DISPOSITION AND DEVELOPMENT AGREEMENT

by and among

THE CITY OF DALY CITY

and

SIERRA ENTERPRISES, INC.,
a California corporation

The Real Properties Known as
San Mateo County Assessor's Parcels Number
002-352-160;
002-352-290;
002-352-310;
002-362-330;
a portion of 002-352-250;
and a portion of 002-342-250

_____, 2020

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2020 ("**Effective Date**") by and among the City of Daly City, a municipal corporation (**"City"**) and Sierra Enterprises, Inc., a California corporation (**"Sierra" or "Developer"**). City and Sierra are collectively referred to herein as the "**Parties**."

RECITALS

A. The City is the owner of the real property located at the intersection of Westlake Avenue and Junipero Serra Boulevard in Daly City, California, known as San Mateo County Assessor's Parcel Nos. ("**APN**") 002-352-160, 002-352-290, 002-352-310, 002-362-330, and more particularly described in Exhibit A-1 and depicted in Exhibit A-3 attached hereto (collectively, "**North-of-Westlake Parcels**"); and APNs 002-352-200, 002-352-210, 002-352-220, 002-352-230, 002-352-240, 002-342-160, 002-252-250, and 002-342-250 which are more particularly described in Exhibit A-2, and depicted in Exhibit A-3 (collectively, "**South-of-Westlake Parcels**") (collectively, the North-of-Westlake Parcels and the South-of-Westlake Parcels are referred to as the "**Property**"). The Property was conveyed to the City by the Successor Agency to the Daly City Redevelopment Agency pursuant to a Long-Range Property Management Plan approved by the California Department of Finance in accordance with Health and Safety Code Section 34191.5.

B. Following the City's evaluation of proposals submitted in response to a Request for Developer Qualifications, the City and the Developer entered into an Exclusive Negotiating Rights Agreement dated as of July 20, 2018 (the "**ENA"**), pursuant to which the Parties agreed to negotiate the terms for the proposed conveyance and development of a portion of the Property. The ENA was extended by means of a July 20, 2019 First Extension of Exclusive Negotiating Rights Agreement. The ENA was further extended by the January 20, 2020 Second Extension of Exclusive Negotiating Rights Agreement.

C. Developer has proposed certain development on the Property to expand the existing mortuary and provide additional parking. Specifically;

(1) The North-of-Westlake Parcels are located at the northeast corner of Junipero Serra Boulevard and Westlake Avenue and is currently a surface parking lot. The parking lot would be demolished and replaced with a two-story 30,605 sq. ft. event center with ground level parking. The building would include 36 parking spaces and two offices on the ground floor and two chapels and assembly/event space on the main floor. The maximum height of the building would be 47 feet. A new 22-space surface parking lot would be located south of the events center. No changes to the existing mortuary building are proposed, but the existing parking lot would be repaved and a new traffic circle would be constructed at the driveway entrance on Westlake Avenue.

(2) A portion of the South-of-Westlake Parcels is an undeveloped lot located south of the existing mortuary across Westlake Avenue. The City currently uses the lot as an access road to the City's Corporation Yard. The site would be redeveloped into a 44-space parking lot for Duggan's and would include an easement for the City for continued access to the Corporation Yard.

(collectively, the "**Project**").

D. In connection with the proposed Project, Developer has applied to City for a Planned Development zoning amendment, a Parcel Map approval, and Design Review approval (collectively, the **"Entitlements**").

E. City previously prepared an environmental impact report (the "**1999 EIR**") to evaluate the potential environmental effects of Planned Development PD-54, which allowed a more intense level of development at the Property than would occur with the Project. City certified the 1999 EIR on March 8,1999. In response to Developer's applications for the Entitlements, City has evaluated the Project pursuant to CEQA, and prepared a study Duggan's Serra Mortuary/Carvana Project Initial Study/Addendum and dated May 2020 (the "**Addendum**") which concludes that the Project is will not result in additional environmental effects not previously evaluated in the EIR (the Addendum together with the EIR is referred to as the "**Project CEQA Documentation**").

G. Upon satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the City will convey the North of Westlake Parcels and the Developer Parking Area (collectively, the "**Subject Property**") to Developer for development of the Project. For the avoidance of doubt, the Subject Property consists of (i) the Developer Parking Area, depicted on Exhibit A-5 and more particularly described in Exhibit A-6; and (ii) the North-of-Westlake Parcels, depicted in Exhibit A-7 and more particularly described in Exhibit A-8. Developer Parking Area is depicted On or after the Completion Date, as defined herein, Developer may sell or lease the Subject Property and the improvements located thereon to a third party, which may or may not be an Affiliate of Developer.

H. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Project within the time periods specified herein and in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS; EXHIBITS

1.1 Definitions. The following terms shall have the meanings set forth below and, in the Sections, referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

"**1999 EIR"** is defined in Recital E.

"**Additional Hazardous Materials Remediation Reimbursement**" is defined in Section 6.6.1(a).

"**Affiliate**" means any corporation, limited liability company, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with Developer and/or Developer's Key Principals.

"**Applicable Laws**" is defined in Section 5.15

"**Assignment of Intangible Property**" is defined in Section 3.7.

"**Authorized Representative"** means the City Manager of the City of Daly City, or his or her designee.

"CEQA" means the California Environmental Quality Act, Public Resources Code section 21000 *et seq*.

"**Certificate of Completion**" is defined in Section 5.12.

"**City**" means the City of Daly City, California, a municipal corporation.

"**City Council**" means the City Council of the City of Daly City, California.

"**City Documents**" means collectively, this Agreement, the Memorandum, and the Developer Parking Area Grant Deed and Reservation of Easement, and North-of-Westlake Grant Deed, and such other and further documents as may reasonably be required to complete the Developer Parking Area Closing and/or the North-of-Westlake Closing, as applicable.

"**City Parking Area**" is that portion of the Corporation Yard which shall be retained by the City after its conveyance of the Developer Parking Area to the Developer, as is depicted on Exhibit A-4 and more particularly described in Exhibit A-3. The Developer Parking Area Grant Deed with Reservation recorded by the City shall reserve an access easement over Developer Parking Area for the benefit of the City Parking Area.

"**Claims**" is defined in Section 5.11.

"**Commencement Date**" means the date thirty (30) months after Developer's acquisition of the Subject Property (*i.e.*, if close of escrow on the North-of-Westlake Parcels and Developer Parking Area occurs in different transactions, the Commencement Date shall be calculated based on the later date).

"**Completion Date**" in defined in Section 5.1

"**Conditions of Approval**" is defined in Section 5.4.

"**Construction Plans**" is defined in Section 5.6.

"**Corporation Yard**," is that certain real property owned by the City, commonly known as 2157 Junipero Serra Boulevard, Daly City, and further described as San Mateo County

Assessor's Parcel No. 002-342-250. A portion of the Corporation Yard is contained within the boundaries of the Developer Parking Area. The remainder of the Corporation Yard is adjacent to the Developer Parking Area, to the south, and is further identified herein as the City Parking Area.

"**Developer Documents**" means collectively, this Agreement, and the countersigned Developer Parking Area Grant Deed and Reservation of Easement and North-of-Westlake Grant Deed, and such other and further documents as may reasonably be required to complete the Developer Parking Area Closing and/or the North-of-Westlake Closing, as applicable.

"Developer Parking Area" means a portion of the real property known as San Mateo County Assessor's Parcel No. 002-352-250 and that portion of the Corporation Yard which shall be conveyed to Developer, further defined in Recital C and as described in Exhibit A-3 and depicted in Exhibit A-4.

"**Developer Parking Area Allocation**" is a portion of the Purchase Price allocated to establish Developer's cost basis in the Developer Parking Area, as defined in Sectionc3.2(a).

"**Developer Parking Area Closing Date**" or the "**Developer Parking Area Close of Escrow**," as defined herein shall be the date(s) that escrow closes for the conveyance of the North-of-Westlake Parcels from City to Sierra.

"Developer Parking Area Grant Deed with Reservation" shall have the meaning defined in Section 3.1, with reference to Exhibit G-1.

"Design Documents" is defined in Section 2.4.

"**Developer**" means Sierra, or its assignee.

"**Developer's Permitted Exceptions**" is defined in Section 3.1.

"**Duggan's**" means Duggan's Serra Mortuary, a California corporation.

"**Economic Force Majeure**" is defined in Section 11.2.2.

"**ENA"** is defined in Recital B.

"Entitlements" is defined in Recital D.

"**Environmental Laws**" is defined in Section 6.11.2.

"Escrow Agent" is defined in Section 3.3.

"**Force Majeure"** is defined in Section 11.2.

"**Good Faith Deposit**" means the good faith deposit provided by the Developer (or an Affiliate of Developer) in the amount of One-Hundred Thousand and 00/100 Dollars

($100,000.00) and all interest that is earned on the Good Faith Deposit after the City deposits the Good Faith Deposit in an interest-bearing account.

"**Hazardous Material**" is defined in Section 6.11.1.

"**Hazardous Materials Remediation**" means such environmental remediation as is reasonable and necessary to satisfy the Covenant to Restrict Use of Property Environmental Restriction recorded in the Official Records of San Mateo County on or about March 23, 2016 as Instruments No. 2016-025567 and 2016-025568.

