

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Cypress  
5275 Orange Avenue  
Cypress, CA 90630  
Attn: City Manager

(For Recorder's Use Only)

Exempt from filing fee pursuant to Gov. Code § 27383

## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of November 25, 2019 by and between the CITY OF CYPRESS, a California charter municipality ("**City**"), and SP ACQUISITION, LLC, a California limited liability company ("**Developer**"). City and Developer are occasionally referred to herein jointly as the "**parties**" and individually as a "**party**". For and in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

### RECITALS

A. The Site. City owns approximately 13.329 acres of land located at 5095-5275 Katella Avenue, Cypress, California (APNs 241-091-022 through -026), which is within the City's municipal boundaries and more particularly shown and described in **Attachment A** hereto ("**Site**"). Pursuant to that certain *Exclusive Negotiation Agreement* (dated April 9, 2019) ("**ENA**"), City has entered into exclusive negotiations with Developer to reach an agreement for the acquisition of the Site, subject to specified conditions precedent set forth herein.

B. Site is Centrally Located for A Variety of Uses. The Site fronts the arterial of Katella Avenue and consists of multiple points of ingress and egress from the signalized intersections of Siboney Street and Winners Circle. The Site is located on a six-lane arterial Orange County Transit Authority "Smart Street" (Katella Avenue), and has easy regional access from major freeways including Highway 91, Interstate 405 and Interstate 605. A major retail magnet is already in place adjacent to the Site, Costco, which (as a chain) generates some of the highest consumer activity in the industry.

C. Developer's Conceptual Project. Developer is active in the planning of numerous developments throughout California, and currently owns substantial mixed-use assets, which are in various stages of development. The qualifications and identity of Developer are of particular concern to City, and it is because of such qualifications and identity that City has entered into this Agreement with Developer. Developer proposes a conceptual plan to design and construct a multi-family residential, mixed use project upon the Site (collectively, the "**Project**"). If this Agreement is approved, Developer plans to file applications and seek approval from City of several discretionary land use entitlements that would be necessary to develop the Project, which is anticipated to consist of the following components, including a total of approximately sixty three thousand nine hundred seventy-five (63,975) square feet of

commercial retail, restaurant and luxury cinema uses along with residential and hotel uses as follows:

1. The “**Residential Component**,” which shall be defined herein to consist of multi-family residential uses with a maximum density of twenty (20) dwelling units per acre, not to exceed a total of (251) multi-family dwelling units and related improvements.
2. The “**Hotel Component**,” which shall be defined herein to consist of that portion of the Site to be improved with the construction and operation of a single hotel tenant and related improvements with up to one hundred twenty (120) keys.
3. The “**Cinema Component**,” which shall be defined herein to consist of that portion of the Site to be improved with the construction and operation of a nationally-recognized cinema and related improvements.
4. The “**Retail Component**,” which shall be defined to consist of that portion of the Site to be improved with the construction and operation of general commercial retail, grocery (if such grocery uses are deemed feasible in Developer’s discretion) and/or restaurant use(s) and related improvements, but excluding hotel or cinema use(s).

The foregoing conceptual Project components are anticipated to be revised and refined by the discretionary entitlement application process that Developer intends to pursue once this Agreement is approved by the City Council to obtain the necessary Discretionary Entitlements and Ministerial Permits (as those terms are defined in Sections 231 and 253 below, respectively), which will take place in accordance with the Schedule of Performance and as otherwise provided for herein. Accordingly, the foregoing conceptual Project components will be subject to further consideration and approval by City in accordance with applicable laws and regulations, including City’s review under the California Environmental Quality Act (Public Resources Code § 21000 *et seq.* and CEQA Guidelines § 15000 *et seq.* (“**CEQA**”). As described more fully herein, Developer’s acquisition and development of the Site is conditioned on City completing its compliance with CEQA before City considers whether or not to approve the Project or any of its components. By entering into this Agreement, City is not committing itself to approve the Project or any component of the Project. However, as detailed more fully herein, City will undertake the steps necessary so that it may properly consider, in the future, whether or not to approve the Project. As part of this consideration and as may be required for purposes of CEQA compliance, it is understood and agreed by the parties that City may consider alternatives to the Project or any of its components; it may impose feasible measures upon the Project to mitigate identified significant impacts; it may condition approval of the Project on Developer’s willingness to modify the Project; or it may deny the Project altogether. Accordingly, City is retaining its full discretion within the bounds of applicable laws in considering the Project.

D. Subsequent Entitlement and Permitting Process. It is anticipated that Developer will submit detailed concept plans, site plans, Project descriptions, and other Project application materials as required for City (as well as any other public agencies with jurisdiction over aspects of the Project) to process the necessary Discretionary Entitlements and Ministerial Permits to develop the Site with the Project. As detailed more fully herein, it is the intent of City and Developer to establish certain conditions and requirements related to review and development

of the Project, which are or will be the subject of subsequent Discretionary Entitlements and Ministerial Permits.

E. Parties' Intentions. City and Developer have reached mutual agreement and now desire to voluntarily enter into this Agreement to provide for City's disposition of the Site to Developer, subject to the terms and conditions set forth herein.

F. City's Vital and Best Interests. City finds that entering into this Agreement has the potential to facilitate achievement of numerous goals and policies of the City's General Plan as well as the applicable Cypress Business & Professional Center Specific Plan ("**Specific Plan**"); and is in conformity with the public convenience, general welfare, and good land use practices.

G. CEQA. The Discretionary Entitlement process for the Project is subject to compliance with CEQA. To satisfy requirements under CEQA, it is anticipated that City, as the lead agency, will cause an Environmental Impact Report ("**EIR**") to be prepared by LSA Associates, Inc.

H. Schedule of Performance. It is anticipated that the parties will use good faith, commercially reasonable efforts to adhere to the general timeline as shown on the "**Schedule of Performance**" set forth in **Attachment C** hereto, to facilitate, to the extent feasible, the purposes of this Agreement including the anticipated Closing, City's consideration of Project Approvals, and, if approved, construction of the Project in accordance with the provisions hereof.

I. Purchase Price. To ensure the top-qualified developer was chosen and a fair market value for sale of the Site, City marketed the Site through a competitive "request for qualifications" process that took place in 2018, from which City ultimately selected Developer. The parties desire to enter into this Agreement subject to the terms and conditions set forth herein, under which Developer will purchase and City will transfer all its rights, title and interests in the Site. As noted above and set forth herein, the purchase and sale of the Site is conditioned upon City's compliance with CEQA, and City retains its full discretion in deciding whether or not to approve the Discretionary Entitlements for the Project.

J. DDA Hearing and Notice. City has given the required notice of its intention to consider this Agreement and has conducted the necessary public hearings thereon. Specifically, on November 25, 2019, the City Council held a duly noticed public hearing on this matter. After taking testimony and considering the matter, the City Council closed the public hearing, deliberated, and then conducted a review pursuant to Government Code Section 65402 and other applicable laws and regulations.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties agree as follows:

#### **(§100) PURPOSE OF THE AGREEMENT.**

##### **A. (§101) Purpose of the Agreement.**

Developer hereby agrees to purchase from City, and City hereby agrees to sell to Developer all of City's rights, title and interests in the Site subject to the terms and conditions

hereinafter set forth. In accordance with the findings in Recital F above, this Agreement is intended to effectuate the sale of the Site as well as the potential development of the Project, subject to CEQA compliance and City's exercise of discretion in its consideration of the Project during the anticipated future Discretionary Entitlement process.

**(§200) DEFINITIONS.**

The terms used in this Agreement shall have the following meanings unless otherwise expressly set forth herein:

**A. (§201) Agreement.**

The term "Agreement" shall have the meaning set forth in the Preamble and shall include all attachments, which attachments are a part hereof and incorporated herein in their entirety.

**B. (§202) As-Is Condition.**

The term "As-Is Condition" shall have the meaning set forth in Section 502 below.

**C. (§203) Assignment and Assumption Agreement.**

The term "Assignment and Assumption Agreement" shall have the meaning set forth in Section 303(5) below.

**D. (§204) Authorized Cinema Developer List.**

The term "Authorized Cinema Developer List" shall have the meaning set forth in Section 303(2)(c) below.

**E. (§205) Authorized Grocer Developer List.**

The term "Authorized Grocer Developer List" shall have the meaning set forth in Section 303(2)(c) below.

**F. (§206) Authorized Hotel Developer List.**

The term "Authorized Hotel Developer List" shall have the meaning set forth in Section 303(2)(b) below.

**G. (§207) CEQA.**

The term "CEQA" shall have the meaning set forth in Recital C above.

**H. (§208) CEQA Expenses Deposit.**

The term “CEQA Expenses Deposit” shall have the meaning set forth in Section 702(3) below.

**I. (§209) Certificate(s) of Completion of DDA Obligations.**

The term “Certificate(s) of Completion of DDA Obligations” shall mean the document(s) prepared in accordance with Section 714 of this Agreement, in substantially the same form as **Attachment D** hereto.

**J. (§210) Cinema Component.**

The term “Cinema Component” shall have the meaning set forth in Recital C above.

**K. (§211) City.**

The term “City” shall mean the City of Cypress, a California charter municipal corporation, as set forth in the Preamble.

**L. (§212) City Advisor.**

The term “City Advisor” shall have the meaning set forth in Section 303(3)(c) below.

**M. (§213) City Closing Condition(s).**

The term “City Closing Condition(s)” shall have the meaning set forth in Section 406(1) below.

**N. (§214) City Expenses.**

The term “City Expenses” shall have the meaning set forth in Section 702(3) below.

**O. (§215) City Expenses Deposit.**

The term “City Expenses Deposit” shall have the meaning set forth in Section 702(3) below.

**P. (§216) City Party(ies).**

The term “City Party(ies)” shall have the meaning set forth in Section 502 below.

**Q. (§217) City Representations.**

The term “City Representations” shall have the meaning set forth in Section 502 below.

**R. (§218) Claims.**

The term “Claims” shall have the meaning set forth in Section 503(1) below.

**S. (§219) Closing.**

The term “Closing” shall mean the closing of the Escrow by the Escrow Agent’s distribution of the funds and the distribution (and recordation, as necessary) of documents received through Escrow to the party entitled thereto, which Closing shall occur on or before the Outside Closing Date subject to any extension(s) or Excused Delay(s) as provided for herein.

**T. (§220) Closing Default.**

The term “Closing Default” shall have the meaning set forth in Section 803(6) below.

**U. (§221) CO.**

The term “CO” shall have the meaning set forth in Section 303(3) below.

**V. (§222) Commence Construction.**

The term “Commence Construction” (or any reasonable variation thereof) shall have the meaning set forth in Section 703(1) below.

**W. (§223) Confidential Information.**

The term “Confidential Information” shall have the meaning set forth in Section 905 below.

**X. (§224) Days.**

The term “days” shall mean calendar days unless otherwise expressly indicated.

**Y. (§225) Default.**

The term “Default” shall have the meaning set forth in Section 801 below.

**Z. (§226) Developer.**

The term “Developer” shall have the meaning set forth in the Preamble.

**AA. (§227) Developer Affiliate.**

The term “Developer Affiliate” shall have the meaning set forth in Section 303(2)(a) below.

**BB. (§228) Developer Closing Condition(s).**

The term “Developer Closing Condition(s)” shall have the meaning set forth in Section 406(2) below.

**CC. (§229) Developer Parties.**

The term “Developer Parties” shall have the meaning set forth in Section 904 below.

**DD. (§230) Disapproved Exceptions.**

The term “Disapproved Exceptions” shall have the meaning set forth in Section 408(1) below.

**EE. (§231) Discretionary Entitlement(s).**

The term “Discretionary Entitlement(s)” shall mean any and all discretionary entitlement(s), permit(s), and approval(s) from City and/or other government or quasi-governmental authorities with jurisdiction over aspect(s) of the Project that are necessary to construct and operate the Project, including, without limitation, General Plan amendment(s), specific plan amendment(s), zoning code/map amendment(s), tentative subdivision/parcel map(s), conditional use permit(s), major and minor use permit(s), design review, encroachment permit(s), sign permit(s), tree removal permit(s), and/or permits necessary for the purchase and sale of alcoholic beverages.

**FF. (§232) Effective Date.**

The term “Effective Date” shall mean the date of the City Council’s adoption of the Resolution approving this Agreement.

**GG. (§233) ENA.**

The term “ENA” shall have the meaning set forth in Recital A above.

**HH. (§234) Environmental Claims.**

The term “Environmental Claims” shall mean any claim(s) for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity other than City, made after the Closing and relating solely to violations of Environmental Law(s) by Developer on the Site.

**II. (§235) Environmental Cleanup Liability.**

The term “Environmental Cleanup Liability” shall mean any costs reasonably incurred after the Closing to contain, remove, remedy, clean up, or abate any Environmental Claims on or under all or any part of the Site, including the groundwater thereunder, including, without limitation, (1) any direct costs for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith; and (2) any cost, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

**JJ. (§236) Environmental Compliance Cost.**

The term “Environmental Compliance Cost” shall mean any cost(s) necessary to enable the Site to comply with all applicable Environmental Law(s) incurred after the Closing as

required to construct and operate the Project, including the costs necessary to demonstrate said compliance.

**KK. (§237) Environmental Law.**

The term “Environmental Law” shall mean any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (1) pollution or protection of the environment, including natural resources; (2) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances; (3) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; or (4) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

**LL. (§238) Escrow.**

The term “Escrow” shall mean the escrow established pursuant to this Agreement for the conveyance of the Site from City to Developer.

**MM. (§239) Escrow Agent.**

The term “Escrow Agent” shall mean Fidelity National Title Insurance Company, 4400 MacArthur Blvd., Suite 200, Newport Beach, CA 92660 and the individual(s) identified by the Escrow Agent to handle the Closing.

**NN. (§240) Exaction(s).**

The term “Exaction(s)” means any exaction(s) that may be imposed by City or other governmental or quasi-governmental authorities as a condition of developing the Project, including, without limitation, requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements; this is the case whether such exaction(s) constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under applicable laws and regulations. Provided, however, any condition imposed on the Project that meets the definition of an Exaction, but also meets the definition of an “Impact Fee” (as defined in Section 247 below), shall be considered an Impact Fee.

**OO. (§241) Excluded Claims.**

The term “Excluded Claims” shall have the meaning set forth in Section 503(1) below.

**PP. (§242) Excused Delay.**

The term “Excused Delay” shall mean any delay described in Section 903 below.

**QQ. (§243) Financial Information.**

The term “Financial Information” shall have the meaning set forth in Section 600 below.



**RR. (§244) FIRPTA Certificate.**

The term “FIRPTA Certificate” shall have the meaning set forth in Section 406(2)(g) below.

**SS. (§245) Future User.**

The term “Future User” shall have the meaning set forth in Section 303(3)(a) below.

**TT. (§246) Grant Deed.**

The term “Grant Deed” shall refer to that certain Grant Deed, which shall be substantially in the form as **Attachment E** hereto, to effect the conveyance of the Site from City to Developer.

**UU. (§247) Hazardous Material.**

The term “Hazardous Material” shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental or quasi-governmental authority (other than City), the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (1) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (2) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (3) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (4) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (5) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (6) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (7) asbestos; (8) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (9) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (10) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (11) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (12) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (13) defined as “Hazardous Material” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (14) defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or underground storage tanks, as now, or at any time hereafter, in effect.

**VV. (§248) Hotel Component.**

The term “Hotel Component” shall have the meaning set forth in Recital C above.

**WW. (§249) Impact Fee(s).**

The term “Impact Fee(s)” shall mean any monetary amount(s) charged by City or other governmental or quasi-governmental authority in connection with a Project Approval in order to lessen, offset, mitigate or compensate for the impacts of development of the Project on the environment; facilities, services, improvements and/or infrastructure; or other public interests, including, without limitation, any “fee” defined by Government Code section 66000(b) as well as any fee imposed “in lieu of” an Exaction. Any such monetary amount imposed on the Project that meets the definition of an Impact Fee as well as the definition of an Exaction shall be considered an Impact Fee. The Parties acknowledge and agree that City Impact Fees in effect on the Effective Date are identified in **Attachment F** hereto.

**XX. (§250) Large Commercial Tenant.**

The term “Large Commercial Tenant” shall have the meaning set forth in Section 303(3)(a) below.

**YY. (§251) License Agreement.**

The term “License Agreement” shall have the meaning set forth in Section 904 below.

**ZZ. (§252) Major Amendment.**

The term “Major Amendment” shall have the meaning set forth in Section 908(2) below.

**AAA. (§253) Ministerial Permit(s).**

The term “Ministerial Permit(s)” shall mean any and all ministerial approval(s), permit(s), license(s) and other entitlements from City and/or other governmental or quasi-governmental authorities with jurisdiction over aspect(s) of the Project that are necessary to construct and operate the Project including, without limitation, final/parcel map(s), grading permit(s), demolition permit(s), building permit(s), encroachment permit(s), certificate(s) of occupancy, core and shell occupancy permit(s), temporary occupancy permit(s), building permit sign-off and permits relating to the purchase and sale of alcoholic beverages and shall expressly exclude all Discretionary Entitlements.

**BBB. (§254) Minor Amendment.**

The term “Minor Amendment” shall have the meaning set forth in Section 908(2) below.

**CCC. (§255) Mortgage.**

The term “Mortgage” shall mean any mortgage, deed of trust, security agreement, sale and lease-back financing, or other like security instrument encumbering all or any portion(s) of the Site and/or any of Developer’s rights under this Agreement.

**DDD. (§256) Mortgage Holder.**

The term “Mortgage Holder” shall mean the holder of any Mortgage, and any Transferee of any such Mortgage Holder.

**EEE. (§257) Notice.**

The term “Notice” shall have the meaning set forth in Section 901 below.

**FFF. (§258) Notice of Default.**

The term “Notice of Default” shall have the meaning set forth in Section 801 below.

**GGG. (§259) Outside Closing Date.**

The term “Outside Closing Date” shall have the meaning set forth in Section 407(1)(a) below.

**HHH. (§260) Pad Sale Buyer.**

The term “Pad Sale Buyer” shall have the meaning set forth in Section 303(3)(a) below.

**III. (§261) Party(ies).**

The term “party(ies)” shall have the meaning set forth in the Preamble.

**JJJ. (§262) Performance Deadline(s).**

**KKK.** The term “Performance Deadline(s)” shall have the meaning set forth in Section 703(2) below.

**LLL. (§263) Performance Guideline(s).**

The term “Performance Guideline(s)” shall have the meaning set forth in Section 703(2) below.

**MMM. (§264) Permitted Affiliate Assignee.**

The term “Permitted Affiliate Assignee” shall have the meaning set forth in Section 303(2)(a)(i) below.

**NNN. (§265) Permitted Exception(s).**

The term “Permitted Exception(s)” shall have the meaning set forth in Section 408(1)(a) below.

**OOO. (§266) Permitted Residential Affiliate Assignee.**

The term “Permitted Residential Affiliate Assignee” shall have the meaning set forth in Section 303(2)(a)(i) below.

**PPP. (§267) Permitted Transfer(s).**

The term “Permitted Transfer(s)” shall have the meaning set forth in Section 303(2) below.

**QQQ. (§268) Preliminary Report.**

The term “Preliminary Report” shall have the meaning set forth in Section 408(1) below.

**RRR. (§269) Preliminary Report Update Review Period.**

The term “Preliminary Report Update Review Period” shall have the meaning set forth in Section 408(1)(a) below.

**SSS. (§270) Project.**

The term “Project” shall have the meaning set forth in Recital C above.

**TTT. (§271) Project Approvals.**

The term “Project Approvals” shall mean, collectively, the Discretionary Entitlements and Ministerial Permits.

**UUU. (§272) Project Phase.**

The term “Project Phase” shall have the meaning set forth in Section 703(1) below.

**VVV. (§273) Project Work Product.**

The term “Project Work Product” shall have the meaning set forth in Section 904 below.

**WWW. (§274) Property Claims.**

The term “Property Claims” shall have the meaning set forth in Section 503(1) below.

**XXX. (§275) Public Disclosure Laws.**

The term “Public Disclosure Laws” shall have the meaning set forth in Section 905 below.

**YYY. (§276) Purchase Price.**

The term “Purchase Price” shall have the meaning set forth in Section 403 below.

**ZZZ. (§277) Reciprocal Easement Agreement.**

The term “Reciprocal Easement Agreement” or “REA” shall mean that certain Reciprocal Easement Agreement executed by Developer and recorded against the Site, which includes, among other items, the provisions set forth in Section 711 below.

**AAAA. (§278) Residential Component.**

The term “Residential Component” shall have the meaning set forth in Recital C above.

**BBBB. (§279) Retail Component.**

The term “Retail Component” shall have the meaning set forth in Recital C above.

