;

(viii) Developer agrees to notice defaults and pursue the remedies set forth in a Ground Lease, Transfer Agreement or SLUR to the extent Developer has the right to enforce the same pursuant to the terms therein and to use commercially reasonable efforts to mitigate the effect of any default by a Transferee thereunder; provided, however, that nothing in this Agreement, the Other Agreements, the Ground Lease, sale contract or the City Non-Disturbance Agreement is intended to or shall limit the City's rights with respect to

Developer. The City shall have the express right (but not the obligation) to seek specific performance: (A) against Developer requiring such Party to exercise its rights and remedies under agreements with the Pad Transferee or its successor in interest (but in such circumstance the City and Developer shall agree upon an extension of the Schedule of Performance with respect to Developer's obligation to Complete the Vertical Improvements (including the core and shell, exterior staircases and balcony systems and common restrooms, but excluding the requirement to construct any other tenant improvements) on such Building Pad in order to permit Developer to seek an appropriate Pad Transferee approved by the City for such Building Pad) and (B) against Developer, the Pad Transferee, or its successor in interest, including the City's Right of Repurchase or Right of Reversion contained in this Agreement with respect to property Transferred to the Pad Transferee.

2.2.4 **Space Lease Transfers**.

(a) With respect to all Space Lease Transfers:

(i) Developer shall retain all of the obligations under this Agreement relating to such Building Pad and Improvements thereon, including construction of the Improvements, payment of all Development Costs, and the performance of Developer's maintenance obligations and all indemnity obligations of Developer set forth in this Agreement with respect to such Building Pad and Improvements thereon and Developer shall not have the right to assign such obligations to the Space Tenant, including no right to assign the obligation to carry out construction of the Vertical Improvements (but Developer may transfer the obligation to construct interior tenant improvements without relieving Developer of any of its obligations under this Agreement);

(ii) The rights of the Space Tenant to its respective portion of the Property shall be "subject to" the use limitations contained in this Agreement, the Special Restrictions, and the CC&Rs; and

(iii) Upon request of Developer, the City shall enter into a City Non-Disturbance and Attornment Agreement with Developer and a Space Tenant under a Space Lease substantially in the form and substance of Attachment 23 (or in other form agreed to by the City in its sole discretion).

(b) Until the issuance of a Certificate of Compliance with respect to each Phase, Developer shall cause an authorized officer of Developer to execute and deliver to the City on a quarterly basis certified written reports (each, a "**Quarterly Leasing Report**") summarizing leasing activity (which will report leasing activity in terms of both GBA and rentable square feet) with respect to each such Phase through the latest quarter and certifying as to the truth and correctness of the information contained in the Quarterly Leasing Report.

2.2.5 **Bankruptcy**. The following shall be considered Transfers which are prohibited without consent from the City, which may be granted or withheld in the City's sole discretion (herein, a "**Developer Insolvency Event**"):

(a) If Developer is or becomes bankrupt, or insolvent or if any involuntary proceeding is brought against Developer (unless, in the case of a petition filed

against Developer, the same is dismissed within ninety (90) calendar days), or Developer makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of federal or State bankruptcy or insolvency laws, including the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(b) If a writ of attachment or execution is levied on this Agreement or on any Parcel, or on any portion thereof, where such writ is not discharged within ninety (90) calendar days; or

(c) If, in any proceeding or action in which Developer is a party, a receiver is appointed with authority to take possession of a Parcel, or any portion thereof, where possession is not restored to Developer within ninety (90) calendar days.

2.2.6 **City Estoppel**.

(a) From time to time (but in no event more often than annually or in connection with a Permitted Transfer or other Transfer or Transfer of Control consented to by the City in accordance with this Agreement), within twenty (20) calendar days of the City's receipt of a written request therefor, the City shall execute and deliver to Developer and the Transferee, and if applicable, any Permitted Mortgagee, a City Estoppel, substantially in the form and substance of the City Estoppel attached hereto as Attachment 6 with such modification as may be reasonably requested by any Transferee or Permitted Mortgagee, together with such modifications as are necessary in the City's sole discretion to ensure the accuracy of the statements made therein.

(b) Developer shall promptly pay to the City all of the City's expenses, including legal fees and staff costs, incurred with respect to the preparation, review, and delivery of each City Estoppel and with respect to the City's review and approval (or disapproval), as applicable, of each Transfer or Transfer of Control, not to exceed Three Thousand Dollars ($3,000.00) per estoppel; provided, however, such cap shall not be applicable if Developer proposes any material changes to the City Estoppel, or Developer is in Default under this Agreement or any of the Other Agreements at such time. The City costs incurred pursuant to this Section shall be DDA Transaction Expenses.

2.2.7 **Exclusion of LPCC**. The City has selected LPCC as the developer of the Project based upon the experience of LPCC and the business terms it has proposed for this transaction. Therefore, notwithstanding that LPCC has entered into agreements pursuant to which the Controlling Person of Developer is not LPCC or an Affiliate of LPCC, and such Controlling Person has a right to Transfer this Agreement and the Property to a Developer Affiliate or to Transfer Control to a Developer Affiliate or to otherwise make certain Transfers or Transfers of Control under this Agreement, in no event shall Developer make a Permitted Transfer or any other Transfer or Transfer Control to any Person that would result in the removal of LPCC (or an Affiliate of LPCC) as the Person which has the Operating Rights and Responsibilities, without the prior written consent of the City, which consent shall be exercised in the sole discretion of the City provided, however, that in the event that the Controlling Person requests the removal of LPCC or an Affiliate of LPCC as a result of a default by the Affiliate of LPCC that is a party to the Original Joint Venture Agreement or, if then in effect, any other Joint

Venture Agreement approved by the City in its sole discretion pursuant to which LPCC (or an Affiliate of LPCC) had Operating Rights and Responsibilities, the City and Developer shall meet and confer in good faith regarding the mutual selection of a replacement for LPCC (or an Affiliate of LPCC) with respect to the Operating Rights and Responsibilities, from the following five (5) developers and/or their affiliates in connection therewith (each, a "**Designated Developer**"): (i) Hines, (ii) Trammell Crow, (iii) Bixby, (iv) LBA, and (v) OliverMcMillan; provided that any of the foregoing shall be ineligible for selection if such entity or a substantial portion of the affiliates of such entity have been the subject of any of the events or actions described in Section 2.2.5 within the preceding eighteen (18) months.

2.2.8 **Requirements for Mortgages and Mezzanine Financing**. Prior to the Recordation of a Certificate of Compliance for any portion of the Property, Developer shall not encumber any portion of the Property with a Mortgage, except in compliance with the requirements of this Agreement, including Article 17. Developer shall not obtain or utilize Mezzanine Financing without the prior consent of the City in its sole discretion.

2.3 **Remedies for Improper Transfers or Transfers of Control**.

Without limiting the generality of the foregoing, a failure (a) by Developer to comply with the requirements of this Article 2 with respect to any Transfer or Transfer of Control or (b) by any Transferee to execute the assumption agreement required by Section 2.2, shall in each case be a Material Default under this Agreement, subject to the provisions of Section 14.2.3, and, in such event, the City shall have all remedies available to it specified in this Agreement.

2.4 **Changes**.

Developer shall promptly notify the City in the event that (a) any of the following Persons cease to be involved with the development of the Project: (1) any of the Key Employees, (2) the Project Architect, or (3) an Affiliate of LPCC, or (b) an Affiliate of LPCC ceases to have the Operating Rights and Responsibilities.

3. Representations and Warranties.

3.1 **Developer's Representations and Warranties**.

Developer represents and warrants to the City as follows as of the Effective Date:

3.1.1 Developer has the necessary experience, financial experience and qualifications necessary to perform as Developer pursuant to this Agreement and to construct and complete the Project, and, without limiting the foregoing, Developer is experienced in the development, management, and leasing of commercial projects of the size and type described in this Agreement and understands the process and requirements associated with projects such as the Project described herein.

3.1.2 Developer's acquisition of the Property, development of the Project and its other undertakings pursuant to this Agreement are for the purpose of timely development of the Development Parcels in accordance with the Schedule of Performance attached to this Agreement and not for speculation or land holding.

3.1.3 Developer is a limited liability company, duly organized, and validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing in the State of California.

3.1.4 Subject to all of the conditions set forth in this Agreement for the benefit of Developer, Developer has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

3.1.5 Developer has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which Developer is or shall be a party and the consummation of the transactions contemplated hereby.

3.1.6 The individuals executing this Agreement and the individuals that will execute the instruments referenced in this Agreement on behalf of Developer have, or will have upon execution thereof, the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

3.1.7 This Agreement has been duly authorized, executed and delivered by Developer and all documents required in this Agreement to be executed by Developer pursuant to this Agreement shall be, at such time as they are required to be executed by Developer, duly authorized, executed and delivered by Developer and are or shall be, at such time as the same are required to be executed hereunder, valid, legally binding obligations of and enforceable against Developer in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

3.1.8 Neither the execution nor delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions in this Agreement contemplated, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law or any order of any court or Governmental Authority to which Developer is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan partnership agreement, lease or other agreements or instruments to which Developer or any of its members are a party and which affect the Property or the transactions contemplated by this Agreement.

3.1.9 No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other insolvency proceedings are pending or, to the best of Developer's knowledge, threatened against Developer or its members.

3.1.10 Developer is relying solely upon its own inspections and investigations in proceeding with this Agreement and the transactions contemplated hereby, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation (excepting only those representations and warranties of the City expressly set forth in Sections 3.3 and 18.11.2 of this Agreement) and not on the non-disclosure of any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Agreement. In making such investigation and assessment, Developer has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the generality of the foregoing provisions, Developer acknowledges that except as set forth in Section 3.3.8 of this Agreement, the City has not made and will not make any representations or warranties concerning the condition of the Property, the compliance or non-compliance of the Property or any portion thereof with Environmental Laws or the existence or non-existence of Hazardous Materials in relation to the Property or any portion thereof or otherwise.

3.1.11 Except as described on Attachment 4, there is no litigation or governmental action either pending or, to the knowledge of Developer's Representatives, threatened, to which Developer or any of LPCC, LO Flight LLC, Alcion Flight Investors LLC, Alcion Flight Strategic LLC, Alcion Real Estate Partners Strategic Parallel Fund III, L.P., Alcion Real Estate Partners Master Fund III, L.P., or any Person Controlling any of the foregoing is or may be a party or to which the Property may become subject, which would reasonably be expected to prevent or materially impair Developer's ability to develop the Property and the Project or carry out its other obligations under this Agreement, and upon each Close of Escrow, the Other Agreements then in effect, as contemplated by the terms of this Agreement.

3.1.12 Except as set forth in this Agreement and the ENA, Developer has not paid or given, and will not pay or give, any third Person any money or other consideration for obtaining this Agreement, other than the normal cost of conducting business and cost of professional services such as architects, engineers, attorneys, and real estate brokers.

3.1.13 Developer has not knowingly submitted or delivered or knowingly caused to be submitted or delivered any reports, documents, instruments, information and forms of evidence to the City concerning or related to this Agreement and the transactions contemplated hereby which, to the best of Developer's knowledge, contain any material misrepresentation or intentional omission.

3.1.14 LO Flight LLC, Alcion Flight Investors LLC, and Alcion Flight Strategic LLC have executed that certain Limited Liability Company Agreement of Flight Venture LLC as of December 23, 2015 (the "**Original Joint Venture Agreement**") a copy of which has been caused to be made available by Developer to the City and is subject to Section 18.23. The Original Joint Venture Agreement is in full force and effect and has not been amended or modified. Except as set forth in the Original Joint Venture Agreement, in any documents executed in connection with any Construction Loan, and, if approved by the City in its sole discretion, in any documents executed in connection with any Mezzanine Financing, Developer does not have any contingent obligations or any other contracts the performance or nonperformance of which could adversely affect the ability of the Developer to fund the Project

or to carry out its obligations hereunder. Developer has not and shall not undertake such additional projects as could reasonably be expected to jeopardize the sufficiency of such equity, capital and firm and binding commitments for the purposes expressed in the preceding sentence.

Subject to Section 7.2.2(b)(x) and 7.3.2(b)(v), Developer's representations and warranties set forth in this Section 3.1 shall be deemed to be restated at each Close of Escrow, and shall survive each Close of Escrow until the Certificate of Compliance has been issued as to the relevant Phase and shall not be merged with any Quitclaim Deed. As used in Article 3, "**to Developer's knowledge**" and similar phrases means any knowledge of the Key Employees, in each case without any duty of inquiry (collectively, the "**Developer Knowledge Parties**"). Notwithstanding anything to the contrary contained herein, (a) none of the Developer Knowledge Parties shall be personally liable for any inaccuracy or breach by Developer of the representations and warranties contained in this Section 3.1, elsewhere in this Agreement or in any of the Other Agreements, and (b) the City shall not be entitled to make a claim for a breach of Developer's representations and warranties if Developer had disclosed in writing facts to the City Manager or the then-current Economic Development Director indicating that the applicable representation and warranty was incorrect prior to (i) the execution of this Agreement and the City proceeded with the execution of this Agreement, or (ii) the relevant Close of Escrow and the City proceeded with such Close of Escrow, in either case in spite of such inaccuracy.

3.2 **Developer Covenants Regarding Representations and Warranties**.

Developer shall promptly advise the City in writing if any of the Developer Knowledge Parties becomes aware (without any duty of inquiry) that any representation or warranty made by Developer in Section 3.1 is or becomes untrue in any material respect prior to the Close of Escrow.

3.3 **City Representations and Warranties**.

City represents and warrants to Developer as follows:

3.3.1 The City is a municipal corporation incorporated within and existing pursuant to the laws of the State of California.

3.3.2 Subject to all of the conditions set forth in this Agreement for the benefit of the City, the City has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

3.3.3 The City has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which the City is or shall be a party and the consummation of the transactions contemplated hereby.

3.3.4 The individual executing this Agreement and the individual that will execute the instruments referenced in this Agreement on behalf of the City have, or will have upon execution thereof, the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

3.3.5 This Agreement has been duly authorized, executed and delivered by the City and all documents required in this Agreement to be executed by the City pursuant to this Agreement shall be, at such time as they are required to be executed by the City, duly authorized, executed and delivered by the City and are or shall be, at such time as the same are required to be executed hereunder, valid, legally binding obligations of and enforceable against the City in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

3.3.6 Neither the execution or delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement, and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions in this Agreement contemplated, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law, any order of any court or Governmental Authority or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which the City is a party or which affect any of the Property or the transactions contemplated by this Agreement.

3.3.7 Except as described in Attachment 4, there is no litigation either pending or, to the knowledge of the City Representatives, threatened, to which the City is or may be made a party, or to which the Property, is or may become subject which would reasonably be expected to prevent or materially impair the ability of the City to carry out its obligations under this Agreement and upon each Close of Escrow, the Other Agreements then in effect, or to affect the Property conveyed at such Close of Escrow.

3.3.8 To the knowledge of the "**City Representatives for Section 3.3.8**," between May 2002 and the Effective Date, except as set forth on Attachment 10B there has been no Release of any Hazardous Materials on the Property. "To the knowledge of the '**City Representatives for Section 3.3.8**'" shall mean any knowledge of Jeffrey Parker (or if he is not then City Manager, the then-current City Manager), David Kendig (or, if he is not then City Attorney, the then-current City Attorney), John Buchanan (or if he is not then Director of Economic Development, the then-current Director of Economic Development), Ken Nishikawa (or, if he is not then the Deputy Director of Public Works/Engineering, the then-current Deputy Director of Public Works/Engineering), Ken Piguee, and Matt West (or, if he is not then the Assistant to the City Manager, the then-current Assistant to the City Manager most involved with the Tustin Legacy project), without any duty of inquiry or any imputed knowledge.

Subject to Section 7.2.1(a)(xi) and 7.3.1(a)(v), City's representations and warranties set forth in this Section 3.3 shall be deemed to be restated at each Close of Escrow, and shall survive each Close of Escrow until the Certificate of Compliance has been issued as to the relevant Phase, and shall not be merged with any Quitclaim Deed. As used in Article 3 (other than

Section 3.3.8) "to City's knowledge" and similar phrases means any knowledge of Jeffrey Parker (or, if he is not then City Manager, the then-current City Manager), David Kendig (or, if he is not then City Attorney, the then-current City Attorney) and John Buchanan (or if he is not then Director of Economic Development, the then-current Director of Economic Development) (the "**City Representatives**") without any duty of inquiry. Notwithstanding anything to the contrary contained herein, (a) none of the City Representatives or the City Representatives for Section 3.3.8 shall be personally liable for any inaccuracy or breach by the City of the representations and warranties contained in Section 3.3 or elsewhere in this Agreement or in any of the Other Agreements, and (b) neither Developer nor any other Person shall be entitled to make a claim for a breach of the City's representations and warranties if the City had disclosed in writing facts to Developer indicating that the applicable representation and warranty was incorrect prior to (i) the execution of this Agreement and Developer proceeded with the execution of this Agreement, or (ii) the relevant Close of Escrow and Developer proceeded with such Close of Escrow, in either case in spite of such inaccuracy.

4. Conveyance of Property from City to Developer

4.1 Conveyance of Property.

Subject to the terms and conditions set forth in this Agreement, including the satisfaction of the Closing Conditions set forth in Article 7 in this Agreement, the City agrees to sell to Developer and Developer agrees to purchase from the City the Development Parcels, together with all existing improvements, if any, presently located on the Development Parcels, all appurtenances pertaining to the Development Parcels or such improvements and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection with the Development Parcels (collectively referred to in this Agreement as the "**Property**"), subject to all Permitted Exceptions. At each Close of Escrow, the City shall cause the Special Restrictions to be Recorded against and thereafter shall convey to Developer by Quitclaim Deed fee title to the Property to be conveyed at such Close of Escrow. Notwithstanding the foregoing:

(a) the term "**Property**" (and the terms "**Phase 1 Property**" and "**Phase 2 Property**") shall exclude the following rights and interest which shall be explicitly reserved to the City:

(i) Any and all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbons by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Development Parcels together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Development Parcels or any other land, including the right to whipstock or directionally drill and mine from lands other than the Development Parcels, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Development Parcels and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels; and

(ii) Any and all water, water rights or interests therein appurtenant or relating to the Development Parcels or owned or used by the City in connection with or with respect to the Development Parcels no matter how acquired by the City, whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the perpetual right and power to explore, drill, re-drill and remove the same from or in the Development Parcels, to store the same beneath the surface of the Development Parcels and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by the City; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels.

(b) the reservation by the City of the rights and interests in Sections 4.1(a)(i) and (ii) shall not be deemed to limit Developer's right to drive piles, construct caissons, foundations, basements and other subsurface improvements for the purpose of constructing the Project, and otherwise engage in subsurface construction activity in order to construct the Project.

4.2 **Purchase Price**.

4.2.1 **Phase 1 Purchase Price**. As consideration for the sale of the Phase 1 Property by the City to the Developer, at the Phase 1 Property Close of Escrow Developer shall pay to the City in immediately available funds the amount of Twenty-Five Million, Nine Hundred Eighty-Four Thousand, Eight Hundred Forty-Seven and No/100 Dollars ($25,984,847.00) (the "**Phase 1 Property Purchase Price**"). The maximum development envelope which may be constructed on the Phase 1 Property as a result of this conveyance shall be 390,440 GBA; provided that this conveyance grants no right to development except as permitted by the Applicable Approvals and such development shall be permitted only upon approval of all Entitlements and Development Permits required by the City in its Governmental Capacity for such development and in accordance with the requirements of this Agreement and the Other Agreements.

4.2.2 **Phase 2 Purchase Price**. As consideration for the sale of the Phase 2 Property to Developer by the City, at the Phase 2 Property Close of Escrow, Developer shall pay to the City in immediately available funds the amount indicated on Attachment 28, which shall be in the amount of Thirty-One Million, Three Hundred Ninety Thousand, Six Hundred Forty Three and No/100 Dollars ($31,390,643.00) if the Phase 2 Property Close of Escrow takes place within the twelve (12) month period following the Phase 1 Property Close of Escrow (the "**First Option Year**"), and shall be increased in each subsequent Option Year to the amount indicated for such year on Attachment 28 (the "**Phase 2 Property Purchase Price**"). The maximum development envelope which may be constructed on the Phase 2 Property as a result of this conveyance shall be 479,560 GBA; provided that this conveyance grants no right to development except as permitted by the Applicable Approvals and such development shall be permitted only upon approval of all Entitlements and Development Permits required by the City in its Governmental Capacity for such development and in accordance with the requirements of this Agreement and the Other Agreements.

4.3 **Payment of Purchase Price**.

4.3.1 **Purchase Price Deposit**. Within two (2) Business Days following approval of this Agreement by the City, and as a condition to its effectiveness, Developer shall deliver an earnest money deposit of One Million and No/100 Dollars ($1,000,000.00) to Escrow Holder (which amount, together with all interest earned thereon, shall be referred to herein as the "**Purchase Price Deposit**"). The Purchase Price Deposit shall be held by Escrow Holder in escrow in an interest-bearing account approved by City and Developer and disposed of in accordance with the terms and conditions of this Agreement; provided, however, that Developer may elect to apply any unapplied portion of the City Costs Deposit held by the City at such time to the Purchase Price Deposit. The Purchase Price Deposit shall constitute security to the City for the Phase 1 Property Close of Escrow.

4.3.2 **Application of Purchase Price Deposit**. After expiration of the Due Diligence Period, the Purchase Price Deposit shall be nonrefundable except as otherwise expressly provided in Sections 15.1.3 and 15.4.3 and shall be applied only to the Phase 1 Property Purchase Price as set forth in Section 4.3.4 below, or shall be liquidated damages to the City in the event of certain Defaults by Developer as further set forth in Section 15.2 of this Agreement.

4.3.3 **Option to Purchase Phase 2 Property**. The provisions of this Section 4.3.3 shall apply to acquisition of the Phase 2 Property, which may be acquired by Optionee if at all by exercise of the Option following the Phase 1 Property Close of Escrow. The term "**Optionee**" shall mean the Person holding and having the right to exercise the Option and/or to acquire the Phase 2 Property pursuant to the Option from time to time under this Agreement, and shall, prior to any Phase Transfer, be the Developer, and subsequent to any Phase Transfer, the Phase 2 Developer. The Option shall not be Transferrable prior to its exercise except to a Developer Affiliate in accordance with Section 2.2.2(f). Notwithstanding any other provision of this Agreement: (x) if this Agreement shall terminate prior to the Phase 1 Property Close of Escrow for any reason, the Option and all rights of Optionee in and to Phase 2 shall likewise terminate, (y) the Option shall automatically terminate and shall be of no further force and effect in the event that the Option is Transferred to any Person that is not a Developer or a Phase 2 Developer hereunder or, unless authorized by Section 2.2.2(f), is Transferred prior to occurrence of all of the following (1) the Phase 1 Property Close of Escrow, (2) Completion of the Minimum Horizontal Improvements, and (3) the exercise of the Option, and (z) from and after any Phase Transfer authorized by this Agreement, the Phase 2 Developer shall be the sole and exclusive Optionee.

(a) Provided that Optionee, concurrently with the Phase 1 Property Close of Escrow, delivers to the City the sum of Two Dollars ($2.00) ("**First Option Payment**") as initial Option consideration, Optionee shall have an option to acquire the Phase 2 Property (the "**Option**"), which Option shall remain in effect for the First Option Year as the same may be extended as described in Section 4.3.3(b), for a total period not to exceed ten years from the Phase 1 Property Close of Escrow ("**Option Term**"), and which may be exercised by Optionee only upon satisfaction of the conditions set forth in Section 4.3.3(d). Notwithstanding any other provision of this Agreement to the contrary, (a) the Option Term may not be further extended once the Option has been exercised and (b) regardless of whether any Phase Transfer has or has

not occurred, (i) if this Agreement terminates prior to the Phase 1 Property Close of Escrow, the Option shall automatically terminate upon termination of this Agreement, and (ii) if this Agreement terminates as to the Phase 1 Provisions following the Phase 1 Property Close of Escrow (other than any termination due to issuance of a Certificate of Compliance for Phase 1) but prior to the Phase 2 Property Close of Escrow, then the Option shall automatically terminate upon termination of the Phase 1 Provisions if either (A) no Phase Transfer has occurred or (B) the Optionee and the Phase 1 Developer are Related Parties.

(b) Provided that the Option has not then been exercised and remains in effect, at the expiration of each Option Year until the ninth (9^{th}) anniversary of the Phase 1 Property Close of Escrow, Optionee shall have the right to extend the Option Term for an additional one year period by (i) providing written notice to the City of its intent to so extend delivered not more than sixty (60) calendar days nor less than thirty (30) calendar days prior to the expiration of the then-effective Option Term and (ii) providing a concurrent Option Payment to the City in the amount required to extend the Option Term for that period, which Option Payment varies year by year and shall be in the amount set forth in Attachment 28 for the applicable year; provided that, Optionee shall not have the right to extend the Option for any additional Option Year if at the time such exercise is required hereunder in order to be effective, (A) Optionee is then in Material Default under this Agreement or in default past all applicable notice and cure periods under the Other Agreements, or (B) following any Phase Transfer, the Phase 1 Developer is then in Material Default under this Agreement or in default past all applicable notice and cure periods under the Other Agreements.

(c) The Option Payment shall be paid by Optionee as a Cash Option Payment or, prior to a Phase Transfer, may be paid by Optionee by application of available Option Credit as further described in Section 4.3.3(e) and (f), provided that from and after any Phase Transfer, the use of Option Credits to fund Option Payments shall not be available and the provisions of Section 4.3.3(g) shall apply. In no event shall Optionee have a right to prepay any required Option Payment or to accelerate the extension of the Option Term by application of Option Credit (even if the amount of the Option Credit Remainder otherwise would be sufficient to permit such acceleration) or to extend the Option Term by more than one twelve (12) month period at any time. The aggregate sum of the First Option Payment and each Cash Option Payment paid to the City (excluding from such calculation any Option Payment deemed paid by application of Option Credit) shall collectively be referred to herein as the "**Total Cash Option Payments**."

(d) The Option shall be exercisable by Optionee only upon satisfaction of the conditions precedent set forth in this Section 4.3.3(d) and shall be exercised by Optionee's delivery of written notice of such exercise to the City on or before the date that is sixty (60) days prior to the expiration of the then-current Option Term, with an accompanying certification by an officer of Optionee that all conditions precedent to exercise of the Option have been satisfied. The following shall be conditions precedent to exercise by Optionee of the Option and to the Phase 2 Property Close of Escrow:

(i) the requirements set forth in Section 4.6.2(c), (d) and (e) shall have been satisfied with respect to Phase 2;

(ii) one of the following threshold conditions shall have been satisfied as of the date of the Option exercise (and as a condition to the Phase 2 Property Close of Escrow, shall remain satisfied as of the date of such Close of Escrow): (A) Leases or Transfer Agreements shall have been executed with End Users for not less than 232,050 GBA within the Minimum Phase 1 Vertical Improvements, or (B) Optionee is under binding contract (which may be subject to contingencies related to financing, conveyance, or construction) to sell or lease to a Build-to-Suit User within the Phase 2 Project which will lease or own at least 100,000 GBA of Office Uses;

(iii) the Phase 1 Property Close of Escrow shall have occurred;

(iv) unless otherwise approved by the City pursuant to Section 2.2.7, LPCC (or an Affiliate of LPCC) has the Operating Rights and Responsibilities;

(v) Developer shall have caused the Basic Concept Plans for Phase 2, if different from those previously approved by the City, to be prepared and submitted to the City for approval;

(vi) City shall have issued the Phase 2 Applicable Approvals;

(vii) Optionee shall not then be in Default under this Agreement or in default under any of the Other Agreements; and

(viii) If a Phase Transfer has occurred, Phase 1 Developer shall not then be in Default under this Agreement or in default under any of the Other Agreements.

(e) If during the Option Term and prior to the exercise of the Option for the Phase 2 Property Close of Escrow, Developer (or following a Phase Transfer, Phase 1 Developer) (such Person, the "**Working Developer**") Completes a usable segment of the Reimbursable Phase 2 Improvements, as determined by the City Department of Public Works applying the standards for acceptance of improvements set forth in the Reimbursement Agreement, then promptly following Completion of such work, Working Developer shall provide the City with the cost to Working Developer for design and construction of such completed usable segment, together with such evidence of expenditure as required by the City to substantiate the costs acceptable to the City in its reasonable discretion. The City shall determine the amount of the "**Total Option Credit**" which shall be equal to the actual costs to Working Developer of each completed usable segment substantiated and acceptable to the City Department of Public Works applying the standards for acceptance of improvement costs set forth in the Reimbursement Agreement; provided, in the event that Working Developer fails to Complete any useable segment within the time period set forth in the Schedule of Performance, the City shall have the right to offset against the Total Option Credit (and thereby reduce the amount of Option Credit and reimbursement, if any, that may be due pursuant to Section 4.3.3.(i)) any direct and indirect costs, including staff and third party costs, that the City incurs as a result of Working Developer's failure to complete such work or the delay in performance of the work beyond the dates set forth in the Schedule of Performance.

(f) For so long as the Working Developer is the Optionee, the following shall apply: With respect to each timely extension of the Option requested by

Optionee in writing, the City and Optionee shall first apply any available Total Option Credit to "pay" the Option Payment then due. The Total Option Credit shall be reduced in each year in which the Option is extended by Optionee by the amount of the Option Payment otherwise due from Optionee to City to extend the Option Term in that year as shown on Attachment 28 (each, an "**Option Credit**") and the remaining amount of the Total Option Credit, after taking into account such cumulative reductions, is referred to as the "**Option Credit Remainder**". By way of example only, and as further shown on Attachment 28 (Table 2, Example 1), if the Total Option Credit is $2,800,000, then if Optionee chooses to request the first Option extension (which it shall request prior to the end of the First Option Year), the Option Payment of $100,000 then due to the City shall be deemed paid by application of Option Credit in the amount of $100,000, the Total Cash Option Payments shall be $0 and the Option Credit Remainder shall be $2,700,000. In the second year, upon request for extension of the Option Term by Optionee, the Option Credit Remainder ($2,700,000) shall again be reduced by the amount of the Option Payment (then $200,000) due to the City, which shall be deemed paid by application of an Option Credit in the amount of $200,000, and the Total Cash Option Payments shall be $0 and the Option Credit Remainder shall be $2,500,000, but the foregoing shall not reduce the Phase 1 Property Purchase Price. Once the Option Credit Remainder reaches $0, each remaining Option Payment (or portion thereof) for which no Option Credit Remainder is available shall be made as a Cash Option Payment, such that, for the example shown in Attachment 28 (Table 2, Example 1), the Option Payments in years 8 ($800,000) and 9 ($900,000) would, if paid to the City in accordance with the requirements of this Agreement, be applicable to the Phase 2 Property Purchase Price.

(g) Following a Phase Transfer, the following shall apply: With respect to each timely extension of the Option requested by Optionee in writing, Optionee shall pay to the City the Option Payment then due as a Cash Option Payment. To the extent that (i) the City receives a Cash Option Payment for an extension from Optionee **and** (ii) there remains an Option Credit Remainder due to the Working Developer **and** (iii) the Working Developer is not then in Default under this Agreement, then the City shall, within sixty (60) calendar days following its receipt of the Cash Option Payment, pay to the Working Developer to which any Option Credit Remainder is due, an amount (the "**City Option Payment**") equal to the lesser of (x) the then-remaining Option Credit Remainder and (y) the amount of the Option Payment received by the City from Optionee in that year. The Total Option Credit shall be reduced in each year in which the Option is extended by Optionee by the amount of the City Option Payment paid by the City to the Working Developer, and the remaining amount of the Total Option Credit, after taking into account such cumulative reductions and any prior cumulative reductions pursuant to Section 4.3.3(f), is referred to as the "**Option Credit Remainder**". If, for any reason, the City does not receive a Cash Option Payment in any year, the City shall have no obligation to pay the City Option Payment or any other amounts to the Working Developer unless specifically required to do so by Section 4.3.3(h) and (i).

(h) Developer acknowledges and agrees on behalf of itself and each and every future Phase 1 Developer and Phase 2 Developer, that (i) regardless of whether or not there has been a Phase Transfer, the provisions of Section 15.3 shall apply in the case of any lapse, termination or expiration of the Option following the Phase 1 Property Close of Escrow with respect to refund or retention by the City of the Cash Option Payments made to the City as of such date by Optionee and (ii) regardless of whether or not the Cash Option Payments of

Optionee are refundable pursuant to Section 15.3, upon a lapse, termination or expiration of the Option, the Working Developer shall be entitled to payment on account of the Reimbursable Phase 2 Improvements in the amount of the Option Credit Remainder if and only if each of the following are true:

(A) the Option has lapsed, expired and/or terminated only because of any one of the following: (1) Optionee has elected not to extend the Option pursuant to Section 4.3.3(b) and the Option has not then been timely exercised or (2) the Option has been timely exercised but the Phase 2 Property Close of Escrow does not take place either due to (aa) the failure of a condition precedent set forth in Section 7.3.1 outside of the control of Optionee (including due to the City's election or deemed election not to cure a Disapproved Exception as set forth in Section 6.3), and, if a Phase Transfer has occurred and Phase 1 Developer and Optionee are Related Parties, outside the control of Phase 1 Developer, and not resulting from the action or inaction of any such Party, or (bb) a Default by the City as set forth in Section 15.4.1, and

(B) neither this Agreement nor the Option has been terminated as a result of a Default by Developer or Optionee, and

(C) Working Developer is not, at the time of the lapse, termination or expiration of the Option or failure to timely close following exercise of the Option, in Material Default under the terms of this Agreement or in default past any applicable notice and cure period under any then effective Other Agreement; provided that if the Working Developer is in Potential Default at the time that such funds would otherwise be due, the City shall have the right to withhold the funds then due until the end of the cure period therefor, and shall remit such funds to Working Developer at the end of such cure period if and only if Working Developer has cured such Default), and

(D) If Working Developer and Optionee are Related Parties, Optionee shall not then be in Material Default under this Agreement or in default past any applicable notice and cure period under any of the Other Agreements; provided that if the Working Developer is in Potential Default at the time that such funds would otherwise be due, the City shall have the right to withhold the funds then due until the end of the cure period therefor, and shall remit such funds to Working Developer at the end of such cure period if and only if Working Developer has cured such Default.

By way of example only, if the Total Option Credit is $2.8 million, and, prior to any Phase Transfer, Optionee chooses to request the first Option extension (which it shall request prior to the end of the First Option Year), the Option Payment of $100,000 then due to the City shall be deemed paid by application of Option Credit in the amount of $100,000, the Total Cash Option Payments shall be $0 and the Option Credit Remainder shall be $2.7 million. If, prior to the date upon which the next Option Payment is due, a Phase Transfer takes place, then upon request for extension of the Option Term by the Optionee, the Optionee shall pay to the City the Option Payment of $200,000 in cash, and within sixty (60) calendar days following City receipt thereof, the City shall pay such funds to the Working Developer, which shall reduce the amount of the Option Credit Remainder (from the prior $2.7 million) by the amount of the $200,000 Cash Option Payment to $2.5 million and the

Option Credit Remainder shall be $2.5 million. If, at that point, the Option shall terminate, or if, following exercise of the Option, the Phase 2 Property Close of Escrow shall fail to occur for any reason other than Default by the City, the Optionee shall not be entitled to a repayment of its Cash Option Payment. If the failure to close Escrow with respect to the Phase 2 Property is as a result of a Default by the City under Section 15.4.1, then the Phase 2 Developer shall be entitled to a repayment of its Cash Option Payment in the amount of $200,000. In either case, if any reimbursement on account of the Phase 2 Reimbursable Improvements is then due to the Working Developer pursuant to this Section 4.3.3(h), the amount of reimbursement to the Working Developer shall be equal to the Option Credit Remainder of $2.5 million, which shall be paid in accordance with Section 4.3.3(i).

(i) If the City is obligated pursuant to Section 4.3.3(h) to make any payment of the Option Credit Remainder to Working Developer, then the City shall pay to the Working Developer an amount equal to the then-existing Option Credit Remainder as follows: the lesser of (i) the amount of the then-existing Option Credit Remainder, and (ii) Nine Hundred Ninety-Nine Thousand Nine Hundred Ninety-Nine Dollars ($999,999.00) shall be paid within sixty (60) calendar days following the termination of the Option or termination of the Escrow for the Phase 2 Property for any reason set forth in Section 4.3.3(h)(ii)(A), and the unpaid balance (if any) of the Option Credit Remainder shall be paid within one (1) calendar year following the termination of the Option or failure of the Phase 2 Property Close of Escrow to occur for any reason set forth in in Section 4.3.3(h)(ii)(A). As a condition to such payment, Working Developer and Optionee shall each execute and deliver to the City a bill of sale transferring to City all right, title and interest of Working Developer and Optionee in and to the Reimbursable Phase 2 Improvements (or any usable segment thereof) and waiving claims to any further payment on account of the Reimbursable Phase 2 Improvements.

(j) Whether or not there is a Phase Transfer, it is the intent of the Parties that at the Phase 2 Property Close of Escrow, the purchaser of the Phase 2 Property, and not the City, shall be obligated to pay for the Reimbursable Phase 2 Improvements. To achieve this, upon the Phase 2 Property Close of Escrow, if the Phase 2 Property Close of Escrow occurs prior to any Phase Transfer, Developer shall receive no credit against the Phase 2 Property Purchase Price for Option Credits applied to extend the Option Term, and if the Phase 2 Property Close of Escrow occurs following any Phase Transfer, Phase 2 Developer shall receive no credit against the Phase 2 Property Purchase Price for (i) Option Credits applied by the Working Developer to extend the Option Term or (ii) Cash Option Payments made by Phase 2 Developer to the City to the extent that the City made corresponding City Option Payments to Working Developer pursuant to Section 4.3.3(g). Further, upon the Phase 2 Property Close of Escrow, whether or not there has been a Phase Transfer, the City shall have no obligation to make any further payments on account of Reimbursable Phase 2 Improvements, and in no event shall Working Developer be entitled to any payment or credit from City related to the Reimbursable Phase 2 Improvements, including any portion of the Total Option Credit or Option Credit Remainder then remaining unpaid.

(k) In the event a Transfer has occurred and City payment is due pursuant to this Section 4.3.3 or Section 15.3 or 15.4 and there is a dispute regarding the Person to which any payment pursuant to this Section 4.3.3 or Sections 15.3 or 15.4 (but only to the extent that the provisions of Section 15.3 become applicable as specifically referenced therein) is

due from the City, the City shall have the right to satisfy such obligation by either itself interpleading, or causing any third party on City's behalf, to interplead in a court of law the amount due and thereafter City shall be deemed released from all of its obligations with respect to Phase 2 and/or the provisions of this Agreement relating to Phase 2, the Phase 2 Provisions shall terminate and City shall have no further liability with respect thereto to any Person, provided that, for avoidance of doubt, the termination of the Phase 2 Provisions shall specifically exclude, during the continuation of the Phase 1 Provisions, the obligations of the City under this Agreement, if any, to the Phase 1 Developer with respect to the Phase 2 Property during the City's ownership thereof, and provided further that if the Option has lapsed, expired or terminated because of a Default by the City as set forth in Section 15.4.1, such interpleader shall not release the City from its obligations to pay the amounts set forth in Sections 15.4.3(b) and (c).