**CCCC. (§280) Right of Reverter.**

The term “Right of Reverter” shall have the meaning set forth in Section 803(4) below.

**DDDD. (§281) Schedule of Performance.**

The term “Schedule of Performance” shall mean that certain Schedule of Performance set forth in **Attachment C** hereto.

**EEEE. (§282) Shea Entity.**

The term “Shea Entity” shall have the meaning set forth in Section 303(a)(2)(i) below.

**FFFF. (§283) Site.**

The term “Site” shall have the meaning set forth in Recital A above.

**GGGG. (§284) Site Documents.**

The term “Site Documents” shall have the meaning set forth in Section 501 below.

**HHHH. (§285) Specific Plan.**

The term “Specific Plan” shall have the meaning set forth in Recital F above.

**IIII. (§286) Substantially Complete.**

The term “Substantially Complete” (or any reasonable variation thereof) shall have the meaning set forth in Section 703(1) below.

**JJJJ. (§287) Taxpayer ID Certificate.**

The term “Taxpayer ID Certificate” shall have the meaning set forth in Section 407(3) below.

**KKKK. (§288) Term.**

The term “Term” shall have the meaning set forth in Section 401 below.

**LLLL. (§289) Third-Party Litigation.**

The term “Third-Party Litigation” shall mean the filing of litigation by a third party challenging this Agreement and/or other Project Approval(s) on CEQA or any other grounds.

**MMMM. (§290) Title.**

The term “Title” shall mean the fee interest to the Site conveyed to Developer in accordance with the terms and conditions of this Agreement as set forth in Section 408(1) below.

**NNNN. (§291) Title Company.**

The term "Title Company" shall mean Fidelity National Title, and the individual Title Officer(s) identified by the Title Company to handle the Closing.

**OOOO. (§292) Title Policy.**

The term "Title Policy" shall have the meaning set forth in Section 408(4) below.

**PPPP. (§293) Transfer.**

The term "Transfer" shall have the meaning set forth in Section 303(1) below.

**QQQQ. (§294) Transferee(s).**

The term "Transferee(s)" shall have the meaning set forth in Section 303 below.

**(§ 300) PARTIES TO THE AGREEMENT.**

**A. (§301) City; Representations and Warranties.**

City is a California charter municipal corporation. The office of City is located at 5275 Orange Avenue, Cypress, CA 90630. As of the Effective Date, City hereby represents and warrants the following to Developer:

1. **Legal Authority.** City has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which City is a party, to consummate, once all legally required steps are taken, including compliance with CEQA, the transaction(s) contemplated hereby, to take any and all steps or actions contemplated hereby, to perform its obligations hereunder, and has been fully authorized by all requisite actions on the part of the City Council.

2. **Valid Obligation.** This Agreement is a valid obligation of City and is enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles relating to or limiting creditors' rights generally.

3. **No Default.** City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which City is bound.

4. **No Litigation.** There is no pending or threatened litigation which would prevent the Site from being conveyed to Developer in the condition of title required hereunder, or which would prevent, hinder or delay City from performing its obligations hereunder and/or the development and operation of the Project.

5. **No Bankruptcy.** City is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of City's assets has been made.

6. **No Possession.** No person or entity other than City has the right to use, occupy, store or display item(s), or possess the Site or any portion thereof. Other than this Agreement and the right of certain third parties to temporarily store trailers and marshal trucks pursuant to that certain *Limited License to Enter Agreement* by and between City and Developer dated May 2, 2019 (with such temporary third party rights having since terminated), as of the Effective Date, City has not granted to any party other than Developer pursuant to this Agreement any option, contract, or other agreement with respect to a purchase or sale of the Site or any portion thereof or any interest therein. City shall not enter into any lease or other agreement(s) or approve any temporary use permit(s) respecting the use (including, without limitation, for storage purposes), occupancy, or possession of the Site or any portion(s) thereof without the prior written consent of Developer; provided, however, that City shall have the right to approve temporary use(s) involving the display and/or sale of seasonal items (e.g., pumpkins, Christmas trees) or the storage of trailers and/or marshalling of trucks so long as City and the temporary user execute a temporary license agreement in connection therewith in substantially the same form as **Attachment G** hereto and City provides Developer ten (10) days' prior written Notice of same.

7. **No Environmental Law Proceedings.** City has no notice of any pending or threatened action or proceeding arising out of the condition of the Site or an alleged violation of any Environmental Laws. To City's actual knowledge, except as may otherwise be disclosed by City to Developer in writing in the Site Documents, the Site is in compliance with all Environmental Laws, and City has not used, generated, transported, discharged, released, manufactured, stored, or disposed of any Hazardous Materials from, into, at, on, under, or about the Site.

8. **No Condemnation.** There is no pending condemnation or similar proceeding affecting the Site or any portion thereof, and City has not received any written notice and has no current actual knowledge that any such proceeding is contemplated.

9. **Not a Foreign Person.** City is not a "foreign person" but is a "United States person" as such terms are defined in the Foreign Investment in Real Property Tax Act of 1980 and Sections 1445 and 7701 of the Internal Revenue Code of 1986 (as amended from time to time).

10. **Site Documents.** The Site Documents are complete copies of such documents and represent all of the documents in City's possession or control concerning the physical and/or environmental condition of the Site.

11. **Commission Agreements.** Except as otherwise disclosed by City to Developer in writing prior to the Effective Date, there are no listing agreements, finder's fee agreements or other agreements pursuant to which commissions or fees are payable with respect to the sale and/or leasing of the Site in effect as of the Effective Date that are due after the Closing.

12. **No Other Contracts.** City has not made any commitment or representation to any adjoining or surrounding property owner that would in any way be binding on Developer or the Site or that would interfere with Developer's ability to develop the Project as it may be approved during the anticipated future Discretionary Entitlement process, and will not make any commitment or representation that would affect the Site or any portion thereof prior to the Close of Escrow, without Developer's written consent, which consent may be withheld in Developer's sole and absolute discretion. Developer, by virtue of the purchase of the Site, will not be required

to satisfy any obligations of City other than those, if any, expressly assumed by Developer pursuant to this Agreement.

**13. No Moratoria etc.** There is no suit, action or arbitration, or legal, administrative, or other proceeding or governmental investigation, formal or informal, including, without limitation, eminent domain, condemnation, assessment district or zoning change proceeding, pending or threatened, or any judgment, moratorium or other government policy or practice that affects the Site or Developer's anticipated development of the Site, or that adversely affects Developer's ability to perform hereunder, nor does City know of any fact that might give rise to an action, investigation, proceeding or moratorium.

**14. Material Disclosure.** To City's actual knowledge, it has provided all documents in City's possession or control concerning the Site or the construction, use, operation, management, leasing, occupancy, status, condition and legal compliance of the Site or any portion thereof.

**15. No Untrue Statements or Omissions.** To City's current actual knowledge, no representation or warranty made by City in this Agreement, in any attachments hereto, or in any letter or certificate furnished to Developer pursuant to the terms hereof, contain any untrue statement of material fact necessary to make the statements contained herein or therein not misleading.

As used in this Section 301, "current, actual knowledge" means the current actual knowledge of Peter Grant (City's City Manager), and Doug Dancs (City's Community Development Director), as of the Effective Date. Until such time as the Closing occurs, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 301 not to be true, promptly give written Notice of such fact or condition to Developer. The foregoing representations and warranties shall survive the Closing for a period of twelve (12) months.

**B. (§302) Developer; Representations and Warranties.**

Developer is SP Acquisition, LLC, a California limited liability company. The principal office of Developer for the purposes of this Agreement is located at 130 Vantis, Suite 200 | Aliso Viejo, CA 92656. As of the Effective Date, Developer hereby represents and warrants the following to Developer:

**1. Legal Authority.** Developer is duly qualified to do business in good standing under the laws of the State of California and has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Developer is a party, to consummate the transaction(s) contemplated hereby, to take any and all steps or actions contemplated hereby, to perform its obligations hereunder, and has been fully authorized by all requisite company actions on the part of Developer.

**2. Valid Obligation.** This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles relating to or limiting creditors' rights generally.

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



4. **No Bankruptcy.** Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

As used in this Section 302, "current, actual knowledge" means the current actual knowledge of Brad Deck (Developer's Senior Vice President, Retail Development) and Kevin McCook (Developer's Vice President of Acquisitions and Development), as of the Effective Date. Until such time as the Closing occurs, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 302 not to be true, promptly give written Notice of such fact or condition to City. The foregoing representations and warranties shall survive the Closing for a period of twelve (12) months.

C. **(§ 303) Transfer.**

Except as otherwise expressly provided for herein, all of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of Developer and Developer's Transferee(s) pursuant to this Section 303. Wherever the term "Developer" is used in this Agreement, such term shall include any and all of its Transferee(s).

1. **Transfer Defined.**

"**Transfer**" shall mean any assignment, transfer, sale, hypothecation, Mortgage, pledge, conveyance, or encumbrance of a fee interest, ground lease or lease of all or any portion(s) of the Site and/or the Project and the respective rights and obligations hereunder related thereto.

2. **Permitted Transfers.**

Notwithstanding any other provision set forth in this Agreement to the contrary, Developer shall not be required to obtain City consent for any of the following (each, a "**Permitted Transfer**"):

(a) **Transfer(s) to Developer Affiliate(s).** At all times, Developer shall have the right to Transfer all or any portion(s) of the Site and/or the Project (assuming City approves the Project during the Discretionary Entitlement process after complying with CEQA) to any entity that is a Developer Affiliate. "**Developer Affiliate**" shall mean: (i) any entity that owns or controls Developer; (ii) any entity owned or controlled by Developer; (iii) any entity owned or controlled by or affiliated with any entity that owns or controls Developer; (iv) any entity resulting from a consolidation for which Developer is a party; (v) the surviving entity in case of a merger for which Developer is a party; or (vi) any entity to which all or substantially all of the assets of Developer have been sold. The term "Developer Affiliate" shall further mean:

(i) Any entity that is (A) wholly owned by Shea Properties LLC, Shea Properties II LLC, J.F. Shea Company, or to any of the foregoing (each, a "**Shea Entity**"); or (b) any limited liability company, partnership or corporation in which Developer and/or any Shea Entity holds a majority interest (50.1%) in the capital and profits and in which Developer and/or any Shea Entity agrees to hold such majority interest (50.1%) for at least the term of this Agreement (each, a "**Permitted Affiliate Assignee**").

(ii) For purposes of the Residential Component only, any limited liability company, partnership or corporation in which Developer and/or any Shea Entity (A) holds an ownership interest in the capital and profits and in which Developer and/or such Shea Entity agrees to hold such ownership interest for at least the term of this Agreement, and (B) manages day to day operations thereof (each, a “**Permitted Residential Affiliate Assignee**”).

(b) **Authorized Hotel Entity.** If City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA, and the Project includes a Hotel Component, then at all times thereafter Developer shall have the right to Transfer all or any portion(s) of the Hotel Component to Authorized Hotel Entity(ies) without the prior consent of the City. An Authorized Hotel Entity is any of the entities identified on the list set forth in **Attachment B** hereto (“**Authorized Hotel Developer List**”).

(c) **Authorized Grocery/Cinema Users.** If City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA, and the Project includes a Retail Component, then at all times thereafter Developer shall have the right to Transfer all or any portion(s) of the Retail Component to Authorized Grocery User(s) and any or all portions of the Cinema Component to Authorized Cinema User(s) without the prior written consent of the City. An Authorized Grocery User is any of the entities identified on the list set forth in **Attachment B** hereto (“**Authorized Grocery Developer List**”) and an Authorized Cinema User is any of the entities identified on the list set forth in **Attachment B** hereto (“**Authorized Cinema Developer List**”).

(d) **Mortgages, Deeds of Trust, and Other Forms for Financing Purposes.**

(i) At all times, Developer shall have the right to Transfer (via Mortgage(s)) for the purpose of financing or refinancing Developer’s direct and indirect costs to (A) acquire the Site, and (B) develop all or portion(s) of the Project thereon assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA.

(ii) At all times, in the event of a Transfer as a result of or in connection with: (a) the judicial or non-judicial foreclosure or deed in lieu of either of the foregoing, or (b) Transfer arising from or relating to a Mortgage Holder exercising its remedies under such lien, City shall not have any right to consent or not consent to a Transfer to any such Mortgage Holder and/or to any other third party or parties acquiring all or any portion(s) of the Site and/or the Project from such holder; provided, however, that any Mortgage Holder and/or any third party or parties acquiring all or any portion(s) of the Site and/or Project (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA) from such holder shall assume Developer’s rights and obligations hereunder accruing after such Transfer to the Mortgage Holder and be bound under the terms, conditions and covenants of this Agreement as though they were parties hereto as provided for herein.

(e) **Lease(s) to Individual Tenant(s).** Except for lease(s) to Large Commercial Tenant(s) (as that term is defined in Section 303(3)(a) below), which shall require City’s prior approval as set forth below, at all times Developer shall have the right to Transfer (via lease(s), ground lease(s), licenses, concessions or other occupancy agreements) portion(s) of the Site and/or the Project (assuming City approves the Project during the anticipated future

Discretionary Entitlement process after complying with CEQA) to individual commercial retail tenant(s).

(f) **Grant of Easement(s)**. At all times, Developer shall have the right to convey temporary or permanent licenses, easement(s) and/or rights-of-way on, over, across, above and below the Site (via offer(s) of dedication or other form(s) of conveyance) for to facilitate development of the Site in accordance with the Project Approvals (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA).

(g) **Common Areas**. At all times, Developer shall have the right to Transfer portion(s) of the Site and/or the Project (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA) as common area to property owners' association(s) (if any) formed in connection with the Project.

(h) **Leases/Sales Within Residential Component**. At all times, Developer shall have the right to lease or sell individual residential unit(s) within the Residential Component, as it may be approved by City during the anticipated future Discretionary Entitlement process after complying with CEQA.

(i) **Subsequent Transfer(s)**. Once a Transfer has occurred in accordance with the requirements of this Section 303, any subsequent Transfer(s) involving substantially the same portion(s) of the Site and/or the Project (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA) shall be considered Permitted Transfer(s) and thus shall require no further City consent; provided, however that any such Transfer(s) shall reflect use(s) that are (or will be as a result of any necessary development application process(es) related thereto) consistent with the General Plan and Specific Plan.

(j) **All Transfers Occurring After 5-Year Period**. Once the 5-Year Period set forth in 303(4) below ends, Developer shall be permitted to freely Transfer all or any portion(s) of the Site and/or the Project (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA) without obtaining City consent.

Developer shall give at least ten (10) business days' prior written Notice to City of a Permitted Transfer, except that no such Notice shall be required for any Permitted Transfer under subsections (d) through (i) above. In addition, upon City's request, Developer, at Developer's election, shall either: (A) certify that the subject Transfer constitutes a Permitted Transfer, or (B) provide City with reasonably sufficient documentation to confirm it is a Permitted Transfer.

### **3. Transfer Restrictions Prior to Issuance of First CO.**

Subject to Section 303(2) and assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA, prior to issuance of the core and shell occupancy permit, temporary occupancy permit, building permit sign-off or local equivalent (as the case may be, for core and shell) (each, a "**CO**") for the Project's first (1st) building, the provisions on Transfer(s) set forth in subsections (a) through (c) below shall apply.

The conceptual Project components shall be subject to further consideration and approval by City in accordance with applicable laws and regulations, including City's review under CEQA. As part of the anticipated future Discretionary Entitlement process, approved and conditionally approved uses for the Project will be determined. The obligations in this Section 303(3) shall apply if City approves the Project, including one (1) or more of the Future Users (as that term is defined below). Nothing in this Section 303(3) shall commit City to a particular course of action, including, without limitation, approving the Project at all and/or with specific Future Users. However, if the Project is approved by City during the anticipated future Discretionary Entitlement process after compliance with CEQA, then the Transfer provisions set forth in this Section 303(3) shall govern as set forth herein.

(a) **Potential Future User(s) Subject to City Consent.**

Transfers to: (i) purchaser(s) of a commercial pad to be developed with one (1) or more commercial building(s) containing more than five thousand (5,000) square feet for a commercial/retail use (each a "**Pad Sale Buyer**") other than to an entity on the Authorized Hotel Developer List, the Authorized Grocery Developer List or the Authorized Cinema Developer List; (ii) any non-affiliated entity that will operate a hotel, grocery or cinema that is not an Authorized Hotel Entity, an Authorized Grocery User and/or an Authorized Cinema User (a "**Grocery/Cinema User**"); or (iii) a non-affiliated entity that will lease commercial retail space not involving grocery or cinema uses that exceeds forty thousand (40,000) square feet of continuous gross leasable area (each a "**Large Commercial Tenant**") (each such Pad Sale Buyer, Grocery/Cinema User, and Large Commercial Tenant is referred to herein as a "**Future User**"), shall be subject to City's prior written consent, which shall not be unreasonably withheld, conditioned, delayed or denied based on the criteria set forth in subsection (b) below.

(b) **Criteria to be Used in Considering Transfer Request for Future User(s).**

In considering any Transfer request for a Future User under this Section 303(3), City shall consider factors such as (i) whether the completion of the Project Phase at issue would be jeopardized if said Transfer request were granted; (ii) the financial strength and capability of the proposed Transferee to perform Developer's obligations hereunder; (iii) the proposed Transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed Transferee will have the ability to finance, own, operate and maintain high quality development in City, similar to the Project in terms of reputation and amount of anticipated sales to be generated from the Site. Provided, however, it is generally intended that City will consent to Transfer request(s) for Future User(s) who (A) operate a chain of stores on a regional or nationwide basis; (B) are comparable, or reasonably equivalent, to the exemplar authorized entities listed on **Attachment B**; and/or (C) do or will do marketing within the general market area. In its reasonable discretion, City may also consent to Transfer request(s) for other Future User(s) based on other appropriate and relevant criteria, including, without limitation, those who operate local chain(s) of business. For the avoidance of doubt, City agrees that City shall have no right to consent to any Transfer to an entity on the Authorized Hotel Developer List, the Authorized Grocery Developer List or the Authorized Cinema Developer List, otherwise listed on **Attachment B** or any other Transfer described in Section 303(2), above.

(c) **Procedure to be Used in Considering Transfer Request for Future User(s).**

Any Transfer request by Developer for a Future User shall be in writing and shall include such supporting information as may be reasonably requested by City within five (5) days of its receipt of Developer's Transfer request in order for City, utilizing the criteria set forth in subsection (b) above, to consider said request. Any financial information of a Future User reasonably requested by City as part of its consideration of a Transfer request shall be delivered to City's third-party advisor, such as Kosmont Realty Corporation (or another third-party consultant reasonably approved by Developer) ("**City Advisor**"), as well as being shown to City, and shall be subject to the confidentiality provisions of Section 904(3) below.

Within ten (10) days of receipt of Developer's Transfer request for a Future User (and supporting documentation reasonably requested by City within the five (5) day period referenced above), City shall notify Developer whether City is consenting to said request. If City notifies Developer it does not so consent, then said Notice shall state specific reasons for this decision. If City fails to respond to said Transfer Request within this ten-day period, then City shall be conclusively deemed to have consented to said request. The City Manager shall have the authority to make a decision on any and all Transfer requests involving Future User(s), which such consideration shall occur administratively and not require a public hearing or public notice. If the City Manager denies any such Transfer request, Developer shall have the right to request the City Manager reconsider its decision and/or appeal this decision to the City Council. Said request for reconsideration and/or appeal shall be filed no later than ten (10) days following Developer's receipt of Notice of any such denial. The City Manager shall take action on any such reconsideration request within ten (10) days' receipt thereof, and/or the City Council shall consider any such appeal at the next available Council meeting for which proper notice can be provided.

**4. Transfer Restrictions During 5-Year Period.**

Assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA, for a period of five (5) years from the date of issuance of the CO for the core and shell for the Project's first (1st) building, SP Acquisition, LLC and/or other Shea Entity(ies) shall own the Site and operate the Project; provided, however, the foregoing restriction shall be subject to any and all Permitted Transfer(s) and/or other Transfer(s) to Future User(s) receiving City consent pursuant to this Section 303.

**5. Assignment and Assumption Agreement.**

For any Transfer made in accordance with this Section 303, Developer and its Transferee shall execute an assignment and assumption agreement in a form substantially the same as **Attachment H** hereto ("**Assignment and Assumption Agreement**"). No later than ten (10) business days after the date said Transfer becomes effective, Developer shall deliver to City a fully executed original of the Assignment and Assumption Agreement. Upon the effective date of each such Transfer, Developer shall be released and have no further obligations or liability under this Agreement with respect to the interest(s) which are Transferred and the obligations assumed under the relevant Assignment and Assumption Agreement.

**6. Developer To Pay Transfer Request Costs.**

Developer shall pay City its actual costs (which may include City staff and/or attorney time) expended to consider a Transfer request made pursuant to this Section 303 where City consent is required, up to a maximum amount of Two Thousand Five Hundred Dollars (\$2,500) for each Transfer request; provided, however, that Developer shall have no obligation to pay the foregoing costs with respect to any Permitted Transfer(s) under Section 303(2) above.

**(§ 400) ACQUISITION AND DISPOSITION OF THE SITE.**

**A. (§ 401) Term of Agreement.**

Subject to any extension(s) provided for herein and/or any Excused Delay, the term of this Agreement shall commence on the Effective Date, and shall expire the earlier of: (1) the issuance of the CO for the core and shell for the final Project building (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA), or (2) seven (7) years ("**Term**"). Following the expiration (or earlier termination pursuant to the terms of this Agreement) of the Term, this Agreement shall be deemed terminated and of no further force and effect, except for the provisions of this Agreement that expressly survive termination. While the parties intend the foregoing termination to be automatic and self-executing, City agrees to promptly execute and deliver such documents and instruments in recordable form as Developer may reasonably request in order to evidence the termination of this Agreement.

**B. (§ 402) Acquisition of Site.**

In accordance with and subject to the terms, covenants and conditions of this Agreement, City shall convey the Site to Developer, and Developer shall purchase the Site from City.

**C. (§ 403) Purchase Price.**

Subject to the credits and/or deduction(s) provided for in this Section 403, the purchase price for the Site shall be Fifteen Million Two Hundred and Fifty Thousand Dollars (\$15,250,000) ("**Purchase Price**"), which constitutes the fair market value of the site as determined by the competitive RFQ process and further documented by that certain Broker's Opinion of Value (dated November 17, 2015) prepared by the City Advisor. The Purchase Price shall be payable in full at Closing in cash by wire transfer from the Escrow Agent of immediately available funds received from Developer to a bank account to be designated by City in writing to Developer prior to the Closing. Notwithstanding anything to the contrary in the foregoing, the parties acknowledge and agree that all monies released to City pursuant to Section 6 of the ENA (Conveyance Instrument Deposit) as non-refundable deposit(s), totaling Four Hundred Thousand Dollars (\$400,000), shall be applicable to the Purchase Price. The parties acknowledge that the first two installments of the Conveyance Instrument Deposit of Fifty Thousand Dollars (\$50,000) each, totaling One Hundred Thousand Dollars (\$100,000), have been released to City pursuant to the timing in Section 6 of the ENA. The timing for the Three Hundred Thousand (\$300,000) balance of the Conveyance Instrument Deposit shall be revised from the terms set forth in the ENA to comport to the following timelines:

The first One Hundred Fifty Thousand Dollars (\$150,000) of the Conveyance Instrument Deposit shall be nonrefundable and released to City, but applicable to the Purchase Price, no later than three (3) days following Developer's submittal of the development applications for the Discretionary Entitlements.

The second One Hundred Fifty Thousand Dollars (\$150,000) of the Conveyance Instrument Deposit shall be nonrefundable and released to City, but applicable to the Purchase Price, no later than ten (10) days after the occurrence of both: (A) City's certification of the EIR; and (B) the expiration of all applicable statute of limitations periods with no Third-Party Litigation being filed; provided, however, that if Third-Party Litigation is filed, then the foregoing \$150,000 shall be paid to City no later than ten (10) days following the full and final resolution of such Third Party Litigation in a manner acceptable to Developer in its sole and absolute discretion.

The parties further acknowledge and agree that if the total amount of the Impact Fees due for the Project (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA), increases from the total amount set forth in **Attachment F** hereto, the difference between these two amounts shall be deducted from the Purchase Price.

**D. (§ 404) City Expenses Deposit for DDA.**

Pursuant to the ENA, Developer previously deposited with City the amount of Twenty Five Thousand Dollars (\$25,000) ("**City Expenses Deposit**") to be used to implement the ENA, including the preparation of this Agreement. Developer shall have no further obligation to fund City costs for implementing the ENA (including, without limitation, attorneys' fees to prepare this Agreement) beyond the City Expenses Deposit.

**E. (§ 405) Opening of Escrow; Joint Escrow Instructions.**

The parties shall open the Escrow for the conveyance of the Site to Developer within thirty (30) days following the Effective Date. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to the Escrow Agent. This Agreement shall constitute the joint escrow instructions of City and Developer. The Escrow Agent is empowered to act under these instructions. City and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional escrow instructions (if any) consistent with the terms herein as may be reasonably necessary or convenient in order to accomplish the Closing; provided, however, that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control.

**F. (§ 406) Authority of Escrow Agent.**

The Escrow Agent is authorized to, and shall:

1. **Payments and Charges.** Pay to and charge the parties in accordance with the provisions set forth herein. All required disbursements shall be made by check or wire transfer.
2. **Purchase Price.** Disburse the Purchase Price (crediting any and all non-refundable deposits and deducting for additional Impact Fees, if required pursuant to Section 403 above, as well as for all closing costs allocated to City) to City and record the Grant Deed when both the Developer Closing Conditions and City Closing Conditions have been fulfilled or

waived in writing by Developer and City, as applicable. Immediately following recordation of the Grant Deed, the Escrow Agent shall record all recordable documents delivered into Escrow for the Closing.

**3. Issuing Title Policy.** Do such other actions as necessary, including obtaining and issuing the Title Policy, to fulfill the Escrow Agent's obligations under this Agreement.

**4. FIRPTA Compliance.** Direct City and Developer to execute and deliver any instrument, affidavit or statement, and to perform any act, which is reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

**5. Settlement Statements.** Prepare and release to the respective parties and file with all appropriate governmental or taxing authorities uniform settlement statements, closing statements, tax withholding forms (including IRS 1099-S forms), if any such forms are provided for or required by law, and be responsible for withholding taxes as may be required.

**6. All Other Actions.** Any and all other actions not referenced in subsections (1) through (5) above that are necessary or desirable to facilitate the Closing as contemplated hereunder.

**G. (§ 407) Conditions to Close of Escrow.**

**1. City's Conditions to Closing.**

City's obligation to convey the Site and to Close Escrow hereunder shall be mandatory and irrevocable once all of the following conditions have occurred; said conditions are solely for the benefit of City and shall be fulfilled or waived within the time periods provided for herein and in any event, no later than the Outside Closing Date (subject to any applicable extension(s) and/or Excused Delay(s)).

(a) City shall have caused to be prepared the Project EIR, and shall have certified the EIR as being in compliance with CEQA. This condition shall not be subject to waiver.

(b) Developer shall have received all required Discretionary Entitlements, which shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Developer in its sole and absolute discretion and such that no further appeals, legal challenges, requests for rehearing, or referenda are possible. All Discretionary Entitlements shall be valid (i.e., shall have not expired) as of the Closing date. Subject to the terms of this Agreement and consistent with the Schedule of Performance, City shall reasonably cooperate with Developer's efforts to obtain the Discretionary Entitlements.

(c) Developer shall have deposited into Escrow the full Purchase Price for the Site, minus any amount(s) for non-refundable deposit(s) and/or credit for any increase in Impact Fees pursuant to Section 403 above.



(d) Developer shall have deposited into the Escrow its share of the Escrow costs, title and transfer fees as determined by the Escrow Agent.

(e) As of the Closing, Developer shall not be in Default hereunder in any of its obligations to City, subject to Default notice and cure provisions in Section 801 below.

(f) Developer shall have certified in writing as of the Closing that Developer's representations and warranties in Section 302 above, continue to be true and correct in all material respects.

(g) Developer shall have deposited an estoppel certificate pursuant to Section 718 below certifying that City has completed all acts required hereunder to Close.

(h) Developer shall have executed and acknowledged the Grant Deed, and Developer shall have executed (and, where appropriate, acknowledged), and delivered into Escrow any and all other documents that Developer is required to deliver into Escrow as required herein.

The foregoing shall be referred to herein collectively as the "**City Closing Conditions**". Should City Default in its obligation to convey Title to the Site once the City Closing Conditions and Developer Closing Conditions have been satisfied or waived, as applicable, Developer may, in addition to all other remedies available to it hereunder, seek specific performance of this obligation to Close Escrow pursuant to Section 804 below. Any waiver of the City Closing Condition(s) must be express and in writing; provided, however, the City Closing Condition set forth in subsection (a) above requiring CEQA compliance shall not be subject to waiver. If, however, City is not in Default and if either the City Closing Conditions are not satisfied and/or Developer Defaults in the performance of its obligations hereunder after notice and failure to cure pursuant to Section 801 below, then City may terminate the Escrow and this Agreement by written notice to Developer prior to the Closing.

## **2. Developer's Conditions to Closing.**

Developer's obligation to purchase the Site and to Close Escrow hereunder shall be mandatory and irrevocable once all of the following conditions have occurred; said conditions are solely for the benefit of Developer and shall be fulfilled or waived in writing within the time periods provided for herein and in any event, no later than the Outside Closing Date (subject to any applicable extension(s) and Excused Delay(s)).

(a) City shall have executed and acknowledged the Grant Deed and delivered it into Escrow, and City shall have executed (and, where appropriate, acknowledged) and delivered into Escrow any and all other documents that City is required hereunder to deliver into Escrow.

(b) Title shall be conveyed by the Grant Deed in accordance with Section 408.4 with the Title Policy issued to Developer at Closing.

(c) As of the Closing, City shall not be in Default hereunder in any of its obligations to Developer, subject to Default notice and cure provisions in Section 801 below.

(d) City shall have caused to be prepared the Project EIR, and shall have certified the EIR as being in compliance with CEQA, and no Third-Party Litigation has

been brought to challenge the Project based on CEQA or any other grounds, or if any such Third-Party Litigation has been filed, then it shall have been fully and finally resolved in a manner acceptable to Developer in its sole and absolute discretion and such that no further legal challenges based on CEQA on other grounds are possible.

(e) Developer shall have received all required Discretionary Entitlements for the Project (with the final design, conditions, requirements and components of the Project approved during the Discretionary Entitlement process being acceptable to Developer in its sole and absolute discretion), which shall be final and non-appealable, and if any appeals, Third-Party Litigation, requests for rehearing, or referenda have been filed or instituted, such appeals, Third-Party Litigation, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Developer in its sole and absolute discretion and such that no further appeals, Third-Party Litigation, requests for rehearing, or referenda are possible. All Discretionary Entitlements shall be valid (i.e., shall have not expired) as of the Closing date.

(f) City shall have deposited into Escrow its share of the Escrow costs, title and transfer fees as determined by the Escrow Agent.

(g) City shall have deposited into Escrow a certificate ("**FIRPTA Certificate**") in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code.

(h) The Site and the conveyance of same contemplated herein shall comply with the California Subdivision Map Act (Gov. Code § 66410 *et seq.*). This condition shall not be subject to waiver.

(i) There shall be no moratorium, prohibition or any other measure, rule, regulation or restriction whose effect would be to preclude any inspections, the issuance of any Project Approval(s), or any pending action or proceeding before City or other governmental or quasi-governmental authority to enact such prohibition.

(j) There shall be an absence of any condemnation, environmental or other pending governmental, quasi-governmental or any type of administrative or legal proceedings with respect to the Site or the Project that would materially and adversely affect Developer's intended uses of the Site or the value of the Site.

(k) There shall not have occurred between the Effective Date and the Closing a material adverse change to the physical condition of the Site.

(l) City shall have caused all debts and liability for labor, material and equipment incurred in connection with City's ownership, operation or improvement of the Site, which could result in a lien against all or any portion(s) of the Site, to be promptly paid, and the Site shall be ready to be conveyed to Developer, subject only to the Permitted Exceptions.

(m) City shall have certified in writing as of the Closing that City's representations and warranties in Section 301 above continue to be true and correct in all material respects.

The foregoing shall be referred to herein collectively as "**Developer Closing Conditions**". Subject to the Default notice and cure provisions in Section 801 below, should

Developer Default in its obligation to purchase the Site once the Developer Closing Conditions and City Closing Conditions have been satisfied, City's sole and exclusive remedy shall be limited to the award of liquidated damages pursuant to Section 804(4) below. Any waiver of the foregoing conditions must be express and in writing. If Developer is not in Default, and if either the Developer Closing Conditions are not satisfied and/or City Defaults in the performance of its obligations hereunder after notice and failure to cure pursuant to Section 801 below, then, in addition to Developer's other rights and remedies hereunder, Developer may terminate the Escrow and this Agreement by written notice to City any time prior to the Closing.

## **H. (§ 408) Conveyance of the Site.**

### **1. Time for Conveyance of Site; Extension(s).**

(a) Escrow shall Close within fifteen (15) days of satisfaction (or written waiver by the benefited party) of the City Closing Conditions and the Developer Closing Conditions, but not later than December 31, 2020 ("**Outside Closing Date**"), unless extended pursuant to subsection (b) below and/or any Excused Delay(s). Upon Closing, possession of the Site shall be delivered to Developer concurrently with the conveyance of Title free of all matters other than any Permitted Exception(s).

(b) If satisfaction (or written waiver by the benefited party) of the City Closing Conditions and the Developer Closing Conditions does not occur by the Outside Closing Date, then either party, so long as such party is not then in Default, may terminate this Agreement by written notice to the other party. Notwithstanding the foregoing, the parties shall have the right, but not the obligation, to mutually agree to an extension of the Outside Closing Date for whatever reason(s) the parties mutually determine appropriate. The City Manager shall have the authority to agree to any such extension(s) on City's behalf without the need for a public hearing or public notice regarding the matter.

### **2. Escrow Agent to Advise of Costs.**

Within thirty (30) business days prior to the Closing, the Escrow Agent shall advise City and Developer in writing of the fees, charges, and costs necessary to clear Title and Close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

### **3. Deposits by City and Developer Prior to Closing.**

On or before, but not later than 1:00 p.m. (Pacific Time) of the business day prior to the Closing, City shall execute and deliver to the Escrow Agent a certificate ("**Taxpayer ID Certificate**") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, date of Closing, the Purchase Price, and the taxpayer identification number for Developer and City. Prior to Closing, Developer and City shall cause to be delivered to the Escrow Agent such other items, instruments, and documents, and the parties shall take such further actions, which are identified herein and/or as may be necessary or desirable in order to complete the Closing.

#### **4. Recordation and Disbursement of Funds.**

Upon the completion by City and Developer of the deliveries and actions specified in this Agreement that are necessary for the Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of Orange County, California, the Grant Deed, and any other appropriate instruments delivered through this Escrow, if necessary or proper to, and provided that the Title can vest in Developer in accordance with the terms and provisions herein. Promptly after Closing, the Escrow Agent shall cause the Title Company to deliver the Title Policy to Developer insuring Title and conforming to the requirements of Section 408 below, and the Escrow Agent shall cause the Title Company to deliver copies of all recorded instruments to Developer and City. In addition, after deducting any sums specified in this Agreement, the Escrow Agent shall disburse funds to the party entitled thereto.

##### **I. (§ 409) Title Matters.**

##### **1. Condition of Title.**

At the Closing, City shall convey to Developer fee simple marketable title to the Site ("**Title**"), subject only to: (i) the Grant Deed; (ii) current taxes, a lien not yet payable; and (iii) any covenants, conditions and restrictions and other encumbrances and title exceptions approved or caused by Developer under this Section 408 (collectively, "**Permitted Exceptions**"). City shall convey Title pursuant to the Grant Deed in substantially the same form as **Attachment E**. Prior to the Effective Date, Developer reviewed that certain preliminary report of title dated August 28, 2019 and issued by the Title Company under its Order No. 012-30028179-E-1 (the "**Preliminary Report**") and agrees that all exceptions set forth therein shall constitute Permitted Exceptions other than 7, 10, 13, 17, 19, 20 and 21 (collectively, the "**Disapproved Exceptions**"). City shall use its best efforts to cooperate with Developer in terminating of record prior to Closing all Disapproved Exceptions and satisfying all of the requirements for the issuance of the Title Policy (as defined below). If, despite City's use of best efforts to terminate such items of record and satisfy the requirements for the issuance of the Title Policy, City is unable to do so, at Developer's sole and exclusive option, Developer shall have the right to terminate this Agreement and receive a full refund of the deposits referenced in Section 403 above, the Escrow shall be canceled and the parties shall be released from all obligations hereunder except for those obligations that expressly survive the expiration or earlier termination hereof.

If the Preliminary Report is amended or updated after the Effective Date (each, a "**Preliminary Report Update**"), then Developer shall furnish City with a written statement of approval or objections to any matter first raised in a Preliminary Report Update that was not caused by Developer within ten (10) business days after its receipt of such Preliminary Report Update together with a legible copy of each new exception raised therein (each, a "**Preliminary Report Update Review Period**"). Should Developer notify City in writing of its approval of such matter first disclosed in a Preliminary Report Update prior to the expiration of the applicable Preliminary Report Update Review Period, then the new matter shall become a Permitted Exception. If, however, Developer either (a) objects to such new matter, or (b) fails to affirmatively approve such new matter, then such new matter shall be deemed disapproved and City shall have until 5:00 p.m. Pacific Time on the tenth (10th) business day after City's receipt of Buyer's written objection (or deemed objection) in which to notify Developer either (i) that City will remove the new disapproved matter (s) prior to the Close of Escrow, or (ii) that City will not

remove the new disapproved matter. If City does not elect to do either (i) or (ii), such silence shall be conclusively deemed to constitute City's election not to remove any new matter(s) disapproved (or deemed disapproved) by Developer. If, however, City elects not to remove any new disapproved matters, then Developer shall have until 5:00 p.m. Pacific Time on the tenth (10th) business day after City's election not to cure the disapproved exception in which to elect (y) to terminate this Agreement by written notice to City, or (z) to waive in writing Developer's previous disapproval of (and thereby accept) any new matter that City does not elect to remove. Developer's failure to notify City of its election on or before 5:00 p.m. Pacific Time on the tenth (10th) business day after City's election not to remove the new disapproved matter shall be deemed to constitute Developer's election to terminate this Agreement. If this Agreement is so terminated, then the deposits referenced in Section 403, above, shall be returned to Developer and neither party shall have any further obligations to the other hereunder except to the extent any such obligation expressly survives the termination of this Agreement.

**2. Exclusion of Oil, Gas, and Hydrocarbons.**

Title shall be conveyed subject to the exclusion therefrom to the extent now or hereafter validly excepted and reserved by the parties named in deeds, leases and other documents of record of all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred feet (500') below the surface, together with the right to drill into, through, and to use and occupy all parts of the Site lying more than five hundred feet (500') below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from the Site but without, however, any right to use either the surface of the Site or any portion thereof within five hundred feet (500') of the surface for any purpose or purposes whatsoever.

**3. City Not to Encumber Site.**

Consistent with and subject to Section 301(6) above, City hereby warrants and covenants to Developer that it has not and will not, from the time of the Effective Date until the Closing, Transfer, sell, hypothecate, pledge, or otherwise encumber the Site without prior express written permission of Developer, which permission Developer may withhold in its sole and absolute discretion.

**4. Title Policy.**

Concurrently with recordation of the Grant Deed, the Title Company shall issue to Developer an ALTA Extended Owner's Policy of Title Insurance ("**Title Policy**") insuring Developer's fee interest, wherein the Title Company shall insure that title to the Site is vested solely in Developer, subject only to the Permitted Exceptions and any other encumbrances expressly contemplated by this Agreement to be recorded at Closing. City shall pay for that portion of the title insurance premium attributable to the premium required for coverage for an ALTA standard coverage policy in the amount of the Purchase Price and for any endorsements necessary to cure any Disapproved Exceptions which City has agreed to cure, with Developer paying for that portion of the premium for said additional or extended coverage, including, without limitation, an ALTA policy or special endorsements. The Title Policy for the Site shall, at a minimum, be in the amount of the Purchase Price.

**5. City Obligations.**

In connection with the foregoing, City shall deliver to the Title Company such agreements, assurances or statements (including, without limitation, an owner's affidavit, lien releases, quitclaim deeds, and bonds, as applicable) concerning City's authority to sell the Site to Developer, disclosing any claims for mechanic's liens, possessory interests or otherwise as may be reasonably required by the Title Company in order to issue the Title Policy.