4.3.4 **Payment of the Balance of each Purchase Price and Other Amounts Due at Close of Escrow**. No later than one (1) Business Day prior to the relevant Close of Escrow, Developer shall deposit the following amounts with Escrow Holder:

(a) in the case of the Phase 1 Property Close of Escrow, the "**Phase 1 Property Closing Payment**", which shall be equal to (i) the Phase 1 Property Purchase Price less the Purchase Price Deposit and less the Extension Payment, if any; plus (ii) any additional amount as is necessary to cover any outstanding City Transaction Expenses incurred by the City through the Phase 1 Property Close of Escrow plus (iii) all closing costs to be paid by Developer pursuant to Sections 7.5.1(b), 7.5.1(c) and 7.5.4, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Sections 7.5.1(a), 7.5.1(c) and 7.5.4; and

(b) in the case of the Phase 2 Property Close of Escrow, the "**Phase 2 Property Closing Payment**", which shall be calculated as follows:

(i) Provided that the Phase 2 Property Close of Escrow takes place prior to a Phase Transfer, the Phase 2 Property Closing Payment shall be equal to (A) the Phase 2 Property Purchase Price, adjusted pursuant to Section 4.2.2, less the Total Cash Option Payments paid by Developer to the City to such date (but, for avoidance of doubt, without reduction for Total Option Credit or Option Credit Remainder); ***plus*** (B) such additional amount as is necessary to cover any outstanding City Transaction Expenses incurred by the City through the Phase 2 Property Close of Escrow ***plus*** (C) all closing costs to be paid by Developer pursuant to Sections 7.5.1(b), 7.5.1(c) and 7.5.4, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Sections 7.5.1(a), 7.5.1(c) and 7.5.4.

(ii) If the Phase 2 Property Close of Escrow takes place following a Phase Transfer, the Phase 2 Property Closing Payment payable by the Phase 2 Developer shall be equal to (A) the Phase 2 Property Purchase Price, adjusted pursuant to Section 4.2.2, ***less*** (B)(1) the Total Cash Option Payments paid by the Phase 1 Developer to the City to such date (but, for avoidance of doubt, without reduction for Total Option Credit or Option Credit Remainder) and (2) the Total Cash Option Payments paid by the Phase 2 Developer but only to the extent Total Cash Option Payments paid by the Phase 2 Developer exceed the amount of City Option Payments paid by City or due to Working Developer from

City pursuant to Section 4.3.3(g)) (but, for avoidance of doubt, without reduction for Total Option Credit or Option Credit Remainder); ***plus*** (C) such additional amount as is necessary to cover any outstanding City Transaction Expenses incurred by the City through the Phase 2 Property Close of Escrow ***plus*** (D) all closing costs to be paid by Developer pursuant to Sections 7.5.1(b), 7.5.1(c), and 7.5.4, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Sections 7.5.1(a), 7.5.1(c) and 7.5.4.

4.3.5 **Payments in Immediately Available Funds**. Funds delivered to the City or Escrow Holder under this Agreement shall be in the form of cash, wire transfer (to such account as the City or Escrow Holder notifies Developer in writing), or by cashier's check drawn on good and sufficient funds on a federally chartered bank and made payable to the order of City or Escrow Holder, as the case may be.

4.4 **Escrow and Joint Escrow Instructions**.

Upon execution of this Agreement by Developer and the City, Developer and the City shall each deliver three (3) executed original counterparts of this Agreement to Escrow Holder. For purposes of this Agreement, the "**Opening of Escrow**" shall be the date that Escrow Holder receives executed original counterparts to this Agreement signed by Developer and the City. Upon the written acceptance of this Agreement by Escrow Holder, this Agreement shall constitute the joint escrow instructions of Developer and the City to Escrow Holder to open an escrow (the "**Escrow**"). Upon Escrow Holder's receipt of the Purchase Price Deposit and Escrow Holder's written acceptance of this Agreement, Escrow Holder is authorized to act in accordance with the terms of this Agreement. Developer and the City shall execute Escrow Holder's general escrow instructions upon request, with such modifications thereto as Developer and the City may reasonably require; provided, however, if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Escrow Holder shall not prepare any further escrow instruction restating or amending this Agreement unless specifically so instructed by the City and Developer in writing. Any supplemental escrow instructions must be in writing and signed by the City and Developer and accepted by the Escrow Holder to be effective.

4.5 **Investigation; Property Conveyed "As-Is."**

4.5.1 **Investigation**.

(a) **Due Diligence Review**. Developer shall have the right to conduct Developer's own investigation of the Property pursuant to Section 5.1 of this Agreement. If Developer proceeds to the Phase 1 Property Close of Escrow, Developer represents and warrants to the City that Developer will have satisfied itself that it has determined that all matters related to the Property and the Project are acceptable to Developer, including, the state of title (subject only to the Permitted Exceptions), the physical condition thereof, the physical condition of structures, if any, located upon the Development Parcels and, as applicable, the accessibility and location of utilities, and all mechanical, plumbing, sewage, and electrical systems located therein, suitability of soils, environmental and other investigations regarding the Property. Prior to the expiration of the Due Diligence Period Developer will have reviewed all items that in the

Developer's sole judgment affect or influence the Developer's purchase and use of the Property and the Developer's willingness to consummate the transactions described by this Agreement.

(b) **Opportunity to Evaluate**. Developer acknowledges and agrees that, as of each Close of Escrow:

(i) Its determination to enter into this Agreement constitutes Developer's agreement that Developer, in consummating the transactions described in this Agreement:

(A) has been given the opportunity to inspect the Property and to review the information and documentation provided by the City to Developer and affecting the Property, including the environmental condition of the Property, or otherwise obtained by Developer in connection with its due diligence of the Property, and is relying solely on its own investigation of the Property, including such investigation prior to execution of this Agreement, and review of such information and documentation in determining the physical, economic and legal condition of the Property, and not on any information, representation or warranty provided by the City or any agents or representatives of the City;

(B) has performed its own assessment of the Property, including the environmental condition of the Property, the presence of Hazardous Materials on the Property, the suitability of the soil for improvements to be constructed, the implications of land use restrictions on the development plan for the Project and the Property and the consequences of any subsequently discovered contamination on or adjacent to the Property, and

(C) has been provided with access to all information in the possession of the City which it has requested.

(ii) Information provided to Developer by or on behalf of the City with respect to the Property was obtained from a variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information; and Developer is satisfied with the nature and extent of its permissible investigation of the physical condition and other matters relating to the Property and is willing to consummate the transactions described by this Agreement.

(iii) Without limiting the generality of the foregoing, Developer acknowledges and agrees that: (A) it has been provided with access to (x) all environmental reports and statements listed on Attachment 10A and all reports either attached to or referenced in the Memorandum of Agreement and Federal Deeds, (y) the FOST and (z) the Environmental Baseline Survey (the "**EBS**") which is incorporated into the FOST by reference; (B) it shall perform its own assessment of the environmental condition of the Property, the presence of Hazardous Materials on the Property, the suitability of the soil for improvements to be constructed, the implications of the land use restrictions on the development plan for the Project and the Property and the consequences of any subsequently discovered contamination on the Property; and (C) it shall review the Navy produced or identified documentation, including that

listed on Attachment 10A (items 1-9 only), reflecting the Navy's knowledge of the environmental condition of the Property.

(c) Nothing in this Section 4.5.1 shall in any way limit the City's representations or warranties set forth in Sections 3.3 or 18.11.2 of this Agreement, or the covenants or obligations of the City set forth in Sections 6.3, 6.5, 8.2.4, 8.3.5, 8.13, 8.14 or 8.15 of this Agreement.

4.5.2 **AS-IS; WHERE-IS**.

(a) No Representations or Warranties. Developer recognizes that the City would not sell the Property except on an "AS, IS, WHERE IS, WITH ALL FAULTS" basis, and Developer acknowledges that the City has made no representations or warranties of any kind whatsoever (excepting only those representations and warranties of the City expressly set forth in Sections 3.3 and 18.11.2 of this Agreement), either express or implied in connection with any matters with respect to the Property or any portion thereof.

(b) Acknowledgement. Developer's determination to enter into this Agreement constitutes Developer's agreement that Developer, in consummating the transactions described in this Agreement is buying the Property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, if any. Without limiting the generality of the foregoing provisions, Developer further acknowledges and agrees that, except as otherwise specifically provided in Sections 3.3 and 18.11.2 of this Agreement, City makes no representations, warranties, or guaranties of any kind or character in connection with the transaction contemplated by this Agreement, whether express or implied, oral or written, past, present or future, whether by the City or any of its agents, elected or appointed officials, representatives or employees, of concerning or with respect to:

(i) the value of the Property or the income to be derived from the Property;

(ii) the existence or nonexistence of any liens, easements, covenants, conditions, restrictions, claims or encumbrances affecting the Property (including any of the foregoing arising from or related to the Entitlements or any of the Other Agreements);

(iii) the suitability of the Property for any and all future development, uses and activities which Developer may conduct thereon, including the development of the Project described in this Agreement and the Other Agreements;

(iv) the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan, the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authority;

(v) the compliance with or enforcement by the City or any third party of the Reuse Plan, the General Plan, the Specific Plan, the Special Restrictions, the CC&Rs, the Tustin Legacy Backbone Infrastructure Program or any other agreement or governmental restriction or plan affecting Tustin Legacy by the City or any third party;

(vi) the habitability, merchantability or fitness for a particular purpose of the Property;

(vii) the manner, quality, state of repair or lack of repair of the Property;

(viii) the nature, quality or condition of the Property including water, soil and geology;

(ix) the compliance of or by the Property and/or its operation in accordance with the Entitlements or any Governmental Requirement, including the National Environmental Policy Act, CEQA and the Americans with Disabilities Act of 1990;

(x) the manner or quality of the construction or materials, if any, incorporated into the Property;

(xi) the presence or absence of Hazardous Materials, including asbestos or lead paint at, on, under, or adjacent to the Property or any other portion of the Development Parcels or Tustin Legacy;

(xii) the content, completeness or accuracy of the information, documentation, studies, reports, surveys and other materials, delivered to Developer in connection with the review of the Property and the transactions contemplated in this Agreement and the Other Agreements;

(xiii) the conformity of the existing improvements on the Property and/or at Tustin Legacy, if any, to any plans or specifications therefor;

(xiv) compliance of the Property with past, current or future Governmental Requirements relating to zoning, subdivision, planning, building, fire, safety, health or environmental matters and/or covenants, conditions, restrictions or deed restrictions;

(xv) the deficiency of any undershoring or of any drainage to, on or from the Development Parcels or any other portion of Tustin Legacy;

(xvi) the condition of any adjoining land owned by the City, including the property covered by the Landscape Installation and Maintenance Agreement and the property covered by the Roadway and Utility Easement Agreement and the adjoining City Park and any improvements thereon;

(xvii) the fact that all or a portion of the Property may be located on or near an earthquake fault line or falls within an earthquake fault zone established under the Alquist-Priolo Earthquake Zone Act, California Public Resources Code Sections 262 1-2630 or within a seismic hazard zone established under the Seismic Hazards Mapping Act, California Public Resources Code, Sections 2690-2699.6 and Sections 3720-3725;

(xviii) the existence or lack of vested land use, zoning or building entitlements affecting the Property;

(xix) the construction or lack of construction of Tustin Legacy or if constructed, the construction of Tustin Legacy in accordance with design guidelines, plans and specifications previously or to be prepared therefor;

(xx) the conditions, covenants and restrictions imposed or to be imposed upon the Property or any portion thereof under this Agreement, the Other Agreements or the Entitlements;

(xxi) the contents of the Memorandum of Agreement, the Federal Deeds, the Base Closure Law and the FOST; and

(xxii) any other matters.

Nothing in this Section 4.5.2(b) shall in any way limit the City's representations or warranties set forth in Sections 3.3 or 18.11.2 of this Agreement, or the covenants or obligations of the City set forth in Sections 6.3, 6.5, 8.2.4, 8.3.5, 8.13, 8.14, or 8.15 of this Agreement.

(c) Environmental Condition of the Property; Restrictions. Without limiting the generality of the foregoing provisions, except as set forth in Section 3.3.8, the City makes no representation or warranty as to the environmental condition of the Property or any portion thereof, the Navy's obligations with respect to the environmental condition of the Property or the adequacy or accuracy of any environmental report that has been rendered. Developer acknowledges and agrees that (i) there may be some residual contamination on the Property as a result of Navy historic activities; (ii) the Navy has agreed to accept certain limited responsibility for any contamination it caused, including any contamination discovered after transfer from the Navy, in accordance with existing Governmental Requirements including the National Defense Authorization Act For Fiscal Year 1993 as amended (Public Law No. 102-434) Section 330 and Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9620(h); and the deed restrictions contained in the Federal Deeds are binding upon successors and assigns of the City and are enforceable by DTSC pursuant to a conveyed property right from the Navy to DTSC.

(d) Federal Deeds and Memorandum of Agreement. Developer acknowledges and agrees that the purchase of the Property is subject to the terms and conditions expressly set forth in the Memorandum of Agreement, the Federal Deeds and the Permitted Exceptions. From and after each Close of Escrow, Developer agrees, to assume and faithfully perform any covenants running with the land and obligations set forth in the Federal Deeds as obligations to be performed by "Grantee or its successors or assigns" with respect to the Property acquired by Developer and such obligations shall run with the land and be binding upon Developer and each Successor Owner for the period of their ownership and for the Additional Liability Period.

(e) No Unauthorized Representations. No Person acting on behalf of the City is authorized to make, and by execution hereof, Developer acknowledges that no Person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Property, the Project or the transactions contemplated in this Agreement or the past, present or future zoning, land use entitlements, construction, physical condition, presence or extent of

Hazardous Materials or other status of the Property except as may be expressly set forth in this Agreement or in any of the Other Agreements. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any Person acting on behalf of the City that is not contained in this Agreement or in any of the Other Agreements will be valid or binding on the City. Nothing in this Section is intended to affect in any manner the validity of the Entitlements and Development Permits obtained by Developer with respect to the Property.

(f) Release. Developer, on behalf of itself and each Successor Owner and every Person claiming by, through or under Developer or any Successor Owner (each a "**Releasing Party**"), hereby waives, as of the Effective Date, and agrees to waive, as of each Close of Escrow, the right of each Releasing Party to recover from, and fully and irrevocably releases, the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns (individually, a "**Released Party**" and collectively, the "**Released Parties**") from any and all Claims that Developer or any Releasing Party may now have or hereafter suffer or acquire arising from or related to: (i) any Due Diligence Information, (ii) any condition of the Property or any current or future improvement thereon, known or unknown by any Releasing Party or any Released Party, including as to the extent or effect of any grading of the Development Parcels; (iii) any construction defects, errors, omissions or other conditions, latent or otherwise, including environmental matters, as well as economic and legal conditions on or affecting the Property, or any portion thereof; (iv) the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof; (v) Claims of or acts or omission to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from, about, or adjacent to the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; and/or (vi) arising from or related to the Tustin Legacy Backbone Infrastructure Program, any community facilities district or the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district assessment against the Property, Development Parcels and/or Improvements described in this Agreement; provided that the foregoing release by the Releasing Parties shall not extend to (A) any breach by the City of any of the representations or warranties of the City set forth in Sections 3.3 or 18.11.2 of this Agreement or any of the Other Agreements, (B) any breach by the City of any of the covenants or obligations set forth in this Agreement or any Other Agreement, (C) any Claim that is the result of the gross negligence or willful misconduct of the City, (D) any actions of the City or any of the Released Parties affecting a portion of the Property which occur following the Close of Escrow with respect to such portion of the Property, or (E) any Claim arising with respect to the Development Permits, Applicable Approvals and Phase 2 Applicable Approvals, if any, approved by the City in its Governmental Capacity. This release includes Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released Parties. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

In this connection and to the extent permitted by law, Developer on behalf of itself, and the other Releasing Parties hereby agrees, represents and warrants, which representation and warranty shall survive each Close of Escrow and the termination of this Agreement and shall not be merged with any Quitclaim Deed, that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected, (y) the waivers and releases in this Section 4.5.2(f) have been negotiated and agreed upon in light of that realization and (z) Developer, on behalf of itself and the other Releasing Parties, nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown Claims and controversies to the extent set forth above which might in any way be included as a material portion of the consideration given to the City by Developer in exchange for the City's performance hereunder.

BY INITIALING BELOW, DEVELOPER ACKNOWLEDGES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

CITY'S INITIALS _____ DEVELOPER'S INITIALS _____

From and after the Phase 1 Property Close of Escrow with respect to the Phase I Property and from and after the Phase 2 Property Close of Escrow with respect to the Phase 2 Property, this release shall be an equitable servitude and a covenant running with the land comprising each such Parcel for the benefit of the City Benefited Property and the City and Developer and the Successor Owners owning all or any portion of each such Parcel and all Persons claiming by, through or under Developer or any Successor Owner of each such Parcel or any portion thereof for the period of such Person's interest in the applicable Parcel or any portion thereof and for the Additional Liability Period if any, applicable to such Person and to further evidence its effectiveness with respect to Developer and the Successor Owners of the Development Parcels, shall be included in its entirety in each Quitclaim Deed.

4.6 **Covenants; Preconditions to Close of Escrow**.

The provisions of this Section 4.6 are covenants of Developer for the benefit of the City, are conditions precedent to the Phase 1 Property Close of Escrow and the Phase 2 Property Close of Escrow, as further described in this Section 4.6 and in Sections 7.2.2 and 7.3.2, as applicable, and shall, for the benefit of the City, be satisfied by Developer not later than the times specified for such conditions below or in the applicable Schedule of Performance.

4.6.1 **Developer Financing Plan**. As of the Effective Date, Developer has provided the City with a Financing Plan (the "**Financing Plan**") containing: (a) a financial pro forma and development budget for the Project setting forth a cash flow projection for operation of the Project and sources and uses of funds and evidencing the Developer's plan to obtain the debt and equity required to construct and operate the Project and to meet its other obligations under this Agreement; and (b) a cost breakdown for all Development Costs anticipated to be incurred for the development of the Project based upon government permits and approvals and any design documents and plans approved to such date. Within forty five (45) Business Days prior and as a condition precedent for the benefit of the City to (i) the Phase 1 Property Close of Escrow, Developer shall provide an update to the Financing Plan for Phase 1 (the "**Phase 1 Financing Plan**") to achieve the Minimum Phase 1 Improvements and (ii) each of the exercise of the Option for Phase 2, and the Phase 2 Property Close of Escrow, Developer shall provide an update to the Financing Plan for Phase 2 (the "**Phase 2 Financing Plan**") to achieve the Minimum Phase 2 Improvements, in each case identifying revisions to the information previously provided and providing actual sources and uses of funds, and shall, as to each financing plan, certify to the City either that the original Financing Plan remains true and correct or, as modified to reflect Developer's expectation as to available funding and costs, remains sufficient to pay through issuance of the Certificate of Compliance for such Phase, all Development Costs of such Phase of the Project and all other costs for the construction, marketing and lease of the Improvements as described in the Scope of Development for such Phase, including, in the case of Phase 1 (and in the case of Phase 2, to the extent not then completed in Phase 1), the Minimum Horizontal Improvements. As a condition to each Close of Escrow for the benefit of the City, the City shall have the right in its sole discretion to approve or disapprove the updated Financing Plan. As a condition to each Transfer pursuant to Section 2.2.3(a) or (b), the Transferee shall provide an updated Financing Plan to the City for the portions of the Project to be acquired by the Transferee (and the Transferor shall, as a condition of such Transfer, provide an updated Financing Plan or otherwise certify to the City that the then-existing Financing Plan remains true and correct), which shall be subject to review and approval by the City in its sole discretion.

4.6.2 **Additional Assurances of Developer; Joint Venture Agreements**.

(a) Developer shall, substantially concurrently with the execution of this Agreement, but in all events on or before the Effective Date, and as a condition to each Transfer pursuant to Section 2.2.3(a) or (b), the proposed Transferee shall:

(i) cause Alcion Real Estate Partners Master Fund III, L.P. and Alcion Real Estate Partners Strategic Parallel Fund III, L.P., collectively, or such other equity investor(s) approved by the City in its sole discretion (the "**Phase 1 Equity Investor**") to provide the City with an Original Equity Investor Certificate and the accompanying matters described in Section 4.6.2(e) below; provided that the certificates of good standing and tax good standing of Phase 1 Equity Investor described in Section 4.6.2(e) shall have been issued within thirty (30) calendar days prior to the required date of delivery; and

(ii) cause the applicable Joint Venture Agreement to have been executed and delivered to the City and as delivered, such Joint Venture Agreement: (A) shall have been approved by the City in its sole discretion, (B) shall have been made and executed by

LPCC (or an Affiliate of LPCC) as the holder of the Operating Rights and Responsibilities unless otherwise agreed by the City in its sole discretion pursuant to Transfer approved by the City pursuant to Section 2.2.3 or Section 2.2.7, and by the Phase 1 Equity Investor, (C) shall be dated as of or prior to the Effective Date, or if delivered in connection with a proposed Transfer, the proposed Transfer Date and (D) shall evidence that the parties thereto have agreed to fund the Development Costs as described in Section 4.6.2(d).

(b) Phase 1. Prior and as a condition precedent to the Phase 1 Property Close of Escrow for the benefit of the City:

(i) The Phase 1 Joint Venture Agreement shall remain in full force and effect and unmodified, or if modified Developer shall have provided the City with any and all modifications, which shall have been approved by the City in its sole discretion, and the Phase 1 Joint Venture Agreement shall satisfy the requirements set forth in Section 4.6.2(d);

(ii) Unless otherwise approved by the City in accordance with Section 2.2.3 or 2.2.7, LPCC (or an Affiliate of LPCC) shall have the Operating Rights and Responsibilities;

(iii) Developer shall have updated the Financing Plan described in Section 4.6.1 and provided to the City the Phase 1 Financing Plan in accordance with Section 4.6.1 and the Phase 1 Financing Plan shall have been approved by the City; and

(iv) The Phase 1 Guarantor shall have delivered a Guaranty in accordance with and meeting the requirements of Section 4.6.3 and 4.7.

(c) Phase 2. Prior and as a condition precedent to the Phase 2 Property Close of Escrow, for the benefit of the City:

(i) Developer shall have caused the Phase 2 Joint Venture Agreement to be executed and delivered and as delivered (A) shall have been approved by the City in its sole discretion, (B), shall have been made and executed by LPCC (or an Affiliate of LPCC) as the holder of the Operating Rights and Responsibilities unless otherwise agreed by the City in its sole discretion pursuant to Transfer approved by the City pursuant to Section 2.2.3(a) or (b) or Section 2.2.7 and made by a Person Controlled by an Affiliate of Alcion, or another equity investor approved by the City in its sole discretion in accordance with Section 2.2.3(a) or (b) ("**Phase 2 Equity Investor**"), (C) shall be dated as of or prior to the date of exercise of the Option, and (D) shall evidence that the parties thereto have agreed to fund the Development Costs as described in Section 4.6.2(d);

(ii) Unless otherwise approved by the City in accordance with Section 2.2.3(a) or (b) or Section 2.2.7, LPCC (or an Affiliate of LPCC) shall have the Operating Rights and Responsibilities;

(iii) Developer shall have updated the Financing Plan described in Section 4.6.1 and provided to the City the Phase 2 Financing Plan in accordance with Section 4.6.1 and the Phase 2 Financing Plan shall have been approved by the City; and

(iv) The Phase 2 Guarantor shall have delivered a Guaranty in accordance with and meeting the requirements of Section 4.6.3 and 4.7.

(d) Each Joint Venture Agreement (or other documents provided by Equity Investor for the benefit of the City and approved by the City in its sole discretion) shall provide evidence that the Equity Investor has provided Developer with a binding contractual commitment to invest sufficient equity, when combined with the other sources and uses set forth in the Phase 1 Financing Plan or the Phase 2 Financing Plan, as applicable, to fund all Development Costs for the applicable Phase as described in the Financing Plan for such Phase including:

(i) Developer's costs and expenses necessary to obtain the Applicable Approvals, Phase 2 Applicable Approvals and Development Permits and to comply with the other obligations of Developer under this Agreement required to be satisfied prior to the Phase 1 Property Close of Escrow, or the Phase 2 Property Close of Escrow, as applicable, including with respect to Phase 2, payment of the Option Payments,

(ii) acquisition of the applicable Phase of the Property;

(iii) all costs of development of the applicable Phase of the Project and the financing (including interest), construction, marketing and sale or Lease of all Improvements in such Phase as further described in the Scope of Development through issuance of a Certificate of Compliance, including brokerage fees incurred in the leasing, sale and financing of the Project; and

(iv) Developer's costs and expenses to perform and satisfy all the covenants of the Developer with respect to the applicable Phase of the Property contained in this Agreement and the Other Agreements;

(e) When required by this Agreement, Developer shall deliver a certification in favor of the City from the chief financial officer or other appropriate authorized officer of the Equity Investor for each Phase in the form attached as Attachment 13B (the "**Original Equity Investor Certificate**") confirming Equity Investor has provided Developer with a binding contractual commitment to fund the development of the applicable Phase of the Project in accordance with the Joint Venture Agreement applicable to such Phase and that such Joint Venture Agreement is in full force and effect and has not been modified, and will not be modified, amended or terminated without the prior consent of the City, in its sole discretion; and certifying as to the authority of such Equity Investor's officer to bind Equity Investor and authorization to execute the Joint Venture Agreement and to the accuracy and correctness of and attaching the following for the applicable Phase and Equity Investor;

(i) A certificate of formation and California foreign entity registration (if applicable) for Equity Investor;

(ii) Evidence of authority of the individual(s) executing the Joint Venture Agreement to bind Equity Investor and to execute the Joint Venture Agreement;

(iii) Copies of all resolutions or other necessary actions, if any, taken by Equity Investor to authorize the execution of the Joint Venture Agreement; and

(iv) Certificates of good standing and tax good standing, issued within thirty (30) calendar days of the date of delivery of the Joint Venture Agreement to the City, by the Secretary of State and the applicable taxing authority of the state in which the Equity Investor is formed and by the California Secretary of State (if registration is required by applicable law).

4.6.3 Guaranty of Developer Obligations; Phase 1 Guaranty and Phase 2 Guaranty.

(a) Substantially concurrently with, but in all events prior to the Phase 1 Property Close of Escrow, and as a condition precedent thereto for the benefit of the City, Developer shall cause the Phase 1 Guarantor to deliver to the City, and substantially concurrently with, but in all events prior to the Phase 2 Property Close of Escrow, and as a condition precedent thereto for the benefit of the City, Developer shall cause the Phase 2 Guarantor to deliver to the City, the following instruments as applicable to the Phase:

(i) A fully executed and effective Guaranty which shall remain in effect until the issuance of the Certificate of Compliance for the applicable Phase and shall guarantee, among other things:

(A) Upon the Close of Escrow for the applicable Phase, payment of all Development Costs for the Completion of the Improvements for such Phase, including, for avoidance of doubt, (1) with respect to the Phase 1 Parcel, Completion of the Phase 1 Horizontal Improvements and the Minimum Phase 1 Vertical Improvements on the Phase 1 Parcel, including the Minimum Horizontal Improvements to be constructed or caused to be constructed by Developer upon the Phase 1 Parcel, the Phase 2 Parcel and off-sites, and (2) with respect to the Phase 2 Parcel, Completion of the Minimum Phase 2 Improvements for such Phase;

(B) Developer's obligations with respect to the Ongoing Matters;

(C) The indemnities and other obligations of Developer pursuant to Sections 4.3.3(e) and (i), 4.5.2(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2, 11.1 (including payment of all deductible amounts), and 18.11.1 of this Agreement;

(D) The costs and expenses incurred by the City, if any, in enforcement by the City of its rights and/or remedies under this Agreement with respect to non-performance by Developer of its obligations of Developer under this Agreement and the Other Agreements, including the exercise by the City of the Right of Repurchase or Right of Reversion with respect thereto, but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Developer, or by any Guarantor; and

(E) Attorneys' fees and costs incurred by the City in connection with the enforcement of the Guaranty; and

(ii) A declaration certified by the chief financial officer or other appropriate authorized officer of the applicable Guarantor (the "**Guarantor Certificate**") certifying as to the authority of such Guarantor's authorized officer to bind Guarantor and authorization to execute the Guaranty and to the accuracy and correctness of and attaching the following for the applicable Phase and Guaranty and attaching copies of the following: (w) a certificate of formation and California foreign entity registration (if required by applicable law) for Guarantor; (x) evidence of authority of the individual(s) executing the Guaranty to bind Guarantor and to execute the Guaranty, (y) copies of resolutions or other necessary actions taken by Guarantor to authorize the execution of the Guaranty, if any; and (z) certificates of good standing and tax good standing issued by the Secretary of State of the state in which Guarantor is formed and by the California Secretary of State (if required by applicable law), within thirty (30) calendar days of the applicable Close of Escrow.

(b) In the event of a Transfer by Initial Developer of all of its interests in this Agreement pursuant to Section 2.2.3(a), the obligations imposed upon any Guarantor hereunder under any Guaranty shall, as a condition to such Transfer, be either retained in full by such Guarantor or be assumed by a guarantor meeting the requirements of Section 2.2.3(a)(iv)(B) and approved by the City in its sole discretion. Upon each subsequent Transfer to a Developer prior to the issuance of a Certificate of Compliance for which Developer desires to replace its existing Guaranty as permitted by Section 2.2.3(a)(iv)(B) or Section 2.2.3(b)(iv)(C), and as a condition to the City's review and approval, in its sole discretion, of the proposed guarantors and proposed Guaranty, Developer shall cause the proposed guarantors to deliver evidence of the financial capacity of the proposed guarantors, authority of the proposed guarantors to provide the Guaranty, and copies of all documents evidencing formation, good standing and authority requested by the City. If the City is not satisfied with the financial status of the proposed guarantor, then the City shall be entitled to obtain the financial information of other members and/or partners of the proposed development entity (and their respective members, partners, shareholders and/or other owners at each tier until substantial assets are identified) and such other financial information as the City may request to demonstrate such guarantor's and Developer's financial capacity and capability to perform its obligations under this Agreement.

4.6.4 **Entitlements; Phase 2 Applicable Approvals**. Developer or Phase 2 Developer (as applicable) shall have applied for and obtained the Phase 2 Applicable Approvals prior and as a condition to its exercise of the Option. Developer's or Phase 2 Developer's (as applicable) application for the Phase 2 Applicable Approvals shall be consistent with the Scope of Development and the terms and conditions of this Agreement. Nothing contained in this Agreement shall relieve Developer or Phase 2 Developer from any obligations imposed by the City on Developer in connection with the Entitlements, the Applicable Approvals and, if applicable, the Phase 2 Applicable Approvals, the recording of the phased final Subdivision Map, including any bonding requirements related thereto, and the Development Permits.

4.6.5 **Insurance**. Developer shall have obtained and delivered to the City a binder or certificate evidencing the insurance as and when required by Article 11 effective upon the mutual execution of this Agreement by Developer and the City.

4.6.6 **Declaration of Ownership; Additional Documentation**. Developer, prior to the date of execution of this Agreement and again concurrently with each respective Close of Escrow (and as a condition precedent thereto for the benefit of the City), and each Transferee or Controlling Party, prior to or concurrently with a Transfer or Transfer of Control, as applicable, shall provide to the City:

(a) a declaration certified by the chief financial officer or other appropriate authorized officer of authorized to execute documents on behalf of Developer, Transferee or Controlling Party, as applicable that the following documentation submitted by such entity to the City is true and correct and attaching copies of:

(i) a certificate of formation, California foreign entity registration (if registration is required by applicable law), and a fully executed limited liability company or limited partnership agreement or bylaws of such entity (including any amendments thereto) or other formation documents, as applicable;

(ii) copies of all resolutions or other necessary actions taken by such entity to authorize the execution of this Agreement, if applicable, and any other documents or instruments required by this Agreement;

(iii) certificates of good standing and tax good standing issued by the Secretary of State and the applicable taxing authority in the state in which Developer (or Transferee, as applicable) is formed or incorporated and by the California Secretary of State (if registration is required by applicable law) within thirty (30) calendar days of the Effective Date; and

(iv) a copy of any Fictitious Business Name Statement, as published and filed with the Clerk of Orange County; and

(b) except in the case of a Permitted Transfer, a certification by such entity that the Phase 1 Financing Plan or the Phase 2 Financing Plan, as applicable, as the same may have been updated in accordance with the requirements of Section 4.6.1, remains true and correct in all material respects.

4.7 **Guarantor Illiquidity Event**.

4.7.1 **Liquid Reserves**. Developer shall cause each Guarantor to maintain sufficient liquid reserves to fully discharge its obligations under the Guaranty executed by such Guarantor and to provide replacement financial assurances in the event Guarantor's liquid reserves fall below an amount adequate to fully discharge its obligations under such Guaranty. Without limiting the foregoing, it is contemplated that each Permitted Mortgage will be supported by guarantors that are the same as the Guarantors under this Agreement, and that the documents executed by Developer and the guarantees provided to each Permitted Mortgagee in connection with each Construction Loan will contain provisions requiring each such guarantor to

achieve at the time the Permitted Mortgage is made and maintain until the earlier of payment in full or earlier termination of the Construction Loan or issuance of a Certificate of Compliance for the Phase for which the Permitted Mortgage is made, various covenants relating to liquidity, including the following (the "**Liquidity Covenants**"): (a) Net Worth and Liquidity minimums and, if and only if required by the Permitted Mortgagee, other financial covenants and tests intended to assess and assure the financial wherewithal of Guarantor, that in each case are established in good faith by the Permitted Mortgagee and Guarantor; (b) agreement to furnish the Permitted Mortgagee under the Permitted Mortgages with certain financial reports on a reasonably frequent basis (such as quarterly), containing the above required financial information at stated intervals as provided in each Permitted Mortgage to assure there has been no Guarantor Illiquidity Event, and (c) in the event of a Guarantor Illiquidity Event, requiring that each Guarantor provide the Permitted Mortgagee with an acceptable replacement or supplemental guarantor or additional security. The Liquidity Covenants shall be incorporated into the Guaranty prior to the applicable Close of Escrow.

4.7.2 **Reporting of Guarantor Illiquidity Events**. Developer shall, or shall cause each Guarantor to, make available to the City such financial reports as Guarantor, or Developer on behalf of Guarantor, furnishes to the Permitted Mortgagees at the same time as they are required to be furnished to each Permitted Mortgagee under the applicable Permitted Mortgage. Each Permitted Mortgage shall provide that in the event that any Guarantor fails to satisfy a Liquidity Covenant or any Guarantor is the subject of any of the events or actions described in Section 2.2.5 (each, a "**Guarantor Illiquidity Event**"), Permitted Mortgagee shall notify the City in writing of the Guarantor Illiquidity Event within five (5) Business Days after the occurrence thereof. In addition, Developer shall and shall require each Guarantor to, independently notify the City in writing within five (5) Business Days from its receipt of notice from any Permitted Mortgagee of a Guarantor Illiquidity Event or at such earlier date as Developer or any Guarantor has knowledge that a Guarantor Illiquidity Event has occurred. The occurrence of a Guarantor Illiquidity Event shall be a Potential Default under this Agreement which Guarantor Illiquidity Event shall be deemed to commence upon the earlier of the date of delivery by the Permitted Mortgagee, Guarantor or Developer of the aforesaid notice or if no notice is provided, the date upon which the required notice was to have been provided to comply with the foregoing. The failure of Developer to deliver or cause others to deliver the financial reporting information to the City as required by Section 4.7.1(b) or this Section 4.7.2 when due shall be a Potential Default of Developer under this Agreement.

4.7.3 **Substitution of Security**. If (a) the guarantors under each Permitted Mortgage or Permitted Mortgages are the same as the Guarantors under this Agreement and (b) each Permitted Mortgage contains Liquidity Covenants that provide that Developer shall, in the event of a Guarantor Illiquidity Event, provide the Permitted Mortgagee with substitute or additional security or guarantors, then within one hundred and eighty (180) calendar days following the date of commencement of the Guarantor Illiquidity Event as specified in Section 4.7.2, Developer shall for the benefit of the City and whether or not required by the Permitted Mortgagee: (i) cause the Guarantor to supplement the security furnished by it in a manner meeting the requirements of the Permitted Mortgage, and cause the City to be furnished with the same additional security as furnished to the Permitted Mortgagee or (ii) provide the City with alternate security meeting the requirements of Section 4.7.4(b)(ii). Failure of Developer to provide substitution of security to the City within such one hundred and eighty (180) calendar

day period shall be a Material Default under this Agreement and the time period to cure such Default prior to its becoming a Material Default shall not be extended for Force Majeure Delay.

4.7.4 **No Permitted Mortgage Liquidity Covenants**. To the extent that any Mortgage proposed to be entered into does not contain the Liquidity Covenants or is guaranteed by guarantors other than Guarantor, then, if such Mortgage is proposed at Close of Escrow, as a condition to Close of Escrow for the benefit of the City, and if such Mortgage is proposed to be entered into subsequent to Close of Escrow for a Phase or Building Pad for which a Certificate of Compliance has not been Recorded, as a condition to City's approval of such Mortgage as a Permitted Mortgage: (a) Developer shall cause Guarantor to agree, in writing, to the following alternative Net Worth and Liquidity standards for the benefit of the City—Guarantor shall meet, at the time the Permitted Mortgage is made, and maintain until issuance of the Certificate of Compliance for the Phase it guarantees, a Net Worth of not less than One Hundred Million Dollars ($100,000,000.00) and Liquidity of not less than Twenty Five Million Dollars ($25,000,000.00) ("**Minimum Liquidity Standards**"), and (b) Developer, Guarantor and City shall enter into a written agreement upon terms approved by each in its sole discretion, establishing the procedures by which (i) Guarantor shall furnish specified financial reports to the City on a regular basis to assure that the Minimum Liquidity Standards are met and that none of the events or actions described in Section 2.2.5 with respect to the Guarantor have occurred (the failure of any such standard being, a "**City Guarantor Illiquidity Event**"); (ii) in the event of a City Guarantor Illiquidity Event, within sixty (60) calendar days following the notice from City of a City Guarantor Illiquidity Event, Guarantor shall supplement its Net Worth and Liquidity to meet the Minimum Liquidity Standards or Developer shall be required to provide the City with additional security satisfactory to the City by (A) providing the City with a Guaranty in the form and substance of the Guaranty, or otherwise acceptable to the City in its sole discretion, from a replacement or supplemental guarantor or guarantors acceptable to the City in its sole discretion, or (B) furnishing the City with another form of security such as a pledge of specified assets or completion bond, in each case in a manner meeting the requirements of the City in its sole discretion. The City shall have the right, but not the obligation, to provide written notice to Developer of the occurrence of a City Guarantor Illiquidity Event and the provision of such notice shall constitute a declaration by the City of a Developer Potential Default. The failure of Developer to provide substitute security for the Guaranty within the required time frame shall constitute a Material Default under this Agreement

4.7.5 **DDA Amendment to Address Liquidity Covenants**. Any amendment of the DDA required to facilitate establishment of the procedures and process described in Section 4.7.4 shall be an administrative amendment to the DDA, approval of which is hereby delegated to the City Manager or designee.

5. Developer's Due Diligence Investigation.

5.1 Due Diligence Period.

Developer acknowledges that while the City has been negotiating this Agreement with Developer, Developer has had access to the Property within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Property as may be necessary to allow Developer to evaluate the physical characteristics of the Property, including

partial storm drain improvements as well as such other matters as may be deemed by Developer to be reasonably necessary to generally evaluate the Property and determine the feasibility and advisability of Developer's purchase and redevelopment of the Property with the Project. In addition to the due diligence investigation previously conducted by Developer, Developer shall have an additional period of time as identified herein to undertake specific additional inspections and investigations as are necessary and specifically permitted herein to allow Developer to continue to evaluate the feasibility and advisability of Developer's purchase of the Property. Developer's obligation to consummate this transaction shall be contingent upon Developer's express written approval, in Developer's sole discretion, of the results of such inspection, examination and other due diligence with regard to the Property and its suitability for construction of the Project and the feasibility and advisability of Developer's purchase and redevelopment of the Property as Developer may elect to conduct during the period commencing on the Effective Date and ending on the date which is sixty (60) calendar days following the Effective Date at 4:00 P.M. Pacific Time (the "**Due Diligence Period**"). Developer acknowledges and agrees that the Due Diligence Period is adequate time to complete such investigation. As further described in Section 5.3 of this Agreement, Developer may give City written notice (the "**Diligence Termination Notice**") on or before the end of the Due Diligence Period stating whether Developer elects to terminate this Agreement or waive its due diligence contingency and proceed to the Close of Escrow with respect to the Project and the Property, subject to the other terms and conditions set forth in this Agreement. Although Close of Escrow with respect to the Property may occur concurrently or in two separately timed closings, any waiver of due diligence contingency or Diligence Termination Notice under this Section 5.1 shall apply to the entirety of the Property.

5.2 **No Financing Contingency**.

Developer represents and warrants that it has examined its ability to purchase the Property and to develop the Project, including Developer's ability to finance the Project. Accordingly, Developer acknowledges and agrees that Developer's purchase of the Property is subject to no financing contingency whatsoever with respect to either private or public financing and that its acquisition of third party financing for the Project is not a condition precedent to Developer's obligation to purchase the Property.

5.3 **Termination of Agreement**.

If Developer elects to terminate this Agreement on or before the end of the Due Diligence Period (or is deemed to have terminated this Agreement in accordance with the last sentence of this Section 5.3) pursuant to its termination rights set forth in Sections 5.1 or 6.3, then this Agreement shall automatically terminate on the date of such election or deemed election, as applicable, and thereafter, neither Party shall have any further obligations under this Agreement (subject to the provisions that expressly survive the termination of this Agreement); provided, however that, Escrow Holder shall return the Purchase Price Deposit to Developer, less Developer's share of any title and escrow cancellation fees of Escrow Holder and outstanding City Transaction Expenses to the extent not covered by the City Costs Deposit, if any. If Developer fails to give the Diligence Termination Notice on or before the end of the Due Diligence Period, then Developer will be deemed to have disapproved the Due Diligence matters

and shall be deemed to have delivered a Diligence Termination Notice and elected to terminate this Agreement pursuant to Section 5.1.

5.4 **Limited License**.

The City grants to Developer, for use by Developer and the Developer Representatives, a limited and revocable license to enter upon the Development Parcels for purposes of (a) conducting Developer's due diligence inspection and/or (b) obtaining data and making surveys and tests necessary to carry out this Agreement, provided that, prior to the effectiveness of such license, Developer shall: (i) deliver to the City written evidence that Developer has procured the insurance required for such license under Sections 11.1 and 11.2; (ii) give the City twenty-four (24) hours telephonic, electronic mail or written notice of any intended access which involves work on the Development Parcels or may result in any impairment of the use of the Property or any portion thereof or any adjacent property by any then-current owners, occupants, or contractors; (iii) access the Property in a safe manner; (iv) conduct no environmental testing, sampling, invasive testing, or boring without the written consent of the City (not to be unreasonably either withheld, conditioned or delayed by action of the City); (v) not authorize any dangerous or hazardous condition to be created or caused on the Property; (vi) comply with all Governmental Requirements and obtain all permits required in connection with such access; and (vii) conduct inspections and testing during normal business hours and only after obtaining the City's prior consent if required under this Section 5.4, which shall not be either unreasonably withheld, conditioned, or delayed by action of the City. This limited license shall commence on the Effective Date, may be revoked by the City during the continuation of any Default by Developer, or upon termination of this Agreement by any Party, and shall be automatically revoked and terminated upon the earlier to occur of (a) a delivery or deemed delivery by Developer of a Diligence Termination Notice, (b) termination of this Agreement, (c) the Phase 1 Property Outside Closing Date or (d) the Phase 1 Property Close of Escrow; provided that this limited license shall not be used for construction purposes, and one or more licenses meeting the requirements of Section 8.2.4 shall be required for construction of the Minimum Horizontal Improvements on the Phase 2 Parcel prior to the Phase 2 Property Close of Escrow and for due diligence by Developer on the Phase 2 Parcel.

5.5 **Indemnity**.

Developer, on behalf of itself and each Successor Owner, hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all Claims arising during the term of the limited license described in Section 5.4, to the extent arising from or related to: (a) the acts and omissions of Developer and/or the Developer Representatives arising from or related to the presence, activities or work on or use of the Development Parcels or from the exercise of the license provided in Section 5.4 by Developer or the Development Representatives, including with respect to any inspections, surveys, tests, Investigations and studies carried out by Developer or the Developer Representatives on the Development Parcels or on adjacent properties as part of the work plan or investigation, (b) entry onto the Development Parcels by Developer or the Developer Representatives in connection with this Agreement, (c) bodily injury to or death of any person (including any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of Developer or any Developer's Representative in connection with this

Agreement, and (d) a Release of Hazardous Materials existing on the Development Parcels prior to Close of Escrow caused by the acts of Developer or any Developer Representatives; provided that the foregoing indemnity shall not apply to (1) the extent caused by the gross negligence or willful misconduct of the City or any City Indemnified Party; or (2) the discovery by Developer of any pre-existing environmental conditions on the Development Parcels not caused by or contributed to by Developer or the Developer Parties. Developer shall keep the Development Parcels free and clear of all Construction Liens related to Developer's inspection and/or Investigation of the Property. The indemnification by Developer set forth in this Section 5.5 shall survive (A) each Close of Escrow and shall not be merged into any Quitclaim Deed, and (B) any termination of this Agreement prior to the occurrence of the Phase 2 Property Close of Escrow. Nothing in this Section shall in any way limit or relieve Developer from its obligations, covenants and indemnities under this Agreement or the Other Agreements with respect to any Phase arising following the Close of Escrow for such Phase.

5.6 **Review of Certain Records and Materials**.

The City shall, within ten (10) Business Days of the Effective Date, provide Developer with copies of all City-produced or commissioned plans, reports, studies, investigations and other materials the City may have in its possession that are pertinent to the Property and/or development of the Project; provided that except as set forth in Section 3.3 the City makes no representation, warranty or guaranty regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials. Developer shall also have the right to enter the City's offices to review files and materials, including the right to examine those books, records and files of the City relating to the environmental and other condition of the Property which the City determines based upon the advice of counsel are not subject to attorney-client or other privilege. The City agrees to make all such books, records, and files available to the Developer and the Developer's attorneys, accountants, and other representatives at City Hall any time during business hours on Business Days upon reasonable notice from the Developer.

5.7 **Communications with City and Third Parties**.

From and after the Effective Date, the Developer's and the Developer Representatives' communications with the City shall be directly with the City Manager, who shall be the administrator of this Agreement on behalf of the City, and such other employees, consultants, and attorneys of the City from time to time as the City Manager may designate. In addition, Developer shall have the right to communicate with staff of other public agencies; and with third parties to all agreements affecting the Property in connection with the Developer's proposed purchase of the Property, and Developer's development of the Project. The City staff shall have the right, but not the obligation, to attend and participate in any and all meetings with other public agencies, with regards to the Project. Upon request of the City, the Developer shall promptly provide the City with a copy of each material item of correspondence (including emails, letters, facsimiles, and any enclosures and attachments) sent to or received by the Developer from other public agencies, or members of the general public, in connection with entitlement, community, or governmental approval of the Project, provided, however, that Developer shall not be obligated to deliver any such materials that based upon advice of counsel are determined to be subject to attorney-client or other privilege.

6. **Title; Survey**.

6.1 **Survey by Developer**.

Prior to the end of the Due Diligence Period, Developer, at Developer's sole cost and expense, shall have obtained a survey for the Property ("**Survey**") prepared by a licensed surveyor ("**Surveyor**"), which Survey shall be certified by the Surveyor to the City, Developer and the Title Company. The Survey shall depict: (a) the location of all existing improvements (if any), existing perimeter improvements (if any), and easements, roads, rights-of-way and encroachments located within twenty (20) feet of the boundary of the Development Parcels, (b) all other Permitted Exceptions susceptible to depiction on a map or survey identified by reference to the recording information applicable to the documents creating them, and (c) any portion of the Development Parcels lying within a flood hazard area.

6.2 **Permitted Exceptions**.

Developer, at Developer's sole cost and expense, has caused the Title Company to prepare and deliver to Developer and the City with respect to the Development Parcels the preliminary title report(s) attached as Attachment 4 and may cause the Title Company to issue additional preliminary title reports (collectively, the "**Preliminary Title Reports**") based upon which the Title Company may issue an extended American Land Title Association Owner's Policy for each Parcel (collectively, the "**ALTA Policy**") to Developer in the amount of the Purchase Price of the applicable Parcel and such additional amounts as Developer may request of Title Company. During the Due Diligence Period, Developer shall review the Preliminary Title Reports and the other relevant documents referenced below, and may object to matters set forth in the Preliminary Title Reports and request that the Title Company and/or the City remove from the Title Policy those exceptions to title disapproved by Developer in the Preliminary Title Reports. The "**Permitted Exceptions**" to title shall include the following: (a) all matters set forth on the Preliminary Title Reports attached as Attachment 4, or set forth on the Survey, and not otherwise deleted (or agreed to be deleted) from the Preliminary Title Reports attached as Attachment 4 nor endorsed over (or agreed to be endorsed over) by the Title Company; (b) the Other Agreements that are to be recorded pursuant to Section 7.5.5(b); and (c) all covenants, restrictions and encumbrances, liens, exceptions, leases, restrictions, deed restrictions and qualifications expressly set forth in or permitted or contemplated by this Agreement or the Other Agreements.

6.3 **Supplemental Title Reports**.

If, after the end of the Due Diligence Period and prior the Close of Escrow for a Parcel, the Title Company discloses additional matters that affect title to such Parcel, then within ten (10) Business Days after Developer's receipt of any report issued by the Title Company concerning the Property (a "**Supplemental Title Report**"), Developer shall cause to be provided to the City a copy of such Supplemental Title Report and shall specify in writing Developer's disapproval of any item or exception shown on such Supplemental Title Report not previously included in the Preliminary Title Reports and that is not acceptable to Developer ("**Disapproved Exception**") together with Developer's suggested cure thereof (to the extent capable of being cured); provided, however, that Disapproved Exceptions may not include any such item or

exception that was previously made a Permitted Exception, arises pursuant to this Agreement or otherwise has been approved by Developer. Failure of the Developer to disapprove any item or exception shown on any such Supplemental Title Report on or before the expiration of such ten (10) Business Day period shall be deemed to be an approval of the matters set forth in such Supplemental Title Report. If Developer designates a Disapproved Exception, then the City shall have the right, but not the obligation, to (x) remove or cure the Disapproved Exception to the satisfaction of the Developer, or (y) subject to Section 6.5, elect not to cure such Disapproved Exception. If the City fails to notify the Developer of the City's election to remove or cure such Disapproved Exception within ten (10) Business Days after the City's receipt of the Developer's notice of disapproval, the City shall be deemed to have elected not to cure such Disapproved Exception. If the City elects or is deemed to have elected not to cure any such Disapproved Exception then the Developer's exclusive remedy shall be: (i) to accept such Disapproved Exception and proceed to take title to the Property in the manner set forth in this Agreement and without either deduction or offset to the Purchase Price, and waive such Disapproved Exception without cause of action hereunder against the City (unless City's election or deemed election not to cure a Disapproved Exception is a breach of City's obligations as set forth in Section 6.5(a) or Section 8.15 (as such section relates to title matters), in which event Developer's remedies shall be limited to those set forth in Sections 18.5.3(b) and 18.5.4), or (ii) to provide written notice to the City within five (5) Business Days after the City's election or deemed election, of the Developer's election to terminate this Agreement and the Escrow, in which case the Purchase Price Deposit to the extent previously paid by the Developer shall be refunded to Developer in accordance with Section 5.3 and this Agreement shall terminate or if the Phase 1 Property Close of Escrow shall have occurred prior to issuance of a Supplemental Title Report for the Phase 2 Parcel, then upon exercise by Developer of its rights under this clause (ii), this Agreement shall terminate only as to the Phase 2 Provisions and the Phase 2 Parcel (for avoidance of doubt, provided that for so long as the Phase 1 Provisions remain in effect and the City shall remain the owner of the Phase 2 Property, the termination of the Phase 2 Provisions shall not affect the obligations of the City under this Agreement, if any, to the Phase 1 Developer with respect to the Phase 2 Property), and the Agreement shall remain in full force and effect with respect to Property conveyed to Developer that was not the subject of the Supplemental Title Report. In the event Developer shall not have terminated the applicable Escrow under clause (ii) of the preceding sentence, then all matters and exclusions or exceptions from title insurance coverage shown in such Supplemental Title Report which Developer shall have accepted (or been deemed to have accepted) pursuant to this Section 6.3 (other than those which the City caused or created or has agreed to cure as provided in this Section 6.3), together with all Permitted Exceptions described in Section 6.2 shall be deemed "**Permitted Exceptions**".

6.4 **ALTA Policy; Endorsements**.

It shall be a condition precedent to Developer's obligation to close Escrow that the Title Company issue the ALTA Policy with a policy amount no less than the Purchase Price for the Property being acquired and subject only to the Permitted Exceptions. Developer shall have the right, at its sole expense, to request and obtain additional ALTA coverage for the value of the development cost of the Project and any title endorsements as Developer deems necessary (the "**Developer Title Endorsements**"); provided that the issuance of such additional ALTA Coverage and the Developer Title Endorsements shall not delay any Close of Escrow and shall not be a condition precedent to any Close of Escrow. Developer shall pay for (a) all costs

attributable to the ALTA Policy other than the premium attributed to so-called standard coverage in the amount of the Purchase Price for the Property being acquired, (b) the cost of all Developer Title Endorsements and (c) the cost of a lender's policy of title insurance, if any.

6.5 **Mandatory City Obligations with Respect to Title**. Notwithstanding anything to the contrary in this Agreement, the City shall (a) remove from title all exceptions caused or created by the City that are not Permitted Exceptions and (b) deliver the Property to Developer free and clear of all monetary liens other than (i) liens for real property taxes that are not yet delinquent and (ii) liens, including Construction Liens, caused by or arising from or related to acts of Developer or work performed by or on behalf of Developer upon the Property.

7. **Close of Escrow**.

7.1 **Time and Place of Close of Escrow**.

7.1.1 **Phase 1 Property Close of Escrow**. The Phase 1 Property Close of Escrow shall take place on that date which is twenty (20) Business Days following the last to occur of the satisfaction (or waiver by the Developer) of the Developer Phase 1 Property Closing Conditions set forth in Sections 7.2.1(c) through (h) hereof and the satisfaction (or waiver by the City) of the City Phase 1 Property Closing Conditions set forth in Sections 7.2.2(c) through (h) hereof (the "**Phase 1 Property Closing Date**"), but in no event later than August 31, 2017, which date shall be not be subject to extension for Force Majeure Delay but shall be subject to the extensions contemplated by Sections 7.2.1(j) and 7.2.2(j), and the last sentence of this Section 7.1.1, if applicable, and further subject to the provisions of Section 15.1.2(c) (the "**Phase 1 Property Outside Closing Date**"). The Phase 1 Property Close of Escrow shall be subject to the satisfaction (or waiver by the Party benefited by such condition) of all of the conditions set forth in Section 7.2, and shall take place at the offices of Escrow Holder, or at such other place that the City selects. Developer shall have the option to extend the Phase 1 Property Closing Date by six (6) months upon the payment to the City of Two Hundred Fifty Thousand Dollars ($250,000.00) (the "**Extension Payment**"), which Extension Payment shall be non-refundable but shall be applicable to the Phase 1 Purchase Price at the time of the Phase 1 Property Close of Escrow.

7.1.2 **Phase 2 Property Close of Escrow**. Upon the exercise of the Option by Developer, which shall be subject to the conditions to such exercise set forth in Section 4.3.3(d), the Phase 2 Property Close of Escrow shall take place on that date which is (a) no less than sixty (60) calendar days following the exercise by Developer of the Option and (b) twenty (20) Business Days following the last to occur of the satisfaction (or waiver by Developer) of the Developer Phase 2 Property Closing Conditions set forth in Sections 7.3.1(c) through (h) hereof and the satisfaction (or waiver by the City) of the City Phase 2 Property Closing Conditions set forth in Section 7.3.2(c) through (j) hereof (the "**Phase 2 Property Closing Date**") but in no event prior to the Phase 1 Property Close of Escrow nor later than sixty (60) calendar days after the last day of the Option Term in which the Option was exercised (without giving effect to any further extensions), which date shall be not be subject to extension for Force Majeure Delay (but shall be subject to the extensions contemplated by Sections 7.3.1(j) and 7.3.2(l) if applicable) (the "**Phase 2 Property Outside Closing Date**"). The Phase 2 Property Close of Escrow shall be subject to the satisfaction (or waiver by the Party

benefited by such condition) of all of the conditions set forth in Section 7.3, and shall take place at the offices of Escrow Holder, or at such other place as the City selects.

7.1.3 **Termination**. In the event that the Phase 1 Property Close of Escrow does not occur on or prior to the Phase 1 Property Outside Closing Date, then, subject to the provisions of Article 15 or any written agreement by the Parties (each in its sole discretion) to extend the Phase 1 Property Outside Closing Date, this Agreement shall terminate in its entirety as of the Phase 1 Property Outside Closing Date. In the event that the Phase 2 Property Close of Escrow does not occur on or prior to the Phase 2 Property Outside Closing Date, then, subject to the provisions of Article 15 or any written agreement by the Parties (each in its sole discretion) to extend the Phase 2 Property Outside Closing Date, this Agreement shall terminate as of the Phase 2 Property Outside Closing Date solely as to the Phase 2 Property and the Phase 2 Project.

7.2 **Conditions Precedent to Phase 1 Property Close of Escrow**.

7.2.1 **Developer Phase 1 Property Closing Conditions**. Developer's obligation (a) to purchase the Phase 1 Property and (b) to complete all requirements for the Phase 1 Property Close of Escrow is subject to and conditioned upon the satisfaction of, or Developer's express written waiver of, each of the following conditions to the Phase 1 Property Close of Escrow ("**Developer Phase 1 Property Closing Conditions**") on or before the Phase 1 Property Closing Date.

(a) Document Deliveries. Not later than two (2) Business Days prior to the Phase 1 Property Close of Escrow, the City shall have executed and delivered to Escrow Holder the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion:

(i) if not previously Recorded, the Memorandum of DDA, acknowledged and in Recordable form;

(ii) the Special Restrictions for Phase 1, acknowledged and in Recordable form;

(iii) a Quitclaim Deed for the Phase 1 Property, acknowledged and in Recordable form;

(iv) if not previously Recorded (and provided that it is then effective as a matter of law), the DA acknowledged and in Recordable form;

(v) the Landscape Installation and Maintenance Agreement acknowledged and in Recordable form;

(vi) the Roadway and Utility Easement Agreement, acknowledged and in Recordable form;

(vii) the License Agreements;

(viii) a reimbursement agreement by and between Developer and the City, in form and substance acceptable to Developer and City, each in its sole discretion, with respect to the Reimbursable Tustin Legacy Improvements listed on Attachment 8, which include construction of certain street improvements and installation of certain utilities (the "**Reimbursement Agreement**");

(ix) a federal "FIRPTA" Affidavit executed by the City;

(x) California's Real Estate Withholding Exemption Certificate Form 593-C;

(xi) a reaffirmation of the City's representations and warranties set forth in Sections 3.3 and 18.11.2, in the form attached hereto as Attachment 17, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to Developer or the Phase 1 Property, as determined by Developer in Developer's reasonable business judgment, constitute the non-fulfillment of a Developer Phase 1 Property Closing Condition, unless such matter is cured at least three (3) Business Days prior to the Phase 1 Property Close of Escrow (as such period may be extended pursuant to Section 7.2.1(j)). If, despite changes or other matters described in the City's reaffirmation certificate, the Phase 1 Property Close of Escrow occurs, the City's representations and warranties set forth in Sections 3.3 and 18.11.2 of this Agreement shall be deemed to have been modified by all statements made in such certificate;

(xii) such proof of the City's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of the City to act for and/or bind the City as may be reasonably required by Title Company and/or Developer; and

(xiii) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(b) Title Policy. Subject to Section 6.3, the Title Company shall be unconditionally prepared to issue the ALTA Policy to Developer in no less than the amount of the Phase 1 Property Purchase Price for the Phase 1 Property and subject only to the Permitted Exceptions.

(c) Pre-Existing Obligations. Except as approved by Developer in writing or constituting a Permitted Exception, there shall exist no leases, contracts or rights of occupancy or other agreements or contracts with respect to the Property (but excluding the provisions of the Federal Deeds and the Memorandum of Agreement) entered into by the City that shall survive the Phase 1 Property Close of Escrow.

(d) Applicable Approvals. The Applicable Approvals shall have been issued and shall not have expired, the Entitlement Approval Date shall have occurred and a final map for the Phase 1 Property shall have been Recorded.

(e) Grading and Building Permits. Provided that Developer has submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough and precise grading permits in accordance with the Approved Plans for Phase 1 and (b) all building permits for the Minimum Phase 1 Improvements, then, and only then, as a condition to Close of Escrow, City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Developer acquiring title to the Phase 1 Property.

(f) No Casualty or Condemnation. There shall not have occurred any casualty or condemnation with respect to the Phase 1 Property and no condemnation shall be threatened with respect to the Phase 1 Property.

(g) No Litigation. No litigation shall be threatened or pending which seeks to prevent or materially impair the development or operation of the Phase 1 Project, or any part thereof, according to the terms of this Agreement and the Other Agreements.

(h) Progress Towards City Park Completion. The City shall have delivered written evidence to Developer, in form and substance satisfactory to Developer, that the plans for the first phase of the City Park are substantially complete (provided that such evidence shall be deemed provided if the City has issued a request for bids from contractors for construction of the City Park).

(i) Representations and Warranties. Subject to Section 7.2.1(a)(xi), the City's representations and warranties set forth in Sections 3.3 and 18.11.2 shall be true and correct as of the Phase 1 Property Close of Escrow.

(j) Default. The City shall not be in Default of any covenant or agreement to be performed by the City under this Agreement, or, if the City is in Default on the expected Phase 1 Property Closing Date, Developer shall have provided the City with written notice and the City shall have cured such Default within ten (10) Business Days of such notice, and, for one such extension only, the Phase 1 Property Closing Date and the Phase 1 Property Outside Closing Date shall be extended to allow such cure within such ten (10) Business Day period, or such later period as Developer may elect pursuant to Section 15.4.1(d).

7.2.2 **City Closing Conditions**. The City's obligations to deliver the Quitclaim Deed for the Phase 1 Property and to complete all requirements for the Phase 1 Property Close of Escrow are subject to and conditioned upon the satisfaction of, or the City's written waiver of, each of the following conditions to the Phase 1 Property Close of Escrow ("**City Phase 1 Property Closing Conditions**") on or before the Phase 1 Property Closing Date:

(a) Developer Closing Payment. Not later than one (1) Business Day prior to the Phase 1 Property Close of Escrow, Developer shall deliver to Escrow:

(i) the Phase 1 Property Closing Payment (provided that City made the document deliveries required under Section 7.2.1(a) within two (2) Business Days prior to the Phase 1 Property Close of Escrow); and

(ii) any other costs explicitly set forth in this Agreement as costs to be paid by Developer at such Close of Escrow.

(b) Document Deliveries. Developer's execution and delivery to Escrow Holder of the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion, which documents Developer shall deliver to the Escrow not later than two (2) Business Days prior to the Phase 1 Property Close of Escrow:

(i) acceptance of the Special Restrictions for Phase 1, acknowledged and in Recordable form;

(ii) acceptance of the Quitclaim Deed for the Phase 1 Property, acknowledged and in Recordable form;

(iii) if not previously Recorded (and provided that it is then effective as a matter of law), the DA acknowledged and in Recordable form;

(iv) the CC&Rs, acknowledged and in Recordable form;

(v) the Landscape Installation and Maintenance Agreement, acknowledged and in Recordable form;

(vi) the Roadway and Utility Easement Agreement, acknowledged and in Recordable form;

(vii) the License Agreements;

(viii) the Reimbursement Agreement;

(ix) a Phase 1 Guaranty executed by Phase 1 Guarantor in substantially the form and substance of that attached hereto as Attachment 14 or as otherwise agreed by Phase 1 Guarantor and the City each in its sole discretion and a legal opinion as to due authorization and enforceability from counsel for Guarantor in substantially the form and substance of that attached hereto as Attachment 30;

(x) a reaffirmation of Developer's representations and warranties set forth in Sections 2.1, 3.1, 4.5.1(a), 4.5.2(f), 5.2 and 18.11.1 in the form attached hereto as Attachment 18, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Developer be liable to the City for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Close of Escrow, and (B) is expressly

permitted under the terms of this Agreement or is beyond the reasonable control of the Developer to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to the City, as determined by the City in the City's reasonable business judgment, constitute the non-fulfillment of a City Phase 1 Property Closing Condition, unless such matter is cured at least three (3) Business Day prior to the Phase 1 Property Close of Escrow (as such period may be extended pursuant to Section 7.2.2(j)). If, despite changes or other matters described in Developer's reaffirmation certificate, the Phase 1 Property Close of Escrow occurs, Developer's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate;

(xi) a declaration certified by an officer of Developer in the form attached hereto as Attachment 18 that the documentation submitted by Developer to the City pursuant to Section 4.6.6 prior to the Effective Date is true and correct in all material respects as of the Phase 1 Property Close of Escrow together with certificates of good standing of Developer, issued by the California Secretary of State within thirty (30) calendar days of the Closing Date.

(xii) a declaration certified by the chief financial officer or other appropriate authorized officer of Phase 1 Guarantor in the form of the Guarantor Certificate attached hereto as Attachment 13A;

(xiii) an Original Equity Investor Certificate certified by the chief financial officer or other appropriate authorized officer of the Phase 1 Equity Investor in the form and substance of Attachment 13B, or if such declaration has previously been delivered by Phase 1 Equity Investor pursuant to Section 4.6.2, a certification in the form of Attachment 13C certifying as to the truth and correctness of in all material respects of the Original Equity Investor Certificate;

(xiv) with respect to a Construction Loan secured by a Permitted Mortgage with a Permitted Mortgagee, a Subordination Agreement executed and acknowledged by Developer and Permitted Mortgagee and in Recordable Form;

(xv) such proof of Developer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Developer to act for and/or bind Developer as may be reasonably required by Title Company and/or the City; and

(xvi) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(c) Subdivision Map and Construction Bond. A final map for the Phase 1 Property shall be Recorded and if not previously delivered in connection with such Recording or required pursuant to then effective subdivision improvement agreement, a Construction Bond with respect to the Phase 1 Horizontal Improvements insuring the Completion of such Phase 1 Horizontal Improvements.

(d) Applicable Approvals. The Applicable Approvals shall have been issued and shall not have expired, and the Entitlement Approval Date shall have occurred.

(e) Grading and Building Permits. Developer shall have submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough and precise grading permits in accordance with the Approved Plans for Phase 1, and (b) all building permits for the Minimum Phase 1 Improvements, and City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Developer acquiring title to the Phase 1 Property.

(f) Financial Capability. Developer shall have caused the conditions precedent to Phase 1 Property Close of Escrow set forth in Section 4.6 to be satisfied and shall be in compliance with the requirements of Sections 8.5.1 and 8.5.2 and there shall have been (i) no material adverse changes (as determined by the City in accordance with Section 4.6 of this Agreement) in the financial condition of any of the Developer, the Phase 1 Equity Investor, or the Phase 1 Guarantor since the City approved the same; (ii) no change in ownership of Developer, the Phase 1 Equity Investor or the Phase 1 Guarantor since the City approved the same, or if there are changes, then except as permitted by Section 2.2.2, such changes shall have been approved by the City in accordance with Section 2.2.3, and (iii) no change to the form and substance of any Transfer Agreements and/or Ground Lease previously approved by the City and applicable to Phase 1, as applicable, without the prior written consent of the City thereto.

(g) Construction Loan Closing. The Permitted Mortgagee(s) for the Construction Loan and Developer shall be prepared to close the Construction Loan substantially concurrently with the Phase 1 Property Close of Escrow, all conditions thereto other than transfer of the Phase 1 Property shall have been satisfied, there shall be no default under the contracts and agreements applicable thereto, the loan documents shall satisfy the requirements of Sections 17.1.2(a) and 17.3, Developer shall have provided to the City written verification from Escrow confirming that the deed(s) of trust to be recorded in conjunction with the closing of the Construction Loan, if any, has/have been fully executed and acknowledged and in Recordable form and deposited into Escrow by the Permitted Mortgagee(s) for the Construction Loan, substantially in the amount set forth in the Phase 1 Financing Plan approved by the City pursuant to Section 4.6.1.

(h) Insurance. The Developer shall have provided to the City evidence of insurance as and to the extent required by Article 11.

(i) Representations and Warranties. Subject to Section 7.2.2(b)(x), Developer's representations and warranties set forth in Sections 3.1 and 18.11.1 shall be true and correct as of the Phase 1 Property Close of Escrow.

(j) Default. Developer shall not be in Default of any covenant or agreement to be performed by Developer under this Agreement, or, if Developer is in Default on the expected Phase 1 Property Closing Date, City shall have provided Developer with written notice and Developer shall have cured such Default within ten (10) Business Days of such notice, and, for one such extension only, the Phase 1 Property Closing Date and the Phase 1

Property Outside Closing Date shall be extended to allow such cure within such ten (10) Business Day period.

7.3 **Conditions Precedent to Phase 2 Property Close of Escrow**.

7.3.1 **Developer Phase 2 Property Closing Conditions**. Upon exercise by Developer of the Option (which shall occur in accordance with Section 4.3.3(d)), Developer's obligation (a) to purchase the Phase 2 Property and (b) to complete all requirements for the Phase 2 Property Close of Escrow is subject to and conditioned upon the satisfaction of, or Developer's express written waiver of, each of the following conditions to the Phase 2 Property Close of Escrow ("**Developer Phase 2 Property Closing Conditions**") on or before the Phase 2 Property Closing Date.

(a) Document Deliveries. Not later than two (2) Business Days prior to the Phase 2 Property Close of Escrow, the City shall have executed and delivered to Escrow Holder the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion:

(i) the Special Restrictions for Phase 2, acknowledged and in Recordable form;

(ii) a Quitclaim Deed for the Phase 2 Property, acknowledged and in Recordable form;

(iii) a federal "FIRPTA" Affidavit executed by the City;

(iv) California's Real Estate Withholding Exemption Certificate Form 593-C;

(v) a reaffirmation of the City's representations and warranties set forth in Sections 3.3 and 18.11.2, in the form attached hereto as Attachment 17, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to Developer or the Property, as determined by Developer in Developer's reasonable business judgment, constitute the non-fulfillment of a Developer Phase 2 Property Closing Condition, unless such matter is cured at least three (3) Business Days prior to the Phase 2 Property Close of Escrow (as such period may be extended pursuant to Section 7.3.1(j)). If, despite changes or other matters described in the City's reaffirmation certificate, the Phase 2 Property Close of Escrow occurs, the City's representations and warranties set forth in Sections 3.3 and 18.11.2 of this Agreement shall be deemed to have been modified by all statements made in such certificate;

(vi) such proof of the City's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of the City to act for and/or bind the City as may be reasonably required by Title Company and/or Developer; and

(vii) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(b) Title Policy. Subject to Section 6.3, the Title Company shall be unconditionally prepared to issue the ALTA Policy to Developer for the Phase 2 Property in no less than the amount of the Phase 2 Property Purchase Price and subject only to the Permitted Exceptions.

(c) Pre-Existing Obligations. Except as approved by Developer in writing or constituting a Permitted Exception, there shall exist no leases, contracts or rights of occupancy or other agreements or contracts with respect to the Phase 2 Property (but excluding the provisions of the Federal Deeds and the Memorandum of Agreement) entered into by the City that shall survive the Phase 2 Property Close of Escrow.

(d) Entitlements. All Entitlements required to be approved by the City shall have been approved, which Entitlements shall not have expired or shall have been extended on the same terms as the Entitlements in effect as of the Effective Date and in all events (i) such Entitlements shall remain effective for a period of two (2) years following the issuance thereof or for the term of the DA as applicable to Phase 2 (as applicable), subject to any extensions of time mutually agreed upon by City and Developer, and (ii) all periods to challenge, review or appeal the Entitlements (including by litigation or referendum) shall have expired without any challenge, review or appeal, or if there is a challenge, review or appeal, a final non-appealable resolution of the challenge or appeal shall have been issued upholding the approval of the Entitlements without any material changes to the original conditions of such approval.

(e) Phase 2 Applicable Approvals; Subdivision Map. The Phase 2 Applicable Approvals shall have been issued and shall not have expired and the Entitlement Approval Date with respect to the Phase 2 Applicable Approvals shall have occurred and, provided that Developer has submitted a complete final Subdivision Map for the Phase 2 Parcel for consideration by the City meeting all of the City's requirements for recordation (other than any signature required from any third party at the time of final map recordation that was not required to have been obtained prior to the approval by the City of the tentative map), such final map shall have been Recorded.

(f) Grading and Building Permits. Provided that Developer has submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough and precise grading permits in accordance with the Approved Plans for Phase 2 and (b) all building permits for the Minimum Phase 2 Improvements, then, and only then, as a condition to Close of Escrow, City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Developer acquiring title to the Phase 2 Property.

(g) No Casualty or Condemnation. There shall not have occurred any casualty or condemnation with respect to the Phase 2 Property and no condemnation shall be threatened with respect to the Phase 2 Property.

(h) No Litigation. No litigation shall be threatened or pending which seeks to prevent or materially impair the development or operation of the Phase 2 Project, or any part thereof, according to the terms of this Agreement and the Other Agreements.

(i) Representations and Warranties. Subject to Section 7.3.1(a)(v), the City's representations and warranties set forth in Sections 3.3 and 18.11.2 shall be true and correct as of the Phase 2 Property Close of Escrow.

(j) Default. The City shall not be in Default of any covenant or agreement to be performed by the City under this Agreement, or, if the City is in Default on the expected Phase 2 Property Closing Date, Developer shall have provided the City with written notice and the City shall have cured such Default within ten (10) Business Days of such notice, and, for one such extension only, the Phase 2 Property Closing Date and the Phase 2 Property Outside Closing Date shall be extended to allow such cure within such ten (10) Business Day period, or such later period as Developer may elect pursuant to Section 15.4.1(d).

7.3.2 **City Closing Conditions**. The City's obligation to deliver the Quitclaim Deed for the Phase 2 Property and to complete all requirements for the Phase 2 Property Close of Escrow is subject to and conditioned upon the satisfaction of, or the City's written waiver of, each of the following conditions to the Phase 2 Property Close of Escrow ("**City Phase 2 Property Closing Conditions**") on or before the Phase 2 Property Closing Date.

(a) Payments. Not later than one (1) Business Day prior to the Phase 2 Property Close of Escrow, Developer shall deliver to Escrow:

(i) the Phase 2 Property Closing Payment (provided that City made the document deliveries required under Section 7.3.1(a) within two (2) Business Days prior to the Phase 2 Property Close of Escrow); and

(ii) any other costs explicitly set forth in this Agreement as costs to be paid by Developer at the Phase 2 Property Close of Escrow.

(b) Document Deliveries. Developer's execution and delivery to Escrow Holder of the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion, which documents Developer shall deliver to the Escrow not later than two (2) Business Days prior to the Phase 2 Property Close of Escrow:

(i) acceptance of the Special Restrictions for Phase 2, acknowledged and in Recordable form;

(ii) acceptance of the Quitclaim Deed for the Phase 2 Property, acknowledged and in Recordable form;

(iii) a supplemental declaration or similar document including the Phase 2 Parcels in the CC&Rs, acknowledged and in Recordable form;

(iv) a Phase 2 Guaranty executed by the Phase 2 Guarantor(s) in substantially the form and substance of that attached hereto as Attachment 14 or as otherwise agreed by the City, Developer and the Phase 2 Guarantor(s), each in its sole discretion and a legal opinion as to due authorization and enforceability from counsel for Guarantor acceptable to City in substantially the form and substance of that attached hereto as Attachment 30;

(v) a reaffirmation of Developer's representations and warranties set forth in in Sections 2.1, 3.1, 4.5.1(a), 4.5.2(f), 5.2 and 18.11.1 in the form attached hereto as Attachment 18, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Developer be liable to the City for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Developer to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to the City, as determined by the City in the City's reasonable business judgment, constitute the non-fulfillment of a City Phase 2 Property Closing Condition, unless such matter is cured at least three (3) Business Days prior to the Phase 2 Property Close of Escrow (as such period may be extended pursuant to Section 7.3.2(l)). If, despite changes or other matters described in Developer's reaffirmation certificate, the Phase 2 Property Close of Escrow occurs, Developer's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate;

(vi) a declaration certified by an officer of Developer in the form attached hereto as Attachment 18 that the documentation previously submitted by Developer to the City pursuant to Section 4.6.6 is true and correct in all material respects as of the Phase 2 Property Close of Escrow together with certificates of good standing of Developer, issued by the California Secretary of State within thirty (30) calendar days of the Closing Date.

(vii) a declaration certified by the chief financial officer or other appropriate authorized officer of Phase 2 Guarantor in the form of the Phase 2 Guarantor Certificate in the form attached hereto as Attachment 13B;

(viii) an Original Equity Investor Certificate certified by the chief financial officer or other appropriate authorized officer of the Phase 2 Equity Investor in the form and substance of Attachment 13B, or if such declaration has previously been delivered by Phase 2 Equity Investor pursuant to Section 4.6.2, a certification in the form of Attachment 13C certifying as to the truth and correctness of in all material respects of the Original Equity Investor Certificate;

(ix) with respect to a Construction Loan that is secured by a Permitted Mortgage with a Permitted Mortgagee, a Subordination Agreement executed and acknowledged by Developer and Permitted Mortgagee and in Recordable Form;

(x) such proof of Developer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Developer to act for and/or bind Developer as may be reasonably required by Title Company and/or the City; and

(xi) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(c) Subdivision Map and Construction Bond. The final Subdivision Map covering the Phase 2 Parcel shall have been Recorded and if not previously delivered in connection with such Recording or the Phase 1 Property Close of Escrow, or required pursuant to then effective subdivision improvement agreement, a Construction Bond with respect to the Minimum Horizontal Improvements (to the extent not yet Complete) and the Phase 2 Horizontal Improvements insuring the Completion of such Phase 2 Horizontal Improvements shall have been delivered.

(d) Phase 2 Applicable Approvals. The Phase 2 Applicable Approvals shall have been issued and shall not have expired and the Entitlement Approval Date with respect to the Phase 2 Applicable Approvals shall have occurred.

(e) Threshold Conditions. One of the following threshold conditions has been met: (A) Leases or Transfer Agreements shall have been executed with End Users for not less than 232,050 GBA of Office Uses within the Minimum Phase 1 Vertical Improvements, or (B) Developer or Phase 2 Developer is under binding contract (which may be subject to contingencies related to financing, conveyance, or construction) to sell or lease to a Build-to-Suit Users within the Phase 2 Project that will lease or own at least 100,000 GBA of Office Uses.

(f) Grading and Building Permits. Developer shall have submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough and precise grading permits in accordance with the Approved Plans for Phase 2 and (b) all building permits for the Minimum Phase 2 Improvements, and City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Developer acquiring title to the Phase 2 Property.

(g) Insurance. Developer shall have provided to the City evidence of insurance as and to the extent required by Article 11.

(h) Financial Capability, Etc. Developer shall have caused the conditions precedent to the Phase 2 Property Close of Escrow set forth in Section 4.6 to be satisfied and shall be in compliance with the requirements of Sections 8.5.1 and 8.5.2, and there shall have been (i) no material adverse changes (as determined by the City in accordance with Section 4.6 of this Agreement) in the financial condition of any of the Developer or the Phase 2 Guarantor since the City approved the same; (ii) no change in ownership of Developer, the Phase 2 Equity Investor or the Phase 2 Guarantor since the City approved the same, or if there are changes, then except as permitted by Section 2.2.2, such changes shall have been approved by the City in accordance with Section 2.2.3 and (iii) no change to the form and substance of any

Transfer Agreements and/or Ground Lease previously approved by the City and applicable to Phase 2, as applicable, without the prior written consent of the City thereto.