**J. (§ 410) Procedure in Event of Failure of Conditions(s) to Closing; Termination.**

Subject to any extension(s) or Excused Delay(s), if one or more of the Developer Closing Conditions and/or City Closing Conditions are not timely satisfied or waived by the benefited party pursuant to the timing requirements set forth herein, and so long as the benefitted party is not otherwise in Default, that party shall have the right to terminate the Escrow and this Agreement. In such event, the terminating party may, in writing, demand return of its money (including the deposits referenced in Section 403 above), papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party, which Notice shall state the condition(s) that have not been satisfied. No demand shall be recognized by the Escrow Agent until ten (10) days after the Escrow Agent shall have sent copies of such demand to the non-terminating party in accordance with the Notice provisions of this Agreement, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within said ten (10) day period, the Escrow Agent shall comply with the terminating party's request. If the non-terminating party timely objects, an additional thirty (30) day opportunity to cure or otherwise satisfy the unperformed condition(s) shall be provided and only if the unperformed condition(s) remain unsatisfied at the end of said 30-day period shall the termination occur. Upon termination of this Agreement, the Escrow shall terminate, and the Escrow Agent shall immediately return all documents, instruments and monies (including the deposits referenced in Section 403 above) to the party that deposited same (without any additional instructions from City or Developer). Also upon termination, except as otherwise specifically provided herein, each party shall bear its own costs incurred, including one-half of any Escrow cancellation charges, and neither City nor Developer shall have any further rights or obligations hereunder, except for any obligations set forth herein that expressly survive this termination.

**K. (§ 411) Costs of Escrow.**

**1. Allocation of Costs.**

The Escrow Agent is authorized to allocate costs as follows. City shall pay the cost of the Title Policy pursuant to Section 408(4) above, while Developer shall pay premiums for any additional insurance, extended coverage or special endorsements. City shall pay the documentary transfer tax. Developer shall pay all recording fees. Any Escrow fees for the holding Escrow are Developer's sole responsibility. Any other closing costs and expenses not specifically allocated to one of the parties hereunder shall be paid according to the custom for sales of vacant land in Orange County as determined by the Escrow Agent and reflected on the settlement statement.

**2. Prorations and Adjustments.**

Ad valorem taxes and assessments on the Site for the current year (if any) shall be prorated by the Escrow Agent as of the date of Closing with City being responsible for those levied, assessed or imposed prior to Closing and Developer responsible for those after Closing. If the actual taxes are not known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, Developer and City shall, within thirty (30) days thereafter, re-prorate the taxes in cash between the parties in accordance with this Section 410(2).

**L. (§ 412) Responsibility of Escrow Agent.**

**1. Deposit of Funds.**

All funds received in Escrow shall be deposited by the Escrow Agent in a special interest-bearing escrow account for the benefit of the depositing party with any state or national bank doing business in the State of California and may not be combined with other escrow funds of the Escrow Agent or transferred to any other general escrow account or accounts.

**2. Notices.**

All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 901 of this Agreement for notices, demands and communications between City and Developer.

**3. Sufficiency of Documents.**

The Escrow Agent shall not be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and City's instructions for their use pursuant to this Agreement.

**4. Exculpation of Escrow Agent.**

The Escrow Agent shall in no event be liable for the failure of any of the City Closing Conditions or Developer Closing Conditions of this Escrow, or for forgeries or false impersonation, unless such liability or damage is the result of the Escrow Agent's negligence or willful misconduct.

**5. Responsibilities in the Event of Controversies.**

If any controversy documented in writing arises between Developer and City or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any monies, papers or documents, or to take any action regarding the Site prior to settlement of the controversy by a final decision by an arbitrator, by a court of competent jurisdiction, or by written agreement of the parties to the controversy, as the case may be. The Escrow Agent shall be responsible for timely notifying Developer and City of any such controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely Close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

**(§ 500) PHYSICAL AND ENVIRONMENTAL CONDITION OF SITE.**

**A. (§ 501) Developer's Approval of Physical and Environmental Condition of Site; Site Assessment and Remediation.**

Prior to the Effective Date, pursuant to Section 6 of the ENA and that certain *Limited License to Enter Agreement* between the parties (dated May 2, 2019), Developer and its employees, agents and contractors have been given the right to enter onto the Site to conduct any and all Investigations (as that term is defined in the ENA) to perform preliminary work, conduct necessary due diligence, and for any other purposes to carry out the terms of this Agreement. In addition, pursuant to Section 6 of the ENA, Developer has conducted its due diligence and has previously notified City of its desire to proceed with negotiating this Agreement. Developer acknowledges and agrees that, prior to Closing, Developer will have been given a full opportunity to obtain, review, inspect and investigate each and every aspect of the Site, either independently or through agents of the Developer's choosing, including all of the following:

1. The size and dimensions of the Site.
2. The availability and adequacy of water, sewage, fire protection, and any other utilities serving the Site.
3. Subject to Section 408(1) above, all matters relating to title including the extent and conditions of title to the Site, taxes, assessments, and liens.
4. All legal and governmental laws, statutes, rules, regulations, ordinances, restrictions or requirements concerning the Site, including, without limitation, zoning, use permit requirements and building codes.
5. Natural hazards, including, without limitation, flood plain issues, currently or potentially concerning or affecting the Site.
6. The physical, legal, economic and environmental conditions and aspects of the Site, and all other matters concerning the conditions, use or sale of the Site, including, without limitation, any permits, licenses, agreements, liens, zoning reports, engineers' reports and studies and similar information relating to the Site. Such examination of the condition of the Site has included examinations for the presence or absence of Hazardous Materials as Developer deemed necessary or desirable.
7. Any recorded easements and/or recorded access rights affecting the Site.
8. Any recorded contracts, documents or agreements affecting the Site.

Notwithstanding the foregoing, City acknowledges and agrees that prior to Closing, Developer may continue to conduct further physical due diligence or other Investigations regarding the Site so long as this Agreement remains in effect; provided, however, that except as otherwise expressly provided in this Agreement, in no event shall Developer have any right to terminate or otherwise modify its obligations hereunder as a result of any such further due diligence or other Investigations regarding the Site. Further, prior to Closing, so long as this Agreement remains in effect, City acknowledges and agrees that Developer shall have the right to grant access to the Site to its consultants and agents as well as its proposed partners, investors, lenders,



insurers, tenants, and purchasers in order to allow them to conduct physical due diligence or other Investigations regarding the Site.

Prior to the Effective Date and pursuant to the ENA, City delivered to Developer copies of all documents in City's possession or control concerning the physical and/or environmental condition of the Site (collectively, "**Site Documents**"). As a result of its Investigations and subject to the other terms and conditions set forth herein, upon the Closing, Developer acknowledges and agrees that it will be taking the Site in its As-Is Condition pursuant and subject to the terms of Section 502 below.

**B. (§ 502) Disclaimer of Warranties for Site.**

Subject to terms and conditions of this Agreement (including, without limitation, all Attachments as well as the Site Documents), Developer shall acquire the Site in its "AS-IS" condition but subject to City's representations, warranties and covenants in this Agreement and the documents and instruments delivered by City at the Closing (collectively, the "**City's Representations**"). Developer specifically acknowledges and agrees that City is selling and Developer is purchasing the Site on an "as is with all faults" basis, condition and state of repair inclusive of any and all faults and defects, legal, physical, or economic, whether known or unknown, as may exist as of the Closing ("**As-Is Condition**") and that, except for City's Representations, Developer is not relying on any representations or warranties from City or any of City's elected officials, officers, agents, employees, representatives or attorneys (each, a "**City Party**" and collectively, "**City Parties**") as to any matters concerning the Site including, without limitation, the physical, environmental, geotechnical or other condition of the Site, the suitability of the Site for the Project, or the present use of the Site. City specifically disclaims all representations or warranties of any nature concerning any portion of the Site made by City or any City Party except for the City's Representations. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of Hazardous Materials or similar substances, or drainage.

**C. (§ 503) Waivers/Releases; Indemnification.**

**1. Waiver and Release For As-Is Condition.**

Developer agrees that, from and after the Closing, Developer waives and releases City and City Parties from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses (collectively, "**Claims**") arising out of: (i) any and all warranties with respect to the physical or environmental condition of the Site; (ii) Developer's use, management, ownership or operation of the Site, whether before or after Closing; (iii) the physical, environmental or other condition of the Site; (iv) the application of, compliance with or failure to comply with any and all applicable laws and regulations with respect to the Site; (v) Hazardous Materials and/or underground storage tanks in, on, under or about the Site; and (vi) the As-Is Condition of the Site; the foregoing are collectively referred to as "**Property Claims**". By releasing and forever discharging the Property Claims, Developer expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM

OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

INITIALS: DEVELOPER \_\_\_\_\_

Notwithstanding the foregoing, the release and waiver of Property Claims set forth in this Section 503(1) shall not apply to any Property Claims (or other claims) arising from (a) City Default with respect to any City obligations hereunder (including, without limitation, breaches of City’s Representations); (b) any fraud committed by City in connection with the transaction(s) contemplated hereunder; (c) any bodily injury claims accruing prior to the Closing to the extent such claims are not based on the acts of Developer or any of its agents, employees, contractors, consultants, officers, directors, affiliates, members, partners or other representatives; (d) any Hazardous Materials that were brought onto the Site by City and/or City Parties before the Closing (in which case Developer retains the right to implead or join City in any claim brought against Developer by a third-party unaffiliated with Developer with respect to events occurring prior to the Closing Date); and (e) any breach by City of an express obligation of City under this Agreement which by its terms survive the Closing (collectively, the “**Excluded Claims**”).

**2. Indemnification.**

From and after the Closing, Developer shall defend, indemnify and hold harmless City and the City Parties from and against any and all Environmental Claims, Environmental Cleanup Liability, and/or Environmental Compliance Costs resulting directly from Developer’s violation of Environmental Laws. The obligations set forth in this Section 503(2) shall survive termination of this Agreement for a period of two (2) years following Substantial Completion of the first (1<sup>st</sup>) Project Phase.

**(§600) DEVELOPER FINANCIAL CAPABILITY.**

The parties acknowledge and agree that Developer previously provided City with the required Project financial information identified in Section 3(A) of the ENA, including, without limitation, a Project proforma, as well as sufficient information about Developer’s financial capabilities to acquire the Site and construct the Project required in Section 3(F) of the ENA (collectively, “**Financial Information**”), which sufficiently documents the availability of adequate funds for Developer to consummate the transaction(s) and development contemplated herein to be pursued by Developer in connection with the anticipated future Discretionary Entitlement process. No further Financial Information from Developer shall be required hereunder or as a condition of any Project Approval(s).

**(§ 700) DEVELOPMENT AND OPERATION OF THE SITE**

**A. (§ 701) Scope of Phased Development.**

Subject to City approving the Project during the anticipated future Discretionary Entitlement process after CEQA compliance and further subject to the Closing occurring pursuant to the terms and conditions hereof and any extension(s) and/or Excused Delay and so long as Developer decides, in its sole and absolute discretion, to commence and complete any Project Phase(s) of construction pursuant to Section 703 below, then the Site shall be developed with the phase or phases so commenced in accordance with the Project Approvals.

**B. (§ 702) Subsequent Entitlement Process; Environmental Review.**

**1. Cooperation During Escrow and After Closing; No Prejudgment from City.**

Subject to the terms and conditions set forth herein, the parties acknowledge and agree that Developer intends to apply for, and diligently seek approval of, those Discretionary Entitlements for the Project before the Closing and Ministerial Permits after Closing. To this end, and at no material cost to City, City shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all Project Approvals so that Developer can obtain City action on such matters in accordance with the time frames set forth in the Schedule of Performance, which may be extended from time to time by the parties' mutual consent as provided for herein. Provided, however, that nothing in this Agreement shall be deemed to be a prejudgment or commitment on a particular course of action from City with respect to compliance with CEQA or the Project Approval(s). City and Developer acknowledge and agree that City is restricted in its authority to limit its compliance with CEQA and its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its obligations under CEQA and its police power.

Furthermore, City and Developer acknowledge and agree that other governmental and quasi-governmental authorities not within City's control may possess jurisdiction to regulate aspect(s) of the development of the Site and the Project and that this Agreement does not limit the jurisdiction of such other authorities. City shall reasonably cooperate with Developer in Developer's effort to process its applications to obtain such permits, entitlements and approvals as may be required by other governmental or quasi-governmental authorities in connection with the development of, or the provision of services to, the Site and/or the Project; provided, however, City shall have no obligation to incur any material costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith.

**2. Evolution of Development Plan; Subsequent Processing.**

The parties acknowledge that it is anticipated the Project will be revised and refined as part of the anticipated future Discretionary Entitlement and Ministerial Permit processes. Accordingly, as set forth in the Schedule of Performance, which may be extended from time to time by the parties' mutual consent pursuant to Section 703(2) below and any Excused Delay(s): (A) Developer, at its expense, shall exercise commercially reasonable diligence to timely submit to City all Project application materials that are necessary for City to consider the Discretionary Entitlements, subject to the terms and conditions set forth herein; and (B) if said entitlements are obtained after compliance with CEQA and the Closing occurs, Developer shall thereafter exercise commercially reasonable diligence to timely submit to City all Project application materials that are necessary for City to consider and grant the Ministerial Permits.

Furthermore, Developer shall exercise commercially reasonable diligence to timely submit and secure any Project Approval(s) necessary from other non-City governmental or quasi-governmental authorities having jurisdiction over aspect(s) of the Project which are required to develop the Project, including, without limitation, permits for the demolition and removal of any temporary structures or improvements on the Site, removal or relocation of any trees on the Site, and any other required public right-of-way improvements. Not by way of limitation of the foregoing, Developer's Project application materials shall reflect the Project's compliance with all applicable development standards in the City's Municipal Code and all

applicable building code, landscaping, signage, and parking requirements, except as may be modified as part of the Project Approval(s). All signage for the Project shall comply with the City of Cypress Sign Ordinance, unless otherwise modified pursuant to any request by Developer and as may be approved by City as part of the anticipated future Discretionary Entitlement process.

### 3. CEQA.

City shall be responsible for complying with CEQA in connection with its consideration of the Project. Developer agrees and acknowledges that compliance with CEQA is required to obtain the Discretionary Entitlement(s). City shall cause an EIR to be prepared in connection the processing of the Discretionary Entitlement(s). City, as the lead agency, at Developer's sole cost and expense, shall conduct such CEQA review expeditiously and in accordance with the requirements of CEQA; provided, however, that Developer shall have the right to terminate the CEQA process and withdraw all development applications submitted as part of the Discretionary Entitlement process pursuant to this subsection (3), in which case this Agreement shall be terminated. City shall use diligent and good faith efforts to facilitate the CEQA review consistent with the Project description described in Recital C above (as may be refined and revised during the anticipated future Discretionary Entitlement process) and the Schedule of Performance, as may be extended by the parties' mutual consent and/or any Excused Delay(s). Developer agrees and acknowledges that, notwithstanding anything in this Agreement to the contrary, Developer will be required to adhere to any and all mitigation measures adopted in connection with such CEQA review and the provisions of any adopted Mitigation and Monitoring Plan upon Developer's initiation of the development of any Project Phase(s) pursuant to the terms and conditions set forth herein. Developer acknowledges and agrees that City may consider alternatives to the Project or any of its components; it may impose feasible measures upon the Project to mitigate identified significant impacts; it may condition approval of the Project on Developer's willingness to modify the Project; or it may deny the Project altogether, in which case, this Agreement will terminate.

Pursuant to Section 1(B) of the ENA, Developer previously deposited with City the amount of One Hundred Thousand Dollars (\$100,000) ("**CEQA Expenses Deposit**") for the sole purpose of reimbursing City for third-party consultant costs incurred by City to complete all documents, reports and studies for its CEQA review of the Project in connection with the subsequent entitlement process (collectively, "**CEQA Expenses**"). Subject to this subsection (3), if the CEQA Expenses are reasonably anticipated to exceed the funds in the CEQA Expenses Deposit, then the parties may mutually agree to increase these funds as necessary to pay for the actual costs incurred and charged by the CEQA Consultant to City in accordance with the following procedures. If the parties so agree, at any time the balance of the CEQA Expenses Deposit is less than Five Thousand Dollars (\$5,000), City may request that Developer replenish the CEQA Expenses Deposit with such additional funds as is necessary to pay for the remaining CEQA Expenses up to the agreed amount. If Developer, in its discretion, approves of this request for an increase in funds, then Developer shall make such additional deposit no later than thirty (30) days' receipt of the request. If Developer, in its discretion, does not approve of any such request, then Developer shall have no obligation to replenish the CEQA Expenses Deposit. Provided, however, then City shall temporarily halt further processing of the Discretionary Entitlements pending resolution of the amount of any additional CEQA Expenses required to complete the CEQA analysis for the Project; upon such resolution, City shall immediately recommence processing of the Discretionary Entitlements and complete the Project's CEQA analysis. The CEQA Expenses Deposit shall not applicable to any portion of the Purchase Price. Furthermore, if Developer elects, in its discretion, to not replenish the CEQA

Expenses Deposit and therefore City cannot complete its CEQA review for the Project, then it is understood that this Agreement will terminate pursuant to the provisions hereunder.

City shall provide Developer with a written report and accounting of expenditures from the CEQA Expenses Deposit on a monthly basis and also upon the expiration or termination of this Agreement, which reasonably documents said time, costs and expenses. If City has a remaining balance in the CEQA Expenses Deposit by the time the City Council takes action on the Discretionary Entitlements and related CEQA EIR certification, and Developer is not in Default (after any applicable notice and cure period has elapsed), City shall return that portion of the CEQA Expenses Deposit for which City has not incurred costs along with an accounting of the costs incurred by City (including reasonable supporting documentation thereof) through the time the City Council takes action on the Discretionary Entitlements and related CEQA determination.

**C. (§ 703) Developer’s Discretion to Commence and Complete Phases of Project Construction; Schedule of Performance; Progress Reports.**

The conceptual Project components shall be subject to further consideration and approval by City in accordance with applicable laws and regulations, including City’s review under CEQA, as part of the anticipated future Discretionary Entitlement process. Accordingly, the obligations in this Section 703 shall apply if City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA. Nothing in this Section 703 shall commit City to a particular course of action, including, without limitation, approving the Project at all. However, if the Project is approved by City after compliance with CEQA, then the provisions set forth in this Section 703 shall govern as set forth herein.

**1. Developer’s Discretion to Commence and Complete Project Phase(s).**

The parties acknowledge and agree that the Project is contemplated to be constructed in phase(s) for each of the Residential, Retail, Hotel and/or Cinema Components (each, a “**Project Phase**”) with each being dependent on a variety of market and other considerations. Accordingly, the parties further acknowledge and agree the decision whether to Commence Construction of any Project Phase(s) shall be within Developer’s sole and absolute discretion. “**Commence Construction**” shall mean the pouring of concrete footings for the first (1st) building of the Project Phase at issue. Provided, however, if Developer elects to Commence Construction of a Project Phase, then Developer shall use commercially reasonable efforts to Substantially Complete said Project Phase within the timing milestones to complete set forth in the Schedule of Performance, subject to any extension(s) provided for herein and/or any Excused Delay(s). “**Substantially Complete**” or any verb tense thereof shall mean that the improvements at issue shall have been completed to the point that City has issued a CO for the core and shell for all building(s) within said Phase. Furthermore, notwithstanding anything to the contrary in the foregoing, given City’s desire for other Project Phase(s) to be constructed in addition to the Project Phase for the Residential Component, if Developer elects, in its sole and absolute discretion, to Commence Construction of the Residential Component, then City may, in its sole discretion, withhold any Certificate of Compliance of DDA Obligations for such Residential Component or certificate of occupancy on such Residential Component until such time as Developer (or its Transferee) obtains building permits, and pays all of City’s applicable fees then due, including, without limitation, Impact Fees, therefor, for either (a) the Hotel Component, or (b) up to twenty thousand eight hundred (20,800) square feet of the Retail

Component, with the foregoing election (i.e., hotel/20,800 sf of retail) being within Developer's sole and absolute discretion.

## **2. Schedule of Performance and Progress Reports.**

Subject to Developer's right to elect whether and/or when to Commence Construction of any Project Phase(s) pursuant to Section 703(1) above, the parties acknowledge and agree that the Schedule of Performance reflects the parties' mutual desire to consummate the transaction(s) contemplated hereunder, including the processing and consideration of Project Approval(s), the Closing, and the Commencement of Construction and Substantial Completion of the Project (assuming City approves the Project after complying with CEQA), and thus the purpose of the Schedule of Performance is to reflect a good faith estimate of anticipated timing to achieve key milestones rather than discrete and absolute deadlines unless otherwise expressly indicated. Accordingly, the Schedule of Performance shall: (A) identify each key milestone; (B) identify the anticipated timeline for each milestone; and (C) confirm whether the anticipated timeline shall be treated as (i) merely a guideline that shall be adjusted from time to time as requested by either party so long as the requesting party is acting in a commercially reasonable and diligent manner to achieve the milestone at issue (each, a "**Performance Guideline**"), or (ii) a deadline that shall be achieved by the relevant party(ies) unless extended pursuant to subsection (3) below or due to the occurrence of Excused Delay(s) (each, a "**Performance Deadline**").