(i) Construction Loan Closing. The Permitted Mortgagee(s) for the Construction Loan and Developer shall be prepared to close the Construction Loan substantially concurrently with the Phase 2 Property Close of Escrow, all conditions thereto other than transfer of the Phase 2 Property shall have been satisfied, there shall be no default under the contracts and agreements applicable thereto, the loan documents shall satisfy the requirements of Section 17.1.2(a) and 17.3, and Developer shall have provided to the City written verification from Escrow confirming that the deed of trust(s) to be recorded in conjunction with the closing of the Construction Loan, if any, has/have been fully executed and acknowledged and in Recordable form and deposited into Escrow by the Permitted Mortgagee(s) for the Construction Loan substantially in the amount set forth in the Phase 2 Financing Plan approved by the City pursuant to Section 4.6.1.

(j) Phase 1 Property Close of Escrow. The Phase 1 Property Close of Escrow shall have occurred.

(k) Representations and Warranties. Subject to Section 7.3.2(b)(v), Developer's representations and warranties set forth in Section 3.1 and 18.11.1 shall be true and correct as of the Phase 2 Property Close of Escrow.

(l) Default. Phase 2 Developer shall not be in Default of any covenant or agreement to be performed by Phase 2 Developer under this Agreement and, if the Phase 1 Developer and the Phase 2 Developer are the same Person or Related Parties, then neither the Phase 1 Developer nor the Phase 2 Developer shall be in Default of any covenant or agreement to be performed by Developer under this Agreement, and if as a result of any Default by Phase 1 Developer or Phase 2 Developer on the Phase 2 Property Closing Date, this condition is not satisfied, City shall have provided Phase 2 Developer with written notice and the Default shall be cured within ten (10) Business Days of such notice, and, for one such extension only, the Phase 2 Property Closing Date and the Phase 2 Property Outside Closing Date shall be extended to allow such cure within such ten (10) Business Day period.

7.4 **Additional Closing Requirements**.

In addition to the provisions of Sections 7.2 and 7.3, upon each Close of Escrow the following shall occur:

(a) Closing Cost Statement. Escrow Holder shall deliver at least seven (7) Business Days prior to each Close of Escrow a statement of costs to each Party and at least two (2) Business Days prior to each Close of Escrow each of the Parties shall approve such statement as being consistent with the provisions of Section 7.5 below.

(b) Closing Certificate. Each Party shall submit to Escrow Holder a certificate stating that all applicable Closing Conditions for its benefit have been satisfied or waived.

7.5 **Procedures for Conveyance**.

7.5.1 **Costs and Expenses**. The costs and expenses of each Close of Escrow shall be allocated as follows:

(a) City's Costs. The City shall pay (i) the portion of the premium for the ALTA Policy attributable to the so-called standard owner's policy coverage portion thereof (CLTA) in the amount of the Purchase Price for the Property being acquired; (ii) one-half (1/2) of all Escrow fees and costs; (iii) all documentary transfer taxes, if any; and (iv) the City's share of prorations, if any.

(b) Developer's Costs. Developer shall pay (i) the entire cost of any extended coverage in excess of the premium for the standard CLTA coverage in the amount of the Purchase Price for the Property being acquired, any other title policy and any Developer Title Endorsements, (ii) the entire cost of the Survey and any additional land surveys obtained by Developer in connection with the foregoing; (iii) document recording charges for the Special Restrictions, the Quitclaim Deed, the CC&Rs, the Roadway and Utility Easement Agreement, the Landscape Installation and Maintenance Agreement, the Subordination Agreement(s), if applicable, and all other Recorded documents; (iv) one-half (1/2) of all Escrow fees and costs; and (v) Developer's share of prorations. Developer shall pay the fees of all consultants and employees (including lawyers and environmental, engineering and land use consultants) engaged by it.

(c) Other Costs. All costs and expenses related to each Close of Escrow and the transfer of the Property to Developer not otherwise allocated in this Agreement shall be allocated between the Parties in accordance with the customary practice in Orange County, California.

(d) City's Removal of Liens. City shall pay all amounts necessary to cause the removal of any monetary liens that are the obligations of the City to remove pursuant to Section 6.5(b).

7.5.2 **Possession**. The City shall deliver to Developer possession of the Phase 1 Property at the Phase 1 Property Close of Escrow and the Phase 2 Property, at the Phase 2 Property Close of Escrow.

7.5.3 **Deliveries to Developer Upon Close of Escrow**. The City agrees to deliver to Developer, on or prior to each Close of Escrow, outside of Escrow, the following items:

(a) Records and Plans. To the extent in the City's possession, originals or copies of those records and plans with respect to the Property conveyed that will affect such Property after the Close of Escrow.

(b) Licenses and Permits. To the extent in the City's possession, originals or copies of all licenses and permits affecting the Property conveyed.

7.5.4 **Prorations**.

(a) General. Rentals, revenues and other income, if any, from the Property conveyed shall be prorated on a cash basis as of 11:59 P.M. Pacific Time on the day preceding each Close of Escrow. Tax payments shall be prorated in accordance with Section 7.5.4(b).

(b) Taxes. Developer shall be responsible for all taxes, assessments, fees and charges imposed by any Governmental Authority with respect to the Property conveyed and all existing and future improvements thereon from and after each Close of Escrow. If, after any Close of Escrow, any real estate taxes or possessory interest taxes are assessed against any conveyed parcel pertaining to the period prior to such Close of Escrow, the City agrees to contact the applicable taxing authority and seek recognition and enforcement of its tax exemption. The provisions of this Section 7.5.4(b) shall survive each Close of Escrow and shall not merge into any Quitclaim Deed.

(c) Method of Proration. All prorations shall be made in accordance with customary practice in Orange County, except as otherwise expressly provided in this Agreement. Developer and the City agree to cause a schedule of prorations to be prepared prior to each Close of Escrow. Such prorations, if and to the extent known and agreed upon as of each Close of Escrow, shall be paid by Developer to the City (if the prorations result in a net credit to the City) or by the City to Developer (if the prorations result in a net credit to Developer) by increasing or reducing the cash to be paid by Developer at each Close of Escrow. Any such prorations not determined or not agreed upon as of each Close of Escrow shall be paid by Developer to the City, or by the City to Developer, as the case may be, in cash as soon as practicable following each Close of Escrow (but in no event later than sixty (60) days after such Close of Escrow). A copy of the schedule of prorations as agreed upon by Developer and the City shall be delivered to Escrow Holder at least three (3) Business Days prior to each Close of Escrow. All prorations provided for in this Section 7.5.4(c) shall be on an "actual day" basis and a three hundred sixty-five (365) day year.

7.5.5 **Disbursements and Other Actions by Escrow Holder**. At each Close of Escrow and subject to the satisfaction or waiver by the benefited party of the applicable Closing Conditions to such Close of Escrow described in Sections 7.2 and 7.3, Escrow Holder shall promptly undertake all of the following in the manner indicated below:

(a) Funds. Debit or credit all matters addressed in Section 7.5.1 and prorate all matters addressed in Section 7.5.4 and disburse to the City the Purchase Price for the Property being acquired (as adjusted pursuant to this Agreement) and all other sums comprising the Phase 1 Property Closing Payment at the Phase 1 Property Close of Escrow and the Phase 2 Property Closing Payment at the Phase 2 Property Close of Escrow as set forth in the Escrow closing statement approved by the Parties.

(b) Recording. Cause to be Recorded, in the following order: (i) at the Phase 1 Property Close of Escrow, the Memorandum of DDA, (if not yet Recorded) which shall be Recorded against all of the Development Parcels, and (ii) thereafter (A) at the Phase 1 Property Close of Escrow, the Phase 1 Special Restrictions and the Phase 1 Property Quitclaim Deed (each of which shall be recorded against the Phase 1 Property only); the Roadway and Utility Easement Agreement and the Landscape Installation and Maintenance Agreement (each

of which shall be Recorded against the entirety of the Property) and thereafter, the CC&Rs, and, if applicable, the Subordination Agreement (each of which shall be Recorded against the Phase 1 Parcel only) and (B) at the Phase 2 Property Close of Escrow, the Phase 2 Special Restrictions the Phase 2 Property Quitclaim Deed, the Supplemental Declaration or similar document including the Phase 2 Parcel in the CC&Rs, and, if applicable, the Subordination Agreement (each of which shall be Recorded against the Phase 2 Parcel only), and, in each case, thereafter, any other documents that Developer and the City may mutually direct, or that may be required by the terms of this Agreement to be Recorded, obtain conformed copies thereof and distribute same to Developer and the City.

(c) Title Policy. Direct the Title Company to issue the ALTA Policy to Developer in the amount not less than the Purchase Price for Property being conveyed and subject only to the Permitted Exceptions. Concurrently with the issuance of the ALTA Policy, the Title Company shall provide the Developer Title Endorsements, provided that the issuance of such Developer Title Endorsements shall not be a condition to any Close of Escrow except for those endorsements that the City agreed to obtain in order to cure any Disapproved Exceptions or Survey matters.

(d) Delivery of Documents to Developer and City. Deliver to each Party original counterparts (and conformed copies, if applicable) of all then-Recorded documents, the FIRPTA Affidavit, the California Form 593-W and any other documents (or copies thereof) deposited into Escrow by Developer or the City pursuant hereto, and deliver to the Parties a certified copy of their respective Escrow closing statements.

(e) Other Actions. Take such other actions as the Parties direct pursuant to mutually executed supplemental Escrow instructions.

7.5.6 **Notice**. All communications from the Escrow Holder shall be directed to the addresses and in the manner established in Section 18.6 for notices, demands and communications between the Parties.

8. Development of the Property and Additional Covenants of Developer and City.Scope of Development.

8.1.1 **Requirement to Develop the Project**. The Scope of Development attached to this Agreement as Attachment 8 sets forth the overall conceptual plan for the Project and development of the Development Parcels, including design, development, and construction of the Improvements as may be required by the Entitlements and Development Permits. The Project shall be designed and constructed in a manner consistent with the Scope of Development, the Entitlements and the Site Plan attached as Attachment 3B (as the same may be modified with approval of the City Manager in his or her Proprietary Capacity and otherwise in compliance with the City Code), the Approved Plans, the Design Guidelines and all Governmental Requirements, as further described below. The Parties acknowledge that the Scope of Development depicts one possible plan for development, and that Developer shall not be obligated to construct all of the improvements included within the Scope of Development, provided that, without limiting any other requirement of the Schedule of Performance: Developer shall be obligated within the time periods for performance set forth in the Schedule of

Performance: (i) from and after the Phase 1 Property Close of Escrow, to construct and Complete the Phase 1 Horizontal Improvements and the Minimum Phase 1 Vertical Improvements and (ii) from and after the Phase 2 Property Close of Escrow, to construct and Complete the portion of the Phase 2 Horizontal Improvements and Minimum Phase 2 Vertical Improvements associated with that Phase, and (iii) to use commercially reasonable efforts to attract tenants for each of Phase 1 and Phase 2. Until the issuance of a Certificate of Compliance as to the applicable portion of the Property, no Person shall be permitted or authorized to undertake the construction of any Vertical Improvements on the Development Parcels or any portion thereof for which a Certificate of Compliance has not yet been issued, unless such Person is: (i) the Initial Developer, (ii) a Transferee under a Permitted Transfer; (iii) an End User, pursuant to a Transfer approved by the City to the extent the City has the right to approve the same pursuant to this Agreement, and if such End User is required by this Agreement to enter into a City Non-Disturbance and Attornment Agreement, such End User shall have satisfied such obligation; or (iv) a Person approved by the City as a Transferee pursuant to Section 2.2.3 and otherwise meeting the requirements of Section 2.2.3, including assumption in writing of all obligations of Developer under this Agreement and the Other Agreements pursuant to an Assignment. The foregoing restriction on Person's carrying out construction does not apply to tenant improvements constructed in a Leasable Space.

8.1.2 **Control of Site Development**. Developer shall have control over the design and layout of the Horizontal Improvements (other than the Reimbursable Tustin Legacy Improvements and the Reimbursable Phase 2 Improvements) and over the Vertical Improvements (including height, shape and location of the Vertical Improvements and special landscaping and art features) and over the special uses to be incorporated therein, subject to (a) the Approved Plans, the Design Guidelines, Development Permits and Entitlements, including any conditional use permit necessitated by particular proposed uses or design features and (b) the design approval provisions set forth in Section 8.4 for the benefit of the City, which are undertaken by the City in its Proprietary Capacity.

8.1.3 **Project Development Costs**. Developer hereby agrees that all costs associated with planning, designing and constructing the Project, preparing the Property and constructing all Improvements and tenant improvements thereon, including all hard costs, soft costs, the cost of services, fees, assessments, exactions, dedications, cost overruns, profit, overhead, consultants' fees, brokerage fees associated with obtaining Construction Loans and entering into Leases and or sales agreements with End Users, legal fees, financing fees and costs, including principal payments and interest payments (whether or not paid through loan proceeds), wages required to be paid to any person employed by Developer, any Transferee, contractor or subcontractor, including the costs of the Project Fair Share Contribution and Tax B (collectively, the "**Development Costs**"), shall be the responsibility of Developer or such Transferee, in any case without any cost or liability to the City.

8.1.4 **Compliance with Governmental Requirements and Other Requirements**. The Project shall be consistent with the development concept set forth in the Scope of Development and shall be developed and maintained in accordance with this Agreement and all Governmental Requirements (subject to Section 1.6 of this Agreement), including the Specific Plan, the Reuse Plan, the Entitlements, the Approved Plans, the

Development Permits, the Design Guidelines, the Memorandum of Agreement and the Federal Deeds.

8.1.5 **Construction of Specific Project Components**.

(a) Horizontal Improvements. Developer acknowledges and agrees that it shall be responsible for design and construction of certain infrastructure to support the development of the Project to the extent described in the Scope of Development attached to this Agreement as Attachment 8 and in the depiction of Horizontal Improvements attached to this Agreement as Attachment 9 and as otherwise required by the Approved Plans, the Entitlements, the Development Permits, the Design Guidelines, all Governmental Requirements and all requirements of private utility purveyors. Developer shall Complete the Minimum Horizontal Improvements (other than cap paving of any portions of the roadway located on the Development Parcels) prior to the earlier of the Phase 2 Property Close of Escrow or the Transfer of all or any portion of Developer's interest in Phase 1 or Phase 2 or any portion thereof without the consent of the City in its sole discretion, unless otherwise permitted pursuant to Section 2.2.2(f). The Horizontal Improvements, including the Minimum Horizontal Improvements, for each Phase shall be commenced and diligently prosecuted to Completion in accordance with the Schedule of Performance as further described in Section 8.2.1.

(b) Vertical Improvements. Following the Phase 1 Property Close of Escrow, Developer shall construct or cause the construction of the Phase 1 Vertical Improvements and following the Phase 2 Property Close of Escrow, Developer shall construct or cause the construction of the Phase 2 Vertical Improvements associated with such Phase, in each case, in accordance with the respective Schedule of Performance, the Scope of Development, the Approved Plans, the Design Guidelines or other plans and specifications prepared by Developer and approved by the City, the Entitlements, the Development Permits, the Design Guidelines, and all other Governmental Requirements (subject to Section 1.6).

8.2 **Timing and Conditions of Project Development**.

8.2.1 **Schedule of Performance**. The Schedule of Performance attached as Attachment 7 sets forth the schedule for submissions, approvals and actions, including the design and development of the Project and construction of the Improvements. The Parties acknowledge and agree that, subject to Section 18.7, time is of the essence with respect to the dates set forth in the Schedule of Performance. Accordingly, subject to Force Majeure Delay, following conveyance of any portion of the Property by the City, Developer shall promptly begin and thereafter diligently prosecute to completion within the time specified in the Schedule of Performance all steps required by the Schedule of Performance applicable to the Property so acquired, including design, construction and development of the Improvements.

8.2.2 **Extensions**. Subject to Section 18.7, the City may, in its sole discretion and upon written request from Developer, extend the time specified in the Schedule of Performance. Any such agreed upon changes shall be within the limitations of the Specific Plan, the Entitlements, and all other Governmental Requirements (subject to Section 1.6). To be effective, any extensions shall be requested in writing by Developer and evidenced by written notice from the City Manager or the City Manager's designee.

8.2.3 **Project Phases**. The City acknowledges and agrees that the Project may be constructed and Completed in two phases, comprising the Phase 1 Project and the Phase 2 Project. Each Phase shall be commenced and Completed in accordance with the Schedule of Performance and upon Completion thereof, each Phase shall comply with all Governmental Requirements (subject to Section 1.6), including all Specific Plan requirements and Entitlement conditions of approval for development on the Property, without reliance upon Improvements to be constructed in future Phases. Subject to the foregoing, the City agrees to cooperate in good faith with Developer to implement this Agreement, so as to permit development of the Project in two phases, including by providing Developer with a license, or other right of access pursuant to the License Agreements as set forth in Section 8.2.4 below.

8.2.4 **Limited Licenses**. At the Phase 1 Property Close of Escrow (and provided that the Phase 2 Property Close of Escrow does not occur substantially concurrently), the City shall provide to Developer the following limited and revocable licenses to enter upon the portions of the Development Parcels continued to be owned by the City: (a) a limited license for performance by Developer of construction, including grading, construction of the Minimum Horizontal Improvements and installation of utilities on the Phase 2 Parcel, pursuant to a license agreement in substantially the form and substance of the agreement attached as Attachment 25A, or as otherwise mutually approved by the City and Developer each in its sole discretion, (b) a limited license for the performance by Developer of property due diligence, pursuant to a license agreement in substantially the form and substance of the agreement attached as Attachment 25B, and (c) a limited Phase 1 construction staging and construction parking license on the Phase 2 Parcel pursuant to a license agreement in substantially the form and substance of the agreement attached as Attachment 25C, or as otherwise mutually approved by the City and Developer each in its sole discretion (collectively, the "**License Agreements**"). Improvements in public right of way shall require that Developer apply for encroachment permits which shall be issued by the City in its Governmental Capacity.

8.3 **Land Use Matters**.

8.3.1 **Subdivision**. Developer at its sole cost and expense shall (a) cause the Parcels within each Phase and the Building Pads within each Phase to be legally described and (b) to the extent required by the Subdivision Map Act and the City Code, file and prosecute applications to create separate legal parcels for the Parcels and Building Pads in each Phase. Accordingly Developer has submitted for the City's approval, as part of the Applicable Approvals, a Subdivision Map which contemplates the filing of phased final maps, and a final map for the Phase 1 Property is anticipated to be Recorded prior to the Phase 1 Property Close of Escrow.

8.3.2 **Required Entitlements**. Developer shall, at its sole cost and expense, use its commercially reasonable efforts to process, obtain, and maintain all Entitlements to assure that the design, construction, use, operation, maintenance, repair and replacement of the Improvements is carried out in accordance with the provisions of this Agreement, and is permitted by the Entitlements and all other Governmental Requirements. Developer's application for Entitlements shall reflect the terms of this Agreement, shall require and be subject to the review processes of the City in its Governmental Capacity with respect to the specific approvals listed on Attachment 26 ("**Applicable Approvals**") and any later Entitlements

requested by Developer. Without limiting the foregoing, in developing and constructing the Project, Developer shall ensure that the Project complies with all applicable development standards in the Specific Plan, the City Code and with all building codes, landscaping, signage and parking requirements, except as may be permitted through conditional use permits, variances and modifications, and with the applicable provisions of the Design Guidelines. Developer acknowledges that the Specific Plan establishes a non-residential total trip estimate for the Property and that the Project shall be required to comply with such estimate. When and if Developer or Phase 2 Developer (as applicable) chooses to pursue development of Phase 2, Developer or Phase 2 Developer (as applicable) shall use its commercially reasonable efforts to timely submit all applications and materials required by the City to deem the Phase 2 Applicable Approvals applications "complete" and shall use its commercially reasonable efforts to timely process and obtain all of the Phase 2 Applicable Approvals required for the Project and to cause the Entitlement Approval Date for the Phase 2 Applicable Approvals to occur prior to and as a condition to exercise the Option.

8.3.3 **Development Permits**. Developer, at its sole cost and expense, shall process, obtain, and maintain all Development Permits required for the construction and use of the Horizontal Improvements (including on-site and off-site Horizontal Improvements) and all Vertical Improvements for each Parcel or portion of such Parcel as is required to develop such Phase and shall maintain all such Development Permits in effect to assure that the design, construction, use, operation, maintenance, repair and replacement of the Improvements is carried out in accordance with the provisions of this Agreement, the Entitlements and all other Governmental Requirements.

8.3.4 **Agreement Does Not Grant Entitlements**. Nothing in this Agreement shall be construed or interpreted as committing the City to approve or undertake any action that requires the independent exercise of discretion by the City in its Governmental Capacity, including any approval of any Entitlement or Development Permit application for which Developer applies for after the date of this Agreement. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in its Governmental Capacity or in connection with Entitlement for the Project or the Property (including approval of the City in its Governmental Capacity of any conditional use permit review which may be necessitated by particular proposed uses or design features of End Users), (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any Governmental Requirements of the City. The issuance or approval of any Entitlement not issued or approved on or prior to the Effective Date or any Development Permit described in this Agreement shall be done by the City in its Governmental Capacity and the failure of the City to issue or approve any such matters shall not be a Default. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity with respect to the consideration and approval of the Entitlements and all other permits, licenses and approvals requested by Developer from time to time in connection with the Project nor shall it entitle Developer to any Entitlement, Development Permit or other City approval necessary for the development of the Project, or to the waiver of any applicable City requirements relating thereto, and the failure of the City to issue or approve any Entitlement described in this Agreement, including to certify or approve any CEQA document, to approve any required Applicable Approval, Phase 2 Applicable

Approval or other Entitlement or Development Permit shall not be a default of the City under this Agreement.

8.3.5 **Cooperation of City**. Consistent with this Agreement, the City agrees, without cost or other liability to the City or any commitment of the City to approve or conditionally approve any Entitlements required for the full implementation of this Agreement, to assist and cooperate with Developer in its efforts to process the Entitlements and the applications and materials (if any) submitted for the Phase 2 Applicable Approvals. The City will use good faith efforts to expedite review of applications for the Entitlements, Phase 2 Applicable Approvals, and Development Permits that are to be issued by the City and other submissions made by Developer where reasonably appropriate in order to meet the deadlines set forth in the Schedule of Performance or to allow exercise of the Option, and will assist and cooperate with Developer in its efforts to process such Development Permits, Entitlements, applications for the Phase 2 Applicable Approvals and other submissions. Without limiting any other provision of this Agreement, the Developer shall pay all permit fees and other fees and costs normally charged by the City in connection with application for and review and approval of Development Permits and Entitlements.

8.3.6 **CEQA Requirements**. The Parties acknowledge and agree that CEQA is applicable to discretionary actions associated with the development of the Project. The Developer agrees to cooperate with the City in obtaining information to determine the environmental impact of the Project, if any. The, Developer acknowledges that the City shall prepare any supplemental environmental information, if any, as may need to be completed in order to effect compliance with CEQA, as determined by the City in its sole discretion, and Developer shall be responsible to pay all costs incurred by the City to prepare or to cause its consultants to prepare such environmental documents and shall enter into such agreements to pay such costs as the City shall require.

8.3.7 **Entitlement Conditions**. Developer acknowledges and agrees that the City in its Governmental Capacity may require satisfaction of certain conditions and dedication of certain property in connection with approval of any Entitlements.

8.3.8 **Payment of Fees**. Without limiting any other provision of this Agreement, unless already paid pursuant to Section 1.8.4, Developer shall pay (a) all fees, costs and deposits normally charged by the City in connection with application for and review and approval of Development Permits and Entitlements, (b) any fees or costs incurred by the City in complying with CEQA or the State CEQA implementing regulations; (c) any costs to review or approve any Entitlement or Development Permit applications or submittals by Developer to the City in connection with the Project.

8.4 **Design Approval**.

8.4.1 **Design Review**. It is understood and agreed by Developer that the quality, character and uses proposed for the Project are of particular importance to the City. In furtherance of the development of the Project and the foregoing, the City, acting in its Governmental Capacity, shall require Concept Plan and Design Review approval as part of the Entitlements. In addition, in its Proprietary Capacity as the current owner of the real property

that is the subject of this Agreement and of substantial portions of Tustin Legacy, the City will require review and approval of the Basic Concept Plan for the Project as further set forth in this Section 8.4. Review of design documents by the City in its Proprietary Capacity only shall be subject to time periods set forth below.

8.4.2 **Plan Development and Cost**. All plans and specifications for the Project shall be prepared by Developer at Developer's sole cost and expense and subject to the requirements set forth in this Article 8.

8.4.3 **Process for Governmental Review**. The Parties acknowledge that the City, acting in its Governmental Capacity, shall have the right to review all plans, specifications and submissions, including any changes therein, through its normal plan review and Entitlement process and that the City may exercise its governmental discretion in review of any of the plans, specifications and submissions. Developer has previously submitted to the City a preliminary site plan for the Project (the "**Site Plan**"), a copy of which is attached as Attachment 3B, graphically depicting the overall plan for development of the Improvements on the Property, the Building layouts, proposed Building Pads, Common Area, parking, and access on and related to each Building Pad, conceptual Building renderings and setting forth the Phasing plan. Within the timeframe shown in the Schedule of Performance, Developer shall submit for approval by the City in its Governmental Capacity, final design drawings and related documents conforming to the requirements of the City Code, the Specific Plan and the Design Guidelines. The Community Development Department is authorized pursuant to City Code to approve minor changes to Building plans after approval by the City, provided such changes do not significantly reduce the quality of the development concept or the design and materials to be used in enhancing the architecture and aesthetics of the Improvements.

8.4.4 **Coordination**. Developer and the Project Architect shall meet with representatives of the City to review and come to a clear understanding of the planning and design criteria required by the City. During the preparation of all plans and specifications for the Project, staff of the City and Developer shall hold regular progress meetings to coordinate the preparation, submission and review of such plans. The staff of the City and Developer shall communicate and consult as frequently as necessary to facilitate prompt and speedy consideration of Developer's submittals.

8.4.5 **Proprietary Review**. Prior to the Effective Date, Developer has caused the Basic Concept Plans to be prepared and submitted to the City for approval. Prior and as a condition to its exercise of the Option, Developer shall have caused the Basic Concept Plans for Phase 2, if different from those previously approved by the City, to be prepared and submitted to the City for approval. The City in its Proprietary Capacity shall have the right of reasonable architectural review of all Basic Concept Plans in accordance with Section 8.4.6, including with respect to exterior elevations, exterior materials (including selections and colors) and the size, bulk and scale for all Buildings, the phasing of the Project and the product mix, which shall include, unless otherwise agreed by the City, only Office Uses, Food Hall Uses, and other Retail Uses. Developer acknowledges and agrees that the City's Community Development Department is responsible for reviewing the working drawings and issuing recommendations with respect to the appropriate Entitlements. The exercise by the City Manager's office of its right to inspect or review the concept plans, drawings and related documents for development of

the Project: (a) shall be an exercise of the City's Proprietary Capacity and not its Governmental Capacity; (b) shall not constitute an approval by the City of any Entitlements; (c) shall not constitute a determination by the City of the engineering or structural design, sufficiency or integrity of the improvements contemplated by such plans, drawings and related documents, and (d) shall not constitute a determination by the City of the compliance of such plans, drawings and related documents with any applicable building codes, safety features and standards. Any inspection or approval of plans and drawings made or granted pursuant to this Agreement shall not constitute an inspection or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Developer acknowledges and agrees that the City in its Proprietary Capacity may approve or disapprove Basic Concept Plans and design review plans in order to satisfy the City's obligation to promote the sound development and redevelopment of land, to promote a high level of design that will impact development surrounding the Project, and to provide an environment for the social, and economic well-being of the citizens of the City and that the City is not constrained or limited to act solely within its governmental discretion, authority, or capacity. Developer shall not be entitled to damages or compensation as a result of the City's disapproval, conditional approval, or failure to approve or disapprove Basic Concept Plans in its Proprietary Capacity.

8.4.6 **Process for Proprietary Review**. Developer shall submit two sets of Basic Concept Plans for the Improvements to the City. Such sets of Basic Concept Plans shall be submitted in writing over the signature of Developer or a representative duly authorized by Developer in writing. If the City approves such Basic Concept Plans, the City shall endorse its approval on one set of such Basic Concept Plans and return them to Developer. The City shall conclusively be deemed to have given its approval to such sets of Basic Concept Plans unless, prior to fifteen (15) Business Days after the City's receipt of such sets of Basic Concept Plans, the City gives written notice of disapproval to Developer specifying in reasonable detail each item that the City disapproves and the reasons for such disapproval. If necessary, Developer shall make changes in response to the City's notice of disapproval and resubmit such Basic Concept Plans to the City for review and approval in accordance with the provisions of this Section 8.4.6 (and in such case the City's review period shall be ten (10) Business Days).

8.4.7 **Approved Plans**. The Approved Plans shall govern development of the Improvements on the Development Parcels. In addition to any other rights to approve or disapprove the construction level drawings in its Governmental Capacity, the City may disapprove such documents if they are not consistent with the Entitlements and the Basic Concept Plan previously approved, do not represent a logical or commercially reasonable implementation thereof, and/or do not provide for construction of approximately the same square footage as set forth therein. Developer shall not construct any Improvements on the Property unless the same are shown in the Approved Plans or unless the prior written consent of the City in its Proprietary Capacity and, if necessary, the approval of the City in its Governmental Capacity are obtained to any modification thereof. To the extent of any inconsistencies between the plans identified in the Scope of Development or the Site Plan and the Approved Plans, the Approved Plans shall govern and control as to the development of the Property.

8.5 **Financial Status**.

8.5.1 **Financial Capability**. After the Phase 1 Property Close of Escrow, and thereafter until issuance of the Certificate of Compliance for each Parcel, Developer shall continue to be responsible for demonstrating to the City its financial capacity and capability to perform its obligations under this Agreement. In addition to the requirements set forth in Sections 4.6.1, 4.6.2, and 4.6.4, as applicable, following Close of Escrow for each Parcel, until issuance of a Certificate of Compliance for such Parcel, Developer a shall submit annually, on the anniversary of the applicable Closing Date, a date-down of the Phase 1 Financing Plan and Phase 2 Financing Plan, respectively, and shall include therein any modifications required to reflect changes to the Project during such period.

8.5.2 **Guaranty**. Developer, on behalf of itself and each Successor Owner, hereby agrees that the Phase 1 Guaranty (or, if applicable, any replacement Guaranty provided and approved by the City pursuant to this Agreement) shall not be amended, modified or terminated prior to issuance of a Certificate of Compliance for the Phase 1 Project and the Phase 2 Guaranty (or, if applicable, any replacement Guaranty provided and approved by the City pursuant to this Agreement) shall not be amended, modified or terminated prior to issuance of a Certificate of Compliance for the Phase 2 Project without the prior written consent of the City in its sole discretion.

8.6 **Project Budget Statement**.

Developer understands and agrees that the City reserves the right to reasonably request at any time prior to the issuance of a Certificate of Compliance for a Phase (but not more frequently than quarterly) a Project Budget Statement with respect to such Phase. If requested by the City, Developer shall submit such Project Budget Statement within thirty (30) calendar days following the later of Developer's receipt of the City's request therefor and the expiration of the applicable quarter. Notwithstanding the foregoing, the delivery of such Project Budget Statement shall be for informational purposes only and in no event shall the City be entitled to declare a Potential Default or Material Default, or exercise any of its remedies pursuant to this Agreement, based on the contents of such Project Budget Statement absent an actual Potential Default or Material Default under one of the other covenants or obligations of Developer set forth in this Agreement. All Project Budget Statements submitted by Developer in response to request by the City shall be subject to the confidentiality provisions set forth in Section 18.23.

8.7 **Backbone Infrastructure Improvements**.

8.7.1 **Developer Acknowledgements**. Developer acknowledges and agrees that: (a) the development of the Project, together with the development of the remainder of Tustin Legacy, will contribute to the need for Tustin Legacy backbone infrastructure located off of the Development Parcels, including Tustin Legacy roadway improvements; traffic and circulation mitigation to support the Tustin Legacy project; domestic and reclaimed water; sewer; telemetry; storm drains and flood control channels; utilities backbone (electricity, gas, telephone, cable, telecommunications, etc.) (as such program is in effect as of the Effective Date, the "**Tustin Legacy Backbone Infrastructure Program**"); (b) a portion of the Purchase Price will be allocated to development by the City of the Tustin Legacy Backbone Infrastructure

Program on behalf of the Project, as further described below; (c) Developer has had an opportunity to review the budgets, plans and projections developed by the City in connection with the Tustin Legacy Backbone Infrastructure Program and the studies prepared by the City in connection therewith; (d) there is an essential nexus between the imposition on the Project of the Project Fair Share Contribution and a legitimate governmental interest; and (e) the Project Fair Share Contribution is roughly proportional to and reasonably and rationally related to the impacts that will be caused by development of the Project.

8.7.2 **Project Fair Share Contribution**. The Purchase Price is inclusive of the obligation to pay the fair share of the Tustin Legacy Backbone Infrastructure Program (the "**Project Fair Share Contribution**") to be contributed by Developer with respect to the Project and no further obligation shall be imposed on Developer of the Project in connection with the Fair Share Contribution. Developer waives its right to fund all or any portion of such contribution pursuant to Special Tax "A" for the development of facilities within the Tustin Legacy Backbone Infrastructure Program ("**Tax A**") or pursuant to other community facilities district, and the City agrees that Tax A shall not be applicable to the Property or the Improvements thereon and Developer shall have no obligation or liability on account thereof. Developer acknowledges and agrees that its development plan for the Project will not require use of community facility district proceeds and that neither assessment district nor community facilities district proceeds will be used to reimburse Developer for its Development Costs, including Project Fair Share Contribution or Project specific infrastructure costs.

8.7.3 **CFD for Services**. Developer acknowledges that the City has formed a community services district for services to fund a portion of the City essential services, including police and fire protection, ambulance and paramedic services, recreation programs and services, street sweeping, traffic signal maintenance and the maintenance of City-owned parks, parkways and open spaces and other City services and facilities at Tustin Legacy by forming a community facilities district pursuant to which is imposed a Special Tax "B" ("**Tax B**"). Tax B shall be in lieu of any other assessments, special taxes, fees or charges by the City that may otherwise be charged on account of the types of services covered thereby. Notwithstanding the foregoing sentence, the City shall not be prohibited by the terms of this Agreement from subjecting the Development Parcels and/or the Improvements thereon to any increase in ad valorem real property tax pursuant to a City of Tustin-wide election, provided that nothing herein shall be construed to constitute a waiver by Developer of its right or ability to dispute or oppose passage of a City of Tustin-wide bond or tax, the proposed formation or amendment of any special district or taxing authority, or the imposition of any tax by such special district or taxing authority, or any amendment to the Rate and Method of Apportionment for Tax B, or its right to dispute any Development Parcel's assessed value. Developer acknowledges and agrees that the term of Tax B imposed upon the Property and the Improvements thereon shall be perpetual and shall not be time limited in any manner unless determined by the City in its sole discretion.

8.7.4 **Master Marketing Program Fees**. Developer acknowledges that the City (in its Proprietary Capacity) requires that all builders within Tustin Legacy contribute a master marketing fee towards the marketing of Tustin Legacy by the City. In complete satisfaction of such obligation by Developer, Developer shall pay to the City through Escrow Holder at the Phase 1 Property Close of Escrow a one-time master marketing fee of Fifty Thousand Dollars ($50,000.00). The City acknowledges and agrees that this payment shall

satisfy all obligations of Developer to contribute to the master marketing program or any future master marketing program and that Developer shall have no additional obligations on account thereof after the payment of such fee.

8.7.5 **Other Fees and Assessments**. Developer acknowledges and agrees that in addition to City fees, fees may be imposed by other Governmental Authorities with jurisdiction over the Project and/or the Property and payment of any such fees and assessments shall be at Developer's sole cost, including (a) the Foothill/Eastern Corridor Fee, (b) the Santa Ana/Tustin Transportation System Improvement Area (TSIA) fee, (c) state-mandated school impact fees by the School District, (d) Orange County School Facility Bonds (Measure G and Measure L), and (e) utility meter and connection fees.

8.8 **Development Covenants**.

Developer, on behalf of itself and Successor Owners, hereby covenants and agrees as follows:

8.8.1 Developer shall maintain throughout the term of this Agreement, sufficient equity, capital and firm binding commitments for financing necessary to (a) pay through Completion, all costs of development, construction, marketing, sale and/or leasing, operation and management of all the Improvements as defined in the Scope of Development to be built on any Parcel acquired by Developer; and (b) enable Developer to perform and satisfy all the covenants of Developer contained in this Agreement, the Quitclaim Deed(s), the CC&Rs and the Special Restrictions.

8.8.2 The development of the Project shall be done in a professional and competent manner. Developer shall perform, and shall cause all others carrying out work on the Development Parcels to perform, all work required to construct and Complete the Improvements and the Project and related work in accordance with the Approved Plans, the Entitlements, the Development Permits, the applicable Design Guidelines and all Governmental Requirements and at the level of quality set forth in the Scope of Development.

8.8.3 The Developer shall be responsible for the timeliness and quality of all work performed and materials and equipment furnished in connection with the Project, whether the work, materials and equipment are performed and furnished by the Developer or through subcontractors, sub-subcontractors (of all tiers) and suppliers.

8.8.4 Developer shall not place, or allow to be placed, on its interests in the Property, Improvements, or any portion thereof, any Mortgage or encumbrance of lien, including any Construction Lien, not authorized by this Agreement.

8.8.5 Developer shall, within thirty (30) calendar days following receipt of notice thereof, cause to be removed or bonded against (such bonding to be by the provision of bonds satisfying California statutory requirements) any and all mechanic's liens, stop notices and/or bonded stop notices that are recorded and/or served by contractors, subcontractors (of all tiers) and suppliers in connection with the Project, including construction of Improvements on the Property and on adjoining City-owned Property or performance of other work in connection therewith, including conducting investigations, or causing the foregoing to be carried out

("**Construction Liens**"). Notwithstanding the foregoing, Developer may contest the amount, validity or application, in whole or in part, of any such Construction Liens; subject, however, to the further requirement that neither the Property nor any Improvements nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings. If any such contest is finally resolved against Developer, then Developer shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon. Developer hereby agrees to indemnify, defend and hold the City Indemnified Parties free and harmless from and against any and all Claims arising from or related to failure to pay for construction of Improvements or other work related to the Project including costs to remove or bond any Construction Liens. The indemnity set forth in this Section 8.8.5 shall survive the termination of this Agreement.

8.9 **City Rights of Access**.

In addition to any rights it may have in its Governmental Capacity, representatives of the City shall have the reasonable right of access to all portions of the Property, upon reasonable prior notice to Developer, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the work being performed in constructing the Improvements. The City agrees to indemnify, defend and hold Developer harmless for any and all Claims arising out of any such non-governmental inspection or other activity on the Property or the Project by the City, or its agents, employees or contractors permitted pursuant to this Section 8.9, except to the extent caused by the gross negligence or willful misconduct of Developer. The indemnity set forth in this Section 8.9 shall survive the termination of this Agreement as to inspections or activities arising on the Property prior to termination of this Agreement as to such portion of the Property.

8.10 **Disclaimer of Responsibility by City and Exculpation**.

8.10.1 **Disclaimer of Responsibility**. The City neither undertakes nor assumes nor will have any responsibility or duty to Developer, any Successor Owner or to any other third party to review, inspect, supervise, pass judgment upon or inform Developer, any Successor Owner or any third party of any matter in connection with the development or construction of Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished for development of the Project, any Person furnishing same, or otherwise. Developer, any Successor Owner and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer, any Successor Owner or to any third party by the City in connection with such matter is for the public purpose of developing the Project, and neither Developer nor any Successor Owner nor any third party is entitled to rely thereon.

8.10.2 **Exculpation**. The City shall not be liable in damages to Developer or to any owner, lessee, any licensee or other Person, on account of (a) any approval or disapproval by the City, including by the City Manager or the City Manager's designee whether made in the Governmental Capacity or Proprietary Capacity of the City of any design documents, including any Basic Concept Plans, whether or not defective or whether or not in compliance with applicable laws or ordinances; (b) any construction, performance or nonperformance by

Developer or any owner, lessee, licensee or other Person of any work on the Property, whether or not pursuant to Approved Plans or whether or not in compliance with applicable laws or ordinances; (c) any mistake in judgment, negligence, action or omission in exercising its rights, powers and responsibilities hereunder in connection with Section 8.10.1 and clauses (a) and (b) of this Section 8.10.2; and/or (d) the enforcement or failure to enforce any of the provisions of this Agreement. Every Person who makes design submittals for approval agrees by reason of such submittal, and Developer and every Successor Owner of the Property or any portion thereof agrees by acquiring title thereto or an interest therein, not to bring any suit or action against the City seeking to recover any such damages and expressly waives any such claim or cause of action for such damages which it would otherwise be entitled to assert. The review of any design submittals shall not constitute the assumption of any responsibility by, or impose any liability upon, the City as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of Developer under this Agreement or otherwise.

8.10.3 **No Supervision or Control**. The City (whether acting in its Governmental Capacity or its Proprietary Capacity) does not have any right, and hereby expressly disclaims any right, of supervision or control over the architects, designers, engineers or persons responsible for drafting or formulating of the plans, drawings and related documents of Developer.

8.10.4 **Survival**. The provisions of this Section 8.10 shall survive the termination of this Agreement.

8.10.5 **City Responsibility**. Nothing in this Section 8.10 shall in any way limit the City's representations or warranties set forth in Sections 3.3 or 18.11.2 of this Agreement, or the covenants or obligations of the City set forth in Sections 8.2.4, 8.3.5, 8.13, 8.14 or 8.15 of this Agreement.

8.11 **Local, State and Federal Laws**.

Developer shall carry out the construction of the Project, including all Improvements, subject to Section 8.1.4 and in conformity with all Governmental Requirements (subject to Section 1.6 of this Agreement), including all applicable federal and State labor laws and regulations and shall investigate the applicability of and, if and to the extent applicable, pay prevailing wages meeting the requirements of such laws and regulations; provided that Developer reserves the right to reasonably contest such laws and regulations. Developer hereby agrees that, with respect to the Project, Developer shall be fully responsible for determining whether the foregoing wage requirements are applicable and agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising from or related to compliance by Developer or Developer's officers, directors, employees, agents, representatives, consultants and/or contractors (at every tier) in construction of the Project with the prevailing wage requirements imposed by any applicable federal and State labor laws.

8.12 **Liens, Taxes and Assessments**.

Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on or against all portions of the Property subsequent to the conveyance thereof by the City to Developer. Developer shall remove, or shall have removed, any levy or attachment made on its interests in the Property (or any portion thereof), or shall assure the satisfaction thereof within thirty (30) calendar days following receipt of notice thereof. Nothing contained in this Agreement shall be deemed to prohibit Developer from contesting the validity or amount of any tax or assessment or to limit the remedies available to Developer in respect thereto. Developer hereby agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising with respect to or related to payment of taxes and assessments assessed or levied against the Property. The indemnity set forth in this Section 8.12 shall survive the termination of this Agreement.

8.13 **Non-Compete Covenant**.

City acknowledges and agrees that it is advantageous to have a variety of types of uses and developments, as contemplated by the Disposition Strategy, constructed in Tustin Legacy. Consistent with the Disposition Strategy, the ultimate success of the Phase 1 Project (and, if developed, the Phase 2 Project) will be enhanced by certain covenants of the City not to dispose of Affected TL Land (as defined below) for the types of development that would be directly competitive with the Office Uses approved for the Property as part of the Applicable Approvals until each of the Phase 1 Project and the Phase 2 Project have been allowed to stabilize their tenant base. "**Affected TL Land**" shall mean land within the boundaries of Tustin Legacy that as of the Effective Date is either (i) owned in fee by the City or (ii) is subject to a ground lease by the City pursuant to LIFOC agreement(s) with the Navy; provided that the Affected TL Land shall not include (x) Disposition Parcel 1C (comprising the land affected by the Regency Centers transaction) and (y) any land subject to LIFOC if upon LIFOC termination such land is not conveyed by the Navy to the City. Accordingly, the City hereby covenants and agrees as follows with respect to the Affected TL Land:

(a) Any binding agreement(s) (including any exclusive negotiation agreement(s), disposition and development agreements, purchase agreements, leases, and/or ground leases) that the City enters into in its Proprietary Capacity during either of the Phase 1 Non-Compete Period or the Phase 2 Non-Compete Period with third parties other than governmental entities (including federal, state, regional and local agencies, school and/or college districts) for the Affected TL Land (each a "**Binding Agreement**") shall be consistent with the following restrictions ("**Restrictions**"): (i) during the Phase 1 Non-Compete Period, the City shall (A) not approve scope(s) of development for any Binding Agreement(s) unless such scope(s) of development shall limit the amount of Office Uses (in the overall aggregate on the Affected TL Land) that can be developed on land to be sold or leased by the City pursuant to such Binding Agreement(s) during the Phase 1 Non-Compete Period to one hundred and fifty thousand (150,000) square feet of rentable space for Office Uses, which Office Uses must be located solely in one or more Mixed Use Building(s) (as defined below) and (B) prohibit during the Phase 1 Non-Compete Period construction of improvements for which the intended use is Office Uses to the extent construction of such improvements would (1) cause an exceedance of

the allowable square feet of rentable space for Office Uses as described in Section 8.13(a)(i)(A) and/or (2) result in Office Uses on the Affected TL Land in a manner that exceeds that described in Section 8.13(a)(i)(A) and (ii) during the Phase 2 Non-Compete Period, the City shall (A) not approve scope(s) of development for any Binding Agreement(s) unless such scope(s) of development shall limit the amount of Office Uses (in the overall aggregate on the Affected TL Land) that can be developed on land to be sold or leased by the City pursuant to such Binding Agreement(s) during the Phase 2 Non-Compete Period to one hundred thousand (100,000) square feet of rentable space for Office Uses, or if no Office Uses are built during the Phase 1 Non-Compete Period, two hundred thousand (200,000) square feet of rentable space for Office Uses, which Office Uses in either case must be located solely in one or more Mixed Use Buildings and (B) prohibit during the Phase 2 Non-Compete Period construction of improvements for which the intended use is Office Uses to the extent construction of such improvements would (1) cause an exceedance of the allowable square feet of rentable space for Office Uses described in Section 8.13(a)(ii)(A) and/or (2) result in Office Uses on the Affected TL Land in a manner that exceeds that described in Section 8.13(a)(ii)(A). During each of the Phase 1 Non-Compete Period and the Phase 2 Non-Compete Period (but not for any period between the termination of the Phase 1 Non-Compete Period and the commencement of the Phase 2 Non-Compete Period), the City shall as a condition to the transfer or conveyance of any stand-alone pads or parcels pursuant to any Binding Agreement pertaining to the Affected TL Land, impose the Restrictions on the use of such property to be transferred or conveyed. The term Office Uses as used in this Section shall not include retail, hotel, entertainment/sports facilities, residential, live/work or loft uses or meeting rooms and the Restrictions shall not apply to any such uses.

(b) The Restrictions shall apply only during each of the Phase 1 Non-Compete Period and the Phase 2 Non-Compete Period and not during any period prior to, between or following such periods or during any period in which Developer is in Material Default under this Agreement and the Restrictions shall not apply with respect to any use for which a building permit application is filed during the time period in which the Restrictions are not applicable, even if the Phase 1 Non-Compete Period or Phase 2 Non-Compete Period subsequently becomes effective prior to issuance of such building permit or construction of the building.

(c) If during the Phase 2 Non-Compete Period (x) an End User approaches the City, Developer or any other Person that is a party to a Binding Agreement seeking to lease or purchase contiguous office space for which such End User has completed initial (conceptual) space planning, and (y) Phase 2 does not have rentable square footage (using the BOMA definition of "rentable square feet") at least equal to eighty-five percent (85%) of the expressed requirement of such End User per such space plan that has not already been leased or sold to other End Users at Phase 2, then notwithstanding any other provision of this Agreement, the Restrictions shall automatically be deemed to be waived and not applicable with respect to the sale or lease of land by the City to any Person (including such End User or a Person proposing to develop office uses at Tustin Legacy) for purposes of development of office uses for the proposed End User. Developer shall promptly refer any such End User to the City. In order to allow the City to comply with the requirements of this Section, Developer shall promptly upon written request made by the City from time to time specifying the amount of square footage requested by a proposed End User, confirm in writing to the City the available

amount of rentable square footage in Phase 2 on a building by building basis. If Developer shall fail to respond to any such written request by City within fifteen (15) calendar days, City may issue a second written request to Developer. Upon failure of Developer to respond to such second written request within a fifteen (15) calendar day time period, the Restrictions shall be deemed to be waived as to such End User.

(d) As used herein, "**Mixed Use Building**" shall mean a separate building in which 100% of the leasable ground floor space is occupied by a use other than Office Uses (provided, however, that a medical office use that is a Prohibited Use under this Agreement is also permitted). "**Phase 1 Project Stabilization**" shall mean that Leases or Transfer Agreements have been executed with End Users for not less than 315,000 GBA within Phase 1, and the "**Phase 1 Non-Compete Period**" shall be the period of time commencing on October 1, 2016 and ending on the date that is the earlier to occur of (i) Phase 1 Project Stabilization or (ii) October 1, 2020. As used herein, the term "**Phase 2 Project Stabilization**" shall mean that Leases or Pad Transfer purchase and sale agreements have been executed with End Users for not less than 360,000 GBA within Phase 2, and the "**Phase 2 Non-Compete Period**" shall be the period of time commencing on the exercise of the Option and ending on the date that is the earlier to occur of (i) Phase 2 Project Stabilization and (ii) three (3) years from the Phase 2 Property Close of Escrow.

(e) If City breaches the Restrictions, fails to incorporate the Restrictions into the Binding Agreement(s), fails to enforce the Restrictions, or amends or waives the Restrictions, and provided that the Developer is not then in Material Default under this Agreement, then Developer's sole remedies shall be the right to bring an action in equity against the City for injunctive relief and specific performance of this Agreement.

(f) Nothing herein shall restrict the right of the City (i) to enter into Binding Agreements in its Proprietary Capacity with respect to sale or lease of the Affected TL Land consistent with the foregoing Restrictions, or (ii) to act in its Governmental Capacity in any manner, or (iii) to convey or lease land to any Governmental Authority or other government agency for any purpose. Upon the termination of each of the Phase 1 Non-Compete Period and the Phase 2 Non-Compete Period, the Restrictions shall be of no further force and effect as to the City or any Person, whether a party to a Binding Agreement or otherwise.

8.14 **City Park Completion**.

The City anticipates that it will construct, in two phases, a City owned park on approximately 26 acres of land located adjacent to the Phase 1 Parcel as further depicted on Attachment 29 ("**City Park**"). The City shall use good faith efforts to commence the first phase of the City Park following the Phase 1 Property Close of Escrow and to complete the first phase in a commercially reasonable time frame, subject to Force Majeure Delay. Developer is obligated to construct certain utilities to and across the City Park as a component of the Minimum Horizontal Improvements as further described on Attachment 8 and depicted on Attachment 9. Developer acknowledges that commencement of the second phase of the City Park cannot occur until such utility work is complete. Upon commencement by Developer of construction of the Phase 1 Vertical Improvements, the City shall use good faith efforts to

commence and complete the second phase of the City Park in a commercially reasonable time frame, subject to Force Majeure Delay.

8.15 **City's Activities on Development Parcels**.

8.15.1 From the Effective Date until the earlier of the Phase 1 Property Close of Escrow, the Phase 1 Property Outside Closing Date or the termination of this Agreement, the City shall not, without Developer's prior consent, take or refrain from taking any action in its Proprietary Capacity, including without limitation entering into any agreements with respect to the Phase 1 Property that could bind Developer or the Property after the Phase 1 Property Close of Escrow, which would reasonably be expected to have a material adverse effect on title to, or the physical condition of, the Phase 1 Property.

8.15.2 From the Effective Date until the earlier of the Phase 2 Property Close of Escrow, the Phase 2 Property Outside Closing Date, the lapse, expiration and/or termination of the Option or the Option Term, or the termination of this Agreement as to the Phase 2 Provisions, the City shall not, without Developer's prior consent, take or refrain from taking any action in its Proprietary Capacity, including without limitation entering into any agreements with respect to the Phase 2 Property that could bind Developer or the Property after the Phase 2 Property Close of Escrow, which would reasonably be expected to have a material adverse effect on title to, or the physical condition of, the Phase 2 Property.

9. **Certificate of Compliance**.**Certificate of Compliance Defined**.

Upon satisfaction of the Conditions Precedent set forth in Sections 9.2 and 9.3, as applicable, and upon written request therefor from Developer setting forth evidence of satisfaction of such conditions, the City shall deliver to Developer or its respective Successor Owner owning fee title, upon request therefor by the Developer or such Successor Owner with respect to the development of the entirety of Phase 1 or the entirety of Phase 2, a "**Certificate of Compliance**" with respect to such Phase. Each Certificate of Compliance shall be substantially in the form and substance of the Certificate of Compliance set forth on Attachment 15 and in such form as to permit it to be Recorded. In addition, upon the Completion thereon of the Improvements described below, the City shall issue a "**Partial Certificate of Compliance**" as to (a) any Building Pad that has been Transferred in fee to a Pad Transferee that is an End User or (b) any Completed Building(s) and associated Building Pad(s) for which a binding contract to purchase has been executed by and between Developer and a proposed Successor Owner prior to issuance of the Certificate of Compliance but for which the Transfer shall not take place until the Certificate of Compliance has been issued, in each case upon satisfaction of the Conditions Precedent below, in which event the Minimum Phase 1 Improvements or Minimum Phase 2 Improvements, as applicable required for satisfaction of the Conditions Precedent for such Partial Certificate of Compliance shall be comprised of: (i) the Minimum Horizontal Improvements (in their entirety), (ii) the remaining Phase 1 Horizontal Improvements or Phase 2 Horizontal Improvements required for development of the applicable Building Pad as determined to the satisfaction of the City in its sole discretion and (iii) the Minimum Phase 1 Vertical Improvements or Minimum Phase 2 Vertical Improvements for such Building Pad, which shall be equal to the minimum GBA for such Building Pad approved by the City in its Design Review

approval as part of the Applicable Approvals or, with respect to Phase 2, pursuant to any Phase 2 Applicable Approval, or, in either case, any later Entitlements granted by the City.

9.2 **Conditions Precedent for Phase 1 Parcel Certificate of Compliance**.

With respect to a request for the issuance of any Certificate of Compliance within the Phase 1 Parcel for which Developer is entitled to request such certificate pursuant to Section 9.1, (i) the City shall issue such Certificate of Compliance when each of the following has occurred and Developer has certified in writing, for the benefit of the City, as to the occurrence, truth and correctness of each of the following items with respect to the Parcel or Building Pad for which such Certificate of Compliance has been requested, and (ii) in connection with any request for a Partial Certificate of Compliance, other than with respect to the Minimum Horizontal Improvements, which must be completed in their entirety, the deliverables in clauses (a) through (e) below shall be only with respect to the Building Pad for which such Certificate of Compliance is being requested:

(a) Completion of each of the following (collectively, the "**Minimum Phase 1 Improvements**"): (i) the Minimum Horizontal Improvements; (ii) the remaining Phase 1 Horizontal Improvements required for construction and operation of the Minimum Phase 1 Vertical Improvements; and (ii) the Minimum Phase 1 Vertical Improvements, except that with respect to a request for a Partial Certificate of Compliance for any Building Pad, the Minimum Phase 1 Improvements for the applicable Building Pad shall be as described in Section 9.1;

(b) Issuance of a certificate of substantial completion for the Minimum Phase 1 Vertical Improvements by the Project Architect(s) for such Improvements;

(c) Final inspection of the Minimum Phase 1 Improvements by or on behalf of the City and determination by the City that such Improvements have been Completed in conformance with this Agreement, including the Entitlements, the Approved Plans and all Governmental Requirements;

(d) Issuance of certificates of occupancy or the equivalent sign-off for a Building core and shell, exterior staircases and balcony systems and common restrooms, by the City for the Buildings comprising the Minimum Phase 1 Vertical Improvements; provided that nothing contained in this Agreement shall require that any interior tenant improvements to be constructed under any Lease be completed in order to satisfy the terms of this Section 9.2 or as a condition to issuance of a Certificate of Compliance. The City shall issue a Certificate of Compliance notwithstanding that any interior tenant improvements have not been completed;

(e) Written release or bonding in accordance with California law of all Construction Liens against the Phase 1 Parcel and, with respect to the Phase 1 Improvements located on the Phase 2 Parcel, the Phase 2 Parcel from the general contractor and all subcontractors (at all tiers) constructing the Phase 1 Improvements, or the statutory period for filing liens with respect to the Phase 1 Horizontal Improvements and Phase 1 Vertical Improvements having expired without any such Construction Liens being filed;

(f) Payment to the City of all funds then owing to the City under this Agreement, and, if applicable, the Other Agreements by Developer, provided that in the event of

a Partial Certificate of Compliance to be issued to a Pad Transferee that is an End User, only payment by the applicable Pad Transferee of all funds then owing to the City from such Pad Transferee under this Agreement and the Other Agreements shall be required; and

(g) No Default by Developer or, subject to the terms of any City Non-Disturbance and Attornment Agreement then in effect, any Pad Transferee that is an End User under this Agreement or default under any of the Other Agreements shall have occurred and be continuing except that (i) following the Phase 2 Property Close of Escrow, this requirement shall not apply with respect to the Phase 2 Provisions, and (ii) notwithstanding any default(s) by such Pad Transferee, if Developer is not then in Default under this Agreement or default under any of the Other Agreements and the Minimum Phase 1 Improvements have been Completed, then Developer may obtain a Certificate of Compliance or Partial Certificate of Compliance, notwithstanding the default by such Pad Transferee. For avoidance of doubt, if such Pad Transferee is in Default under this Agreement or in default under the Other Agreements and the Minimum Phase 1 Improvements have not then been Completed, then during the pendency of such Pad Transferee default, no Certificate of Compliance shall be issued to Pad Transferee or Developer.

9.3 **Conditions Precedent for Phase 2 Parcel Certificate of Compliance**.

With respect to a request for the issuance of any Certificate of Compliance within the Phase 2 Parcel for which Developer is entitled to request such certificate pursuant to Section 9.1, (i) the City shall issue such Certificate of Compliance when each of the following has occurred and Developer has certified in writing, for the benefit of the City, as to the occurrence, truth and correctness of each of the following with respect to such Parcel or Building Pad for which such Certificate of Compliance has been requested, and (ii) in connection with any request for a Partial Certificate of Compliance, other than with respect to the Minimum Horizontal Improvements, which must be completed in their entirety, the deliverables in clauses (a) through (e) below shall be only with respect to the Building Pad for which such Certificate of Compliance is being requested:

(a) Completion of each of the following ("**Minimum Phase 2 Improvements**"): (i) the Minimum Horizontal Improvements (which shall have been Completed as part of Phase 1 but must be Completed as a condition to issuance of any Phase 2 Certificate of Compliance); (ii) the Phase 2 Horizontal Improvements required for construction and operation of the Minimum Phase 2 Vertical Improvements; and (ii) the Minimum Phase 2 Vertical Improvements for such Phase; except that with respect to a request for a Partial Certificate of Compliance for any Building Pad, the Minimum Phase 2 Improvements for the applicable Building Pad shall be as described in Section 9.1;

(b) Issuance of a certificate of substantial completion for the applicable portion of the Minimum Phase 2 Vertical Improvements by the Project Architect(s) for such Improvements;

(c) Final inspection of the applicable portion of the Minimum Phase 2 Improvements by or on behalf of the City and determination by the City that such Improvements

have been Completed in conformance with this Agreement, including the Entitlements, the Approved Plans and all Governmental Requirements;

(d) Issuance of certificates of occupancy or the equivalent sign-off for a Building core and shell, exterior staircases and balcony systems and common restrooms, by the City for the Buildings comprising the applicable portion of the Minimum Phase 2 Vertical Improvements; provided that nothing contained in this Agreement shall require that any interior tenant improvements to be constructed under any Lease be completed in order to satisfy the terms of this Section 9.3 or as a condition to issuance of a Certificate of Compliance. The City shall issue a Certificate of Compliance notwithstanding that any interior tenant improvements have not been completed;

(e) Written release or bonding in accordance with California law of all Construction Liens against the Phase 2 from the general contractor and all subcontractors (at all tiers) constructing the Phase 2 Improvements, or the statutory period for filing liens with respect to the Phase 2 Horizontal Improvements and Phase 2 Vertical Improvements having expired without any such Construction Liens being filed;

(f) Payment to the City of all funds then owing to the City under this Agreement, and, if applicable, the Other Agreements by Developer, provided that in the event of a Partial Certificate of Compliance to be issued to a Pad Transferee that is an End User, only payment by the applicable Pad Transferee of all funds then owing to the City from such Pad Transferee under this Agreement and the Other Agreements shall be required; and

(g) No Default by Developer or, subject to the terms of any City Non-Disturbance and Attornment Agreement then in effect, any Pad Transferee that is an End User under this Agreement or default under any of the Other Agreements shall have occurred and be continuing except that (i) following the Phase 2 Property Close of Escrow, this requirement shall not apply with respect to the Phase 1 Provisions, and (ii) notwithstanding any default(s) by such Pad Transferee, if Developer is not then in Default under this Agreement or default under any of the Other Agreements and the Minimum Phase 2 Improvements have been Completed, then Developer may obtain a Certificate of Compliance or Partial Certificate of Compliance, notwithstanding the default by such Pad Transferee. For avoidance of doubt, if such Pad Transferee is in Default under this Agreement or in default under the Other Agreements and the Minimum Phase 2 Improvements have not then been Completed, then during the pendency of such Pad Transferee default, no Certificate of Compliance shall be issued to Pad Transferee or Developer.

9.4 **Conclusive Presumption**.

Each Certificate of Compliance shall be, and shall so state, conclusive determination of satisfactory completion of the obligations of Developer to construct pursuant to this Agreement the portions of the Project on the Parcel to which such Certificate pertains.

9.5 **Not Evidence**.

Issuance by the City of a Certificate of Compliance is not a Notice of Completion as referred to in Section 8182 of the California Civil Code.

9.6 **City Obligations**.

The City shall not unreasonably withhold, condition, or delay issuance of any Certificate of Compliance when all the Conditions Precedent thereto are satisfied. If the City refuses or fails to issue such Certificate of Compliance after written request from Developer (or Pad Transferee that is an End User, if applicable) provided each of the conditions established in Section 9.1 and in Sections 9.2 or 9.3, as applicable, have been satisfied, the City shall, within ten (10) Business Days of the written request, provide a written statement which details the reasons the City refused or failed to issue such Certificate of Compliance. The statement shall also contain a statement of the actions that Developer (or a Pad Transferee that is an End User, if applicable) must take to obtain a Certificate of Compliance, as the case may be.

9.7 **Effect of Certificate of Compliance; Termination of Agreement**.

Except as set forth in this Section 9.7 and any Certificate of Compliance issued by the City, after the Recording of a Certificate of Compliance with respect to any Phase (or portion thereof if applicable), any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Parcel subject to the Certificate of Compliance or the Improvements thereon (or any portion thereof) shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such Improvements, except that such Party shall continue to be bound by the Other Agreements in each case to the extent set forth therein. Issuance of the Certificate of Compliance shall not waive any rights or claim that the City might have against any party for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to others not a party to this Agreement. The Certificate of Compliance shall be in such form as to permit it to be Recorded. Upon Recording of the Certificate of Compliance, this Agreement shall terminate in its entirety with respect to the Project and Property to which such Certificate of Compliance applies, except that:

(a) the provisions of Section 4.5.2, including the release set forth therein, shall survive in perpetuity to the extent set forth in the Quitclaim Deed for such Property;

(b) the provisions of Section 11.1.4 shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby.

(c) the releases and indemnities set forth in Sections 4.5.2(f), 5.5, 8.8.5, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.11 shall remain in effect and shall bind the indemnifying party and its successors and assigns to the extent set forth in the Quitclaim Deed for such Property; and

(d) any and all obligations contained in the Federal Deeds shall survive in perpetuity to the extent set forth therein, unless such obligations are released by the Federal Government.

10. **Indemnification and Environmental Provisions**.

10.1 **Developer's Indemnification for Non-Environmental Matters**.

From and after the Effective Date, as a material part of the consideration for this Agreement, to the maximum extent permitted by law, Developer, on behalf of itself and its successors and assigns hereunder and each and every Person claiming by, through or under Developer or any Successor Owner, hereby agrees to indemnify, protect, defend, assume all responsibility for and hold harmless the City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors and representatives (collectively referred to as the "**City Indemnified Parties**"), with counsel reasonably acceptable to the City, from and against any and all Non-Environmental Claims to the extent caused by, resulting or arising from the following during the period of Developer's ownership of the Property or any portion thereof and any Additional Liability Period applicable thereto, and with respect to those obligations of a Transferor described in clause (d) of the definition of "**Ongoing Matters**" set forth on Attachment 1, except that with respect to clauses (b), (c), (e) and (f) below, the obligation of Developer shall commence as to each Phase upon the Close of Escrow with respect to such Phase:

(a) The marketing, sale or use of the Property owned by Developer or Developer Affiliate in any way;

(b) All acts and omissions of Developer, or any Developer Representative, Developer Affiliate, Pad Transferee or Space Tenant in connection with the Project, the Property, or any portion of any of the foregoing;

(c) Any plans or designs for Improvements prepared by or on behalf of Developer, any Developer Affiliate, Pad Transferee or Space Tenant including any errors or omissions with respect to such plans or designs;

(d) Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer or resulting from any Potential Default or Material Default, by Developer under this Agreement;

(e) The non-performance or breach by Developer, any Developer Representative, Developer Affiliate, Pad Transferee or Space Tenant of any term or condition of this Agreement; and

(f) Any development or construction of any Improvements by Developer, any Developer Representative, Developer Affiliate, Pad Transferee or Space Tenant whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any Person furnishing the same, or otherwise.

Notwithstanding the foregoing, the foregoing shall not apply to and Developer shall not be obligated to indemnify any of the City Indemnified Parties to the extent of the gross negligence or willful misconduct of the City Indemnified Parties or any breach of any of the City's representations, warranties, covenants or obligations set forth in this Agreement or the Other Agreements. The indemnification provisions in this Section 10.1 shall not apply to

Environmental Claims. Developer's indemnification obligations to the City regarding any Environmental Claims are exclusively addressed in Section 10.2. The foregoing indemnity shall be included in each Special Restrictions and shall run with the land in accordance with Section 10.3 below.

10.2 **Developer's Environmental Indemnification**.

10.2.1 As a material part of the consideration for this Agreement, and effective as to the Property or any portion thereof, but only with respect to the Property or such portion thereof to which the Developer has then acquired fee title, Developer on behalf of itself and Successor Owners and each and every Person claiming by, through or under Developer or any Successor Owner, hereby agrees that Developer and each Successor Owner shall, to the maximum extent permitted by law, indemnify, protect, defend (with counsel reasonably acceptable to the City), assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Claims resulting or arising from or in any way connected with (i) the existence, Release, threatened Release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials on, in, under, from, or about any such acquired portion or portions of said lands, regardless whether any such condition is known or unknown now or upon acquisition and regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring, and (ii) non-performance or breach by Developer of its obligations under Sections 10.4, 10.5, 10.7, 11.1.4 or 11.2 (provided that as to Section 11.2, only to the extent applicable to the environmental insurance required in Section 11.1.4 of this Agreement) (collectively, "**Environmental Claims**"); provided that neither Developer nor any Successor Owner shall be responsible (and such indemnity shall not apply) (a) to the extent caused by the gross negligence, fraud or willful misconduct of the City Indemnified Parties, or (b) to the extent caused by any breach of the City's representations, warranties, covenants or obligations set forth in this Agreement or any Other Agreements relating directly to the environmental matters giving rise to the Environmental Claim, or (c) to any claim for a civil or criminal penalty based upon an alleged violation of any Environmental Law by the City arising out of actions or inactions between May 2002 and the Close of Escrow on the applicable Parcel. This environmental indemnity shall be included in the Special Restrictions provided that such indemnity (x) shall not be binding upon Tenants who are End Users under Space Leases and (y) shall not be deemed to limit in any manner the rights and/or remedies that Developer may have against the Federal Government.

10.2.2 Notwithstanding anything contained herein and without limiting or relieving Developer or any Successor Owner of its obligations under this Agreement, the City agrees that with respect to any Environmental Claims tendered by any one (1) or more of the City Indemnified Parties under this Agreement for which Developer has the obligation to indemnify the City pursuant to the terms of this Agreement, the City Indemnified Parties shall seek recourse for such Environmental Claims under the Developer's insurance coverage required by Article 11 of this Agreement as well as any other applicable insurance coverage maintained by third parties for the benefit of the City, in each case only to the extent such insurance could reasonably be determined to be applicable to the type, extent, value and location of the Environmental Claim being made. The City shall thereafter use reasonable commercial efforts to prosecute its Environmental Claim for coverage with such insurer(s). To the extent that insurance is determined by the City not to be reasonably applicable the Environmental Claim or,

if after six (6) months from tender of the Claim to the insurer, despite such efforts, insurance proceeds are not available to cover all or a portion of the Claim or if such Environmental Claim is earlier denied by the insurance carrier, then Developer shall defend and indemnify the City Indemnified Parties for the full amount of the Environmental Claim not covered by the insurance but only to the extent Developer has such obligations in this Agreement. If an insurer(s) to which an Environmental Claim is tendered declines to defend, or fails to timely defend the Environmental Claim within the six (6) month time period described above, then Developer shall defend and indemnify against such Environmental Claim to the extent it has such obligations in this Agreement. However, if for any Environmental Claim for which the City has reasonably concluded that insurance is applicable to such Claim and the City has not received insurance proceeds after six (6) months as described above, then the City shall continue to use reasonable commercial efforts to pursue such insurance until the insurance carrier finally pays out on all or part of such Claim and/or denies all or the remaining portion of such Claim. At any time after six (6) months have passed since the original tender of a Claim to an insurer by the City as described herein if the insurer has not paid out on all or any part of the claim, the City shall advise the Developer and Developer in its sole discretion may decide to pay for the legal fees and expenses associated with filing and prosecuting litigation against such insurance carrier. If Developer decides to pay such legal fees and expenses, the City shall proceed with such litigation at Developer's expense as further set forth below. Developer shall have the right to select counsel to represent the City in connection with the prosecution of such Environmental Claim in litigation. Any fees and expenses of such litigation will be borne by the Developer and any monetary recovery from such litigation shall first be applied to reimburse the Developer for any fees and expenses paid by Developer to defend and indemnify the City for such Claim, and second, to the extent there remains additional money recovered after such payments, then such additional monetary recovery shall be applied to reimburse the City for any incurred fees and expenses that were part of the Environmental Claim but were not reimbursed by the Developer. Finally, to the extent any additional money is recovered after the payments described above, then such additional monetary recovery shall be applied to reimburse the Developer for its litigation fees and expenses incurred in prosecuting the Environmental Claim against the insurance carrier. As used in this Section 10.2.2, "reasonable commercial efforts" shall not include the initiation or prosecution of a lawsuit.

10.3 **Duration of Indemnities**.

The indemnities set forth in this Article 10 shall become effective upon each Close of Escrow and shall survive each Close of Escrow to the extent set forth herein and in any Special Restrictions

10.4 **Claim Response**.

In the event that following the Close of Escrow for any portion of the Property or Parcel and for so long as Developer remains the fee title holder of such portion of the Property or Parcel, any Environmental Agency or other third party brings, makes, alleges, or asserts a Claim, arising from or related to any actual, threatened, or suspected presence or Release of Hazardous Materials on or about such portion of the Property or Parcel or any Improvements thereon, including any Claim for Investigation or Remediation on such portion of the Property or Parcel or such Improvements, or such Environmental Agency or other third party orders, demands, or

otherwise requires that any Investigation or Remediation be conducted on such Property or Parcel or with respect to Improvements thereon, Developer shall promptly upon its receipt of notice thereof, notify the City in writing and thereafter shall promptly and responsibly evaluate and respond to such Claim as provided in Section 10.5 below. Further, upon receipt of such Claim, order, demand or requirement, Developer shall take such reasonable measures, as necessary or appropriate, to reasonably attempt to dissuade such Environmental Agency or other third party from bringing, making, alleging, or asserting any Claim against the City arising from or related to the presence or any actual, threatened, or suspected Release of Hazardous Material on or about such Property, Parcel or such Improvements, including any Claim for Investigation or Remediation on such Property, Parcel or Improvements; provided, however, that Developer shall have no obligation pursuant to this sentence with respect to any Claim, order, demand or requirement arising from or related to any actual, threatened or suspected Release of Hazardous Material to the extent caused by the gross negligence, fraud or willful misconduct of the City Indemnified Parties or any breach of any of the City's representations, warranties, covenants or obligations set forth in this Agreement or any Other Agreements relating to environmental matters.

10.5 **Release Notification and Remedial Actions**.

If, after the Close of Escrow with respect to a component of the Property or the Development Parcels and for so long as the Developer remains the fee title holder of such component of the Property or the Development Parcels, the presence or any Release of a Hazardous Material is discovered on such Property or Parcel or any Improvements thereon in such quantities or concentrations that require notifying an Environmental Agency of such discovery, and regardless of the cause, Developer shall with respect to such Property, Parcel and/or Improvements promptly provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such Release to the City. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such Release and the Developer acknowledges that it is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or there is a good faith dispute between the City and Developer as to whether Developer is obligated to assume responsibility or indemnify the City with respect to such condition or Release pursuant to Section 10.2, then Developer shall (a) Investigate and/or Remediate the condition or Release in compliance with and to the extent required by Environmental Laws and such Environmental Agency; (b) take such other reasonable action as is necessary to have the full use and benefit of the Property as contemplated by this Agreement; and (c) provide the City with satisfactory evidence of the actions taken as required in this Section. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such condition or Release and the City acknowledges that Developer is not obligated to assume responsibility or indemnify the City with respect to such condition or Release pursuant to Section 10.2 or no Environmental Agency (other than the City) is requiring that the City Remediate such condition or Release, then (as between Developer and the City under this Agreement) Developer may elect in its sole discretion whether to Remediate such condition or Release and/or pursue any rights that Developer has against any Person (including the Federal Government and the City) with respect to such condition or Release. The foregoing shall be without prejudice to Developer's or the City's rights against any responsible party or against the Federal Government pursuant to Section 330, Fiscal Year 1993, National Defense Authorization Act Public Law 102-484 or Section 120(h) of

the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9620(h), and without compromising the applicability of any insurance coverage in regard to such Release. The City and Developer will coordinate any remediation action with appropriate environmental insurance carriers so as not to compromise coverage for the costs of such actions. Nothing set forth herein requires Developer to perform any obligation of the Federal Government and nothing set forth herein shall be deemed to limit or impair (or take any action that might limit or impair) in any manner the rights and/or remedies that Developer or City may have against the Federal Government or any other rights and/or remedies of Developer.

10.6 **Conflict with Section 330 and Other Federal Government Obligations**.

Notwithstanding anything to the contrary contained in this Article 10, in the event that any actions required to be taken by Developer pursuant to this Article 10 could potentially result in Developer losing rights, or are contrary to any rights, which it otherwise would have pursuant to Section 330, Fiscal Year 1993, National Defense Authorization Act Public Law 102-484 or otherwise against the Federal Government, then the City and Developer shall meet in order to determine the proper course of action to be taken by Developer. The course of action to be agreed upon shall protect the City's interest in the Project and Tustin Legacy, while retaining for Developer its rights pursuant to Section 330 or otherwise against the Federal Government to the maximum extent reasonable under the circumstances. Notwithstanding the foregoing, nothing set forth in this Section 10.6 relieves Developer with respect to Developer's environmental responsibilities and obligations and environmental indemnification of Developer to the City in this Agreement.

10.7 **Insurance and Indemnification**.

Notwithstanding anything contained herein and without limiting or relieving Developer or any Successor Owner of its obligations under this Agreement, the City agrees that with respect to any Claims tendered by any one (1) or more of the City Indemnified Parties under this Agreement for which Developer has the obligation to indemnify the City pursuant to the terms of this Agreement, the City Indemnified Parties shall seek recourse for such Claims under the Developer's insurance coverage required by Article 11 of this Agreement as well as under any other applicable insurance coverage maintained by or for the benefit of the City, in each case only to the extent such insurance could reasonably be determined to be applicable to the type, extent, value and location of the Claim being made. The City shall thereafter use reasonable commercial efforts to prosecute its Claim for coverage with such insurer(s). To the extent that insurance is determined by the City not to be reasonably applicable the Claim or, if after six (6) months from tender of the Claim to the insurer, despite such efforts, insurance proceeds are not available to cover all or a portion of the Claim or if such Claim is earlier denied by the insurance carrier, then Developer shall defend and indemnify the City Indemnified Parties for the full amount of the Claim not covered by the insurance but only to the extent Developer has such obligations in this Agreement. If an insurer(s) to which a Claim is tendered declines to defend, or fails to timely defend the Claim within the six (6) month time period described above, then Developer shall defend and indemnify against such Claim to the extent it has such obligations in this Agreement. However, if for any Claim for which the City has reasonably concluded that insurance is applicable to such Claim and the City has not received insurance proceeds after six (6) months as described above, then the City shall continue to use reasonable commercial

efforts to pursue such insurance until the insurance carrier finally pays out on all or part of such Claim and/or denies all or the remaining portion of such Claim. At any time after 6 months have passed since the original tender of a Claim to an insurer by the City as described herein if the insurer has not paid out on all or part of the claim, Developer in its sole discretion may decide to pay for the legal fees and expenses associated with filing and prosecuting litigation against such insurance carrier. If Developer decides to pay such legal fees and expenses, the City shall proceed with such litigation at Developer's expense as further set forth below. Developer shall have the right to select counsel to represent the City in connection with the prosecution of such Claim in litigation. Any fees and expenses of such litigation will be borne by the Developer and any monetary recovery from such litigation shall first be applied to reimburse the Developer for any fees and expenses paid by Developer to defend and indemnify the City for such Claim, and second, to the extent there remains additional money recovered after such payments, then such additional monetary recovery shall be applied to reimburse the City for any incurred fees and expenses that were part of the Environmental Claim but were not reimbursed by the Developer. Finally, to the extent any additional money is recovered after the payments described above, then such additional monetary recovery shall be applied to reimburse the Developer for its litigation fees and expenses incurred in prosecuting the Claim against the insurance carrier. As used in this Section 10.7, "reasonable commercial efforts" shall not include the initiation or prosecution of a lawsuit.

11. **Insurance**.

11.1 **Required Insurance**.

Without limiting the City's rights to indemnification, Developer shall procure and maintain, at its own cost and expense and furnish or cause to be furnished to the City, evidence of the following policies of insurance (complying with the requirements set forth below) naming the Developer as insured and, with respect to insurance provided pursuant to Sections 11.1.1 and 11.1.4, the additional insureds specified below. Unless otherwise specified below, all insurance required below shall be obtained by Developer upon the date specified below and shall be kept in force with respect to each such component of the Property and the Project until issuance of a Certificate of Compliance with respect thereto. Upon sale or Ground Lease of any Building Pad to a Pad Transferee, such Pad Transferee may provide the insurance required by this Article 11 (except for Section 11.1.4) with respect to the portion of the Property Leased or sold to it and the Improvements thereon and in such case Developer shall not be required to carry duplicative insurance, and Developer shall continue to maintain the insurance required by this Article 11 with respect to all portions of the Development Parcels and Improvements not sold or Ground Leased to an End User. Notwithstanding anything contained in Sections 11.1.1 and 11.1.2 to the contrary, each of the requirements set forth in this Article 11 may be satisfied through Developer's or an affiliated entity's umbrella insurance policies.