During the Term of this Agreement, the parties shall keep each other reasonably informed of their efforts to achieve the identified milestones in the Schedule of Performance. If after Closing, Developer elects, in its sole and absolute discretion, to Commence Construction of a Project Phase pursuant to Section 703(1) above, then Developer shall notify City accordingly and thereafter shall keep City reasonably informed of the progress towards Substantial Completion of said phase.

## **3. Extension of Performance Deadline(s) in Schedule of Performance.**

A Performance Deadline may be extended: (A) by the parties' mutual consent in writing; (B) as expressly provided for in the Schedule of Performance; (C) pursuant to a Excused Delay; or (D) by delays caused by the acts or omissions of City or any City Party. The City Manager shall have the authority to consent on City's behalf to any extension(s) under this subsection (3).

### **D. (§ 704) Costs of Project Construction.**

Assuming City approves the Project after complying with CEQA, if Developer elects, in its sole and absolute discretion, to Commence Construction of a Project Phase pursuant to Section 703(1) above, then Developer shall be solely responsible for all costs to construct that Project Phase, subject to any applicable fee credit(s) and/or reimbursement due to Developer pursuant to the Project Approvals and/or other applicable laws and regulations. Said costs shall include all hard and soft construction costs for said Project Phase, including costs associated with Project design, site preparation, permitting, construction management, and payment of applicable fees and charges.

### **E. (§ 705) No Financial Assistance; Prevailing Wage Matters.**

City is not providing any direct or indirect financial assistance to Developer that would make any part of the Project a "public work" "paid for in whole or in part out of public funds," as

described in California Labor Code Section 1720, such that it would cause Developer to be required to pay prevailing wages for any aspect of the Project.

**F. (§ 707) Bodily Injury, Site Damage and Workers' Compensation Insurance.**

**1. Types of Insurance.**

Assuming City approves the Project after complying with CEQA and subject to the Closing occurring, if Developer elects, in its sole and absolute discretion to Commence Construction of a Project Phase pursuant to Section 703(1) above, then prior to said commencement, Developer shall procure and maintain or cause to be procured and maintained, at its sole cost and expense, in a form and content reasonably satisfactory to City, during the entire term of that Project Phase's construction, the following policies of insurance:

(a) **Commercial General Liability Insurance.** Comprehensive broad form commercial general liability insurance against claims and liability for personal injury or death arising from Project construction, providing protection of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.

(b) **Builder's Risk Insurance.** "All Risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits and at least One Million Dollars (\$1,000,000.00) per occurrence.

(c) **Worker's Compensation.** Workers' compensation insurance as required by law. Employer's liability limits usually should be One Million Dollars (\$1,000,000) to be equal to general and auto liability limits.

(d) **Auto and Other Insurance.** Automobile liability coverage in the amount of One Million Dollars (\$1,000,000) combined single limit (CSL) per accident. Developer may procure and maintain or cause to be maintained any insurance not required by this Agreement.

**2. Insurance Policy Form, Content and Insurer.**

All insurance required by this Section 707 shall be carried only by responsible insurance companies permitted to do business by California, rated "A-" or better in the most recent edition of the Best Rating Guide, the Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. All such policies shall contain language, to the extent reasonably obtainable at no additional cost, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and City Parties; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled except after thirty (30) days' written notice by the insurer to City or its designated representative. Developer shall furnish City with certificates evidencing the foregoing insurance. City shall be named as an additional insureds on all policies of insurance required to be procured by the terms of this Agreement.

**3. Failure to Maintain Insurance and Proof of Compliance.**

Developer shall deliver to City, in the manner required for notices under Section 903 below, copies of certificates evidencing the insurance required hereunder.

If Developer fails or refuses to procure or maintain (or cause to be maintained) insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and such failure continues for ten (10) business days after receipt of written notice, then such failure or referral shall be a Default hereunder.

**G. (§ 708) Rights of Access During Construction.**

Assuming City approves the Project after complying with CEQA, once the Closing has occurred, representatives of City shall have the reasonable right of access to the Site without charges or fees, at any time during normal construction hours during any period(s) of Project construction as part of City's standard inspection process for development projects and so long as City agrees in writing to adhere to applicable safety and security rules and regulations at the construction site. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall use commercially reasonable efforts not to interfere with the construction occurring at the Site during such inspection. Further, City shall indemnify, defend, and hold Developer harmless from all Claims of any kind or nature arising out of City's exercise of this right of access as provided in this Section 708.

**H. (§ 709) Applicable Laws.**

Assuming City approves the Project after complying with CEQA, once Closing has occurred and subject to Developer's election, in its sole and absolute discretion, to Commence Construction of any Project Phase pursuant to Section 703(1) above, Developer shall carry out the construction of said Project Phase in conformity with all applicable laws and regulations, including all applicable federal and state labor laws, and in accordance with the Project Approvals.

**I. (§ 710) Anti-discrimination During Construction and Operation.**

Assuming City approves the Project after complying with CEQA, once Closing has occurred and subject to Developer's election, in its sole and absolute discretion, to Commence Construction of any Project Phase pursuant to Section 703(1) above, Developer agrees that in the construction of said Project Phase, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital or familial status, sexual orientation, ancestry or national origin.

Furthermore, Developer shall not discriminate against, or segregate, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site or any portion(s) thereof with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project. The nondiscrimination and non-segregation covenants contained herein shall survive termination of this Agreement and remain in effect in perpetuity.



**J. (§ 711) Maintenance of Project Improvements.**

Assuming City approves the Project after complying with CEQA, once Closing has occurred and subject to Developer's election, in its sole and absolute discretion, to Commence Construction of any Project Phase pursuant to Section 703(1) above, Developer shall record an REA, which shall include provisions that require the owner(s) and/or occupants of the Site to maintain all improvements that may exist on the Site from time to time, including without limitation, buildings, parking lots, lighting, signs, and walls as follows: (a) in good and reasonable condition and repair, reasonable wear and tear excepted; (b) in proper operating condition; and (c) in a neat, clean, sanitary and attractive condition, meaning that the Site shall be kept reasonably free from accumulation of debris or waste materials. Improvements shall be required to be regularly painted so as to avoid fading, cracking or peeling. The owner(s) or occupants of the Site shall also maintain all on-site landscaping required pursuant to approved landscaping plan(s), as may be amended from time to time, in a healthy condition, including replacement of any dead or diseased plants. City shall have the right to review said REA prior to recordation to ensure that the provisions required by this Section 711 are included. All maintenance work, including excavation or construction, shall be performed in compliance with all Applicable Laws and by contractors duly licensed by the State of California. Work once commenced shall be diligently pursued until completion. Any ingress and egress easement area(s) shall be maintained in a smooth and level condition with the type of material originally installed or material that is similar or better in quality, use and durability. Potholes and cracks in any ingress and egress easement area(s) resulting in vertical displacement shall be repaired in a timely manner.

**K. (§ 712) Taxes, Assessments, Encumbrances and Liens.**

If applicable, City shall pay, when due, all real estate taxes and assessments assessed or levied prior to conveyance of the Site. Developer shall pay, when due, all real estate taxes and assessments assessed or levied subsequent to conveyance of the Site that relate to periods after the conveyance of the Site, if any. Prior to conveyance of the Site, Developer shall not place or allow to be placed thereon any Mortgage (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Site after Closing and as a result of Developer's activities, or assure the satisfaction thereof, within a reasonable time, but in any event prior to any foreclosure or execution of any kind upon such levy or attachment. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

**L. (§ 713) Rights of Mortgage Holders of Approved Security Interests in Site.**

**1. Developer's Default Shall Not Defeat Mortgage Lien.**

If Developer Defaults, any such Default shall not defeat or render invalid the lien of any Mortgage(s) made in good faith and for value as to the Site, or any portion(s) thereof or interest(s) therein; provided, however, that unless otherwise provided herein, the terms and conditions of this Agreement shall be binding and effective against any and all Mortgage Holder(s) whose interest is acquired by foreclosure, trustee's sale or otherwise.

**2. Holder Not Obligated to Commence or Complete Project.**

Assuming City approves the Project after complying with CEQA, a Mortgage Holder shall in no way be obligated by the provisions of this Agreement to Commence Construction or Substantially Complete construction of any Project Phase(s) or to guarantee any such commencement and/or completion of same nor shall any covenant or any provision in the conveyances from City to Developer evidencing the realty comprising the Site or any part thereof be construed so to obligate such Holder; provided, however, nothing in this Agreement shall be deemed to or be construed to permit any such Holder to devote the Site or any portion(s) thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the Project Approvals (if approved by City after complying with CEQA).

**3. Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders.**

With respect to any Mortgage granted by Developer on the Site or any portion(s) thereof, whenever City shall deliver any notice or demand to Developer with respect to any Default by Developer, City shall at the same time deliver a copy of such notice or demand to each Mortgage Holder of record who has previously made a written request to City therefor, or to the representative of such Mortgage Holder as may be identified in such a written request. No notice of Default shall be effective as to the Mortgage Holder unless such notice is given.

**4. Right to Cure Developer Default Hereunder.**

Each Mortgage Holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice of Default, to:

- (a) Cure or remedy or commence to cure or remedy any such Default and diligently pursue said cure until the same is completed, and
- (b) Add the cost of said cure to the Mortgage debt and the lien of its Mortgage.

Provided that in the case of a Default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such Default.

If possession of the Site (or portion(s) thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within ninety (90) days, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy (the foregoing time periods being subject to extension during the period that such holder is precluded from taking or pursuing any such action as a consequence of any bankruptcy stay or other court order).

If there is more than one such holder, the right to cure or remedy a Default of Developer under this Section 713(4) shall be exercised by the Mortgage Holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a Default of Developer under this Section 713(4).

Assuming City approves the Project after complying with CEQA, nothing in this Agreement shall be deemed to permit or authorize such holder to commence or continue the construction of any Project Phase(s) (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City with respect to such improvements by written agreement, in substantially the same form as **Attachment H** hereto, with respect to the Site or any portion(s) thereof in which the holder has an interest. Any such Holder Substantially Completing an Project Phase shall be entitled, upon written request made to City, to a Certificate of Compliance of DDA Obligations pursuant to Section 714 below.

**5. City's Rights upon Failure of Holder to Cure Developer Default on Mortgage.**

During the Term of this Agreement and subject to any rights of Developer to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion(s) thereof, in any case where thirty (30) days after default by Developer on a Mortgage and the Developer has not exercised the option to cure afforded in the Mortgage or if it has exercised such option and has not proceeded diligently to cure, then City may cure the Mortgage default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing the Mortgage default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site or portion(s) thereof to the extent of such costs and expenses. Any such lien shall be subject to:

- (a) Any Mortgage for financing permitted by this Agreement; and
- (b) Any rights or interests provided in this Agreement for the protection of such Mortgage Holders.

City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Nothing contained herein shall be deemed to impose upon City any affirmative obligation to cure a Mortgage default by Developer (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of any such lien.

**6. Modifications.**

If a Mortgage Holder should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interest in the Site or this Agreement, then City shall consider such request in good faith consistent with the rights and obligations of the parties under this Agreement.

**M. (§ 714) Certificate(s) of Compliance of DDA Obligations.**

Assuming City approves the Project after complying with CEQA, if Developer elects, in its sole and absolute discretion to Commence Construction of a Project Phase pursuant to Section 703(1) above, then upon Substantial Completion of each said Phase, City shall furnish Developer with a "**Certificate of Compliance of DDA Obligations**" for the relevant Phase in substantially the same form as **Attachment D** upon written request therefor by Developer.

Each Certificate of Compliance of DDA Obligations shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Orange County, California.

Each Certificate of Compliance of DDA Obligations shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of Developer's obligations hereunder with respect to the relevant Phase. After issuance of a Certificate of Compliance of DDA Obligations, City shall not have any rights or remedies under this Agreement with respect to the relevant Phase.

Except under the limited circumstances specified in Section 703.1 above, City shall not unreasonably withhold, delay, deny or condition any Certificate(s) of Compliance of DDA Obligations. City shall respond to Developer's request for any Certificate(s) of Compliance of DDA Obligations within thirty (30) days after receipt thereof. If City notifies Developer in writing that it is refusing to furnish the requested Certificate of Compliance, then City shall provide a written statement of City's reasons for doing so and shall also contain City's opinion of the action Developer must take to obtain the requested Certificate of Compliance. Notwithstanding anything to the contrary in the foregoing, if the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping or other minor so-called "punch list" items, City shall issue a Certificate of Compliance of DDA Obligations for the relevant Phase upon the posting of a bond (or other assurance reasonably satisfactory to City) in an amount representing one hundred fifty percent (150%) of the estimated value of the minor, punch-list work items not yet completed. If City fails to respond in writing to Developer's request with the foregoing 30-day period, then City shall be conclusively deemed to have determined Developer to be in compliance with its obligations hereunder with respect to the relevant Phase and shall be fully and finally estopped from proclaiming otherwise in any subsequent litigation by or against Developer or relevant Mortgage Holder.

Any Certificate(s) of Compliance of DDA Obligations shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any Mortgage Holder, or any insurer of a Mortgage. Any Certificate(s) of Compliance of DDA Obligations shall not constitute notice of completion as referred to in the California Civil Code Section 8180 *et seq.* Nothing herein shall prevent or affect Developer's right to obtain CO(s) or similar permits from City before any Certificate(s) of Compliance of DDA Obligations for a particular Project Phase is issued.

**N. (§ 715) Estoppels.**

At the request of Developer, any potential or existing Mortgage Holder(s), tenant(s), and/or other Transferee(s), City shall, from time to time, timely execute and deliver to the requesting party a written statement of City that certifies the following: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; (c) Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults; (d) City is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults; (e) any or all Project Phase(s) have been Substantially Completed, or if not Substantially Completed, to describe the nature and extent of any additional work required to achieve Substantial Completion; and (f) any such other matters as may be reasonably requested by the requesting party. The requesting party shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, which costs shall not exceed the total amount of Two Thousand Dollars (\$2,000). The Planning Director shall be authorized to

execute any estoppel certificate requested hereunder. The form of estoppel certificate shall be in the form of **Attachment I** hereto or such other form reasonably acceptable to the City Attorney. The Planning Director shall execute and return such certificate within fifteen (15) days following a request therefor. Developer and City acknowledge that an estoppel certificate hereunder may be relied upon by any existing or potential Mortgage Holders, tenant(s), and/or other Transferee(s). If City fails to deliver an estoppel certificate within the aforementioned fifteen (15) day period, then Developer shall have the right to deliver a second request clearly indicating thereon that failure of City to respond within five (5) days of its receipt of such second notice shall be deemed City's approval of all of the terms and conditions set forth in the estoppel certificate.

**O. (§ 716) Developer's Rights Regarding Project Approvals.**

Notwithstanding anything to the contrary contained in this Agreement, Developer shall have the right, exercisable in its sole and absolute discretion at any time, to elect to abandon processing any or all of the Project Approval(s) and terminate this Agreement at any time prior to Close of Escrow, in which event neither City nor Developer shall be obligated to perform their respective obligations under this Agreement other than obligations that expressly survive the expiration or earlier termination hereof. Developer's election to terminate this Agreement pursuant to this Section 716 shall not constitute a Default by Developer; provided, however, that if Developer makes such election, then City, as its sole and exclusive remedy, shall be entitled to retain the Conveyance Instrument Deposit(s) made pursuant to the ENA as consideration for entering into this Agreement.

**(§ 800) DEFAULTS, REMEDIES AND TERMINATION.**

**A. (§ 801) Defaults, Right to Cure and Waivers.**

Subject to any Excused Delay, failure or delay by either party to timely perform any material term or condition of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice ("**Notice of Default**") from the non-defaulting party specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion (in such case, a "**Default**").

Upon occurrence of a Default and without any right to further notice or additional cure period (except with respect to the Right of Reverter pursuant to Section 803(4) below), the non-defaulting party shall have all remedies available to it under this Agreement as set forth in Section 803 below; provided, however, neither party shall have the right to recover any punitive, consequential, or special damages. Failure or delay in giving any Notice of Default shall not constitute a waiver of any Default and any waiver of a Default shall be in writing and be signed by the non-defaulting party.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any term or condition herein shall not invalidate this Agreement, nor shall it be considered a waiver of any other term or condition. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any Default shall not operate as a waiver of any Default or of any rights or remedies or to deprive such 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.

**B. (§ 802) Legal Actions.**

**1. Institution of Legal Actions.**

Upon occurrence of a Default, the non-defaulting party shall have all rights and remedies available to it under this Agreement, including the right to institute a legal action or proceeding to cure, correct or remedy such Default. Legal actions must be instituted and maintained in the Superior Court of the County of Orange County, State of California, or in any other appropriate court in that county.

**2. Applicable Law and Forum.**

The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement without regard to conflict of law principles.

**3. Acceptance of Service of Process.**

If any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk or City Manager, or in such other manner as may be provided by law. If any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer at the address indicated in Section 903 below, or in such other manner as may be provided by law.

**C. (§ 803) Rights and Remedies.**

**1. Rights and Remedies are Cumulative.**

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its 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 Default or any other Default by the other party.

**2. Rights and Remedies Before Closing.**

Before the Closing, upon the occurrence of a Developer Default, City shall have the right, as its sole and exclusive remedy, to terminate the Escrow and this Agreement and obtain liquidated damages pursuant to subsection (5) below. IN CONSIDERATION OF THE PAYMENT OF SUCH LIQUIDATED DAMAGES, CITY SHALL BE DEEMED TO HAVE WAIVED ANY AND ALL RIGHTS TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE.

Before the Closing, upon the occurrence of a City Default, Developer shall have the right to: terminate the Escrow and this Agreement and obtain a refund of any and all Conveyance Instrument Deposit(s) made pursuant to the ENA and seek recovery of its out-of-pocket costs incurred in connection with this Agreement and the Site (if no specific performance to compel Closing is sought); seek specific performance or other equitable relief to compel City to Close the Escrow; and seek any other remedy available at law or in equity.

### **3. Rights and Remedies After Closing.**

After the Closing, upon the occurrence of a City Default, Developer shall have all rights and remedies available under applicable law including, without limitation, the right to bring a legal action, if necessary, to enforce any City obligations hereunder that expressly survive termination (e.g., any applicable indemnification obligation(s)).

After the Closing, upon the occurrence of a Developer Default, City shall have all rights and remedies available under applicable law including, without limitation, the right to bring a legal action, if necessary, to enforce any Developer obligations hereunder that expressly survive termination (e.g., any applicable indemnification obligation(s)); provided, however, that City shall, under no circumstances, have the right to seek specific performance or other equitable relief to compel Developer to Commence Construction or Substantially Complete construction of any Project Phase(s). Notwithstanding the foregoing, if Developer, in its sole and absolute discretion elects to Commence Construction of a Project Phase pursuant to Section 703 above and thereafter fails to Substantially Complete said Phase pursuant to the timing required hereunder and provided that no other remedy is reasonably available to City, then City shall have, as its sole and exclusive remedy, the Right of Reverter with respect to said Phase as provided for under subsection (4) below.

### **4. Right of Reverter.**

The parties acknowledge and agree that Developer shall have no obligation hereunder or in any other documents or instruments executed and delivered by Developer, or required of Developer, in connection with the Site; including, without limitation, as a condition of any Project Approvals, to Commence Construction of any Project Phase, and therefore any election not to do so shall not be deemed a Default by Developer. Nevertheless, the parties further acknowledge and agree that City's desire to sell the Site to Developer is to facilitate the development of the Site with the Project (assuming City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA). Accordingly, if City so approves the Project, and further if after the Closing, Developer elects not to Commence Construction of the first (1st) Project Phase by the timing requirements set forth in the Schedule of Performance, then City shall have the right, at its option, to repurchase, reenter and take possession ("**Right of Reverter**") of the entire Site pursuant to this subsection (4) but subject to Developer's right to notice and opportunity to cure set forth therein.

In addition, assuming City approves the Project after complying with CEQA, after the Closing, if Developer, in its sole and absolute discretion elects to Commence Construction of a Project Phase pursuant to Section 703 above and thereafter fails to Substantially Complete said Phase pursuant to the timing required under the Schedule of Performance, then City shall have the Right of Reverter with respect to that Project Phase, subject to an additional opportunity for Developer to cure as provided for in this subsection (4). Such right to repurchase, reenter and repossess that Project Phase, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit: (a) any Mortgage permitted by this Agreement; (b) any rights or interests provided in this Agreement for the protection of the Mortgage Holder(s); and (c) any right or interests provided in the REA or any other covenants, conditions and restrictions recorded on the Site.