11.1.1 **Liability Insurance**. Commencing upon the Effective Date, Developer shall maintain or cause to be maintained commercial general liability insurance, subject to the standard terms, exclusions, and conditions of said policy, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any Person or Persons whomsoever on or about the Property and the business of Developer on the Property, or in connection with the operation

thereof, resulting directly or indirectly from any acts or activities of Developer or anyone directly or indirectly employed or contracted with or acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any third party occurring on or about the Property or related to the Project and the business of Developer on the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or any Person acting for Developer, or under its control or direction. Such insurance shall also provide for and protect the City against incurring any legal cost in defending Claims for alleged loss. Such insurance shall be maintained in full force and effect with respect to each Parcel until issuance of a Certificate of Compliance for such Parcel and so long thereafter as necessary to cover any claims of damages suffered by Persons or property prior to issuance of a Certificate of Compliance for the Project, resulting from any acts or omissions of Developer, Developer's employees, agents, contractors, suppliers, consultants or other related parties. The amount of insurance required hereunder shall include comprehensive general liability and personal injury with limits of at least Five Million Dollars ($5,000,000.00) and automobile liability with limits of at least Two Million Dollars ($2,000,000.00) combined single limit per occurrence. The insurance shall be issued by a company authorized, approved, or qualified by the Insurance Department of the State of California and rated A-/VII or better (if an admitted carrier) or A-VIII (if offered, by a surplus line broker), by the latest edition of Best's Key Rating Guide. Subject to the prior approval of the City Attorney and City Risk Manager, such insurance may be provided by an umbrella insurance policy otherwise meeting the requirements of this Article 11.

An Accord certificate evidencing the foregoing and providing the following endorsements signed by the authorized representative of the underwriter and approved by the City shall be delivered within seven (7) Business Days following the Effective Date and annually (upon request from the City) evidencing renewals of each policy until issuance of a Certificate of Compliance for the Project. The endorsements shall provide as follows: (a) designate the designate "the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees" as additional insureds on the commercial general liability policies; (b) the commercial general liability insurance coverage shall be primary, and not contribute with any insurance or self-insurance maintained by the City, and (c) a waiver of subrogation for the benefit of the City. The procuring of such insurance and the delivery of policies, certificates or endorsements evidencing the same shall not be construed as a limitation of Developer's obligation to indemnify the City Indemnified Parties as set forth herein.

11.1.2 **Workers' Compensation Insurance**. Commencing upon the Effective Date, Developer shall obtain, and thereafter maintain or cause to be maintained, workers' compensation insurance issued by a responsible carrier authorized, approved, or qualified under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all Persons employed by Developer in connection with the Project and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any Person incurring or suffering injury or death in connection with the Project or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the

State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Developer shall deliver to the City evidence that such self-insurance has been approved by the appropriate State authorities. Developer shall also furnish (or cause to be furnished) to the City from time to time evidence satisfactory to the City that any contractor with whom it has contracted for performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance required by law. The insurance policy, by endorsement signed by an authorized representative of the underwriter, shall contain a waiver of subrogation. The insurance provided for under this Section 11.1.2 shall be issued by a company rated B-/VIII or better or from the State Compensation Fund.

11.1.3 **Builder's Risk Insurance**. Upon the commencement of construction by Developer of any Improvements and continuing until such time as the City delivers a Certificate of Compliance with respect to a Parcel, Developer shall obtain, or shall cause its contractor to obtain, and thereafter maintain a builder's risk policy or a property insurance policy including a sublimit for property under the course of construction with respect to the improvements constructed on such Parcel or in connection with development of such Parcel or maintain comparable coverage through a property policy. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements to be constructed on or in connection with development of such Parcel. The insurance provided for under this Section 11.1.3 shall be provided by insurer(s) licensed, qualified, or approved to do business in the State of California and with a Best's rating of B/NR or better.

11.1.4 **Environmental Insurance.** From and after the Phase 1 Property Close of Escrow, Developer shall obtain and shall thereafter maintain environmental insurance coverage for the Property, including coverage for loss, remediation expense and legal defense expenses, and naming "the City of Tustin and the Successor Agency to the Tustin Community Redevelopment Agency, and their respective elected and appointed officials, agents, representatives and employees" as additional insureds to address pollution risks at the Property. Such policy shall include coverage relating to unknown pre-existing conditions and/or conditions that are first discovered during development after the Effective Date on the Development Parcels. From and after the Phase 2 Property Close of Escrow, Developer shall obtain either (a) an extension of the term of such policy for an additional period of five (5) years from the date of such Close of Escrow for the Phase 2 Property or (b) a new policy of environmental and pollution legal liability insurance coverage for the Phase 2 Property meeting the requirements of this Section. Any such policy shall comply with the following minimum requirements:

(a) The policy shall be written by the insurance company selected by Developer and approved by the City, which approval shall not be unreasonably withheld, and which insurer(s) shall have a Best's rating of A-/VII or better. Indian Harbor Insurance (a Subsidiary of XL Capital) is hereby approved by the City and deemed to meet this condition;

(b) The policy shall provide at least Five Million Dollars ($5,000,000.00) in total coverage and with at least Five Million Dollars ($5,000,000.00) per claim, subject to a maximum One Million Dollar ($1,000,000.00) deductible per claim, to protect against Claims and loss from liability relating to unknown conditions for a 5-year term with an extended reporting period of at least 24 months; and

(c) The policy shall be paid for in full at the time of issuance and shall be endorsed as non-cancelable without the written consent of each of Developer and the City in its sole discretion to such cancellation and, to the extent available, shall contain a waiver of subrogation for the benefit of the City Indemnified Parties. The unwillingness of an insurance company to provide a waiver of subrogation for the benefit of the City Indemnified Parties shall be a reasonable basis for the City to withhold approval of the insurance company under Section 11.1.4(a) unless such unwillingness is the common position of insurance carriers in the market (defined to mean that Developer cannot find an insurance carrier willing to waive such subrogation or cannot find an insurance carrier willing to waive such subrogation without charging a material increase in the premium for such insurance, over the premium that would be charged absent such waiver. A "material" increase for purposes of this clause (c) shall mean an increase of 20% or more.) Developer's obligation to maintain environmental insurance pursuant to this Section 11.1.4 shall survive the termination of this Agreement following the Phase 1 Property Close of Escrow for the term required for such insurance policy pursuant to Section 11.1.4(b).

11.2 **General Insurance Requirements**.

11.2.1 For all policies or certificates, an authorized representative of Developer, or other Person required to obtain insurance hereunder ("**Insured Party**"), or its insurance broker shall notify the City within thirty (30) calendar days after its knowledge of any cancellation, termination or modification of such policies.

11.2.2 The term "**full insurable value**" as used in this Article 11 shall mean the cost determined by mutual agreement of the Parties (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar Improvements of equal size and providing the same habitability as the Improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision.

11.2.3 All insurance provided under this Article 11 shall be for the benefit of the City and any additional Parties that the Developer may require. Developer shall, and shall cause each Insured Party, (a) to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance, and (b) to submit certificates evidencing such insurance to the City on an Accord form within seven (7) Business Days following the Effective Date, or, with respect to coverage required by Section 11.1.4, each Close of Escrow, and with respect to coverage required by Section 11.1.3, commencement of construction. Upon request by the City, within seven (7) calendar days, if practicable, after expiration of any such policy, certificates evidencing renewal policies shall be submitted to the City.

11.2.4 If Developer fails to procure or to cause any Insured Party to procure and maintain insurance as required by this Agreement, the City shall have the right, at the City's election, and upon ten (10) calendar days' prior written notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as a loan, due from Developer, to be paid on the first calendar day of the month following the date on which the

premiums were paid. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

11.2.5 Since the insurance policies required by Section 11.1.4 will not be effective until after each Close of Escrow, the evidence of insurance to be delivered by Developer to the City at each Close of Escrow shall be limited to a binder evidencing that the insurance required by Section 11.1.4 will become effective following such Close of Escrow.

12. **Covenants and Restrictions**.

The following covenants and restrictions shall be set forth in the Special Restrictions and shall run with the land for the duration set forth below and in the Special Restrictions for the benefit of the City in its Proprietary Capacity. The Special Restrictions may contain additional covenants and restrictions as further set forth therein.

12.1 **Prohibited Uses**.

Developer covenants and agrees for itself and each Successor Owner and each and every Person claiming by through or under Developer or any Successor Owner that:

(a) During the term of this Agreement and any additional term set forth in the Special Restrictions, the Property shall be used only for Office Uses, Retail Uses, and Food Hall Uses and otherwise in accordance with the requirements of this Agreement and the Special Restrictions.

(b) Neither Developer nor any Successor Owner nor any Person claiming by through or under Developer or any Successor Owner including any Pad Transferee or Tenant shall use the Development Parcels or any portion thereof for any Prohibited Use.

(c) The Developer and its Successor Owners and all Pad Transferees and Tenants shall be subject to the covenants, conditions and restrictions set forth in the Quitclaim Deed applicable to the Property, the Special Restrictions and the CC&Rs.

12.2 **Maintenance Covenant**.

12.2.1 **Maintenance Standards**. Developer, on behalf of itself and its successors and assigns hereunder, hereby covenants and agrees, from and after each Close of Escrow that Developer shall during its period of ownership of any portion of the Development Parcels and for any Additional Liability Period, maintain the Development Parcels and the Improvements thereon owned by it consistent with the following requirements:

(a) Prior to commencement of construction, Developer shall be responsible, at its sole cost and expense, (i) to secure and maintain the Development Parcels in a clean, safe and secure condition, in compliance with all applicable laws, (ii) to abate weeds and other hazards and nuisances on such portion of the Development Parcels as are not then under construction, (iii) to erect and maintain barricades and fencing, and provide security, in each case with respect to the Development Parcels and as reasonably necessary to protect the public and

any Improvements already constructed, and (iv) to maintain (in compliance with all Environmental Laws) erosion control on the Development Parcels.

(b) From the date of commencement and during the continuance of construction of any Improvements on the Development Parcels, Developer shall maintain the Development Parcels and the Improvements thereon then under construction consistent with normal and customary construction industry practice.

(c) From and after the issuance of a certificate of occupancy for any Improvements on the Development Parcels, while this Agreement is in effect, Developer shall maintain all Improvements owned by Developer on the Development Parcels not then under construction in a clean, sanitary, orderly and attractive condition, subject to reasonable wear and tear, change or damage by casualty or condemnation. Developer shall be required to meet the standard for the quality of maintenance of the Improvements on the Development Parcels required by this Section regardless of whether or not a specific item of maintenance is listed below, except that, in each case, and notwithstanding anything in this Section to the contrary, Developer shall not have any maintenance obligation with respect to any items owned or controlled by (or on property owned or maintained by) a utility franchisee, any lighting or landscape district or by the City. Representative items of maintenance shall include: (i) maintenance and repair on a regular schedule, of Buildings and improvements, private streets, roads, drives, sidewalks, utilities, Common Area, landscaping, hardscaping and fountains; (ii) regular inspection for graffiti or damage or deterioration or failure, and reasonably prompt (or, in the case of graffiti, within 48 hours) repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; (iii) emptying of trash receptacles and removal of litter; (iv) regular sweeping of private streets, roadways and sidewalks throughout the Development Parcels; (v) fertilizing, irrigating, trimming and replacing vegetation as necessary; (vi) cleaning exterior windows on a regular basis; (vii) painting the Buildings on a regular program and prior to the deterioration of the painted surfaces; and (viii) conducting roof inspections on a regular basis and maintaining roofs in a leak free and weather tight condition. The level of quality of the operation and maintenance activities shall be similar to those provided with respect to the buildings at the Campus at Playa Vista.

12.2.2 **Maintenance Responsibilities**. Developer shall have the right to subcontract its maintenance responsibilities under this Agreement to a reputable property management company or other third party that has an interest in one or more of the Parcels, provided that such subcontracting shall not relieve Developer of any liability for its obligations under this Section 12.2.

12.2.3 **City Rights to Maintain**. In the event Developer or any Successor Owner fails to maintain the Improvements or landscaping on the Development Parcels or any portion thereof in accordance with the standard for the quality of maintenance set forth in this Section or the Special Restrictions after thirty (30) calendar days have elapsed from City's written notice of same, the City or its designee shall have the right but not the obligation to enter the Property upon reasonable written notice to Developer or its Successor Owners, correct any such failure, and hold Developer, or such Successor Owner, responsible for the reasonable cost thereof, and such cost, until paid, shall constitute a lien on the applicable portion of the Property as and to the extent described in Section 16.2.

12.3 **Landscape Installation and Maintenance Agreement and Roadway and Utility Easement Agreement; Additional Agreements**.

Concurrently with the Phase 1 Property Close of Escrow, Developer and the City shall enter into (a) a Landscape Installation and Maintenance Agreement, the form and substance of which shall be agreed to by the City and Developer each in its sole discretion (the "**Landscape Installation and Maintenance Agreement**") pursuant to which Developer on behalf of itself and each Successor Owner shall agree to undertake the landscape and maintenance obligations with respect to the City right of way fronting on the public streets adjacent to the Development Parcels and certain adjoining portions of the Development Parcels as further set forth therein for the benefit of the City and its Successor Owners at no cost to the City and (b) a Roadway, Landscape and Utility Easement Agreement, the form and substance of which shall be agreed by the City and Developer each in its sole discretion ("**Roadway and Utility Easement Agreement**"), pursuant to which Developer on behalf of itself and each Successor Owner shall agree to construct and cause to be maintained certain roadways, comprising the portions of Flight Way and Airship Avenue within the Development Parcels, certain utilities and storm drains thereon and therein, and adjoining landscaping, as further set forth therein and providing a reciprocal easement agreement granting reciprocal easements for vehicular, pedestrian and bicycle ingress and egress, and utility access, at no cost to the City. Developer acknowledges and agrees that the form of the Landscape Installation and Maintenance Agreement and the form of the Roadway and Utility Easement Agreement shall, together with the form of the Pad Transferee Non-Disturbance and Attornment Agreement described in Section 2.2.3(c)(iii)(B), require the approval of the City Council and that the approval of the City Council, in its sole discretion, to each such document shall be a condition precedent to the Phase 1 Property Close of Escrow for the benefit of the City. City acknowledges and agrees that the approval of the form of each such document by Developer shall be a condition precedent to the Phase 1 Property Close of Escrow for the benefit of the Developer. Upon approval by the City Council and Developer of all of the foregoing forms of agreement, the approved agreements shall be attached to and memorialized in an amendment to the DDA approved by the City Council and Developer and executed by each of the Parties, and the Roadway and Utility Easement Agreement so approved shall be deemed to be attached to this Agreement as Attachment 21, the Landscape Installation and Maintenance Agreement shall be deemed to be attached to this Agreement as Attachment 27 and the Pad Transferee Non-Disturbance and Attornment Agreement shall be deemed to be attached to this Agreement as Attachment 22.

12.4 **Duration of Covenants**.

The covenants in Sections 12.1 and 12.2.2 shall be included in the Special Restrictions, shall run with the land and shall remain in force and effect with respect to each Parcel until the date which is the twenty-fifth (25th) anniversary of the Recording of the last Certificate of Compliance for such Parcel, unless released at an earlier date by the City in writing. The covenants set forth in Section 12.2.1 shall remain in effect only until CC&Rs addressing maintenance requirements in substance substantially similar to those set forth in Section 12.2.1 are approved by the City, executed and Recorded and the covenants set forth in Section 12.3 shall remain in effect only until the Landscape Installation and Maintenance Agreement and the Roadway and Utility Easement Agreement are each executed and Recorded. The Special Restrictions shall run with the land, shall survive each Close of Escrow, and shall not be merged

into any Quitclaim Deed, and shall survive any termination of this Agreement following each Close of Escrow.

12.5 **Obligation to Refrain from Discrimination**.

Developer covenants and agrees for itself and each Successor Owner, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property or in development of the Project, nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees of the Property or in development of the Project or any part thereof.

12.6 **Deed Restrictions/Covenants Running with the Land**.

The obligations of Developer set forth in this Agreement, the Special Restrictions and each Quitclaim Deed shall be covenants running with the land, shall be binding upon Developer, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner for the benefit of the City, its Governmental Successors and the City Benefited Property.

12.7 **Priority of Agreement and Special Restrictions**.

This Agreement, including the City Lien, the Right of Repurchase and the Right of Reversion contained herein, the Memorandum of DDA, the Special Restrictions, the Roadway and Utility Easement Agreement, and the Landscape Installation and Maintenance Agreement shall be superior in priority to all Mortgages.

13. **CC&Rs**.

As a condition precedent to the Phase 1 Property Close of Escrow, Developer shall prepare and submit to the City for approval, in its sole discretion, a set of covenants, conditions and restrictions, together with other requirements included in the conditions of approval for each Subdivision Map for the Project as approved by the City (the "**CC&Rs**"). Among other things and without limitation, the CC&Rs shall establish (a) access, parking, and maintenance easements, including pedestrian and vehicular access to the portion of Flight Way located on private property and to Airship Avenue, in favor of the owners of Phase 1 and Phase 2, Developer, each Pad Transferee, each Space Tenant and other permitted users as further set forth in the CC&Rs; (b) certain use restrictions; and (c) the mechanism for sharing costs for maintenance, repair and replacement of the Common Area and Common Area Improvements between the Phase 1 Parcel owner(s) and the Phase 2 Parcel owner(s). The CC&Rs shall be Recorded against the Phase 1 Parcel at the Phase 1 Property Close of Escrow, and shall be Recorded against the Phase 2 Parcel at the Phase 2 Property Close of Escrow. From and after the Phase 1 Property Close of Escrow, Developer and each Successor Owner of the Development Parcels shall be responsible for all costs associated with maintenance and repair of the Improvements owned by such party, and the City shall have no liability therefor, provided, however, that except as set forth in this Agreement, any License Agreements, Roadway and

Utility Easement Agreement, Landscape Installation and Maintenance Agreement, Reimbursement Agreement or with respect to construction of the Minimum Horizontal Improvements, Developer and each Successor Owner shall have no responsibility for costs associated with the Phase 2 Property prior to the Phase 2 Property Close of Escrow. The CC&Rs shall provide that the foreclosure of any Mortgage will not terminate the CC&Rs.

14. **Potential Defaults and Material Defaults**.

14.1 **Potential Defaults**.

Except as otherwise provided in this Agreement, in the event either Party (the "**Defaulting Party**") fails to perform, or delays in the performance of, any obligation, in whole or in part, required to be performed by the Defaulting Party as provided in this Agreement (a "**Potential Default**"), the other Party (the "**Injured Party**") may give written notice of such Potential Default to the Defaulting Party (the "**Default Notice**"), which Default Notice shall state the particulars of the Potential Default. The Parties agree to cooperate in good faith and meet and confer regarding each Potential Default.

14.2 **Material Defaults**.

14.2.1 **Monetary Defaults**. Notwithstanding any other provision of this Agreement, if a Party fails to pay the other Party any sum as and when required to be paid pursuant to this Agreement and the Injured Party gives the Defaulting Party a Default Notice of such nonpayment, such nonpayment shall be a Potential Default. The Defaulting Party shall have a period of fifteen (15) calendar days after the date the Default Notice is received, or deemed to have been received, within which to cure the Potential Default by making the required payment; the period to cure such Potential Default shall not be extended by Force Majeure Delay. In the event a Potential Default for nonpayment is not cured within said fifteen (15) calendar day period, the Potential Default shall become a "**Material Default**" that shall be deemed to have occurred upon the expiration of the cure period.

14.2.2 **Non-Monetary Defaults**. With respect to non-monetary defaults under this Agreement, a Potential Default shall become a "**Material Default**" in the event the Potential Default is not cured, at the Defaulting Party's expense, (a) within thirty (30) calendar days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party, or (b) if such cure cannot be reasonably accomplished within such thirty (30) calendar day period, within ninety (90) calendar days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party, but only if the Defaulting Party has commenced such cure within such thirty (30) calendar day period and diligently pursues such cure to completion, or (c) within such longer period of time as may be expressly provided in this Agreement or as mutually agreed to in writing between the Parties with respect to the Potential Default. Except as set forth in Sections 4.7 and 14.2.3 and the proviso at the end of Section 16.4.1(e), the time periods set forth in this Section 14.2.2 to cure a Potential Default shall be extended by Force Majeure Delay. Following written notice and failure to cure within the time periods set forth above, each Potential Default shall become a Material Default that shall be deemed to have occurred upon the expiration of the applicable cure period. Notwithstanding

anything in the foregoing to the contrary, the Defaulting Party may cure a Material Default at any time prior to the date the Injured Party exercises its remedy for the Material Default.

14.2.3 **Transfer Defaults**. Notwithstanding the foregoing, any Transfer or any Transfer of Control in violation of the provisions of Article 2 shall be null and void and shall in all events be a Material Default under this Agreement as of the date of the Transfer by the violating party, without notice or cure period and shall not be subject to extension for Force Majeure Delay, except that with respect to involuntary Construction Liens for which the notice and cure periods set forth in Section 14.2.2 shall apply, in order to enable Developer to comply with the provisions of Section 8.8.5.

14.2.4 **Interest**. If a monetary Material Default occurs under this Agreement, then in addition to any other remedies conferred upon the Injured Party pursuant to this Agreement, the Defaulting Party shall pay to the Injured Party, in addition to all principal amounts due, interest on such principal amounts at the Default Rate, for the period from the date such payment or part thereof was due until the date the same is paid.

14.2.5 **No Waiver**. Failure or delay by an Injured Party to deliver a Default Notice shall not constitute a waiver of any Default, nor shall it change the time of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

14.3 **Due Diligence Information; Products**.

14.3.1 **Destruction of Due Diligence Information**. Developer shall use commercially reasonable efforts to return to the City all hard copy written Due Diligence Information in Developer's possession: (a) pertaining to the Property within five (5) Business Days following (i) termination of this Agreement prior to the Phase 1 Property Close of Escrow or (ii) the Phase 1 Property Outside Closing Date, if the Close of Escrow for the Phase 1 Property shall not have taken place on or before such date, or (b) pertaining to the Phase 2 Property following (i) termination of this Agreement as to the Phase 2 Property prior to the Phase 2 Property Close of Escrow or (ii) the Phase 2 Property Outside Closing Date, if the Close of Escrow for the Phase 2 Property shall not have taken place on or before such date. The obligation to return Due Diligence Information to the City under this Section is without representation or warranty of any kind by Developer. The Developer does not provide the City any assurances that electronic information will be irretrievably eradicated, and in no event shall Developer be obligated to destroy company-wide electronic back-up tapes in order to destroy Due Diligence Information. The Developer shall not be obligated to destroy any Developer Excluded Information and the Developer shall be entitled to retain one copy of any Due Diligence Information as is necessary to comply with any legal or regulatory requirements.

14.3.2 **Surrender of Transferable Products**. In connection with the proposed Project, Developer shall be preparing or causing to be prepared architectural and other

products, surveys, plans, reports, tests, studies and investigations with respect to the Property and the proposed Project (collectively, "**Products**"). All Products shall be prepared at Developer's sole cost and expense. If (a) this Agreement is terminated for any reason other than a Default by the City prior to the Phase 1 Property Close of Escrow or (b) if either the Phase 1 Property Outside Closing Date or the Phase 2 Property Outside Closing Date shall pass without the Close of Escrow for such Property having taken place and this Agreement shall terminate as to either such Property, then, with respect to all Products with respect to the portion of the Property for which this Agreement has terminated, other than financial or economic estimates, projections and evaluations; studies and information related to potential tenants, lenders and investors; and any confidential or proprietary information of Developer or its equity partner(s) (the Products not subject to such exclusions are collectively the "**Transferable Products**"), the City may request that Developer, for consideration to be mutually agreed, transfer Developer's rights to any or all of the Transferable Products identified by the City, but in no event shall the cost to the City exceed Five Thousand Dollars ($5,000.00). Upon such request, Developer shall deliver to the City copies of all Transferable Products requested by the City together with a bill of sale therefor, provided that Developer makes no representation, warranty or guaranty of any kind, whether express or implied, including without limitation regarding the completeness or accuracy of the Transferable Products, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such Transferable Products shall thereupon be free of all claims or interests and other liens and encumbrances of Developer. Upon the City's acquiring Developer's rights to any or all of the Transferable Products, the City shall be permitted to use, grant, license or otherwise dispose of such Transferable Products to any Person for development of the Project or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee of title to the Transferable Products in connection with the use of the Transferable Products. Notwithstanding anything to the contrary herein, the Developer shall only be obligated to transfer any Transferable Products to the extent that the Developer owns the rights to the same pursuant to its contract with the preparer thereof, provided that the Developer shall use commercially reasonable efforts to secure ownership of Transferable Products pursuant to such contracts.

14.3.3 **Survival**. The provisions of this Section 14.3 shall survive the termination of this Agreement in its entirety or as to any portion of the Property except that it shall terminate upon the issuance of a Certificate of Compliance therefor.

15. Nonoccurrence of a Condition at Close of Escrow.

The following provisions govern the failure to occur of Close of Escrow for either the Phase 1 Property or the Phase 2 Property for reason of non-occurrence of a Closing Condition or Default by either Party. Notwithstanding any other provision of this Agreement,

(a) Any failure of a Closing Condition for the benefit of either Party to be satisfied at or prior to a Close of Escrow shall not, on its own, constitute a Default by either Party hereunto absent a Default under a separate covenant, obligation, representation or warranty set forth in this Agreement or any Other Agreement;

(b) In the event of a termination of all or a portion of this Agreement, except as provided in Section 15.4.2, under no circumstances shall Developer have any right or

claim to, or against, the Project or Property or any portion thereof for which this Agreement is terminated and the Option, whether or not then exercised, shall automatically terminate as of the date of the termination of this Agreement;

(c) In the event of a termination of the City's obligation to sell either the Phase 1 Property or the Phase 2 Property pursuant to this Agreement (including the termination of the Option or the right of Developer to exercise the Option with respect to the Phase 2 Property), the City shall have the right to market and sell such Property to third parties without restriction, but shall remain obligated to comply with the provisions of Section 8.13 (if then applicable); and

(d) The termination of this Agreement or the Phase 1 Provisions or the Phase 2 Provisions pursuant to Article 15 shall constitute a waiver of any rights or Claims either Party may have against the other pursuant to this Agreement or against the Property or the Improvements, or portion thereof to which the termination applies, but shall not terminate or release any liability or obligations of either Party to comply with any obligations under this Agreement pursuant to this Article 15 which remain in effect or which are expressly stated to survive a termination of this Agreement.

15.1 **Failure of a Condition to Phase 1 Property Close of Escrow Absent a Default**.

15.1.1 **Failure of a Condition to Phase 1 Property Close of Escrow Generally**.

(a) If the Phase 1 Property Close of Escrow does not occur on or before 5:00 p.m. Pacific Time on the earlier of the Phase 1 Property Closing Date (as extended as contemplated by Section 7.2.1(j) or 7.2.2(j) and the last sentence of Section 7.1.1, if applicable) or the Phase 1 Property Outside Closing Date, because of the failure to occur of a Phase 1 Property Closing Condition for the benefit of either Party for reasons other than a Default by a Party, then the Party for whose benefit the failed Closing Condition was intended may, by delivery of written notice to the other Party and to the Escrow Holder, terminate this Agreement.

(b) It is the intent of the Parties that even if (i) the Phase 2 Property Close of Escrow has not then occurred, (ii) the time period for close of escrow for the Phase 2 Property has not expired, and (iii) no Party is then in Default with respect to the Phase 2 Property Close of Escrow and (iv) irrespective of whether there has been a Transfer of any portion of Developer's interest to a Phase 2 Developer, that upon termination under Section 15.1.1(a) or Section 15.1.2, this Agreement shall terminate in its entirety as to both the Phase 1 Provisions and the Phase 1 Project and as to the Phase 2 Provisions and the Phase 2 Project.

(c) In the event either Developer or the City is in Default as of the Phase 1 Property Closing Date the Party in Default shall not have the right to terminate the Agreement pursuant to this Section 15.1.

15.1.2 **Failure of a Condition to Phase 1 Property Close of Escrow for Litigation or Referendum**. In the event the Phase 1 Property Close of Escrow is extended for any of the reasons set forth in this Section 15.1.2 not caused by a Default by either Party, then:

(a) In the event a final non-appealable decision in any litigation brought by a third party or approval of a referendum or initiative results in the inability of the City to convey all or any portion of the Phase 1 Property to Developer, or results in the inability of Developer to perform its material obligations hereunder despite Developer's commercially reasonable efforts to do so, either Party shall have the right, upon thirty (30) calendar days' prior written notice to the other Party and the Escrow Holder, to terminate this Agreement.

(b) In the event litigation, referendum, or initiative brought by a third party remains pending on the Phase 1 Property Outside Closing Date and (i) such ongoing challenge prevents the City from conveying all or any portion of the Phase 1 Property to Developer, or (ii) such ongoing challenge is the cause of Developer's inability to perform its material obligations hereunder despite Developer's commercially reasonable efforts to do so, or (iii) such ongoing challenge could reasonably be expected to result in a material adverse effect on Developer's ability to develop or operate all or any portion of the Phase 1 Property, either Party shall have the right, upon thirty (30) calendar days' written notice to the other Party and the Escrow Holder, to terminate this Agreement.

(c) In the event that the circumstances creating the right of termination in Sections 15.1.2(a) or (b) above has been cured during the thirty (30) calendar day period described in each such Section, the right to terminate with respect to such circumstances shall likewise be extinguished. In addition, if Developer provides the City with written notice that Developer will indemnify, defend and hold harmless the City in any litigation or will challenge such referendum or initiative identified in Section 15.1.2(a) or (b) above, then, the City shall not have the right to terminate this Agreement and the Phase 1 Property Outside Closing Date shall be extended for as long as the Developer continues such defense or challenge.

15.1.3 **Return of Purchase Price Deposit Prior to Phase 1 Property Close of Escrow**. Upon any termination of this Agreement or the Phase 1 Provisions pursuant to Section 15.1.1(a) or 15.1.2 prior to the Phase 1 Property Close of Escrow and provided that neither Party is then in Default under this Agreement, each Party shall pay one-half (1/2) of Escrow Holder's normal cancellation charges and Escrow Holder shall return the Purchase Price Deposit to Developer less any amounts due and owing to the City with respect to City Transaction Expenses and for which the City Cost Deposit then funded pursuant to Section 1.8 is insufficient. The termination of the obligations of the Parties with respect to the Phase 1 Property Close of Escrow shall relieve both parties of all of their respective liabilities and obligations with respect to this Agreement except for the rights and remedies for a separate breach, if any, of the confidentiality and/or indemnification provisions set forth in Sections 5.5 and 18.23 of this Agreement and/or the provisions of Section 14.3.

15.2 **DEFAULT OF DEVELOPER RESULTS IN FAILURE OF PHASE 1 PROPERTY CLOSE OF ESCROW**.

IF THE PHASE 1 PROPERTY CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M., PACIFIC TIME, ON THE CLOSING DATE ESTABLISHED BY THIS AGREEMENT FOR SUCH CLOSE OF ESCROW, SOLELY AS A RESULT OF A DEFAULT BY DEVELOPER (INCLUDING FAILURE TO DELIVER THE DELIVERABLES REQUIRED PURSUANT TO SECTION 7.2.2(b), OR TO DELIVER SUFFICIENT FUNDS

TO CAUSE THE CLOSING TO OCCUR IN A TIMELY MANNER, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7, THEN THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT:

(i) THE PURCHASE PRICE DEPOSIT PROVIDED FOR IN SECTION 4.3.1 OF THIS AGREEMENT AND THE OTHER SUMS DESCRIBED IN THIS PARAGRAPH BEAR A REASONABLE RELATIONSHIP TO THE DAMAGES WHICH THE PARTIES ESTIMATE MAY BE SUFFERED BY THE CITY AS THE RESULT OF THE DEVELOPER'S DEFAULT UNDER THIS AGREEMENT THAT RESULTS IN THE FAILURE OF THE PHASE 1 PROPERTY CLOSE OF ESCROW, WHICH DAMAGES WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO QUANTIFY, THAT SUCH DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT, AND THAT THE REMEDY PROVIDED FOR IN THIS AGREEMENT IS NOT A PENALTY OR FORFEITURE AND IS A REASONABLE LIMITATION ON DEVELOPER'S POTENTIAL LIABILITY AS A RESULT OF SUCH DEFAULT; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM DEVELOPER FOR THE CITY TRANSACTION EXPENSES AND RETAINING AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO THE CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE DATE OF TERMINATION OF THIS AGREEMENT;

(ii) DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES;

(iii) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTION 5.5; AND

(iv) THE CITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND THE ESCROW IN ITS ENTIRETY BY DELIVERING WRITTEN NOTICE TO THE DEVELOPER AND TO ESCROW HOLDER, WHEREUPON THIS AGREEMENT SHALL TERMINATE AND THE CITY SHALL BE RELEASED FROM ITS OBLIGATIONS HEREUNDER, AND ESCROW HOLDER SHALL DISBURSE THE PURCHASE PRICE DEPOSIT AND ALL ACCRUED INTEREST THEREON TO THE CITY, AS LIQUIDATED DAMAGES, WHICH DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR SUCH DEFAULT, EXCEPT FOR THE RIGHTS AND REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 5.5 AND 18.23 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3. THE CITY'S RIGHT TO TERMINATE THIS AGREEMENT IN ITS ENTIRETY AS AFORESAID SHALL APPLY IRRESPECTIVE OF WHETHER THERE HAS BEEN A TRANSFER OF ANY PORTION OF DEVELOPER'S INTEREST UNDER THIS AGREEMENT TO A PHASE 2 DEVELOPER.

Initials of City Initials of Developer

15.3 **FAILURE OF PHASE 2 PROPERTY CLOSE OF ESCROW.**

IF THE PHASE 1 PROPERTY CLOSE OF ESCROW HAS TAKEN PLACE AND EITHER (a) THE OPTION LAPSES, EXPIRES AND/OR TERMINATES FOR ANY REASON (INCLUDING AS A RESULT OF DEVELOPER'S ELECTION NOT TO EXTEND THE OPTION, DEFAULT BY DEVELOPER AND/OR TERMINATION OF THIS AGREEMENT OR EXERCISE BY THE CITY OF ITS RIGHT OF REPURCHASE OR RIGHT OF REVERSION WITH RESPECT TO PHASE 1) OR (b) DEVELOPER EXERCISES THE OPTION AS TO PHASE 2, AND THE PHASE 2 PROPERTY CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE THE EARLIER OF THE PHASE 2 PROPERTY CLOSING DATE OR THE PHASE 2 PROPERTY OUTSIDE CLOSING DATE FOR ANY REASON OTHER THAN A DEFAULT OF THE CITY AS SET FORTH IN SECTION 15.4.1, THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:

(i) THE OPTION SHALL, TO THE EXTENT NOT THEN TERMINATED, IMMEDIATELY TERMINATE WITHOUT FURTHER ACTION BY THE PARTIES, AND THE AGGREGATE OF ALL CASH OPTION PAYMENTS MADE TO SUCH DATE (EXCLUDING CASH OPTION PAYMENTS THAT HAVE BEEN PAID BY CITY TO WORKING DEVELOPER PURSUANT TO SECTION 4.3.3(g)) SHALL BE FORFEITED TO THE CITY AS A NON-REFUNDABLE OPTION PAYMENT AND DEVELOPER SHALL BE DEEMED TO HAVE CONVEYED TO THE CITY ALL RIGHT, TITLE AND INTEREST OF DEVELOPER, IF ANY, IN AND TO THE REIMBURSABLE PHASE 2 IMPROVEMENTS WHICH CONVEYANCE SHALL BE MADE WITHOUT COST OR EXPENSE TO THE CITY UNLESS THE PROVISIONS OF SECTION 4.3.3 OTHERWISE REQUIRE (AND OPTIONEE AND WORKING DEVELOPER AND ALL OTHERS REQUIRED TO DO SO PURSUANT TO SECTION 4.3.3(i) SHALL EACH EXECUTE AND DELIVER TO THE CITY A BILL OF SALE IN CONNECTION WITH SAME), WHICH TOGETHER SHALL BE THE CITY'S SOLE COMPENSATION IN ALL EVENTS FOR A FAILURE OF SUCH PHASE 2 PROPERTY CLOSE OF ESCROW TO OCCUR EXCEPT FOR THE CITY RIGHTS AND REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 5.5 AND 18.23 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3.

(ii) THE REMEDIES DESCRIBED IN SECTION 15.3(i) ABOVE SHALL BE THE EXCLUSIVE REMEDIES TO THE CITY FOR THE DAMAGES SUFFERED BY THE CITY AS THE RESULT OF THE FAILURE OF THE PHASE 2 PROPERTY CLOSE OF ESCROW; PROVIDED THAT NOTHING HEREIN SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM DEVELOPER FOR THE CITY TRANSACTION EXPENSES AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS

THEN DUE TO THE CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE PHASE 2 PROPERTY OUTSIDE CLOSING DATE;

(iii) DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES;

(iv) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTION 5.5; AND

(v) THE PHASE 2 PROVISIONS SHALL TERMINATE WHEREUPON THE CITY SHALL BE RELEASED FROM ITS OBLIGATION HEREUNDER TO SELL THE PHASE 2 PROPERTY TO THE DEVELOPER THE PHASE 2 PROPERTY SHALL NOT BE ENCUMBERED BY THIS AGREEMENT AND EXCEPT AS SET FORTH IN SECTION 4.3.3(h) AND (i) AND THIS SECTION, EACH PARTY SHALL BE RELIEVED OF ALL OF ITS RESPECTIVE LIABILITIES AND OBLIGATIONS WITH RESPECT TO PHASE 2 UNDER THIS AGREEMENT; PROVIDED THAT FOR SO LONG AS THE PHASE 1 PROVISIONS REMAIN IN EFFECT AND THE CITY SHALL REMAIN THE OWNER OF THE PHASE 2 PROPERTY, THE TERMINATION OF THE PHASE 2 PROVISIONS SHALL NOT AFFECT THE OBLIGATIONS OF THE CITY UNDER THIS AGREEMENT, IF ANY, TO THE PHASE 1 DEVELOPER WITH RESPECT TO THE PHASE 2 PROPERTY.

(vi) NOTHING HEREIN SHALL RELIEVE THE DEVELOPER (OR, IN THE EVENT A PHASE TRANSFER HAS TAKEN PLACE, PHASE 1 DEVELOPER) FROM ITS OBLIGATION TO COMPLY WITH THE PHASE 1 PROVISIONS INCLUDING THE OBLIGATION TO CONSTRUCT THE MINIMUM HORIZONTAL IMPROVEMENTS OR LIMIT THE CITY'S REMEDIES WITH RESPECT TO SUCH PROVISIONS, AND THIS AGREEMENT AND THE OTHER AGREEMENTS SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL PROPERTY PREVIOUSLY CONVEYED BY THE CITY PURSUANT TO THIS AGREEMENT.

Initials of City

Initials of Developer

15.4 **Failure to Close; Default of City**.