To exercise its Right to Reverter with respect to a Project Phase as provided for under this subsection (4), City shall pay to Developer in cash an amount equal to:

(a) The Purchase Price paid by Developer for the relevant Phase based on the allocation set forth in the Financial Information; less

(b) The total amount of any Mortgage(s) or other liens encumbering the relevant Project Phase at the time of the repurchase, reentry and repossession, which such amounts shall be used by City to repay and/or satisfy any such Mortgages or other liens.

In order to exercise this Right of Reverter, City shall give Developer Notice of such exercise and Developer shall, within sixty (60) days after Developer's receipt of such Notice, shall have a further right to cure any Default by Substantially Completing the relevant Project Phase (and if there is no Default, then Developer shall have the right to elect to Commence Construction within said 60-day period); and if the cure (or election to Commence Construction, in the case of no Default) cannot be reasonably be completed within said 60-day period, then Developer's commencement of the cure (or election to Commence Construction, in the case of no Default) and diligent prosecution thereafter to Substantial Completion shall be deemed a cure.

If after said 60-day period (as the same may be extended pursuant to the terms hereof), Developer decides not to cure (or elects not to Commence Construction in the case of no Default), or decides to cure (or elect to Commence Construction in the case of no Default) but fails to thereafter diligently prosecute the same to Substantial Completion, then City shall request that Developer provide it with a detailed accounting of all of Developer's costs incurred as provided in subparagraph (b) above. City, within thirty (30) days after its receipt of such accounting, shall have the Right of Reverter for the relevant Project Phase subject to City's payment to Developer in cash all sums owing pursuant to this subsection (4), if any. Once City has made said payment and repaid in full all obligations and loans secured by all Mortgages encumbering the relevant Phase of the Project, then Developer shall thereupon execute and deliver to City a quitclaim deed transferring to City all of Developer's interest in the relevant Project Phase and assign to City (and City shall assume) all leases and contracts related to the Site and all declarant rights under the REA, if any. The transfer of the Site to City pursuant to the City's Right of Reverter shall be in its then AS-IS Condition and City shall execute a waiver and release of known and unknown claims substantially similar to the one contained in Section 503 of this Agreement in connection with such transfer.

Notwithstanding anything to the contrary in the foregoing, City's Right of Reverter under this subsection (4) shall terminate with respect to each Project Phase upon the Substantial Completion of each relevant Phase. Provided, however, that City's rights under this subsection (4) shall survive termination of this Agreement.

**5. Liquidated Damages in the Event of a Closing Default.** IF, FOR ANY REASON OTHER THAN A CITY DEFAULT OR A FAILURE OF A DEVELOPER CLOSING CONDITION, DEVELOPER DEFAULTS IN ITS OBLIGATION TO CLOSE ESCROW FOR PURCHASE OF THE SITE BY THE OUTSIDE CLOSING DATE ("CLOSING DEFAULT"), THE PARTIES ACKNOWLEDGE AND AGREE THAT CITY WILL SUFFER DAMAGES, INCLUDING COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER DEVELOPER FOR THE SITE, OPPORTUNITY COSTS IN KEEPING THE SITE OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HERewith, AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE, IN THE EVENT OF A CLOSING DEFAULT, CITY



SHALL RETAIN THE CONVEYANCE INSTRUMENT DEPOSITS (AS THAT TERM IS DEFINED IN THE ENA) AND SUCH AMOUNTS SHALL SERVE AS LIQUIDATED DAMAGES TO CITY FOR SUCH CLOSING DEFAULT. RETENTION OF THE CONVEYANCE INSTRUMENT DEPOSITS SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A CLOSING DEFAULT, AND CITY WAIVES ANY AND ALL RIGHTS TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE.

**6. Statutory Acknowledgments Regarding Liquidated Damages**

**Remedies.** THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION 803 ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. BY PLACING THEIR INITIALS BELOW, DEVELOPER AND CITY SPECIFICALLY CONFIRM THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS:

\_\_\_\_\_   
 CITY

\_\_\_\_\_   
 DEVELOPER

**D. (§ 805) Attorney's Fees.**

In the event of any litigation by either party pertaining to this Agreement, the prevailing party in such litigation, in addition to any other relief which may be granted, shall be entitled to its litigation costs and expenses, including, without limitation, reasonable attorneys' fees.

**E. (§806) Participation in Third-Party Litigation; Indemnity.**

The parties acknowledge and agree that each shall have the right to elect to defend any Third-Party Litigation subject to the obligations of this Section 806, which shall survive the expiration or termination of this Agreement.

**1. Developer Indemnification in the Event of Third-Party Litigation.**

Subject to Section 806(2)(c) below, Developer agrees to indemnify City and the City Parties and shall hold and save them and each of them harmless from any and all Claims concerning any Third-Party Litigation except if and to the extent said Claims arise from City's sole negligence, willful misconduct, or fraudulent acts. Third-Party Litigation shall mean any court action or proceeding instituted by any third party (i.e., any private individual or entity or any non-City governmental or quasi-governmental authority) challenging the validity of any provision of this Agreement, the Discretionary Entitlements, the Ministerial Permits or any CEQA issue(s) or document(s) approved in connection therewith. City and/or each indemnified City Party seeking defense or indemnity from Developer concerning Third-Party Litigation shall provide Developer with prompt notice of the pendency of any action or proceeding for which it believes it is entitled to indemnity under this Section 806(1) and request that Developer defend it regarding such action or proceeding (but any delay or failure to notify Developer shall reduce Developer's obligations to so defend or indemnify to the extent of any actual prejudice suffered by Developer

due to the delay or failure). Developer's indemnification obligations under this Section 806(1) shall survive the expiration or termination of this Agreement.

**2. Cooperation in the Event of Third-Party Litigation.**

Subject to Section 806(2)(c) below, Developer and City shall cooperate defending same pursuant to this subsection (2), and the parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

(a) **Meet and Confer.** If Third-Party Litigation is filed, upon receipt of the complaint or petition, the parties shall have twenty (20) days to meet and confer regarding the merits of such Third-Party Litigation to determine whether each party elects to defend same and if so, whether they elect to so jointly defend, which period may be extended by the parties' mutual agreement so long as it does not adversely and materially impact any litigation deadlines. Subject to an election to defend, City and Developer shall mutually commit to meet all required litigation timelines and deadlines. If City and Developer agree jointly to defend the Third-Party Litigation, they shall expeditiously enter a joint defense agreement, which shall include, among other things, provisions regarding the preservation of confidential communications. The City Manager is authorized to negotiate and enter such joint defense agreement in a form reasonably acceptable to the City Attorney and Developer's attorneys. Such joint defense agreement shall also provide that any proposed settlement of the Third-Party Litigation shall be subject to Developer's approval, in its reasonable discretion, except in the event City elects to solely defend under subsection (c) below. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is mutually approved by the parties in accordance with applicable laws and regulations.

(b) **Defense Election.** If, after meeting and conferring, the parties mutually agree (each in its sole discretion) to defend against the Third-Party Litigation, then the following shall apply:

(i) For the purposes of cost-efficiency and coordination, the parties shall first consider defending the Third-Party Litigation with common counsel and under terms of a joint representation agreement mutually acceptable to City and Developer (each in its sole discretion), at Developer's sole cost and expense.

(ii) If the parties cannot reach timely and mutual agreement on joint counsel, then:

(1) Developer shall take the lead role defending such Third-Party Litigation and may, in its sole discretion, elect to be represented by the legal counsel of its choice.

(2) City may, in its sole discretion, elect to be separately represented by the City Attorney with the reasonable costs of such representation to be paid by Developer. Provided, however, if City elects to proceed with any outside legal counsel of its choice in addition to the City Attorney, then City shall be solely responsible for any such additional legal fees and costs.



With copies to: Shea Properties  
130 Vantis, Suite 200  
Aliso Viejo, CA 92656  
Attention: Julie Guizan, General Counsel  
Email: [julie.guizan@jfshea.com](mailto:julie.guizan@jfshea.com)

And: Miller Starr Regalia  
1331 North California Blvd., Fifth Floor  
Walnut Creek, CA 94596  
Attention: Hans Lapping  
Email: [hans.lapping@msrlegal.com](mailto:hans.lapping@msrlegal.com)

If to City: City of Cypress  
5275 Orange Avenue  
Cypress, CA 90630  
Attn: Peter Grant, City Manager  
Email: [pgrant@cypressca.org](mailto:pgrant@cypressca.org)

A copy to: Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
Attn: Anthony Taylor, City Attorney  
Email: [ataylor@awattorneys.com](mailto:ataylor@awattorneys.com)

Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

**B. (§ 902) Nonliability of City and City Parties: Conflicts of Interest: Commissions.**

**1. Personal Liability.**

No City Party shall be personally liable to Developer in the event of any City Default or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit City's liability. No member, officer, employee, agent, contractor, representative or consultant of Developer shall be personally liable to City in the event of any Developer Default or for any amount which may become due to City or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Developer's liability.

**2. Financial Interest.**

No City Party shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

**3. Broker Commissions.**

City represents it has engaged JLL and Kosmont Realty Corporation in connection with the potential sale and acquisition of the Site and the transaction contemplated hereunder. Developer agrees to hold City harmless from any claim by any other broker, agent,

or finder retained by Developer in connection with said transaction. City shall not be liable to pay any real estate commission or any broker's fees which may arise in relation to the Project or the transfer of Title to the Site. Assuming the Closing occurs, Developer shall pay a real estate commission fee to JLL and Kosmont Realty Corporation in the total aggregate amount of three percent (3%) of the Purchase Price through escrow at Closing, with said amount being deducted from the Purchase Price. Developer's indemnification obligations set forth in this Section 902(3) shall survive the termination or expiration of this Agreement for a period of five (5) years from the Effective Date.

**C. (§ 903) Excused Delay: Extension of Times of Performance.**

Time is of the essence in the performance of this Agreement. In addition to the specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default when the delay or Default is due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather that prevents, limits, delays or hinders the ability to perform; environmental conditions discovered that delay construction or development, including delays resulting from investigation and/or remediation of such conditions; initiatives, referenda, Third-Party Litigation challenging this Agreement and/or other Project Approval(s) on CEQA or any other grounds or any other material litigation related to the Project; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of a governmental or quasi-governmental authority (except that acts or the failure to act of City shall not excuse performance by City); economic or product demand declines that make it not commercially feasible to proceed with development of the Site with the Project or a phase thereof; or any other similar causes beyond the control or without the fault of the party claiming an extension of time to perform (each, "**Excused Delay**"). Excused Delay shall also include (provided the party seeking the extension is acting with reasonable diligence), additional reasonable period(s) (a) required to complete compliance with and/or obtain approval, adoption or certification (as applicable) of any supplemental or subsequent environmental analysis and/or documentation required for the Project or any portion(s) thereof; (b) the full and final resolution of any Third-Party Litigation filed challenging this Agreement and/or other Project Approval(s) on CEQA or any other grounds or any other material litigation related to the Project in a manner that is acceptable to Developer in its sole and absolute discretion; and (c) required to complete any pending application or request before City for an action or approval under this Agreement or before City for an action or approval under the Project Approvals. Notwithstanding anything to the contrary in the foregoing, Developer's failure to obtain financing for the Project shall not be considered an Excused Delay. City's financial condition shall similarly not be considered an Excused Delay that can be relied on by City for failure to satisfy any City obligation hereunder.

Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, no delay shall be deemed an Excused Delay unless the party claiming the benefit of this provision shall, as a condition thereto, give notice to the other party in writing within fifteen (15) days of the declaring party having actual knowledge of the incident specifying with reasonable particularity the nature thereof, the reason therefor, the date and time such incident occurred and a reasonable estimate of the period that such incident will delay the fulfillment of obligations contained herein. If any notice of Excused Delay is given later than fifteen (15) days after the party declaring such delay has actual knowledge of the existence of the Excused Delay, then the Excused Delay occurring during the period commencing on the sixteenth (16th) day after the commencement of the Excused Delay and ending on the date of such notice, shall be disregarded and deemed not to have occurred.

In the event of an Excused Delay, the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Excused Delay, and shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended by mutual written agreement by City and Developer, with the City Manager having the authority on behalf of City to so consent.

**D. (§ 904) Ownership of Documents; Confidentiality.**

If this Agreement terminates for any reason other than a City Default, then, subject to the terms of this Section 904, Developer shall grant City a royalty-free, one-time, non-exclusive license to use the Project Work Product (as defined below) in strict accordance with the terms of this Section 904. City covenants and agrees that the Project Work Product shall be used solely in connection with the design, development and construction of the Project on the Site and shall not be used in any other location. FURTHER, CITY EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE PROJECT WORK PRODUCT WILL BE MADE AVAILABLE ON AN "AS IS" BASIS ONLY AND WITHOUT ANY WARRANTY OR INDEMNITY OF ANY KIND. NEITHER DEVELOPER NOR ANY OF ITS PARTNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES OR AGENT (COLLECTIVELY, THE "**DEVELOPER PARTIES**") ARE MAKING OR WILL MAKE ANY WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PROJECT WORK PRODUCT. IN ADDITION, DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE QUALIFICATIONS OF ANY CONSULTANT WHICH PREPARED ANY OF THE PROJECT WORK PRODUCT AND DEVELOPER SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CITY OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS OR DAMAGE RESULTING FROM RELIANCE ON THE PROJECT WORK PRODUCT OR ANY USE OF THE MATTERS CONTAINED THEREIN.

As consideration for the foregoing license, City agrees to indemnify, defend, protect and hold Developer and each of the Developer Parties harmless from any and all loss, expense, claim, damage and injury to person or property (including reasonable attorneys' fees) arising out of or relating to any use of, or reliance on, the Project Work Product. City expressly acknowledges and agrees that City may not rent, lease, sublicense, assign or transfer its rights in the Project Work Product without the prior written consent of Developer which consent may be withheld in Developer's sole and absolute discretion; provided, however, that City shall have the one-time right to sublicense the Project Work Product to the purchaser of the Site so long as (a) City has otherwise satisfied the requirements of Subsections (i), (ii) and (iii) of this Section 904, and (b) City obtains a License Agreement (as defined below) from the sublicensee and delivers same to Developer. City acknowledges that the restrictions on its use of the Project Work Product contained in this Section 904 is reasonable and necessary in order to protect Developer's legitimate interests therein and that any violation thereof would result in irreparable injury to Developer. City therefore acknowledges and agrees that, in the event of any violation of any of the terms and conditions of this Section, Developer shall be authorized and entitled to obtain, from any court of competent jurisdiction, preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violations, which

rights and remedies shall be cumulative and in addition to any other rights or remedies to which Developer may be entitled. Notwithstanding anything to the contrary contained in this Section, Developer shall have no obligation to grant the foregoing limited license to City unless and until (i) City reimburses Developer for its actual out-of-pocket costs incurred in connection with developing and obtaining the Project Work Product if the City Council denies approval of the Discretionary Entitlements, (ii) the return of the Conveyance Instrument Deposit to Developer if Developer is otherwise entitled to the return thereof pursuant to the terms and conditions of this Agreement, and (iii) City's execution and delivery of a commercially reasonable license agreement that includes the foregoing disclaimers and indemnity as well as a release of all known and unknown claims related to the use of the Project Work Product (the "**License Agreement**"). For purpose of this Section 904, the "**Project Work Product**" shall mean (x) all third party inspection reports, studies, surveys, and other reports and/or test results relating to the Site, and (y) all improvement plans and specifications including the Grading Plans, Improvement Plans as well as the site plan but only to the extent completed as of the date this Agreement terminates; provided, however, in no event shall the Project Work Product include any documents, materials or information which are proprietary, confidential and/or protected by one or more legally recognized privilege or any rights in or to use Developer's trade names or logos. The parties' rights and obligations under this Section 904 shall expressly survive the termination of this Agreement.

Notwithstanding the foregoing, City agrees, to the maximum extent permitted by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state or federal disclosure laws (collectively, "**Public Disclosure Laws**"), to keep confidential all proprietary financial and other information submitted by Developer to City in connection with Developer's satisfaction of its obligations under this Agreement (collectively, "**Confidential Information**"). Notwithstanding the preceding sentence, City may disclose Confidential Information to City Parties (including the City Advisor), but only if and to the extent necessary to carry out the purpose for which the Confidential Information was disclosed consistent with the rights and obligations provided for hereunder. Developer acknowledges that City has not made any representations or warranties that any Confidential Information City receives from Developer will be exempt from disclosure under any Public Disclosure Laws. If the City Attorney determines that the release of any Confidential Information is required by Public Disclosure Laws, or by order of a court of competent jurisdiction, City shall promptly notify Developer in writing of City's intention to release the Confidential Information so that Developer has the opportunity to evaluate whether to object to said disclosure and/or to otherwise take whatever steps it deems necessary or desirable to prevent disclosure, provided that City shall not be liable for any damages, attorneys' fees and costs for any alleged failure to provide said notice (although such failure may be considered a City Default). If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

Developer acknowledges that in connection with the City Council's consideration of this Agreement, City will need to present a summary of Developer's anticipated costs of development reflected in the Financial Information, together with such other information as may be reasonably required for a staff report accompanying this Agreement. Provided, however, that to the extent Developer reasonably determines it is necessary to protect Confidential Information relating to financial data, said information may be delivered directly to City's third-party advisor, such as Kosmont Realty Corporation (or another third-party consultant reasonably approved by Developer), who shall sign a confidentiality agreement to prevent disclosure of the

Confidential Information but who shall be permitted to provide to City a summary of said information consistent with the purposes of this Agreement. Within ten (10) days of the Closing, or in the alternative if this Agreement expires or is terminated without the Closing having occurred, then City shall promptly return to Developer any and all Confidential Information.

**E. (§ 905) Assurances to Act in Good Faith; Approvals Not to Be Unreasonably Withheld.**

City and Developer agree to execute all documents and instruments and to take all actions as may be reasonably required in order to consummate the conveyance of the Site as well as facilitate the processing of the anticipated future Discretionary Entitlements as contemplated herein and subject to CEQA compliance, and shall use their diligent and commercially reasonable efforts to accomplish the Closing and subsequent development of the Site (assuming City approves the Project during said Discretionary Entitlement after complying with CEQA) in accordance with and subject to the provisions hereof. City and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their respective approval. If the approval of a party is required hereunder, such approval shall not be unreasonably withheld, delayed, or conditioned except as may be otherwise expressly set forth herein. Notwithstanding anything to the contrary in the foregoing, nothing in this Section 905 shall commit City to any particular course of action with respect to the Project, nor shall it limit City's discretion in its consideration of the Project during the anticipated future Discretionary Entitlement process.

**F. (§ 906) Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety.

**G. (§ 907) Entire Agreement, Waivers.**

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof, including without limitation the ENA. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate representatives of City or Developer, as applicable.

**H. (§ 908) Amendments.**

**1. Amendment by Written Consent.**

Except as otherwise expressly provided for herein, this Agreement may be terminated, modified or amended only by the parties' mutual written consent.

**2. Major and Minor Amendments.**

Any amendment to this Agreement that affects or relates to: (i) the Term; (ii) permitted uses on the Site; (iii) provisions for the reservation or dedication of land;



(iv) conditions, terms, restrictions or requirements for subsequent discretionary actions; (v) the density or intensity of the use of the Site or the maximum height or size of proposed buildings; or (vi) monetary contributions by Developer, shall be deemed a “**Major Amendment**” and shall require giving of notice and a public hearing before the City Council. Any amendment that is not a Major Amendment shall be deemed a “**Minor Amendment**” and shall not, except to the extent otherwise required by applicable laws, require notice of public hearing before the parties may execute an amendment hereto.

**3. Authority to Consider Minor Amendment.**

The City Manager or his or her designee shall have the authority to reasonably determine if an amendment is a Major Amendment or a Minor Amendment, as well as the authority to review and approve Minor Amendment(s) administratively without public notice or hearing.

**I. (§ 909) Severability.**

If any term or condition contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term or condition contained herein.

**J. (§ 910) Execution.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Delivery of the executed Agreement may be accomplished by transmittal of a PDF by electronic mail, and if so done, the electronically mailed copy shall be deemed an executed original counterpart of the Agreement for all purposes.

**K. (§ 911) Title of Parts and Sections.**

Any title of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

**L. (§ 912) No Third Party Beneficiaries.**

The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

**M. (§ 913) Parties Not Co-Venturers.**

Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date of execution by City.

“CITY”

CITY OF CYPRESS, a California Charter City

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Anthony Taylor, City Attorney

“DEVELOPER”

SP ACQUISITION, LLC  
a California limited liability company

By: Shea Properties Management Company,  
Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT A**

**SITE DEPICTION AND LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CYPRESS IN THE COUNTY OF

ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 7, 8, AND 9 OF PARCEL MAP 96-121, IN THE CITY OF CYPRESS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 298, PAGE(S) 13 TO 16 INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

SAID LAND IS ALSO DESCRIBED AS PARCEL 1 OF THAT CERTAIN LOT LINE ADJUSTMENT NO. LL-2007-01, DATED AUGUST 16, 2007, IN THE CITY OF CYPRESS, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED JANUARY 30, 2008 AS INSTRUMENT NO. 2008000044840 OFFICIAL RECORDS OF SAID COUNTY.