15.4.1 If any Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on or before the applicable Closing Date, solely as a result of a Default by the City in the performance of its obligations under this Agreement with respect to such Close of Escrow, then, as the sole remedy of Developer with respect to such Default by the City, and available to Developer only so long as Developer is not in Default, Developer shall have the right, by providing notice to the City, within twenty (20) Business Days after the Closing Date, of its election to do so, either: (a) to purchase the relevant Property pursuant to this Agreement notwithstanding such Default by the City and to waive all of Developer's rights with respect to such Default, other than those Defaults described in Section 6.5(a) and Section 8.15, for which Developer's remedies shall be limited as set forth in Sections 18.5.3(b) and 18.5.4, (b) with

respect to the Phase 1 Property Close of Escrow only, to terminate this Agreement and cancel the Escrow, in which case the provisions of Section 15.4.3(a), (b), and (c) shall apply; (c) with respect to the Phase 2 Property Close of Escrow only (and provided Optionee has properly exercised the Option only), to terminate (i) its obligation to acquire the Property to be conveyed at the Phase 2 Property Close of Escrow and (ii) the Phase 2 Provisions, in which case the provisions of Section 15.4.3(b) and (c) shall apply; or (d) with respect to any such Close of Escrow, to elect to extend the applicable Closing Date for an additional period (over and above the time period set forth in Section 7.2.1(j) or Section 7.3.1(i), as applicable) of fifty (50) calendar days in order to provide the City with time to cure such Default (and in such event the City shall use commercially reasonable efforts to cure the same during such extension period). Notwithstanding the foregoing, in the event that all applicable City Closing Conditions have been waived by the City in writing or satisfied (except with respect to any applicable City Closing Condition which is not satisfied as a result of a Default by the City), and the City fails to deliver any of the materials described in Section 7.2.1(a) or Section 7.3.1(a) or otherwise fails to proceed with either Close of Escrow in breach of this Agreement within ten (10) Business Days after Developer has delivered into Escrow a written notice that Developer is prepared to consummate the transaction and proceed to Close of Escrow, Developer shall have the right to bring an action in equity against the City or subsequent owners, lessors or sub-lessors of the Property for specific performance of this Agreement, including Article 7, provided, that, except as specifically set forth in this Section 15.4.1, Developer specifically waives any right to receive any monetary award as a result of the City's Default.

15.4.2 In the event the City receives timely notice of Developer's election pursuant to Section 15.4.1 to purchase (a) the Phase 1 Property or (b) pursuant to Close of Escrow to take place concurrently with or following the Phase 1 Property Close of Escrow, the Phase 2 Property, then as applicable, notwithstanding the Default by the City, Developer shall (a) with respect to the Phase 1 Property Close of Escrow, deliver the Phase 1 Property Closing Payment and all other deliverables required by this Agreement and (b) with respect to the Phase 2 Property Close of Escrow, deliver the Phase 2 Property Closing Payment and all other deliverables required by this Agreement into Escrow no later than ten (10) Business Days after the City's receipt of said notice and, provided that the City Phase 1 Property Closing Conditions or the City Phase 2 Property Closing Conditions, as applicable, have been satisfied, the Close of Escrow for such Property shall occur on that date which is eleven (11) Business Days after the City's receipt of such notice.

15.4.3 **Termination**.

(a) In the event the City is in Default of this Agreement and receives timely notice from Developer pursuant to Section 15.4.1 of Developer's election to terminate this Agreement with respect to the Phase 1 Property, then Developer's election to terminate this Agreement with respect to the Phase 1 Property shall terminate the entirety of this Agreement, including the Phase 1 Provisions and the Phase 2 Provisions (regardless of whether the Developer has then Transferred all or any portion of Phase 2 to a Phase 2 Developer), the City shall pay the full amount of Escrow Holder's charges, and Developer shall be entitled to a full refund of its Purchase Price Deposit which refund shall be Developer's sole and exclusive remedy hereunder for the failure of the Phase 1 Property Close of Escrow.

(b) In the event the City is in Default of this Agreement with respect to the Phase 2 Property Close of Escrow and receives timely notice of Optionee's election not to proceed to Close of Escrow as to the Phase 2 Property pursuant to Section 15.4.1 and to terminate the Phase 2 Provisions: (a) the Phase 2 Provisions of this Agreement shall terminate as to all portions of the Phase 2 Property (provided that for so long as the Phase 1 Provisions remain in effect and the City shall remain the owner of the Phase 2 Property, the termination of the Phase 2 Provisions shall not affect the obligations of the City under this Agreement, if any, to the Phase 1 Developer with respect to the Phase 2 Property), (b) City shall pay the full amount of Escrow Holder's charges, and (c) Optionee shall be entitled to a full refund of the aggregate of all Cash Option Payments it has previously paid to the City, if any, and applicable to the pending Phase 2 Property Close of Escrow, which refund shall be Optionee's sole and exclusive remedy hereunder for the failure of the Phase 2 Property Close of Escrow. The City may satisfy its obligation to refund Cash Option Payments by interpleader of Cash Option Payments received by it in accordance with Section 4.3.3(k).

(c) In all cases, and with respect to a termination of this Agreement with respect to the Phase 1 Property and/or the Phase 2 Property, none of Developer, Phase 1 Developer or Phase 2 Developer shall be entitled to pursue an action against the City for damages or other remedies as a result of the Default by the City, provided that if the provisions of Section 4.3.3(h) apply and require payment by the City of the Option Credit Remainder, then Working Developer shall be entitled to receive any payment then due pursuant to Section 4.3.3(h) and (i) and upon receipt thereof, Working Developer shall execute and deliver a bill of sale to the City in accordance with Section 4.3.3(i).

15.4.4 In the event Developer has elected to purchase the Phase 1 Property or the Phase 2 Property pursuant to this Section 15.4, but fails to deliver the Phase 1 Property Closing Payment or the Phase 2 Property Closing Payment, as applicable, into Escrow and to satisfy the other Closing Conditions with respect to such Close of Escrow for the benefit of the City no later than ten (10) Business Days after the City's receipt of said notice, then the City shall have the right: (a) if the Phase 1 Property Close of Escrow shall not then have occurred, to terminate this Agreement by providing written notice of its election to terminate to Developer, such termination to be in accordance with the provisions of Section 15.4.3, or (b) if the Phase 1 Property Close of Escrow shall have occurred, to terminate the portions of this Agreement applicable to the Phase 2 Property (i.e., the Phase 2 Provisions), by providing written notice of its election to terminate to Developer, such termination to be in accordance with the provisions of Section 15.4.3.

15.4.5 The termination of this Agreement pursuant to this Section 15.4 shall not (a) terminate the right of Developer to recover amounts due to it as provided in Section 15.4.3 and (b) terminate or release any liability or obligations of Developer to indemnify the City as provided in Section 5.5 or to comply with Section 14.3. In the event of a termination as provided in Section 15.4.3 or 15.4.4, under no circumstances shall Developer have any right or claim to, or against, the Property or any portion thereof. The termination of this Agreement pursuant to this Section 15.4 shall constitute a waiver of any and all rights and Claims either Party may have with respect to this Agreement, except as expressly provided in this Section 15.4.

16. **Remedies for Defaults After the Close of Escrow**.

16.1 **General Remedies**.

In addition to any other rights and remedies that the City may have at law or in equity that are not specifically restricted by this Agreement, in the event Developer or any Pad Transferee is in Material Default with respect to any obligation of Developer under this Agreement following the Phase 1 Property Close of Escrow, and prior to the issuance of the Certificate of Compliance with respect to such Property, the City may do any one or more of the following:

(a) The City may record a lien against the Property owned by Developer or Pad Transferee, as applicable, in accordance with Section 16.2.

(b) The City may sue for damages it may have incurred (subject to any limitations on damages set forth in Section 18.5.1).

(c) The City may seek to specifically enforce the obligations of Developer or the Pad Transferee or otherwise bring an action at law or in equity to enforce its rights under this Agreement.

(d) Subject to Section 17.6, the City may exercise its Right of Repurchase pursuant to Section 16.3.

(e) Subject to Section 17.6, in the event of a Reversion Action Trigger only, the City may exercise its Right of Reversion pursuant to Section 16.4.

Upon and after termination of the City's Right of Repurchase and Right of Reversion pursuant to Sections 16.3 and 16.4, the City agrees to provide Developer with such documentation, including recordable evidence of such termination, as Developer reasonably requires to reflect that the City no longer has such rights with respect to the applicable Property or portion thereof. Notwithstanding anything to the contrary set forth herein, following the conveyance by City to Developer of the Phase 2 Property, in no event shall the Phase 1 Project and the Phase 2 Project be cross-defaulted with one another hereunder.

16.2 **Lien Rights.**

Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner for the benefit of the City and its successors and assigns hereby agrees that the delinquent amount of any payments due hereunder, together with any late charges or interest due on any such delinquent payment, attorneys' fees, experts' fees and consultants' fees and collection costs and the cost of in-house staff time (including City overhead and administrative costs) related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the Property and shall be a continuing lien upon the Property in favor of the City effective upon Recording of the Memorandum of DDA (the "**City Lien**"), which lien and charge shall be paramount to the lien and charge of each and every Mortgage, Construction Lien and other lien upon or affecting the Property (and, subject to the rights of a Permitted Mortgagee under Section 17.6.2, the City shall

have the right to foreclose the City Lien with respect to any Property so encumbered by such lien).

16.3 **Right of Repurchase**.

For the period described in Section 16.3.3, the City shall have the right (the "**Right of Repurchase**"), from time to time, at any time after the date that Developer became in Material Default and after the expiration of any applicable notice and cure periods in favor of a Mortgagee with respect to such Material Default to (re)purchase, enter and possess the following ("**Reacquired Property**"): (a) all or any portion of the Phase 1 or Phase 2 Property (as applicable), (b) any Improvements thereon, (c) all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and (d) all other appurtenant rights applicable to the respective Property, including the interest in any ground leases encumbering the respective Property. A Right of Repurchase with respect to all or a portion of the Phase 1 Property shall not result in a Right of Repurchase with respect to all or a portion of the Phase 2 Property, and vice versa. The Reacquired Property designated by the City shall be acquired by the City for the Repurchase Price and otherwise in accordance with this Section 16.3. In the event the City exercises its Right of Repurchase as to any Reacquired Property as provided in this Section 16.3, this Agreement shall terminate with respect to the Reacquired Property as of the date of the quitclaim deed conveying to the City title to the Reacquired Property; provided that the provisions of this Section 16.3 shall survive the termination of this Agreement.

16.3.1 **Exercise of Right of Repurchase**. The City may exercise its Right of Repurchase by delivering written notice to Developer stating that the City is exercising its Right of Repurchase and specifying the Reacquired Property; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Property to the City pursuant to the Right of Repurchase and otherwise in accordance with this Section 16.3.

16.3.2 **Process**. If the City is entitled to and timely elects to repurchase any designated Reacquired Property, the Parties shall: (a) within five (5) Business Days after the date of the City's notice of election to exercise the Right of Repurchase, open an escrow with an escrow agent designated by the City for the purchase and sale, and shall execute an escrow agreement that shall provide that Developer shall pay all costs of the escrow and shall include such usual and ordinary terms as are reasonably required by the escrow agent and by the transaction; (b) no later than five (5) Business Days after the opening of escrow, Developer shall place into the escrow appropriate quitclaim deeds and bill of sale conveying fee title to the Reacquired Property; and (c) no later than eighty-five (85) calendar days after the opening of the escrow, the City shall deposit into the escrow an amount equal to the Repurchase Price. The escrow shall close, and title to the Reacquired Property shall be conveyed to the City, and the Repurchase Price paid to the Developer or the Approved Foreclosure Purchaser or its successor in interest no later than five (5) Business Days after the City has deposited into escrow the Repurchase Price. Concurrently with the close of escrow, Developer shall comply with its obligations under Section 14.3. Nothing herein shall restrict the right of the City to terminate its exercise of the Right of Repurchase at any time prior to the close of escrow The Parties agree

that the amount of reduction in the Repurchase Price as compared with the Purchase Price is justified in that it bears a reasonable relationship to the damages which the Parties estimate may be suffered by the City as the result of the Developer's Material Default in the performance of its obligations under this Agreement, which damages would be impractical or extremely difficult to quantify, and that the remedy provided for herein is not a penalty or forfeiture, and is a reasonable limitation on the Developer's potential liability as a result of Developer's default.

16.3.3 **Termination of Right of Repurchase**. The Right of Repurchase shall remain in effect from the Close of Escrow with respect to any portion of the Property until the Recording by the City of a Certificate of Compliance with respect thereto. In the event that Developer or any Person on behalf of Developer either (a) cures the Material Default which is the basis for the City's exercise of its Right of Repurchase, but excluding any Transfer in violation of this Agreement, or (b) Completes the Phase 1 Project or the Phase 2 Project, as applicable, prior to the closing of escrow on such Right of Repurchase, such Right of Repurchase shall cease and terminate with respect to such Material Default only. With respect to any Material Defaults for which the City seeks to exercise the Right of Repurchase and which, by their nature, are not curable (which shall include, by way of example only, and not as a limitation, the failure to give notice or provide evidence of insurance prior to entering the Parcel), but excluding any Transfer in violation of this Agreement and any Material Default under the Schedule of Performance (except as set forth in clause (b) above, in which case the preceding sentence shall apply), such Default shall be deemed cured if Developer takes the required action promptly following Developer's becoming aware of such failure and the City is not adversely affected by such Default, has not relied on the performance of the applicable provision of this Agreement that is the subject of such Default to the detriment of the City or suffered any actual damage as a result of such Default.

16.3.4 **Release of Liability**. In the event the City exercises its Right of Repurchase, such purchase shall release each of City and the Developer owning the Reacquired Property from all liability and obligations under this Agreement and the Other Agreements with respect to the Reacquired Property except for the following obligations of Developer, from which Developer shall not be released and which in addition shall continue to be "Guaranteed Obligations" as such term is defined in each Guaranty provided in connection with the acquisition of the Reacquired Property by Developer: (a) Ongoing Matters and any other obligations of Developer that are addressed by the terms of the Guaranty; (b) the release provided for the benefit of the City pursuant to Section 4.5.2(f); (c) the obligation to return any written Due Diligence Information to the City as provided in Section 14.3; (d) the obligation to indemnify, defend and hold harmless the City Indemnified Parties as provided in Article 10 for matters arising or related to the period of time prior to the conveyance of the Reacquired Property to the City; (e) Developer's obligation to indemnify, defend and hold harmless the City Indemnified Parties as provided in Section 5.5 as to a Parcel for matters arising or related to the period prior to the Close of Escrow for such Parcel, and such liability and obligations shall survive the close of escrow and shall not be merged into the quitclaim deed, it being acknowledged and agreed that all other obligations under this Agreement related to the Reacquired Property shall be released and terminated as of the date on which the Required Property is conveyed to the City. In no event shall the Guaranty provided at the Close of Escrow for the relevant phase (or any Guaranty approved by the City in its sole discretion as a replacement for such original Guaranty) to secure the obligations of Developer under this

Agreement and the Other Agreements with respect to the portion of the Property containing the Reacquired Property be released or terminated as a result of the exercise by the City of the Right of Repurchase. Following the close of escrow with respect to the Reacquired Property, under no circumstances shall Developer have any right or claim to, or against, the Reacquired Property. Notwithstanding the purchase of the Reacquired Property by the City as provided in this Section 16.3, this Agreement shall remain in full force and effect with respect to the portions of the Property not purchased by the City.

16.3.5 **Rights of Third Parties**. The Right of Repurchase shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of (a) any Mortgage upon the Parcels or Improvements, except that with respect to a lien that is a Construction Loan secured by a Permitted Mortgage, the implementation of the Right of Repurchase shall be subject to the terms of the Subordination Agreement, and the Repurchase Price paid by the City hereunder shall be paid directly to the applicable Permitted Mortgagee (or, if there shall be more than one Permitted Mortgagee, to the Permitted Mortgagee that the City has been notified is the holder of the first priority Permitted Mortgage encumbering the applicable Property), and (b) all other liens including Construction Liens that may attach to the Development Parcels or the Improvements thereon. The Right of Repurchase shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., Persons other than Developer or Developer Affiliates) granted pursuant to Transfers approved by the City (or constituting Permitted Transfers) and Recorded on the portion of the Property for which the City exercises its rights under this Section 16.3. The Reacquired Property acquired by the City shall be delivered to the City at close of escrow free and clear of all Mortgages including Permitted Mortgages and all other liens, including Construction Liens (other than City Liens and Lien Release Amounts that are actually deducted from the Repurchase Price paid by the City), and subject only to (w) the Permitted Exceptions in effect at the time of the original Close of Escrow for such Property, (x) utility easements and/or roadway easements, (y) other matters affecting title consented to or requested by any Governmental Authority with respect to the Property in connection with development of the Property, or requested by the City and any covenants recorded in order to comply with the Entitlements, and (z) the DA and Other Agreements recorded in accordance with the terms of this Agreement.

16.4 **Right of Reversion**.

In the event of the occurrence of any Reversion Action Trigger (defined in Section 16.4.1) in addition to its other rights or remedies as a result of the occurrence of any such Reversion Action Trigger, and notwithstanding that the Reacquired Property may be encumbered by Construction Liens and/or Permitted Mortgages, the City shall have the right, during the time period set forth in Section 16.4.1, on the terms and subject to the conditions set forth in this Section 16.4, to re-enter and take possession of the applicable Reacquired Property or any portion thereof and to revest title thereto in the City (the "**Right of Reversion**") which right shall be exercised only in accordance with the terms of this Section 16.4. Notwithstanding anything to the contrary contained herein, prior to the Phase 2 Property Close of Escrow, if the Optionee and Phase 1 Developer are Related Parties, the exercise by the City of the Right of Reversion with respect to Phase 1 or any portion thereof shall terminate the Option as further set forth in Section 16.4.1. In all other cases, the Phase 1 Project and the Phase 2 Project shall not be cross-defaulted with one another hereunder, and the Right of Reversion with respect to all or a portion

of the Phase 1 Property shall not result in a Right of Reversion with respect to all or a portion of the Phase 2 Property, and vice versa. Any revesting of the Reacquired Property by the City whether based on voluntary action of Developer or otherwise after notice by the City of its intent to exercise the Right of Reversion is referred to herein as a "**Reversion Event**" and, for avoidance of doubt, the Reversion Event shall occur on the date upon which fee title to the Reacquired Property vests in the City. Subject to the time limitations for exercise of the Right of Reversion set forth in Section 16.4.8, the City shall be entitled to exercise the Right of Reversion at any time on or after the occurrence of any of any one or more of the Reversion Action Triggers; provided that the City has complied with the conditions to such reversion set forth in Section 16.4.2. The occurrence of a Revision Action Trigger shall be a Material Default under this Agreement.

16.4.1 **Certain Defaults Triggering the Right of Reversion**. The Right of Reversion shall remain in effect with respect to each Phase from the Close of Escrow with respect to such Phase until the Equity Completion Date applicable to such Phase, provided that prior to the Phase 2 Property Close of Escrow, if the Optionee and Phase 1 Developer are Related Parties, then upon the exercise by the City of the Right of Reversion with respect to Phase 1 or any portion thereof the Option and the Phase 2 Provisions shall be suspended and upon the occurrence of the Reversion Event, the Option and the Phase 2 Provisions shall be deemed to have terminated and to be of no further force or effect (provided that for so long as the Phase 1 Provisions remain in effect and the City shall remain the owner of the Phase 2 Property, the termination of the Phase 2 Provisions shall not affect the obligations of the City under this Agreement, if any, to the Phase 1 Developer with respect to the Phase 2 Property), and the provisions of Section 15.3 shall apply. In all other cases, exercise by the City of the Right of Reversion with respect to a Phase shall not apply with respect to or affect the rights of the Developer of the other Phase unless the City specifically exercised the Right of Reversion with respect to such other Phase or portion thereof following a Reversion Action Trigger with respect to such other Phase. The City may exercise the Right of Reversion if it elects to do so with respect to only the Parcel affected by the Material Default and any Improvements thereon and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any Governmental Authority or quasi-Governmental Authority, and all other appurtenant rights applicable thereto upon the occurrence of any of the following (each, a "**Reversion Action Trigger**," and the date on which the Reversion Action Trigger occurs shall be referred to herein, as the "**Reversion Action Trigger Date**").

(a) Developer fails to (i) commence construction of the Minimum Horizontal Improvements within six (6) months after the Construction Period Commencement Date for the Phase 1 Parcel, or (ii) to Complete the Minimum Horizontal Improvements (other than the final cap/pave for the roadways on the Property) within twenty-four (24) months after the Construction Period Commencement Date for the Phase 1 Parcel, as each such date may be extended for Force Majeure Delay;

(b) Developer fails to commence construction of the Minimum Phase 1 Vertical Improvements within twelve (12) months after the Construction Period Commencement Date for the Phase 1 Parcel, as such date may be extended for Force Majeure Delay;

(c) Developer fails to commence construction of the Phase 2 Horizontal Improvements within six (6) months after the Construction Period Commencement Date for the Phase 2 Parcel as such date may be extended for Force Majeure Delay.

(d) Developer fails to commence construction of the Minimum Phase 2 Vertical Improvements within twelve (12) months after the Construction Period Commencement Date for the Phase 2 Parcel, as such date may be extended for Force Majeure Delay;

(e) Developer fails to Complete construction (i) of the Minimum Phase 1 Vertical Improvements within forty-eight (48) months after the Construction Period Commencement Date for the Phase 1 Parcel as such date may be extended for Force Majeure Delay or (ii) of the Minimum Phase 2 Vertical Improvements within forty-eight (48) months after the Construction Period Commencement Date for the Phase 2 Parcel as such date may be extended for Force Majeure Delay; provided that in each case, such Completion date shall not under any circumstances be later than the date that is sixty (60) months after the Close of Escrow for such Parcel (which date shall not be extended for Force Majeure Delay);

(f) Developer commits physical waste on the Property or any portion thereof and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2, subject to extension for Force Majeure Delay;

(g) Developer abandons or substantially suspends (except for suspensions resulting from Force Majeure Delay) construction of the Phase 1 Project or the Phase 2 Project, as applicable, for a period of one hundred eighty (180) consecutive calendar days, and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2. Nothing in this Section 16.4.1(g) shall extend the terms of Section 16.4.1(a), (b), (c) or (d) above;

(h) The occurrence of a Developer Insolvency Event; or

(i) With respect to any Guarantor which has provided a Guaranty to the City, the occurrence of a Guarantor Illiquidity Event or a City Guarantor Illiquidity Event, unless Developer shall, within the time period required thereby, provide substitute security meeting the requirements of Section 4.7; or

(j) Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.

16.4.2 **Conditions to Exercise of the Right of Reversion**. The City shall be entitled to exercise the Right of Reversion at any time on or after the applicable Reversion Action Trigger Date by providing written notice to Developer that the City elects to exercise its Right of Reversion, which notice shall state the date for the Reversion Event. The Reversion Event shall not take place until the earlier of (a) the date that is thirty (30) calendar days after Developer has had the opportunity to address the City Council at a public meeting regarding the Reversion Action Trigger or (b) if there is a Permitted Mortgage encumbering the Parcel, the expiration of the time period set forth in Section 17.6.3 for cure by the Permitted Mortgage of any Default resulting from a Reversion Action Trigger. In the event that, prior to the Reversion

Event, Developer, any Permitted Mortgagee with respect to the portion of the Property to which the Right of Reversion is applicable or any other Person on behalf of Developer either (x) cures the Reversion Action Trigger which is the basis for the City's exercise of its Right of Reversion or (y) Completes the Phase 1 Project or the Phase 2 Project, as applicable, prior to the date of the Reversion Event, such Right of Reversion shall cease and terminate with respect to such Reversion Action Trigger only.

16.4.3 **Exercise and Effect of Right of Reversion**.

(a) Cooperation. If the City exercises its Right of Reversion in accordance with the provisions of this Agreement, Developer and each Permitted Mortgagee shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the revesting of the Reacquired Property in the name of the City, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such revesting and the other provisions of this Section 16.4.

(b) Effect on Mortgages other than Permitted Mortgages and Construction Liens. A Reversion Event shall foreclose, defeat and render invalid each and every Construction Lien and Mortgage other than a Permitted Mortgage and upon the occurrence of a Reversion Event all Construction Liens and Mortgages other than Permitted Mortgages Recorded against or affecting all or any portion of the Reacquired Property shall be deemed to be automatically released and of no further force and effect with respect to the Reacquired Property.

(c) Effect on Permitted Mortgages. Concurrent with the Reversion Event, the City shall fully satisfy each and every Permitted Mortgage affecting the Reacquired Property, by paying to the Permitted Mortgagees, in the aggregate, the **lesser of** (a) the aggregate Permitted Mortgage Unpaid Balances of all Permitted Mortgages and (b) Two Million Dollars ($2,000,000) per Phase, which amount has been determined to be a reasonable estimation of the advances, costs and expenses incurred or to be incurred by the Permitted Mortgagees, in the aggregate, for each Phase prior to the Equity Completion Date for such Phase, or by causing such amounts to be paid by any third party, including any guarantor.

(d) Interpleader. The City shall have the right to satisfy its obligation pursuant to Section 16.4.3(c) by either interpleading, or causing any third party on City's behalf, including Guarantor, to interplead in a court of law the sums due and thereafter City and the Reacquired Property shall be deemed released from and the City shall be released from and have no further liability with respect to any Permitted Mortgagee of the Reacquired Property or Permitted Mortgage encumbering the Reacquired Property.

(e) Effect. If the City pays or interpleads the amount specified in Section 16.4.3(c), concurrently with the Reversion Event and the deposit of such amount with the court or payment of such amount to Permitted Mortgagee, (1) the Reversion Event shall foreclose, defeat and render invalid each and every Permitted Mortgage encumbering the Reacquired Property and upon the occurrence of a Reversion Event all Permitted Mortgages Recorded against or encumbering all or any portion of the Reacquired Property shall be deemed

to be automatically released and of no further force and effect with respect to the Reacquired Property and (2) promptly thereafter, each Permitted Mortgagee shall take all steps individually and collectively required to Record evidence of such release and termination with respect to each Permitted Mortgage encumbering all or any portion of the Reacquired Property.

16.4.4 **Sale of Reacquired Property**. Upon the revesting in the City of title to the Reacquired Property, the City shall use commercially reasonable efforts to resell the Reacquired Property as soon and in such manner as the City shall find feasible, in accordance with applicable State law, if any, and consistent with the objectives of this Agreement, to a qualified and responsible Person or Persons (as determined by the City in its sole discretion). Upon such resale of the Reacquired Property, or any part thereof, the proceeds thereof shall be applied in the following order and amounts to the extent of funds available and the City shall have no liability to Developer or any Person to the extent the balance is insufficient to pay any or all of the following amounts nor shall the City have any obligation to make payments to any Person except in accordance with the priorities and obligations set forth below:

(a) Delinquencies. First, to repayment in full of all delinquent tax and delinquent assessment liens with respect to the portion of the Reacquired Property sold;

(b) City Liens. Second, to repayment in full of City Liens and to reimburse the City for all costs and expenses incurred by the City in connection with the recapture, management, maintenance, repair, and resale of the Reacquired Property, or any part thereof and the enforcement of City's rights under this Agreement and the Other Agreements including City's exercise of the Right of Reversion, taxes, assessments, and other delinquent liens, if any, whether arising before or after the acquisition by the City of the Reacquired Property.

(c) Release of Liens. Third, to release all Claims affecting the Reacquired Property, including Claims asserted with respect to Construction Liens and/or Mortgages, in such amounts as may be determined by the City in its sole discretion to be required to satisfy such Claims or to reinstate service or work on the Reacquired Property, utility charges with respect to the Reacquired Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Reacquired Property; all costs of sale and marketing, including reasonable brokers' fees and costs incurred in the marketing and sale of the Reacquired Property; all legal fees and expenses; all escrow and title fees and costs; all survey and due diligence fees and costs; and any amounts otherwise owing to the City or any third party by Developer and/or any Successor Owner) with respect to the foregoing, in each case (x) whether arising prior to or following the acquisition by the City of the Reacquired Property and (y) only to the extent that the foregoing are not fully foreclosed or other terminated by or as a result of the exercise by the City of the Right of Reversion;

(d) Reimbursement to Developer. Fourth, to reimburse Developer in the amount of the Repurchase Price as determined in clause (a) of the definition thereof, after

deducting therefrom: (i) all amounts paid to Permitted Mortgagees or interplead by the City pursuant to Section 16.4.3(c) and (ii) all amounts paid pursuant to Section 16.4.4(a), (b), and (c), in each case to the extent such amounts are not already deducted as part of the formula in clause (a) of the Repurchase Price; and

(e) Balance Retained by the City. Any balance remaining after such reimbursements shall be retained by the City as its property.

The City shall have the right to satisfy its obligation pursuant to this Section 16.4.4 by either interpleading, or causing any third party on City's behalf, including purchaser, to interplead in a court of law the sums due. Upon sale of the Reacquired Property and distribution of the proceeds of such sale in accordance with the foregoing or interpleader of proceeds as aforesaid, the City shall be released from all liability and obligations under this Agreement and/or the Other Agreements with respect to the Reacquired Property.

16.4.5 **Release of Liability**. In the event the City exercises its Right of Reversion then upon the occurrence of the Reversion Event and compliance with the requirements of Sections 16.4.3, the City and the Developer owning the Reacquired Property shall each be released from all liability and obligations under this Agreement and the Other Agreements with respect to the Reacquired Property except for (a) the obligation of the City to comply with Section 16.4.4. upon sale of the Reacquired Property and (b) the following obligations of Developer, from which Developer shall not be released and which in addition shall continue to be "Guaranteed Obligations" as such term is defined in each Guaranty provided in connection with the acquisition of the Reacquired Property by Developer: (a) Ongoing Matters and any other obligations of Developer that are addressed by the terms of the Guaranty; (b) the release provided for the benefit of the City pursuant to Section 4.5.2(f); (c) the obligation to return any written Due Diligence Information to the City as provided in Section 14.3; (d) the obligation to indemnify, defend and hold harmless the City Indemnified Parties as provided in Article 10 for matters arising or related to the period of time prior to the conveyance of the Reacquired Property to the City; (e) Developer's obligation to indemnify, defend and hold harmless the City Indemnified Parties as provided in Section 5.5 as to a Parcel for matters arising or related to the period prior to the Close of Escrow for such Parcel, and such liability and obligations shall survive the close of escrow and shall not be merged into the quitclaim deed, it being acknowledged and agreed that all other obligations under this Agreement related to the Reacquired Property shall be released and terminated as of the date on which the Required Property is conveyed to the City. In no event shall the Guaranty provided at the Close of Escrow for the relevant phase (or any Guaranty approved by the City in its sole discretion as a replacement for such original Guaranty) to secure the obligations of Developer under the DDA and the Other Agreements with respect to the portion of the Property containing the Reacquired Property be released or terminated as a result of the exercise by the City of the Right of Reversion. Following the close of escrow with respect to the Reacquired Property, under no circumstances shall Developer or any Permitted Mortgagee have any right or claim to, or against, the Reacquired Property. Notwithstanding the revesting of the Reacquired Property by the City as provided in this Section 16.4, this Agreement shall remain in full force and effect with respect to the portions of the Property not revested by the City.

16.4.6 **Rights of Third Parties**. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of (a) any Mortgage upon the Parcels or Improvements, except that with respect to a lien that is a Construction Loan secured by a Permitted Mortgage, the implementation of the Right of Reversion shall be subject to the terms of the Subordination Agreement, if any, and (b) all other liens including Construction Liens that may attach to the Development Parcels or the Improvements thereon. The Right of Reversion shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., Persons other than Developer or Developer Affiliates) granted pursuant to Transfers approved by the City (or constituting Permitted Transfers) and Recorded on the portion of the Property for which the City exercises its rights under this Section 16.4. The Reacquired Property shall be delivered to the City at close of escrow free and clear of (a) all Mortgages that are not Permitted Mortgages, (b) all Permitted Mortgages if the payments described in Section 16.4.3(c) are made, and (c) all other Liens, including Construction Liens and subject only to (w) the Permitted Exceptions in effect at the time of the original Close of Escrow for such Property, (x) utility easements and/or roadway easements, (y) other matters affecting title consented to or requested by any Governmental Authority with respect to the Property in connection with development of the Property, or requested by the City and any covenants recorded in order to comply with the Entitlements, and (z) the DA and Other Agreements recorded in accordance with the terms of this Agreement.

16.4.7 **Continuation of Agreement**. This Agreement shall remain in full force and effect with respect to portions of the Property not revested in the City, but the termination of this Agreement shall be effective as of the date title to any portion of the Property and/or any Improvements thereon are revested in the City.

16.4.8 **Termination of Right of Reversion**. The right of the City to exercise the Right of Reversion with respect to any Phase of the Project or the Property comprising such Phase shall terminate and be of no further force and effect upon the occurrence of the Equity Completion Date with respect to such Phase.

16.4.9 **Waiver of Certain Matters**. Developer hereby (a) acknowledges that it has reviewed and understands the implications of each of the following sections of the California Code of Civil Procedure and (b) agrees that the City may exercise any and all of the rights contained in this Section 16 without such exercise constituting an "action" under any of Sections 580a, 580b, 580d, or 726 of the Code of Civil Procedure or any case interpreting any of said Sections or any doctrine or defense based in whole or in part on such sections of the Code of Civil Procedure and Developer hereby waives its right to assert and agrees not to assert any position or defense based in whole or in part upon such sections of the Code of Civil Procedure and hereby waives any benefit of such sections of the Code of Civil Procedure as might otherwise apply.

16.5 **Cooperation of Developer**.

If the City exercises its Right of Repurchase or Right of Reversion in accordance with the provisions of this Agreement, Developer shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or desirable

under applicable law to consummate the repurchase or revesting of the Reacquired Property, as the case may be, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such transactions.

17. Mortgages and Mortgagee Protection.

17.1 Transfers to Permitted Mortgagee.

17.1.1 Generally.

(a) Prior to the Recording of the relevant Certificate of Compliance, Developer shall be permitted to Mortgage the Phase 1 Property and the Phase 2 Property only as set forth in this Article 17. Any Mortgage or other encumbrance of the Parcel in violation of this Section 17.1 shall be a prohibited Transfer and a Material Default by Developer.

(b) Prior to the Recording of the relevant Certificate of Compliance, neither this Agreement, nor the Development Parcels (nor any portion thereof) for which a Certificate of Compliance has not been Recorded nor the Improvements thereon, shall be cross-collateralized with any other contract or real or personal property, nor shall this Agreement or the Development Parcels (or any portion thereof) for which a Certificate of Compliance has not been Recorded or the Improvements thereon serve as additional security for any other loan by a Mortgagee, nor any other debt of Developer. Developer may elect to separately finance Phase 1 and Phase 2. Developer may collaterally assign its interest in this Agreement with respect to a Phase to a Permitted Mortgagee pursuant to a Permitted Mortgage if required as a condition to the making of a Construction Loan with respect to such Phase, provided that any such financing shall be subject to, and shall comply with, all the terms and conditions of this Agreement, including the limitations on cross-default set forth in Section 17.1.1(c).

(c) A Permitted Mortgage otherwise permitted by this Agreement may not include as collateral any real property other than the Property and may not be cross-collateralized or cross defaulted with any other Mortgage encumbering property that is not collateral for the Permitted Mortgage nor may any Construction Loan or Permitted Mortgage securing such loan cross-collateralize the Phase 1 Parcel and the Phase 2 Parcel, and each of the Phase 1 Parcel and Phase 2 Parcel shall be separately collateralized, such that a default by Developer with respect to Phase 1 or Phase 2 shall not trigger or be considered a default thereunder with respect to the other Phases of the Project.

(d) Prior to Recording of a Certificate of Compliance as to a Parcel, Developer shall not convey the Property associated with such Parcel or any portion thereof to a third party for purposes of a sale-leaseback transaction.

(e) Prior to the Recording of a Certificate of Compliance with respect to a Phase, Developer shall not encumber any Parcel or any portion thereof or any Improvements thereon with any Mortgage, unless such Mortgage is a Permitted Mortgage made by a Permitted Mortgagee that secures a Construction Loan (and no other loan or obligation) that has been approved by the City in its sole discretion as complying with the requirements of this Agreement and in all particulars satisfying each and every requirement of this Article 17.

(f) Except as set forth in Section 17.1.1(g) with respect to Building Pads for a Build-to-Suit User, in the aggregate there may be no more than two Construction Loans with respect to the Phase 1 Property and no more than two Construction Loans with respect to the Phase 2 Property and each such Construction Loan shall be secured by the entirety of the applicable Phase excluding portions for which a Certificate of Compliance has been issued or for which the provisions of Section 17.1.1(g) apply. In the aggregate, the Construction Loans with respect to each of Phase 1 and Phase 2 shall meet the following requirements: (i) the total loan to cost ratio at the time of the encumbrance of the applicable Phase of the Property (counting both Construction Loans on any Phase if there is more than one Construction Loan on that Phase) shall not exceed sixty five percent (65%) and no second Construction Loan shall be permitted if at the time the second Construction Loan is proposed the first Construction Loan meets or exceeds such loan to cost ratio with respect to the applicable Phase, (ii) the terms of each Construction Loan shall be consistent with the Financing Plan approved by the City for the applicable Phase, (iii) neither the Property nor the Improvements thereon shall serve as collateral for any loan other than the Construction Loans described in this Section, and (iv) there shall be no other Mortgages.

(g) With respect solely to a Construction Loan for a Building Pad for which Developer has either sold or leased to, or is under binding contract (which may be subject to contingencies related to financing, conveyance, or construction) to sell or lease to, a Build-to-Suit User, and which is not secured by or has been released from the Construction Loans described in Section 17.1.1(f), the provisions of Section 17.1.1(f) shall apply except that (i) there shall be no more than one (1) Construction Loan with respect to the Building Pad and Improvements thereon, (ii) neither the Building Pad nor the Improvements thereon shall serve as collateral for any other loan, including any other Construction Loan and (iii) the Construction Loan secured by a Permitted Mortgage may exceed the 65% loan to cost ratio at the time of encumbrance but shall not exceed a loan to cost ratio at the time of encumbrance of eighty percent (80%).

(h) In order to provide the City with information necessary to inform its right to confirm, in its sole discretion, that a proposed loan is a Construction Loan, that a proposed Mortgagee is a Permitted Mortgagee and that a proposed Mortgage is a Permitted Mortgage pursuant to this Section, Developer shall provide to the City within the time period set forth in Section 17.1.2:

(i) The names of the proposed Mortgagee, and if not a Qualified Institutional Lender, the names of the participants;

(ii) Drafts of all proposed documents relating to the proposed Mortgage;

(iii) Current construction budgets for proposed costs of construction and related materials such as proposed construction contracts in connection with Developer's calculations of the relevant loan to cost requirements.

(iv) Such other relevant information as the City may request in its reasonable discretion in connection with its approval rights under this Agreement.

17.1.2 **Permitted Mortgages**. The following shall apply to every Mortgage made with respect to portions of the Property for which no Certificate of Compliance has been issued by the City, the Improvements thereon, or any portion thereof:

(a) A Mortgage shall be a Permitted Mortgage under this Agreement and a Mortgagee shall be a Permitted Mortgagee entitled to a Transfer under this Agreement if the City determines in its sole discretion that: (i) such Mortgagee is a Qualified Institutional Lender or (ii) such Mortgagee is a lender that is regularly engaged in the business of making or owning (or, in the case of a fund advisor or manager, advising or managing with respect to a fund that is regularly engaged in the business of making or owning) commercial real estate loans (including mezzanine loans with respect to commercial real estate), originating preferred equity investments or owning or operating commercial properties, which Person is identified in and approved by the City in its sole discretion in connection with its approval of the Financing Plan for the relevant Phase approved by the City in Section 4.6.1; (ii) the Mortgage shall be a Construction Loan and the terms of the Mortgage and all of the loan documents executed in connection with the loan shall be consistent with such Financing Plan and the requirements of Sections 8.5 and 17.1 of this Agreement; (iii) complete copies of all of the loan documents have been reviewed by the City and the City has determined that such loan documents comply with the requirement of this Section 17.1 and, if applicable, Section 17.3; and (iv) the loan proceeds will be used solely to finance the acquisition of the Property and/or construction of the Improvements and for associated costs and expenses that directly relate to the Project (including financing costs) and for no other purpose. If requested by a Permitted Mortgagee, the loan documents shall include a Subordination Agreement executed by the Permitted Mortgagee and the City and acknowledged in recordable form, which agreement shall be in the form and substance of the Subordination Agreement attached hereto as Attachment 24 unless otherwise agreed by the City and such Permitted Mortgagee, each in its sole discretion, which shall be Recorded at the Close of Escrow for the portion of the Property being so encumbered, immediately after the Permitted Mortgage is Recorded.