PARCEL B:

APPURTENANT EASEMENTS TO USE, MAINTAIN, OPERATE, ALTER, REPAIR, REPLACE, RECONSTRUCT AND INSPECT THE UTILITIES, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN RECIPROCAL UTILITIES EASEMENT AGREEMENT RECORDED JULY 31, 1991 AS INSTRUMENT NO. 91-404179 OFFICIAL RECORDS.

PARCEL C:

AN APPURTENANT EASEMENT FOR STORM WATER DRAINAGE, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN GRANT OF DRAINAGE EASEMENT RECORDED SEPTEMBER 11, 1990 AS INSTRUMENT NO. 90-482118 OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN AMENDMENT TO DRAINAGE EASEMENT RECORDED JANUARY 18, 1991, AS INSTRUMENT NO. 91-026004 OFFICIAL RECORDS, AND ALSO AS AMENDED BY THAT CERTAIN GRANT OF EASEMENTS AND AGREEMENT REGARDING DRAINAGE EASEMENT RECORDED JUNE 3, 1997 AS INSTRUMENT NO. 19970253674 OFFICIAL RECORDS.

PARCEL D:

A NON-EXCLUSIVE, PERPETUAL EASEMENTS FOR PEDESTRIAN AND VEHICULAR ACCESS AND FOR INSTALLATION AND MAINTENANCE PURPOSES, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN ACCESS AND UTILITY EASEMENT AGREEMENT RECORDED SEPTEMBER 11, 1990 AS INSTRUMENT NO. 1990-482112 OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN AMENDMENT TO ACCESS AND UTILITY EASEMENT AGREEMENT RECORDED JANUARY 10, 1991 AS INSTRUMENT NO. 91-025992 OFFICIAL RECORDS, AND AS FURTHER AMENDED BY THAT SECOND

AMENDMENT RECORDED OCTOBER 9, 1997 AS INSTRUMENT NO. 1997-507990  
OFFICIAL RECORDS.

APN: 241-091-022 thru 026

## ATTACHMENT B

### LIST OF AUTHORIZED ENTITIES FOR PURPOSES OF THE HOTEL COMPONENT AND RETAIL COMPONENT

As detailed more fully in the Agreement, the various conceptual Project components are anticipated to be revised and refined by the discretionary entitlement application process that Developer intends to pursue once this Agreement is approved by the City Council to obtain the necessary Discretionary Entitlements and Ministerial Permits. If City approves the Project during the anticipated future Discretionary Entitlement process after complying with CEQA, and further if the Project includes the Hotel Component and/or the Retail Component, then the followed entities shall be treated as Authorized Hotel Entity(ies), Authorized Grocery User(s), and Authorized Cinema User(s), as applicable.

Defined terms used in this **Attachment B** shall have the same meaning set forth in the Agreement unless otherwise expressly indicated. In the event of a conflict between the Agreement and this Scope of Development, the Agreement shall control and prevail.

#### Authorized Hotel Entities

Aloft by Marriott  
Courtyard by Marriott  
Four Points by Sheraton  
Hyatt Place by Hyatt  
Hilton Garden Inn  
Hotel Indigo  
Ayres  
Cambria Suites by Choice Hotels  
Homewood Suites

#### Authorized Cinema Users

Cinemark  
Alamo Drafthouse  
Cinapolis  
The Lot  
Arclight

Studio Movie Grill

Metro Theaters

iPic

Authorized Grocery Users

Mother's Market

Sprouts

Whole Foods

Trader Joes

Lazy Acres Market

Gelson's

**ATTACHMENT C**

**SCHEDULE OF PERFORMANCE**

	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>	<b><u>Performance Guideline or Deadline</u></b>
1.	Developer executes and delivers DDA to City	November 12, 2019		Performance Guideline
2.	City holds public hearing on DDA, approves or disapproves DDA and, if approves, executes DDA	November 25, 2019	Recital K, §229	Performance Guideline
3.	Open Escrow	Within 30 days after Event No. 2 above	§404	Performance Deadline
4.	Developer approves or disapproves title exceptions	Within 10 days of any Preliminary Report Update	§408.1	Performance Deadline
5.	City delivers notice to Developer as to whether it will cure Disapproved Exceptions	Within 10 days after receipt of Developer's notice of any Disapproved Exception	§408.1	Performance Deadline
6.	City delivers to Developer all Site documents required pursuant to Section 501 of the DDA	Prior to Effective Date of DDA, pursuant to Section 6 of the ENA	§501	Performance Deadline
7.	City makes Site available to Developer for Inspections	Prior to the Effective Date of DDA, pursuant to Section 6 of the ENA	§501	Performance Deadline
8.	Developer approves the Site Condition	Prior to the Effective Date of DDA and prior to Closing	§501	Performance Deadline

	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>	<b><u>Performance Guideline or Deadline</u></b>
9.	Developer submits Project Discretionary Entitlement Applications	Within 60 days of the Effective Date of DDA and expiration of all applicable appeal/statute of limitations periods	§702.2	Performance Guideline
10	City Council completes CEQA and approves or disapproves Discretionary Entitlements	Within 180 days from submittal of Project Discretionary Entitlements (Event No. 9)	§§702.2, 702.3	Performance Guideline
11	Escrow Agent gives notice of fees, charges, and costs to close escrow	Within 30 business days prior to Closing	§407.2	Performance Deadline
12	Deposits into Escrow by City:			
	a) Executed Deed	On or before 1:00 p.m. on the business day preceding the Closing Date	§§ 406.2, 407.3	Performance Deadline
	b) Payment of City's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	§§ 406.2, 407.3	Performance Deadline
	c) Estoppel Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	§§ 406.2, 407.3	Performance Deadline
	d) Taxpayer ID Certificate	Prior to Closing Date	§407.3	Performance Deadline



	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>	<b><u>Performance Guideline or Deadline</u></b>
	e) FIRPTA Certificate	Within 15 days after opening	§407.3	Performance Deadline
<b>13</b>	Deposits into Escrow by Developer:			
	a) The remaining amount of the Purchase Price due pursuant to Section §403.	On or before 1:00 p.m. on the business day preceding the Closing Date	§§ 406.1, 407.3	Performance Deadline
	b) Lender's Deed of Trust or Security, if applicable	On or before 1:00 p.m. on business day preceding the Closing Date	§§ 406.2, 407.3	Performance Deadline
	c) Estoppel Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	§§ 406.2, 407.3	Performance Deadline
	d) Payment of Developer's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	§§ 406.2, 407.3	Performance Deadline
	e) Taxpayer ID Certificate	Prior to Closing Date	§§ 406.2, 407.3	Performance Deadline
<b>14</b>	Close of Escrow; recordation and delivery of documents	Upon satisfaction of City's and Developer's Closing Conditions, but not later than 12/31/20, unless extended pursuant to subsection (b) below and/or any Excused Delay(s)	§407.1	Performance Deadline

	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>	<b><u>Performance Guideline or Deadline</u></b>
15	Parties execute Purchase and Sale Agreement with Hotel	Subject to Developer's sole and absolute discretion of proceeding with the Phase in question, within 30 days of Approval of Discretionary Entitlements	§703.1,  Atch. B	Performance  Guideline
16	Developer delivers to City certificates evidencing insurance	Before Developer may Commence Construction	§707.1	Performance  Deadline
17	Developer submits building permits/improvement plans	Subject to Developer's decision to Commence Construction of a particular Project Phase, in its sole and absolute discretion, then:  a. Residential Component: Within 180 days of Close of Escrow  b. Hotel Component: Within 150 days from Close of Escrow.  c. Cinema Component: Within 120 days from Close of Escrow  d. Retail Component: Within 120 days from Close of Escrow	§§702.2;  703.1	Performance  Guideline

	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>	<b><u>Performance Guideline or Deadline</u></b>
18	Developer revises and resubmits plans, drawings, and specifications, if necessary	Within 30 days after disapproval	§702.2	Performance Guideline
19	City staff approves or disapproves final drawings	Within 30 days after submittal of revised plans, drawings and specifications, if necessary	§702.2;	Performance Guideline
20	Developer pulls necessary building permits	Subject to Developer's decision to Commence Construction of a particular Project Phase, in its sole and absolute discretion, then:  a. Residential Component: Within 180 days from Submittal  b. Hotel Component: Within 180 days from Submittal  c. Cinema Component: Within 180 days from Submittal  d. Retail Component: Within 180 days from Submittal	§§702.2;  703.1	Performance Guideline

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>	<u>Performance Guideline or Deadline</u>
21.	Developer Commences Construction of Project	<p>Subject to Developer's decision to Commence Construction of a particular Project Phase, in its sole and absolute discretion, then:</p> <p>a. Residential Component: Within 60 days from Event 20</p> <p>b. Hotel Component: Within 60 days from Event 20</p> <p>c. Cinema Component: Within 60 days from Permit</p> <p>d. Retail Component: Within 60 days from Event 20</p>		Performance Guideline

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>	<u>Performance Guideline or Deadline</u>
22	Developer Substantially Completes construction of relevant Project Phase	<p>Subject to Developer's decision to Commence Construction of a particular Project Phase, in its sole and absolute discretion, then:</p> <p>Residential Component: Within 2.5 years from Commencement of Construction of Residential Component</p> <p>b. Hotel Component: Within 1 year from Commencement of Construction of Hotel Component</p> <p>c. Cinema Component: Within 1 year from Commencement of Cinema Component</p> <p>d. Retail Component: Within 1 year from Commencement of Retail Component</p>	§§702.2;  703.1	Performance  Guideline
23	City issues Certificate of Compliance of DDA Obligations for a particular Project Phase	Within 30 days of receipt of written request by Developer, and Developer's satisfactory completion of all improvements of the Project or Phase	§714	Performance  Deadline

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement, including, without limitation, Section 703 in the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of

any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time frames set forth in the Schedule of Performance constitute either a Performance Guideline or a Performance Deadline, as indicate therein, which may be either adjusted or amended pursuant to Section 703.2 of the Agreement.

**ATTACHMENT D**

**FORM OF CERTIFICATE OF COMPLIANCE OF DDA OBLIGATIONS**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
City of Cypress  
5275 Orange Avenue  
Cypress, CA 90630

Attn: City Manager

*EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383*

*Space above this line for recorder's use*

**FORM OF CERTIFICATE OF COMPLIANCE OF DDA OBLIGATIONS**

THIS CERTIFICATE OF COMPLIANCE OF DDA OBLIGATIONS ("**Certificate of Compliance of DDA Obligations**") is made by the CITY OF CYPRESS, a California charter municipality ("**City**"), in favor of \_\_\_\_\_ ("**Developer**"), as of the date set forth below ("**Effective Date**").

RECITALS

A. City and Developer are parties to that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 2019 ("**DDA**") concerning *[all or a portion of]* property located at 5095-5275 Katella Avenue, Cypress, California (APNs 241-091-022 through -026) ("**Site**"). This Certificate of Compliance of DDA Obligations affects *[Insert as applicable: description of the relevant Project Phase(s)]* of the Site as more particularly described in attached Attachment 1 (the "**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 714 of the DDA, City is required to furnish Developer its Transferee(s), in a form suitable for recordation, a Certificate of Compliance of DDA Obligations upon Substantial Completion of the relevant Project Phase.

C. City has determined that the relevant Project Phase on the Property is Substantially Complete as required by the DDA.

NOW, THEREFORE, City hereby certifies as follows:

1. This Certificate of Compliance of DDA Obligations shall constitute City's conclusive determination that the relevant Project Phase is Substantially Completed on the Property as required under the DDA.

2. After the Effective Date of this Certificate of Compliance of DDA Obligations, City shall not have any rights or remedies under the DDA with respect to the relevant Project Phase on the Property except for (a) the non-discrimination covenants contained in Section 3 of the Grant Deed (which covenants shall remain in effect and enforceable in accordance with the terms thereof), and (b) any Developer indemnification obligations that survive termination of the DDA to the extent these are applicable to the Property.

3. This Certificate of Compliance of DDA Obligations shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any Mortgage Holder, or any insurer of a Mortgage. Any Certificate(s) of Compliance of DDA Obligations shall not constitute notice of completion as referred to in the California Civil Code Section 8180 *et seq.*

4. Nothing contained in this instrument shall be deemed or construed to modify any provisions of the DDA or any other document executed in connection therewith.

IN WITNESS WHEREOF, City has executed and issued this Certificate of Compliance of DDA Obligations as of the date set forth below.

**CITY:**

CITY OF CYPRESS, a California charter municipality

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FORM – DO NOT SIGN



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Contra Costa )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Contra Costa )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**ATTACHMENT E**

**GRANT DEED**

RECORDING REQUESTED BY AND  
AFTER RECORDING MAIL TO:

\_\_\_\_\_  
c/o Shea Properties  
130 Vantis, Ste. 200  
Alisio Viejo, CA  
92656  
Attn: Julie Guizan

MAIL TAX STATEMENTS TO:

Same As Above

the payment of a recording fee  
Section 27383

\_\_\_\_\_  
This document is exempt from  
pursuant to Government Code

APNs:

**GRANT DEED**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the CITY OF CYPRESS, a California charter city ("**Grantor**"), hereby grants to \_\_\_\_\_, LLC, a California limited liability company ("**Grantee**"), that certain real property located in the City of Cypress, County of Los Angeles, State of California, and described in **Exhibit "A"** attached hereto and incorporated herein (the "**Site**") subject to the following:

1. **Conveyance in Accordance with Disposition and Development Agreement.** The Site is conveyed in accordance with and subject to that certain recorded agreement by and between City and Grantee entitled "Disposition and Development Agreement" dated as of \_\_\_\_\_, 2019 and recorded with the Los Angeles County Recorder's Office as \_\_\_\_\_ (the "**DDA**"). A copy of the DDA is on file with the City and the County Recorder's Office as a public record. All terms used herein shall have the same meaning as those used in the DDA.

2. **Nondiscrimination.** Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, Transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall

Grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or other Transferees in the premises herein conveyed. The foregoing covenants shall run with the land.

Grantee shall refrain from restricting the rental, sale or lease of the premises herein conveyed on any of the bases listed above. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, assigns, and other Transferees and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or other Transferees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, assigns, and other Transferees and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: "That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, Transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, vendees, or other Transferees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, Transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this agreement, nor shall Grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or other Transferees in the premises herein conveyed. The foregoing covenants shall run with the land."

Grantee certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights

Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

The foregoing covenants as set forth in this Section 2 shall run with the land and remain in effect in perpetuity.

3. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any Mortgage permitted by this Grant Deed or the DDA; provided, however, that any subsequent owner of all or a portion of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Grant Deed to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

GRANTOR:

CITY OF CYPRESS, a California charter city

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved to Form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Attorney

The undersigned Grantee accepts title subject to the covenants hereinabove set forth.

\_\_\_\_\_, LLC,  
a California limited liability company

By: Shea Properties Management Company,  
Inc.,  
a Delaware corporation  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_



**EXHIBIT "A" TO GRANT DEED**

**LEGAL DESCRIPTION OF SITE**

**SITE DEPICTION AND LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CYPRESS IN THE COUNTY OF

ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 7, 8, AND 9 OF PARCEL MAP 96-121, IN THE CITY OF CYPRESS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 298, PAGE(S) 13 TO 16 INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

SAID LAND IS ALSO DESCRIBED AS PARCEL 1 OF THAT CERTAIN LOT LINE ADJUSTMENT NO. LL-2007-01, DATED AUGUST 16, 2007, IN THE CITY OF CYPRESS, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED JANUARY 30, 2008 AS INSTRUMENT NO. 2008000044840 OFFICIAL RECORDS OF SAID COUNTY.

PARCEL B:

APPURTENANT EASEMENTS TO USE, MAINTAIN, OPERATE, ALTER, REPAIR, REPLACE, RECONSTRUCT AND INSPECT THE UTILITIES, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN RECIPROCAL UTILITIES EASEMENT AGREEMENT RECORDED JULY 31, 1991 AS INSTRUMENT NO. 91-404179 OFFICIAL RECORDS.

PARCEL C:

AN APPURTENANT EASEMENT FOR STORM WATER DRAINAGE, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN GRANT OF DRAINAGE EASEMENT RECORDED SEPTEMBER 11, 1990 AS INSTRUMENT NO. 90-482118 OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN AMENDMENT TO DRAINAGE EASEMENT RECORDED JANUARY 18, 1991, AS INSTRUMENT NO. 91-026004 OFFICIAL RECORDS, AND ALSO AS AMENDED BY THAT CERTAIN GRANT OF EASEMENTS AND AGREEMENT REGARDING DRAINAGE EASEMENT RECORDED JUNE 3, 1997 AS INSTRUMENT NO. 19970253674 OFFICIAL RECORDS.

PARCEL D:

A NON-EXCLUSIVE, PERPETUAL EASEMENTS FOR PEDESTRIAN AND VEHICULAR ACCESS AND FOR INSTALLATION AND MAINTENANCE PURPOSES, AS SAID EASEMENT IS SET FORTH IN THAT CERTAIN ACCESS AND UTILITY EASEMENT AGREEMENT RECORDED SEPTEMBER 11, 1990 AS INSTRUMENT NO. 1990-482112 OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN AMENDMENT TO ACCESS AND UTILITY EASEMENT AGREEMENT RECORDED JANUARY 10, 1991 AS INSTRUMENT NO. 91-

025992 OFFICIAL RECORDS, AND AS FURTHER AMENDED BY THAT SECOND AMENDMENT RECORDED OCTOBER 9, 1997 AS INSTRUMENT NO. 1997-507990 OFFICIAL RECORDS.

APN: 241-091-022 thru 026

## **ATTACHMENT F**

### **IMPACT FEE SCHEDULE**

For purposes of Sections 247 and 403 of the Agreement, the parties acknowledge and agree that the Impact Fees in effect on the Effective Date shall be those set forth in the following:

1. Cypress City Council Resolution No. 6182, including any and all attached exhibits (adopted March 8, 2010).
2. Cypress City Council Ordinance No. 1170, including any and all attached exhibits (adopted November 27, 2017).
3. Orange County Sanitation District, Ordinance No. OCSD-50, including any and all attached exhibits (adopted on March 28, 2018).
4. Orange County Fire Authority, Fee Schedule (Planning and Development Services), effective as of September 29, 2017.
5. Cypress School District Resolution No. 178-17, including any and all attached exhibits (adopted May 10, 2018).

## ATTACHMENT G

### FORM OF TEMPORARY LICENSE AGREEMENT

#### FORM OF TEMPORARY LICENSE AND INDEMNIFICATION AGREEMENT

THIS TEMPORARY LICENSE AND INDEMNIFICATION AGREEMENT ("**Temporary License**"), dated as of \_\_\_\_\_, 20\_\_\_\_ ("**Effective Date**") is made and entered into by and between CITY OF CYPRESS, a California charter municipality ("**City**"), and \_\_\_\_\_ ("**Licensee**"). Licensee and City are hereinafter collectively referred to as the "parties" and individually as a "party".

#### RECITALS

- A. SP Acquisition, LLC, a California limited liability company ("**Developer**") and City entered into that certain *Disposition and Development Agreement*, dated October 14, 2019 ("**DDA**") regarding the conveyance from City to Developer of that certain real property situated in the City of Cypress, California, commonly described as 5095-5275 Katella Avenue, Cypress, California (Assessor Parcel Numbers ("**APNs**") 241-091-022 through 026) ("**Site**") for the purpose of enhancing the Site's use with the Project (as that term is defined in the DDA).
- B. Upon the Closing (as that term is defined in the DDA), Developer will own the Site. Prior to Closing, pursuant to Section 301(6) of the DDA, City agreed not to enter into any lease or other agreement(s) or approve any temporary use permit(s) (each, a "**TUP**") respecting the use (including, without limitation, for storage purposes), occupancy, or possession of the Site or any portion(s) thereof without the prior written consent of Developer; provided, however, that City would have the right to approve temporary use(s) involving the display and/or sale of seasonal items (e.g., pumpkins, Christmas trees) or the storage of trailers and/or marshalling of trucks so long as City and the temporary user execute a temporary license agreement, consistent with the terms and conditions set forth herein, in connection therewith and City provides Developer ten (10) days' prior written Notice of same.
- C. Licensee has obtained a TUP pursuant to \_\_\_\_\_ [*Insert reference to approved permit*], which City granted on \_\_\_\_\_, 20\_\_\_\_, to allow for the temporary occupancy and use of a small portion of the Site for the limited purpose(s) of \_\_\_\_\_ [*Insert reference to scope of TUP activities*] (collectively, "**TUP Activities**").
- D. The parties hereto desire to enter into this Temporary License to satisfy the requirements set forth in Section 301(6) of the DDA, and to memorialize the terms and conditions of Licensee's temporary occupancy and use of the Site, which are consistent with the conditions imposed on the TUP.