(b) At least fifteen (15) Business Days prior to entering into any Mortgage, Developer shall deliver to the City drafts (and at least five (5) Business Days prior to entering into any Mortgage, Developer shall cause to be made available to the City proposed Mortgagee's loan documents in substantially the form and substance of the final forms of such documents, red-lined to show changes from the drafts reviewed by the City; and shall cause to be made available final forms or indicate no change in the previously submitted forms prior to the execution thereof), including all documents and guaranties securing the interest of the Mortgagee, and such other information as may be reasonably requested by the City to confirm the matters that require the City's determinations described in this Section 17.1.2. The City shall determine in its sole discretion whether the loan documents for a proposed Permitted Mortgage comply with the requirements of this Agreement, including:

(i) Whether the proposed Mortgagee is a Qualified Institutional Lender or, if the proposed Mortgagee is not a Qualified Institutional Lender, whether the proposed Mortgagee was identified and approved in connection with the City's approval of the relevant Financing Plan and in each case whether the proposed Mortgagee is a Permitted Mortgagee and whether the proposed Mortgage is a Permitted Mortgage.

(ii) Whether the Mortgage proposed by Developer complies with the terms of this Agreement.

17.2 **Acknowledgment by City of Permitted Mortgagee**.

Within fifteen (15) Business Days following the Developer's delivery of the loan documents and information required under Section 17.1.2: (a) the City shall acknowledge receipt of the same and receipt of the address of any Mortgagee (or proposed Mortgagee), (b) the City shall confirm in writing to Developer whether the proposed Mortgagee is a Permitted Mortgagee, or explain why the City considers the proposed Mortgagee not to be a Permitted Mortgagee, and (c) the City shall confirm in writing to Developer whether it has determined if the loan documents comply with the requirements of Sections 17.1 and 17.3 or explain why the City considers the loan documents not to comply.

17.3 **Change in Loan Documents**.

Following approval by the City of loan documents in connection with its approval of a Permitted Mortgage, but prior to closing of the Construction Loan evidenced by such loan documents, Developer shall not modify or agree to modify those loan documents without the prior written approval of the City, in its sole discretion. In addition, as to each Mortgage, Developer shall, within five (5) Business Days following execution of same, provide written notice to the City, in accordance with Section 18.6, of each and every instrument which effects or purports to effect an amendment, modification, waiver, postponement, extension, replacement, renewal or termination of any of the loan documents associated with such Mortgage or other terms and conditions of the loan, which notice shall include a full and complete copy of each such instrument. Notwithstanding its receipt of such notice, the City shall not be bound by any amendment, modification, waiver, postponement, extension, replacement, renewal or termination of any of the loan documents associated with any Mortgage unless it shall have given its prior written consent thereto; provided that nothing herein shall obligate Developer to seek City's consent nor City to grant such consent.

17.4 **Initial Notice**.

Developer or any Permitted Mortgagee shall provide the City notice, in accordance with the provisions of Section 18.6, of the name and address of such Mortgagee, and shall cause to be made available a copy of the executed loan documents for such Mortgage, but the failure to provide such notice shall not affect the protections provided for under this Agreement to any Permitted Mortgagee.

17.5 **Foreclosure Transfers**.

If a Permitted Mortgagee or its affiliate acquires any Foreclosed Collateral as a result of a Foreclosure, the provisions of Section 17.6 and the Subordination Agreement, if any, shall be applicable to such acquisition and the rights and obligations of such Permitted Mortgagee or its affiliate. With respect to a Transfer to an Approved Foreclosure Transferee, the provisions of Section 2.2.2(h) shall apply. No Transfer to a Foreclosure purchaser that is not an Approved Foreclosure Purchaser shall be a Permitted Transfer and Transfers to all other purchasers at Foreclosure shall be subject to the provisions of Section 2.2 and/or 2.2.3 and shall require the

consent of the City in its sole discretion to be effective and any such Transfer shall be void and of no force and effect if City consent is not obtained prior to the Transfer. All of the provisions contained in this Agreement shall be binding upon and benefit any Person which acquires title to all or any portion of the Property, including as a result of Foreclosure and provided that such Person either is an Approved Foreclosure Transferee or is subsequently approved by the City in writing as aforesaid and assumes the obligations of Developer under this Agreement in accordance with Section 2.2.2(h) or Sections 2.2 and 2.2.3, the City shall recognize such Transferee as Developer under this Agreement.

17.6 **Mortgagee Protections**.

Each Permitted Mortgagee of a then-existing Permitted Mortgage affecting a portion of the Property which has provided notice to the City as required by Section 17.4 shall, until its Permitted Mortgage is satisfied of record or until written notice of satisfaction is given by the Permitted Mortgagee to the City or it ceases to be a Permitted Mortgagee, be entitled to the following:

17.6.1 Provision of concurrent notice of any default by any Party hereunder; provided, however, that a failure of a Party to deliver a concurrent copy of such notice of default to the Permitted Mortgagee shall not affect in any way the validity of the notice of default as it relates to the defaulting Party, but in any subsequent proceedings arising from or related to the notice of default with respect to which there was a failure to provide the requested concurrent notice to the Permitted Mortgagee, the interest of the Permitted Mortgagee and its lien upon the affected Property shall not be affected in any way until such time as it has received proper notice and all cure periods with respect thereto have expired, and provided, further, the giving of any notice of default or the failure to deliver a copy to any Permitted Mortgagee shall in no event create any liability on the part of the Person so declaring a default.

17.6.2 The right, but not the obligation, at any time prior to the earlier to occur of the consummation of the Right of Repurchase and/or the Reversion Event, the foreclosure of the City Lien or the termination of this Agreement and without payment of any additional penalty or assumption of the obligations of Developer under this Agreement, to cure or remedy such Potential Default or Material Default, to effect any insurance, to pay any amounts due to the City, to make any repairs or improvements, to do any other act or thing required of Developer under this Agreement and to do any act or thing which may be necessary and proper to be done in the performance and observance of this Agreement to prevent termination of this Agreement. To carry out the foregoing, Developer hereby agrees that from and after Close of Escrow for the applicable Parcel until acquisition of such Parcel or any portion thereof by the City pursuant to the Right of Repurchase or Right of Reversion or otherwise, such Permitted Mortgagee and its agents and contractors shall have full access to the Parcel for purposes of accomplishing any of the foregoing. Any of the foregoing done by such Permitted Mortgagee shall be as effective to prevent a termination of this Agreement, foreclosure of the City Lien or the exercise by the City of the Right of Repurchase or the Right of Reversion as the same would have been if done by Developer.

17.6.3 Notwithstanding any other provision of this Agreement to the contrary, if any Material Default shall occur which, pursuant to any provision of this Agreement, entitles

the City to terminate this Agreement as to a Phase or any portion thereof following Close of Escrow with respect thereto, and/or to exercise its Right of Repurchase or Right of Reversion, the City shall not be entitled to terminate this Agreement or to exercise its Right of Repurchase or Right of Reversion unless (a) the City, following the expiration of any periods of time given Developer in this Agreement to cure such Material Default, shall have given written notice to such Permitted Mortgagee stating the City's intent to terminate this Agreement or exercise the Right of Repurchase or Right of Reversion (a "**Notice to Mortgagee**"), and (b) such Permitted Mortgagee shall fail to do any of the following:

(a) within one hundred and eighty (180) calendar days after delivery of the Notice to Mortgagee, cure the Material Default if the same consists of the nonperformance by Developer of any covenant or condition of this Agreement requiring the payment of money by Developer to the City, other than payments required under Sections 4.2 or Article 7 (provided, however, that nothing set forth in this Agreement shall restrict or limit the right of City to exercise its Governmental Capacity remedies with respect to the Entitlements or any bond issues in favor of the City); and

(b) if the Material Default is not of the type described in Section 17.6.3(a), either, in such Permitted Mortgagee's sole discretion, (i) cure such Material Default, if the same is capable of being cured within a one hundred and eighty (180) calendar day period, or (ii) or if such Material Default is not capable of cure without ownership or control of the Property or is not of a nature that it can be cured within such one hundred and eighty (180) day period, commence a Foreclosure within one hundred and eighty (180) days after delivery of the Notice to Mortgagee, and thereafter diligently pursue to completion, steps and proceedings to such Foreclosure; provided that except as extended by Section 17.6.4, such Foreclosure shall be completed within a maximum of one (1) year following the commencement of such Foreclosure proceeding. Any Material Default which does not involve a covenant or condition of this Agreement requiring the payment of money by Developer to the City shall be deemed cured if any Permitted Mortgagee shall diligently pursue to completion a Foreclosure in accordance with the time periods set forth above, and shall, upon acquiring fee title to all or any portion of the Property, thereafter undertake its obligations (if any) with respect such portion of the Property pursuant to Section 17.6.2. For the avoidance of doubt, (A) any Default by the Developer that due to passage of time is not susceptible to cure by the Approved Foreclosure Transferee upon its acquisition of the Foreclosed Collateral shall be deemed waived, and (B) following a Foreclosure, the entity that is then the Developer shall not be in default hereunder with respect to any failure to meet any time requirement in the Schedule of Performance that has expired as of the date of the Foreclosure, and the applicable Approved Foreclosure Transferee and the City shall endeavor to agree in good faith on a revised Schedule of Performance to be applicable to such Approved Foreclosure Transferee following such Foreclosure giving due regard to the circumstances in existence at such time.

17.6.4 If such Permitted Mortgagee is prohibited from commencing or prosecuting Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer or any direct or indirect owner of Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 17.6.3(b)(ii) for commencing or prosecuting a Foreclosure or other

proceedings relating to insolvency shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Material Default required by Section 17.6.3(b)(i) above and shall continue to perform and/or cure all such obligations as and when the same fall due. Notwithstanding anything to the contrary in this Section 17.6, if the Foreclosure is not consummated on or before the date that is eighteen (18) months after the date of the Notice to Mortgagee, then at any time after such date (which shall not be extended by any Bankruptcy of Developer or any Force Majeure Delay), the City may (in its sole discretion) consummate a Right of Repurchase or Reversion Event if such action is otherwise permitted by this Agreement.

17.6.5 No Permitted Mortgagee shall have the right to use the failure of the City to provide notice to any other Mortgagee as a claim, defense or estoppel to application of these provisions with respect to such Permitted Mortgagee's Permitted Mortgage.

17.7 **Failure of Permitted Mortgagee to Cure**.

If Developer shall have failed to cure any Material Default following the applicable Close of Escrow within the time periods for such cure set forth in Article 14, and any notice required by Section 17.6.1 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 17.6.3, the City may, at its option, upon thirty (30) calendar days' written notice to Developer and such Permitted Mortgagee either: (a) purchase the Reacquired Property pursuant to the Right of Repurchase set forth in Section 16.3; (b) subject to the conditions to exercise of such reversion set forth in Section 16.4.2, exercise its Right of Reversion with respect to Reacquired Property pursuant to Section 16.4 or (c) exercise any other rights or remedies provided to the City by this Agreement.

17.8 **Condemnation or Insurance Proceeds**.

Except as otherwise expressly set forth in this Agreement, the rights of any Permitted Mortgagee pursuant to its Permitted Mortgage to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired. All awards and proceeds payable to Developer in connection with a condemnation of all or any applicable portion of the Property shall be applied as required pursuant to the terms and conditions of the applicable loan documents executed in connection with the Permitted Mortgage; provided nothing herein shall affect or apply awards or proceeds payable to the City.

17.9 **Loss Payable Endorsement to Insurance Policy**.

The City agrees that the name of any Permitted Mortgagee (or in the event there is a lead Mortgagee with respect to a Permitted Mortgage, the lead Mortgagee only) may be added as the primary loss payee to the "Loss Payable Endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement, and that all such insurance proceeds payable to Developer shall be applied as required pursuant to the terms and conditions of the applicable loan documents executed in connection with the Permitted Mortgage, provided that nothing herein shall affect or apply to insurance proceeds payable to the City.

17.10 **Subordination Agreement**.

Notwithstanding anything to the contrary contained in this Agreement, the rights of the Parties and any Permitted Mortgagee(s) hereunder shall be subject in all cases to the terms of any Subordination Agreement(s) executed by the City. In the event of any specific conflict in the language between this Agreement and the Subordination Agreement, the Subordination Agreement shall control.

17.11 **Constructive Notice and Acceptance**.

Until such time as a Certificate of Compliance is Recorded with respect to the Property and subject to the provisions of Article 2 or this Article 17 and the terms of any Subordination Agreement, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires fee title to a portion of the Property that has not received a Certificate of Compliance. Upon acquisition of fee title to an interest in the Property or any portion thereof by a Person, other than a Permitted Mortgagee which is not assuming the obligations of Developer under this Agreement, acquiring title through Foreclosure, the acquiring Person and the City shall meet and confer in good faith to revise the Schedule of Performance as reasonably necessary to provide adequate time for such Person to satisfy the obligations of Developer hereunder.

17.12 **Bankruptcy Affecting the Developer**.

Developer and City hereby agree that this Agreement (including the Right of Repurchase and Right of Reversion contained herein), the Quitclaim Deed(s) and the Other Agreements shall contain and consist of covenants running with the land and that neither this Agreement, the Quitclaim Deed(s) or the Other Agreements shall be subject to rejection in bankruptcy, and Developer hereby waives its rights to reject this Agreement, Quitclaim Deed(s) and the Other Agreements in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for Developer seeks to and does reject this Agreement, the Quitclaim Deeds or the Other Agreements in connection with any proceeding involving Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Parties hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to the written acceptance by the most senior Permitted Mortgagee, be deemed the Developer's assignment of this Agreement, the rights under the Quitclaim Deeds and the Other Agreements and the Property corresponding thereto to the most senior Permitted Mortgagee or its nominee or designee in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment accepted by the Permitted Mortgagee holding the senior Permitted Mortgage with respect to the affected Property, subject to compliance with Section 2.2, and subject to the terms and conditions of Section 17.6.6 hereof, the same shall constitute a Foreclosure and such Permitted Mortgagee (or an affiliate thereof designated by such Permitted Mortgagee) shall be deemed to be the Mortgagee Purchaser under this Agreement as if the Bankruptcy Proceeding had not occurred.

17.13 **Notice and Cure Rights of City**.

Following the occurrence of an event of default under any Mortgage, the holder of the Mortgage shall promptly notify the City of the occurrence of such event of default, which notification shall be provided to the City contemporaneously with the delivery to Developer or its Assignee of any notice of default under any of Mortgage documents. The City shall have the right, but not the obligation, during the cure periods which apply to Developer pursuant to the Mortgage documents to cure default by Developer relative to the Mortgage. If the City elects to cure Developer's default, the Developer shall reimburse the City for all direct and actual costs and expenses incurred by the City in curing the default and any amounts paid by the City in curing such Developer's default shall, the extent not paid by Developer, be secured by the City Lien against the Development Parcels under this Agreement.

18. **General Provisions**.

18.1 **Applicable Law; Consent to Jurisdiction; Service of Process**.

This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles. Developer and City agree that any disputes arising between them in connection with this Agreement or in connection with or under any instrument, agreement or document provided for or contemplated by this Agreement, including in connection with the execution of this Agreement, a Close of Escrow or any other matter arising under, related to or in connection with this Agreement (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended by Developer and the City to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between or among Developer and the City with respect to or arising out of or related to this Agreement in any jurisdiction other than that specified in this Section 18.1. Each Party hereby waives any right that it may have to assert *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 18.1, and stipulates that the State and federal courts located in the County of Orange, State of California, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 18.1 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement, or in the manner set forth in Section 18.6 of this Agreement pertaining to notice. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

18.2 **Legal Fees and Costs**.

If any Party to this Agreement institutes any action, suit, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an

"**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (a) the Prevailing Party's reasonable attorneys' fees (which, if the Prevailing Party is the City, shall be payable at the actual contractual hourly rate for the City's litigation counsel at the time the fees were incurred, and which with respect to both the City and the Developer shall in no event be more than $200 per hour) and (b) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "**Costs**") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) post judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. "**Prevailing Party**" within the meaning of this Section 18.2 includes a Party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains from a court of competent jurisdiction substantially the relief sought by such Party.

18.3 **Memorandum of DDA; Modifications or Amendments**.

The Parties shall cause the Memorandum of DDA to be Recorded promptly following the Effective Date of this Agreement, payment of the Deposit and satisfaction by Developer of the requirements specified in Section 4.6.1(a). No amendment, change, modification or supplement to this Agreement shall be valid and binding on any of the Parties unless it is in writing and signed by each of the Parties hereto. From time to time the Parties (with the City Manager or his or her designee having delegated authority to act on behalf of the City) may by mutual written agreement (in the Parties' sole and absolute discretion) update any of the Attachments (other than Attachments 1, 2A, 2B and 5) and substitute such updated Attachment for the Attachment attached hereto as of the Effective Date, and such substitution shall not be deemed an amendment of this Agreement as a whole nor require the Recording of an amendment of the Memorandum of DDA.

18.4 **Further Assurances**.

Each of the Parties hereto shall execute and deliver, any and all additional papers, documents, or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of its obligations hereunder in order to carry out the intent and purposes of this Agreement.

18.5 **Rights and Remedies Are Cumulative; Limitation on Damages**.

18.5.1 **Cumulative Remedies**. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Material Default or any other Material Default by the other Party. Except as otherwise specifically set forth in this Agreement, and subject to Section 18.5.2, wherever a Party has a right to damages for the Material Default of another Party and/or a right of indemnification under this Agreement: (a) such damages shall be limited to direct (actual) damages for the Material Default of the other Party, and such indemnification shall be limited to direct actual losses of such Party and (b) each of the Parties, on behalf of itself and its successors and assigns, hereby expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary or punitive damages or losses (it being understood that consequential or punitive damages owed by such Party to a third party shall constitute direct actual damages or losses of such Party).

18.5.2 **Limitation on Damages Payable by the City**. Developer acknowledges that the City would not have entered into this Agreement if the City could become liable for significant damages under or with respect to this Agreement and the Other Agreements. Consequently, and notwithstanding any other provision of this Agreement, except for (a) the monetary damages that may arise from the City's obligations referenced below in Section 18.5.3, and (b) the payment of attorneys' fees and court costs in accordance with Section 18.2, the City shall not be liable in damages under this Agreement or any Other Agreement to Developer or to any Successor Owner and Developer hereby waives any and all rights to claim damages of any kind or nature from the City except as set forth in Section 18.5.3.

18.5.3 **Special Circumstances Where Damages may be Payable by the City**. The limitations set forth in Section 18.5.2 shall not preclude Developer from seeking (a) payment of amounts which the City is obligated to pay to Developer or Escrow Holder pursuant to Sections 1.8, 4.3.3(h) and (i), 7.5.1, 7.5.4, 14.3.2, 15.1.3, 15.3, 15.4.3 or 18.2 of this Agreement, provided that (i) the provisions of Section 18.5.1 shall apply to such claims and payments, and (ii) Developer shall not be entitled to any damages in addition to the actual amounts owed by City to Developer pursuant to this Agreement or the Other Agreements, or (b) damages which arise out of a breach of the City's representations and warranties contained in Sections 3.3 or 18.11.2 of this Agreement or breach of the City's covenants set forth in Sections 6.5(a) and 8.15 of this Agreement, provided that the amount of any damages payable pursuant to this subsection (b) shall be the lesser of (x) actual damages, or (y) Five Hundred Thousand Dollars ($500,000.00) or (c) damages that arise out of the exercise of any of the rights reserved to the City pursuant to Section 4.1(a)(i) or (ii) and as the same shall be included in each Quitclaim Deed.

18.5.4 **Right to Specific Performance**. In the event the City is in Material Default with respect to a portion of the Property conveyed to Developer or any obligation of City under this Agreement following Close of Escrow with respect to the Property so conveyed, Developer shall be entitled to seek specific performance or injunctive relief in order to enforce Developer's rights pursuant to this Agreement. For purposes of clarity, in the event that the City

is obligated to pay any amounts to Developer pursuant to this Agreement, including without limitation pursuant to Sections 1.8 and 7.5.4, and the City fails to pay such amounts to Developer as and when required by this Agreement, Developer shall be entitled to seek specific performance of such obligation, notwithstanding the other provisions of this Section 18.5.

18.6 **Notices, Demands and Communications between the Parties**.

All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered to the other Party; (b) three (3) Business Days after such notice has been sent by U.S. Postal Service via certified mail, return receipt requested, postage prepaid, and addressed to the other Party as set forth below; (c) the next Business Day after such notice has been deposited with an overnight delivery service reasonably approved by the Parties (Federal Express, Overnite Express, United Parcel Service and U.S. Postal Service are deemed approved by the Parties), postage prepaid, addressed to the Party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (d) when transmitted if sent by facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section 18.6 other than by facsimile or email (provided that the recipient Party need not receive such duplicate copy prior to any deadline set forth herein); or (ii) the receiving Party delivers a written confirmation of receipt for such notice either by facsimile, email or any other method permitted under this Section. Any notice given by facsimile or email shall be deemed received on the next Business Day if such notice is received after 5:00 p.m. (recipient's time) or on a non-Business Day. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

City:
Jeffrey C. Parker, City Manager
City of Tustin
300 Centennial Way
Tustin, CA 92780
Fax: (714) 838-1602
Email: jparker@tustinca.org

With a copy to:
David Kendig
Woodruff Spradlin & Smart, APC
555 Anton Boulevard, #1200
Costa Mesa, CA 92626
Fax: (714) 415-1183
Email: dkendig@wss-law.com

Developer:
David Binswanger
Flight Venture LLC
c/o Lincoln Property Company Commercial, Inc.
915 Wilshire Boulevard, Suite 2050
Los Angeles, CA 90017
Fax: (213) 538-0901

Email: dbinswanger@lpc.com

With a copy to: Parke Miller
Lincoln Property Company Commercial, Inc.
114 Pacifica, Suite 370
Irvine, CA 92618
Fax: (949) 333-2131
Email: pmiller@lpc.com

With a copy to: Gregory S. Courtwright
Lincoln Property Company Commercial, Inc.
2000 McKinney Avenue, Suite 1000
Dallas, TX 75201
Fax: (214) 740-3460
Email: gcourtwright@lpc.com

With a copy to: Mark Potter
Alcion Ventures
One Post Office Square, Suite 3150
Boston, MA 02109
Fax: (617) 603-1001
E-mail: mpotter@alcionventures.com

With a copy to: Amy Forbes and Douglas Champion
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Suite 4900
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E-mail: aforbes@gibsondunn.com / dchampion@gibsondunn.com

With a copy to: Andrew C. Sucoff
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Fax: (617) 523-1231
Email: asucoff@goodwinlaw.com

Any Party may by written notice to the other Party in the manner specified in this Agreement change the address to which notices to such Party shall be delivered.

18.7 **Delay**.

18.7.1 **Definition of Force Majeure Delay**. "**Force Majeure Delay**" shall mean the occurrence of any of the following events when such event is beyond the control of the First Party and such Party's officers, directors, employees, contractors, consultants, agents and representatives and is not due to an act or omission of such Party or its officers, directors, employees, contractors, consultants, agents or representatives, which directly, materially and adversely affects (a) the ability of the First Party to meet its non-monetary obligations under this

Agreement, including the deadlines imposed by the Schedule of Performance, or (b) the ability of Developer to Complete the Project, and which events (or the effect of which events) reasonably could not have been avoided by due diligence and use of commercially reasonable efforts by the Party claiming Force Majeure Delay:

(a) Civil Unrest. An epidemic, blockade, quarantine, rebellion, war, insurrection, act of terrorism, strike or lock-out, riot, act of sabotage, civil commotion, act of a public enemy, freight embargo, or lack of transportation;

(b) Unforeseeable Conditions. Reasonably unforeseeable physical condition of the Property including the presence of Hazardous Materials;

(c) Casualty. Fire, earthquake or other casualty, in each case only if causing material physical destruction or damage on the Property;

(d) Litigation. Any lawsuit seeking to restrain, enjoin, challenge or delay any issuance of any Entitlement or seeking to restrain, enjoin, challenge, or delay construction of the Project, which is defended by the claiming Party, provided however that the foregoing shall not apply to a Party's performance regarding the Close of Escrow, which are governed by Sections 7 and 15;

(e) Change of Law. The passage of a referendum or initiative that results in the inability of the First Party to perform its material obligations hereunder;

(f) Change in Governmental Requirements. Any change in Governmental Requirements or adoption of any new Governmental Requirements which is materially inconsistent with Governmental Requirements in effect as of the Effective Date, as described in the DA, and which applies to the Property or the Project after taking into account the provisions of the DA; and

(g) Weather. Unusually severe weather conditions not reasonably anticipatable for the City of Tustin, based upon U.S. Weather Bureau climatological reports for the months included plus a report indicating average precipitation, temperature, etc. for the last ten (10) years from the nearest reporting station.

18.7.2 **Limitation**. The term "**Force Majeure Delay**" shall be limited to the matters listed in Section 18.7.1 above and specifically excludes from its definition the following matters which might otherwise be considered Force Majeure Delay:

(a) Entitlements. The suspension, termination, interruption, denial or failure to obtain or nonrenewal of any Entitlement, permit, license, consent, authorization or approval which is necessary for the development of the Project, except for any such matter resulting from a lawsuit or referendum as described in Section 18.7.1(d).

(b) Previously Proposed Changes in Governmental Requirements. Any change in Governmental Requirements which was proposed prior to the Effective Date.

(c) Failure to Perform Obligations. Failure of Developer or any Successor Owner or other Person to perform any obligation to be performed by Developer or any Successor Owner or such other Person hereunder as the result of adverse changes in the financial condition of Developer or such Successor Owner or other Person, as applicable.

(d) Failure to Provide Financial Security. Failure of Developer or any Successor Owner to provide financial security required by this Agreement when due or to submit evidence of financing of the Project or failure to perform any obligation to be performed by Developer or any Successor Owner or other Person hereunder as the result of adverse changes in market conditions.

(e) Failure to Submit Required Documentation. Failure of the First Party to submit documentation as and when required by this Agreement.

(f) Failure to Submit Basic Concept Plan or Other Plans and Entitlements. Failure to submit a Basic Concept Plan and Concept Plan and Design Review submittals, and/or submittals for other Entitlements required for construction of the Improvements and/or development of the Project on the Property when required pursuant to the Schedule of Performance.

(g) Failure to Maintain Required Insurance. Failure to acquire, maintain and submit evidence of insurance policies as required by Article 11.

(h) Failure to Execute Documents. Failure of the First Party to execute documents.

(i) All Other Matters. All other matters not caused by the Second Party and not listed in Section 18.7.2.

18.7.3 **Procedure**. If any Party (the "**First Party**") believes that it is entitled to an extension of time due to Force Majeure Delay, it shall notify the other Party (the "**Second Party**") in writing within thirty (30) calendar days from the date upon which the First Party becomes aware of such Force Majeure Delay, describing the Force Majeure Delay, when and how the First Party obtained knowledge thereof, the date the event commenced, the steps the First Party anticipates taking to respond to such Force Majeure Delay, and the estimated delay resulting from such Force Majeure Delay and response. The extension for Force Majeure Delay shall be granted or denied in the Second Party's sole discretion. If the First Party fails to notify the Second Party in writing of its request for a given Force Majeure Delay within the thirty (30) calendar days specified above, any extension for such Force Majeure Delay shall be in the sole discretion of the Second Party.

18.7.4 **Extension of Time Periods**. Except as otherwise specifically set forth in this Agreement, all time periods under this Agreement, including the Schedule of Performance and the dates provided in Section 16.4, relating to non-monetary obligations under this Agreement shall be extended for Force Majeure Delay in accordance with this Section 18.7.

18.7.5 **Reversion Action Dates**. Notwithstanding any other provision of this Agreement to the contrary, the Reversion Action Trigger Date shall not be extended for Force Majeure Delays except to the extent specifically provided in Section 16.4.1.

18.8 **Conflict of Interest**.

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

18.9 **Non-liability of City Officials and City or Developer Employees**.

No elected or appointed official, representative, employee, agent, consultant, legal counsel or employee of the City shall be personally liable to Developer, or any successor in interest in the event of any Default or breach by the City for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement. No representative, agent, consultant, legal counsel or employee of Developer shall be personally liable to the City, or any successor in interest in the event of any Default or breach by Developer for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

18.10 **Consents and Approvals**.

18.10.1 **Consent**. In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which such Party's consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing. In addition, whenever not expressly otherwise stated: (a) the City, when acting in its Governmental Capacity shall be permitted to utilize its sole discretion with respect to matters requiring its approval except as otherwise specified in any applicable Governmental Requirements; (b) the City, when acting in its Proprietary Capacity shall not unreasonably withhold, condition or delay its approvals with respect to matters requiring its approval hereunder; and (c) Developer shall not unreasonably withhold, delay or condition its consent with respect to matters requiring its approval hereunder.

18.10.2 **Deemed Submitted**. Any matter required by this Agreement to be submitted to the City shall be deemed submitted upon the submittal to the City Manager or his or her designee.

18.10.3 **Action Taken**. Following its approval by the City, this Agreement shall be administered by the City Manager or the City Manager's designee. Except where the terms of this Agreement expressly require the approval of a matter or the taking of any action by the City Council, any matter to be approved by the City shall be deemed approved, and any action to be taken by the City shall be deemed taken, upon the written approval by the City Manager (or the City Manager's designee). The City Manager or the City Manager's designee shall have the authority to issue interpretations, clarifications and confirmations with respect to this Agreement and to determine whether any action requires the approval of the City Council.

All waivers, amendments or modifications of this Agreement shall require the approval of the City Council.

18.11 **No Real Estate Commissions**.

18.11.1 **Developer Representation and Indemnity.** Developer represents that it has engaged CBRE as Developer's broker for leasing to End Users of the Phase 1 Project. Developer represents that it has engaged no broker, agent or finder in connection with this Agreement or the transactions identified in this Agreement or the Other Agreement, other than as set forth in the immediately preceding sentence or as otherwise disclosed to the City in writing prior to the Effective Date. Developer hereby agrees to indemnify and hold the City and its elected and appointed officials, employees and representatives harmless from any losses and liabilities arising from or in any way related to any claim by CBRE as Developer's leasing broker with respect to the Phase 1 Project and any claim by any broker, agent, or finder including CBRE retained or alleged to have been retained by any Person regarding this Agreement or the Other Agreements or for sale, leasing or development of the Project or the transactions identified in this Agreement or the Other Agreements except with respect to the retention by City of CBRE or another broker as described in Section 18.11.2.

18.11.2 **City Representation and Indemnity.** The City represents that it has retained CBRE as the City's broker with respect to the sale of the Property, and that it has not and shall not engage any other broker, agent, or finder in connection with this Agreement, the Other Agreements, development of the Project or the transactions identified in this Agreement or the Other Agreements unless it shall first notify Developer in writing. City hereby agrees to indemnify and hold Developer harmless from any losses and liabilities arising from or in any way related to any claim by CBRE as the City's broker solely with respect to commissions due for the sale of the Property pursuant to this Agreement and any claim by any broker, agent, or finder retained by City for which City provides a written acknowledgement as aforesaid.

18.12 **Date and Delivery of Agreement**.

Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, executed and delivered for all purposes under this Agreement and for the calculation of any statutory time periods based on the date an agreement between the Parties is effective, executed and/or delivered, as of the Effective Date.

18.13 **Constructive Notice and Acceptance**.

Every Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such Person acquired an interest in the Project or Property.

18.14 **Survival of Covenants**.

The covenants and indemnities expressly specified in this Agreement shall survive the closing of the transactions contemplated hereby for any Phase until the earlier to occur of (a) termination of this Agreement with respect to such Phase, or (b) the issuance of a Certificate

of Compliance with respect to such Phase, unless otherwise expressly provided for in this Agreement.

18.15 **Construction and Interpretation of Agreement**.

18.15.1 **Construction**. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it. The provisions of California Civil Code Section 1654 are specifically waived by each Party hereto.

18.15.2 **Effect of Invalidity or Unenforceability**. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any Party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

18.15.3 **Captions**. The captions of the articles, sections, subsections and clauses in this Agreement are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

18.15.4 **References to Articles, Sections, Paragraphs, Subsections, Exhibits, Attachments and Schedules**. Unless otherwise indicated, references in this Agreement to articles, sections, paragraphs, subsections, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Agreement and all attachments and schedules referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

18.15.5 **Gender, Singular and Plural**. As used in this Agreement and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and vice versa.

18.15.6 **Includes and Including**. As used in this Agreement the words "include" and "including" mean, respectively, "include, without limitation" and "including, without limitation".

18.16 **Time of Essence**.

Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided that the foregoing shall not be construed to limit or deprive a Party of the benefits of any cure period or Force Majeure Delay expressly provided for in this Agreement.

18.17 **Fees and Other Expenses**.

Except as otherwise provided in this Agreement, each of the Parties hereto shall pay its own fees and expenses, including attorneys' fees, experts' fees and consultants' fees and costs, in connection with negotiation and preparation of this Agreement and compliance with its terms.

18.18 **No Partnership**.

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other relationship between the Parties hereto other than purchaser and seller according to the provisions contained in this Agreement, or cause the City to be responsible in any way for the debts or obligations of Developer.

18.19 **Binding Effect**.

This Agreement and terms, provisions, promises, covenants, conditions and restrictions contained herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

18.20 **No Third Party Beneficiaries**.

This Agreement has been made and entered into solely for the benefit of the Parties to this Agreement and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies on any other Person. Nothing in this Agreement relieves or discharges the obligation or liability of any third Persons to any Parties to this Agreement.

18.21 **Counterparts**.

This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Agreement shall not be effective until the execution and delivery by the Parties of at least one set of counterparts. The Parties agree to recognize execution of this Agreement by facsimile or other electronically transmitted signatures. The Parties hereby authorize each other (and Escrow Holder) to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

18.22 **Duplicate Originals, Entire Agreement and Waivers**.

18.22.1 **Duplicate Originals**. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

18.22.2 **Entire Agreement**. This Agreement, including the Attachments hereto, together with the Other Agreements, constitute the entire agreement between the Parties with respect to the subject matter hereof. This Agreement and the Other Agreements supersede and replace any and all prior agreements, proposed agreements, negotiations and communications, oral or written, relating to the subject matter hereof and contain the entire agreement between the Parties as to the subject matter hereof and any and all prior agreements, understandings or representations between the Parties and/or any Developer Affiliate are hereby terminated and canceled in their entirety. Each Party hereby acknowledges that no other Party hereto, nor its agents or attorneys, has made any promises, representations or warranties whatsoever, expressed or implied, not contained in this Agreement or the Other Agreements, to induce such Party to execute this Agreement, and each Party acknowledges that it has not executed this Agreement in reliance on any such promise, representation or warranty not contained in this Agreement or any Other Agreements. For the avoidance of doubt, this Agreement shall terminate and supersede the City's selection process for Cornerstone under the Disposition Strategy, the responses of Developer or any Developer Affiliate in connection therewith and the ENA, except that this Agreement does not supersede Sections 3.7, 4.5.2, 4.5.3, 10.1, and 10.12 of the ENA which shall remain in effect with respect to claims arising during or related to the term of the ENA.

18.22.3 **No Waiver**. No waiver of any provision or consent to any action under this Agreement shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically set forth in writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities for the City and Developer and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

18.23 **Confidentiality**.

18.23.1 **Public Records Act**. Subject to the provisions of the California Public Records Act (Government Code Section 6250 et seq.) (the "**Public Records Act**"), which governs the City's use and disclosure of its agreements and records, the City and the Developer hereby agree that each shall keep confidential information provided by the other and denominated as confidential and will not disclose any such information to any Person without obtaining the prior written consent of the other Party, except that (a) the City shall have the right to disclose any information contained in any third party reports produced or obtained by the Developer and required to be disclosed by it pursuant to law, (b) Developer shall have the right to disclose any Developer Excluded Information, (c) the City shall have the right to disclose any City Excluded Information, (d) Developer shall have the right to disclose to its consultants, members, and their respective consultants and members, any information to the extent necessary or desirable in connection with Developer's due diligence on the Property and performance of its obligations under this Agreement and the Other Agreements, (e) City shall have the right to

disclose to its officials, employees and City retained consultants and representatives all information received by it from Developer as required to perform its obligations under this Agreement and the Other Agreements, and (f) either Party shall have the right to disclose any information to the extent that it is legally required or compelled to do so provided that (to the extent permitted) it provides the other Property with prior notice of such disclosure obligation and cooperates with such other Party (at no cost or liability to the cooperating Party) in any attempts to obtain confidential treatment of such disclosed information. Developer's obligations pursuant to this Section 18.23 shall terminate upon the earlier of (i) termination of this Agreement, (ii) the Phase 2 Property Close of Escrow or (iii) if the Phase 2 Property Close of Escrow has not then occurred, the Phase 2 Property Outside Closing Date. Except with respect to material described in Section 18.23.2, the City's obligations pursuant to this Section 18.23 shall terminate upon the earlier of (x) the Phase 2 Property Close of Escrow or (y) if the Phase 2 Property Close of Escrow has not then occurred, the Phase 2 Property Outside Closing Date.

18.23.2 **Financial Information**. Developer shall identify with specificity any submitted financial documents (including loan and equity financing documents and Guarantor information) which Developer wants the City to maintain as confidential documents and a statement as to why the request is consistent and complies with the provisions of the Public Records Act. The City shall not disseminate such information and shall take all reasonable steps to maintain such confidentiality unless otherwise required by law. The City's staff, agents, negotiators and consultants may review the statements as necessary as long as such parties agree to maintain the confidentiality of such statements.

18.23.3 **Cooperation**. In the event that the City obtains a request pursuant to the provisions of the Public Records Act to disclose any of Developer's information which the City is required to keep confidential pursuant to the terms of this Agreement, the City shall provide Developer with prompt written notice thereof and the City and Developer shall cooperate at Developer's sole cost and expense to seek to avoid disclosure of such matters to the extent legally permissible pursuant to the provisions of the Public Records Act.

18.24 **Proprietary and Governmental Roles; Actions by Parties**.

Except where clearly and expressly provided otherwise in this Agreement, the capacity of the City in this Agreement shall be as owner, lessor, assembler, redeveloper and/or seller of property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Agreement on the City, shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the exercise by the City of its governmental authority with respect to any matter related to this Agreement which shall include the regulation and entitlement of the Property pursuant to Governmental Requirements, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("**Governmental Capacity**"). In addition, nothing in this Agreement shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Governmental Requirements.

18.25 **Performance of Acts on Business Days**.

In the event that the final date for payment of any amount or performance of any act under this Agreement falls on a day other than a Business Day, such payment may be made or act performed on the next succeeding Business Day.

[Signature page follows]

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date first set forth above.

"CITY"

City of Tustin

Dated: 11/15/16

By: _____
Jeffrey C. Parker
City Manager

ATTEST:

By: _____
Erica Rabe, City Clerk

APPROVED AS TO FORM

By: _____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Tustin Special Real Estate Counsel

By: _____
Amy E. Freilich

Dated: 11/15/16

"DEVELOPER"

Flight Venture LLC

By: _____

Name: Eugene DelFavero

Title: Authorized Signatory

Dated: 11/15/16

JOINDER OF ESCROW HOLDER

The undersigned is joining this Agreement to evidence its agreement to receive, hold and disburse the Purchase Price Deposit in accordance with the terms of this Agreement and otherwise to comply with the escrow instructions set forth in this Agreement.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____