NOW, THEREFORE, for good and valuable consideration, Licensee and City agree as follows:

1. **Grant of Temporary License.** Licensee shall have the right to occupy and use a small portion of the Site pursuant to Temporary Use Permit \_\_\_\_\_ [*Insert reference to approved TUP*] ("**TUP**"), in the location described in and shown on attached Exhibit A ("**License**

Area”), subject to the terms and conditions set forth herein and the TUP. Licensee shall occupy and use the License Area during the Term (as that term is defined below) of this Temporary License in accordance with the terms and conditions of the TUP, for the limited purpose(s) of the TUP Activities.

2. **Conditions on TUP.** City and Licensee acknowledge that, as a condition of approval imposed on the TUP, Licensee shall not locate trailers, trucks, materials, equipment and/or otherwise operate on the Site in a way that would impair Developer’s Inspections (as that term is defined in the DDA) and/or other due diligence conducted as provided for in the DDA. City also has imposed on the TUP the following additional conditions: (a) it requires the Licensee to comply with all applicable laws while on site; (b) it requires the Licensee to ensure that no dangerous or hazardous conditions occur on the Site as a result of the Licensee’s occupancy and use of the License Area pursuant to the TUP and this Temporary License; (c) it requires the Licensee to indemnify City and/or Developer (as detailed in Section 9 below) against any and all Claim(s) (as that term is defined below) against City and/or Developer (as the case may be) that result from or are in connection with Licensee’s entry, presence and/or TUP Activities on the Site that occur during the Term; (d) it requires that Licensee does not impair the transaction contemplated between Developer and City under the DDA; (e) it requires that Licensee must keep the Site free and clear of all materialmen’s liens, lis pendens and other liens arising out of Licensee’s entry and TUP Activities; and (f) it requires that Licensee name City and Developer (and/or any additional affiliated entities requested by Developer) as additional insured pursuant to Section 10 below.

3. **Securing of Site.** During the Term of the DDA, Licensee acknowledges and agrees that City has granted to Developer the right, at Developer’s cost and expense, to secure the Site with a fence and locked gate for the purpose of ensuring no third-party entry (except for Licensee pursuant to the TUP and this Temporary License). Said securing of the Site is to be in accordance with a City-approved fencing plan, which includes a requirement that Licensee have access to the License Area during the Term of this Temporary License.

4. **Condition of License Area.** In conducting its activities within the License Area under the TUP, Licensee shall: (a) not permanently damage any part of the Site or any personal property owned or held by City or any third party (including, without limitation, Developer) that is located on the Site; (b) promptly repair any damage to the Site resulting directly from the entry by Licensee or their agents, consultants, employees, contractors and representatives or from any TUP Activities; (c) comply with all applicable laws; and (d) promptly return the Site to substantially its original condition as soon as reasonably practicable upon completion of the TUP Activities. Licensee further acknowledges and agrees that it shall be solely responsible for all costs associated with its entry onto the Site and any and all TUP Activities that it conducts on-site. Consistent with the obligations set forth in the foregoing, in the event any damage to the Site or to Developer’s personal property located thereon is caused by Licensee, then Licensee shall be solely responsible for repairing any such damage and promptly returning the Site to substantially its original condition as soon as reasonably practicable and Developer shall have no obligations to City in this regard.

5. **Term.** This Temporary License shall commence on the Effective Date and shall continue until such time as the TUP terminates pursuant to the terms thereof (“*Term*”), at which time this Temporary License shall concurrently and automatically terminate, subject to the indemnification obligations in Section 9 that shall survive termination of this License Agreement.

6. **Compliance with Law.** Licensee shall perform the TUP Activities in compliance with all applicable laws including, without limitation, obtaining any and all permits required by any applicable governmental authority having jurisdiction including, without limitation, City. Licensee shall not allow any dangerous or hazardous conditions to occur on the Site while conducting its TUP Activities.

7. **Notice Prior to Entry.** Licensee shall provide City with written notice (via email addressed to City's representative, City Manager, or such other City representative(s) as City may identify from time to time) at least twenty four (24) hours in advance of Licensee entering the License Area or schedule of the dates and times of its proposed use of the License Area. Said notice shall include the date and time, the anticipated purpose of intended entry, the names and affiliations of the persons entering the License Area, a copy of the insurance certificate specified in Section 10 below and copies of the TUP and any other required governmental approvals, entitlements and/or permits in accordance with Section 3 above (if and to the extent any are required).

8. **Mechanic's Liens.** Licensee shall keep the Site free and clear of all materialmen's liens, lis pendens and other liens arising out of Licensee's entry and the TUP Activities.

9. **Indemnity.** Licensee shall indemnify, defend, and hold City and its respective elected and appointed officials, officers, attorneys, employees and agents (collectively, "*City Indemnitees*") and/or Developer (as the case may be) harmless from any and all claims, actions, suits and other liability (collectively, "*Claims*") asserted against City Indemnitees and/or Developer (as the case may be) resulting from or in connection with Licensee's entry and/or TUP Activities that occur pursuant to this Temporary License. This indemnity shall survive the expiration or termination of this Temporary License as well as the TUP. In the event that any Claim should be filed against any of the City Indemnitees and/or Developer (as the case may be) that would require indemnification by Licensee hereunder, City and/or Developer (as the case may be) shall notify Licensee of such Claim in a reasonably timely manner to permit Licensee the opportunity to provide adequate representation to the City Indemnitees and/or Developer (as the case may be) with respect to any such Claim.

10. **Insurance.** During the Term of this Temporary License, Licensee shall maintain in full force, at its own expense, insurance meeting City's requirements set forth in the TUP. Licensee shall deliver to City a certificate of insurance evidencing the required insurance. Licensee shall not enter into the License Area, as contemplated by this Temporary License, until Licensee has provided City and Developer with certificates of insurance evidencing the required insurance coverages and said certificates of insurance are approved by City. City reserves the right to inspect complete, certified copies of any endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City or Developer. Licensee shall name City and Developer (and/or any additional affiliated entities requested by Developer) as additional insured pursuant to Licensee's obligations set forth in this Section 10.

11. **Notices.** Any notices, demands or communications under this Temporary License between the parties shall be in writing, and may be given either by (i) personal service, (ii) overnight delivery, or (iii) mailing via United States mail, certified mail, postage prepaid, return receipt requested ("*US Mail*"), addressed to each party, as well as Developer, as set forth on the signature page of this Temporary License or such other address as may be furnished in writing by a party and/or Developer, and such notice or communication shall, if properly

addressed, be deemed to have been given as of the date so delivered, or three (3) business days after deposit into the U.S. Mail.

12. **Severability**. If any term of this Temporary License is held by a court of competent jurisdiction to be invalid or unenforceable, then this Temporary License, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

13. **Governing Law**. This Temporary License shall be construed and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Temporary License, the parties agree that a court of competent jurisdiction in Orange County shall be the sole venue and jurisdiction for the bringing of such action.

14. **Legal Fees and Costs**. In the event of any litigation or other legal proceeding including, without limitation, arbitration or mediation, which is between the parties to enforce provision(s) of this Temporary License, the prevailing party shall be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses (including attorney's fees) incurred in the proceeding.

15. **Third Party Beneficiary**. The parties acknowledge and agree that Developer shall be treated as a third party beneficiary under this Temporary License, and shall have the right to enforce its rights set forth herein pursuant to all available remedies under law and equity.

16. **Final Agreement**. This Temporary License terminates and supersedes all prior understandings or agreements on the subject matter hereof as between the parties.

17. **Construction**. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Temporary License, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Temporary License. Headings used in this Temporary License are provided for convenience only and shall not be used to construe meaning or intent.

18. **Qualification; Authority**. Each party to this Temporary License represents and warrants to the other that (i) such party is duly organized and existing; (ii) the person or persons executing and delivering this Temporary License on such party's behalf are duly authorized to do so; (iii) by executing this Temporary License, such party is formally bound to the provisions of this Temporary License; and (iv) entering into this Temporary License does not violate any provision of any other agreement to which said party is bound.

19. **Modifications in Writing**. Any modification or amendment of any provision of this Temporary License must be in writing and bear the signature of the duly authorized representatives of both parties, and the parties shall obtain Developer's consent thereto if and to the extent any such modification affects Developer's rights hereunder.

20. **No Waiver**. The failure of either party to enforce any term, covenant, or condition of this Temporary License on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Temporary

License at any later date or as a waiver of any term, covenant, or condition of this Temporary License.

21. **Counterparts**. This Temporary License may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.

*Signatures on next page*



IN WITNESS WHEREOF, the parties hereto have caused this Temporary License to be executed the dates hereinafter respectively set forth.

**CITY**

CITY OF CYPRESS,  
a charter city and municipal corporation

By: \_\_\_\_\_  
Peter Grant  
City Manager

By: \_\_\_\_\_  
City Attorney

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2019

**Addresses for Notice:**

5275 Orange Avenue  
Cypress, CA 90630  
Attn: Peter Grant, City Manager

**With Copy to:**

Aleshire & Wynder  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
Attn: Anthony Taylor, City Attorney

**LICENSEE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 2019

**Addresses for Notice:**

**With Copy to:**

Developer Consent and Contact Information for Notice Purposes

“DEVELOPER”

SP ACQUISITION, LLC  
a California limited liability company

By: Shea Properties Management Company,  
Inc., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SP Acquisition, LLC  
130 Vantis, Suite 200  
Aliso Viejo, CA 92656  
Attn: Brad Deck

With copies to:

Shea Properties  
130 Vantis, Suite 200  
Aliso Viejo, CA 92656  
Attention: Julie Guizan, General Counsel

And:

Miller Starr Regalia  
1331 North California Blvd., Fifth Floor  
Walnut Creek, CA 94596  
Attention: Hans Lapping

ATTACHMENT H

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUEST BY AND  
AFTER RECORDING RETURN TO:

(Space Above for Recorder's Use)

FORM OF PARTIAL ASSIGNMENT AND ASSUMPTION OF  
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT ("**Assignment Agreement**") is made as of the [\_\_\_] day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Assignor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**"), with reference to the following facts:

A. SP Acquisition, LLC, a California limited liability company ("**SP**") and the City entered into that certain Disposition and Development Agreement, recorded in the Official Records of Los Angeles County, State of California (the "**Official Records**") on \_\_\_\_\_, 2019 as Instrument No. \_\_\_\_\_ (the "**DDA**").

B. SP assigned [all or a portion of] its rights and obligations under and with respect to the DDA to \_\_\_\_\_ pursuant to an Assignment and Assumption of Disposition and Development Agreement dated \_\_\_\_\_ and recorded in the Official Records on \_\_\_\_\_, as Instrument No. \_\_\_\_\_.

C. Concurrently herewith, Assignee acquired fee title to the Property as more particularly described on **Exhibit A** attached hereto ("**Assigned Parcel(s)**") from Assignor on the date first written above (the "**Acquisition Date**").

D. Assignor desires to assign to Assignee those interests, rights, obligations, conditions and requirements under the DDA to the extent related to the development of the Property (collectively, "**Benefits and Burdens**"), and Assignee desires to accept the assignment of such Benefits and Burdens, subject to the terms, conditions and restrictions set forth in this Assignment Agreement.

E. Assignor [has requested approval from the City of the assignment to Assignee described herein pursuant to Section 303(3) of the DDA // has the right to make the assignment to Assignee described herein as a "Permitted Transfer" under Section 303(2) of the DDA.]

F. Assignor represents that neither it nor City is in violation or breach of any provision of the DDA and that the DDA remains valid and in full force and effect as of the Effective Date.

G. [City has consented to the assignment described herein pursuant to Section 303(3) of the DDA, as documented in City's execution of same attached hereto // Pursuant to Section 303(2) of the DDA, the assignment contemplated herein is a Permitted Transfer because \_\_\_\_\_.]

**NOW THEREFORE**, in consideration of the foregoing facts and the mutual covenants and conditions herein below set forth, it is agreed:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, and in accordance with Section 303 of the DDA, Assignor hereby assigns, transfers and conveys to Assignee the Benefits and Burdens under the DDA with respect to the Assigned Parcels and delegates to Assignee all of the Benefits and Burdens under the DDA that accrue after the Acquisition Date of this Assignment under the DDA with respect to the Assigned Parcels. Upon the execution of this Assignment Agreement [and written consent of the City// NOTE: include the foregoing bracketed language only if City consent is required], Assignee shall become substituted for Assignor as the "Developer" under the DDA with respect to the Assigned Parcels. Assignee acknowledges that Assignor or a predecessor-in-interest has previously made one or more partial assignments of the DDA to a party or parties that acquired other property subject to the DDA, and that this Assignment assigns only the Benefits and Burdens with respect to the Assigned Parcels.

2. Notwithstanding any other provision of this Agreement, Assignee hereby assumes and agrees to perform all of the Benefits and Burdens under the DDA with respect to the Assigned Parcels.

3. As of the Effective Date, Assignor hereby relinquishes all Benefits hereby assigned to Assignee under this Assignment, and all Burdens of Assignor hereby assigned under this Assignment shall be terminated as to, and shall have no more force or effect with respect to, Assignor.

4. As of the Effective Date, any default or breach by Assignee under the DDA following the Effective Date with respect to the Assigned Parcel or the Benefits and Burdens ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the DDA and, provided Assignor is not in default under the terms of the DDA shall not result in (a) any remedies imposed against Assignor, including without limitation any remedies authorized pursuant to Section 800 of the DDA, or (b) modification or termination of the DDA with respect to any other property subject to the DDA retained by Assignor after the conveyance of the Assigned Parcel (the "**Assignor Property**"). Similarly, any default or breach by Assignor under the DDA prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the DDA and, provided Assignee is not in default under the terms of the DDA shall not result in (x) any remedies imposed against Assignee, including without limitation any remedies authorized pursuant to Section 800 of the DDA, nor a (y) modification or termination of the DDA with respect to the Assigned Parcel.

5. [City Consent;] City is Third-Party Beneficiary. [The executed City Consent below is for the limited purposes of indicating consent to the assignment and assumption set forth in this Assignment Agreement if and to the extent said consent is required by DDA, and for clarifying that there is privity of contract between City and Assignee with respect to the DDA in such circumstances.] [NOTE: Include the foregoing bracketed language only if the City's consent to the assignment is required.] City is an intended third-party beneficiary of this Assignment Agreement, and has the right, but not the obligation, to enforce the provisions hereof.

6. For purposes of Section 901 of the DDA, the address of the owner of the Assigned  
Parcels is:

Assignee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. This Agreement shall be recorded in the Office of the Los Angeles County  
Recorder.

8. If there is any dispute, action, lawsuit or proceeding relating to this Assignment  
Agreement, or any default hereunder, whether or not any action, lawsuit or proceeding is  
commenced, the non-prevailing party shall reimburse the prevailing party for its attorneys' fees,  
expert witness fees and all fees, costs and expenses incurred in connection with such dispute,  
action, lawsuit or proceeding, including, without limitation, any post-judgment fees, costs or  
expenses incurred on any appeal, in collection of any judgment or in appearing in any bankruptcy  
proceeding.

9. Each party hereto covenants and agrees to perform all acts to prepare, execute  
and deliver such written agreements, documents, instruments, statements, filings and notices as  
may be reasonably necessary to carry out the terms and provisions of this Assignment  
Agreement.

10. Each party to this Assignment Agreement represents and warrants to the other  
that the persons executing this Assignment Agreement on its behalf has the right, power, legal  
capacity and authority to enter into and to execute this Agreement on behalf of the respective  
legal entities of the Assignor and the Assignee.

11. This Assignment Agreement may only be amended or modified by a written  
instrument signed by both parties hereto.

12. This Assignment Agreement shall be binding upon and inure to the benefit of the  
heirs, successors and assigns of the respective parties hereto. Assignee shall have the right to  
reassign these Benefits and Burdens only in connection with a conveyance of the fee title to the  
Property and in accordance with the DDA's terms and conditions.

13. This Assignment Agreement sets forth the entire understanding between the  
parties hereto with respect to all matters discussed herein and supersedes any and all prior  
agreements whether written or oral regarding such matters. Should any term, condition, covenant  
or provision of this Assignment Agreement be held to be invalid or unenforceable, the remainder  
of this Assignment Agreement shall continue in full force and effect.

14. This Assignment Agreement may be executed in several counterparts and, when  
so executed, shall constitute one agreement binding on both parties hereto, notwithstanding that  
both parties are not signatory to the original and the same counterpart.

15. All capitalized terms used herein but not otherwise defined herein shall have the  
meanings ascribed to such terms as set forth in the DDA .

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement as of the date first set forth above.

“Assignor” \_\_\_\_\_, **LLC**,  
a California limited liability company

By: Shea Properties Management Company, Inc.,  
a California limited liability company,  
its Manager

By: **FORM – DO NOT SIGN**  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“Assignee” \_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_ **FORM – DO NOT SIGN** \_\_\_\_\_,  
a \_\_\_\_\_, its \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF CYPRESS CONSENT**

[NOTE: THIS SIGNATURE TO BE INCLUDED ONLY IF CITY CONSENT IS REQUIRED UNDER DDA]

The City hereby consents to the covenants, terms and conditions of the foregoing Assignment and Assumption of Deposition and Development Agreement. In accordance with Section 303 of the Development Agreement, City hereby releases Assignor from the Benefits and Burdens with respect to the Assigned Parcels.

City: By: FORM – DO NOT SIGN  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved to Form: By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Attorney

EXHIBIT A TO PARTIAL ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND  
DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF ASSIGNED PARCELS

[Attach Legal Description]



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ATTACHMENT I

FORM OF ESTOPPEL CERTIFICATE

\_\_\_\_\_, 20\_\_

\_\_\_\_\_ LLC ("**Owner**")  
c/o Shea Properties LLC  
130 Vantis, Suite 200  
Aliso Viejo, CA 92656  
Attn: Julie Guizan

\_\_\_\_\_ LLC ("**Purchaser**" "**Lessee**")  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

RE: 5095-5275 Katella Avenue, Cypress, California (APNs 241-091-022 through -026) (the "**Property**"); Estoppel Certificate

Ladies and Gentlemen:

Reference is made to that certain Disposition and Development Agreement dated \_\_\_\_\_, 2019 and recorded \_\_\_\_\_ as Instrument No. \_\_\_\_\_ of the Official Records of Los Angeles County, California (as amended, the "**DDA**") attached hereto as **Exhibit A**, by and between the undersigned (the "**City**") and Owner for the disposition and development of the Site. City understands that [Purchaser/Lessee] may be [purchasing/leasing] all or a portion of the Site from Owner, and [Purchaser/Lessee] is relying upon this Estoppel Certificate (this "**Certificate**"), as provided for in Section 718 of the DDA, in connection with such transaction. All capitalized terms used herein have the meaning set forth in the DDA unless otherwise expressly indicated.

With such understanding and as of the date of this Estoppel Certificate, City hereby represents, warrants and agrees, on behalf of itself and its successors and assigns, for the benefit of Owner; [Purchaser/Lessee]; their affiliates; their current, potential and future members, partners, shareholders, lenders, and investors; and each of their respective transferees, successors and assigns, as follows:

1. A true, correct and complete copy of the DDA is attached hereto as **Exhibit A**. The DDA represents the entire agreement between the parties as to the Site, and there are no side agreements, modifications, amendments, or supplements with respect thereto, except as set forth in **Exhibit A**.

2. The DDA is in full force and effect and is hereby ratified and reaffirmed by City.
3. There is no default by Owner under the DDA and no event has occurred that, with the passage of time or the giving of notice, or both, would constitute a default by Owner under the DDA. The undersigned has not cured any default by Owner under the DDA as to which it claims any right of reimbursement and/or lien under the DDA. City has no other claims against Owner with respect to the Site or the DDA, and City has not disputes with Owner with respect to the Site and/or the DDA.
4. [ ] Project Phase(s) have been Substantially Completed, or if not Substantially Completed, following is a description of the nature and extent of any additional work required to achieve Substantial Completion.
5. The individual executing this Certificate on City's behalf hereby represents and warrants that he or she is duly authorized to so execute this Certificate on behalf of City.

Very truly yours,

CITY OF CYPRESS, a California charter city

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City Attorney

Exhibit A to Estoppel Certificate  
Disposition and Development Agreement

[See Attached]