"**Hazardous Material Remediation Holdback**" is defined in Section 3.6(e), and shall be used to reimburse Developer for the reasonable costs incurred in performing the Hazardous Materials Remediation.

"**Improvements**" means the improvements to be constructed on the Property pursuant to this Agreement.

"**Indemnitees**" is defined in Section 5.11.

"**Independent Consideration**" is defined in Section3.3(a).

"**KJE**" means and KJE Investments LLC, a California limited liability company, or its assignee.

"**Key Principals**" is defined as the shareholders and/or principals of Developer, *i.e.*, Daniel M. Duggan, Winifred D. Sullivan, Joseph Duggan, Matthew Duggan and William J. Duggan, or any other officer, director, or majority shareholder or member of Developer as of the date of this Agreement.

"**Lender's Title Policy**" is defined in Section 3.8.

"**Memorandum**" is defined in Section 3.7(e).

"**North-of-Westlake Closing Date**" or "**North-of-Westlake Close of Escrow**" shall be the date(s) that escrow closes for the conveyance of the North-of-Westlake Parcels from City to Sierra, which date shall be no later than six (6) months after the "Developer Parking Area Closing Date" or the "Developer Parking Area Close of Escrow."

"**North-of-Westlake Grant Deed**" shall have the meaning defined in Section 3.1, with reference to Exhibit G-1.

"**North-of-Westlake Allocation**" is a portion of the Purchase Price allocated to establish Developer's cost basis in the North-of-Westlake Parcels, as defined in Section 3.2(b).

"**Official Records**" means the Official Records of San Mateo County.

"**Owner's Title Policy**" is defined in Section 3.8.

"**Permitted Transfer**" is defined in Section 7.3

"**Planning Commission"** means the Planning Commission of the City of Daly City.

"**Project**" is defined in Recital C.

"Project CEQA Documentation" is defined in Recital E.

"**Property**" is defined in Recital A, described and depicted in Exhibit A-1 through A-5, inclusive.

"**Repurchase Option**" is defined in Section 9.9.

"Sierra" means Sierra Enterprises, Inc., a California corporation.

"**Subject Property"** means the North-of-Westlake Parcels and the Parking Area, as each of those terms is defined in this Agreement.

"Title Company" is defined in Section 3.3.

"**Title Report**" is defined in Section 3.1.

"**Total Purchase Price**" is defined in Section 3.2.

"**Transfer**" is defined in Section 7.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A-1 Legal Description – North-of-Westlake Parcels
A-2 Legal Description – South-of-Westlake Parcels
A-3 Legal Description – City Parking Area
A-4 Site Map – Property
A-5 Site Map – Developer Parking Area
A-6 Legal Description – Developer Parking Area
A-7 Site Map – North-of-Westlake Parcels
A-8 Legal Description – North-of-Westlake Parcels
B Intentionally Omitted
C Intentionally Omitted
D Intentionally Omitted
E Form of Certificate of Completion
F Form of Memorandum of Option
G-1 Form of Developer Parking Area Grant Deed and Reservation of Easement
G-2 Form of North-of-Westlake Grant Deed
H Leases and Service Contracts
I Form of Assignment of Intangible Property

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE; FINANCIAL CAPACITY

2.1 Representations.

2.1.1 Developer's Representations. Developer covenants that until the issuance of a Certificate of Occupancy for the Project upon reasonable discovery of any fact or condition that would cause any of the warranties and representations in Section 2.1.1 to be untrue , Developer shall promptly, and no later than five (5) business days, give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City. Developer hereby represents, warrants, and covenants that the following are true and correct as of the Effective Date.

(a) Organization. Developer is a corporation, duly organized and in good standing under the laws of the State of California.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments that have been or that will be executed and delivered by Developer pursuant to or in connection with this Agreement, have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments that have been or that will be executed and delivered by Developer pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments that have been or that will be executed and delivered by Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments that have been or that will be executed and delivered by Developer pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict

with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to the City prior to execution of this Agreement, Developer is not in default under or in violation of any law or regulation or under any order of any court, board, commission or agency whatsoever, and to the best knowledge of the Key Principals of Developer, there are no claims, actions, suits or proceedings pending or, to the best knowledge of the Key Principals of Developers, threatened against or affecting Developers, or the Property, at law or in equity, before or by any court, board, commission or agency. Developer is not the subject of any bankruptcy or insolvency proceeding, and no general assignment or 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.

2.1.2 City's Representations. City covenants that until the first to occur of the expiration or earlier termination of this Agreement or the Close of Escrow, upon learning of any fact or condition that would cause any of the warranties and representations in Section 2.1.2 to be untrue, City shall promptly give written notice of such fact or condition to Developer. City acknowledges that Developer shall rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Developer. City hereby represents, warrants, and covenants that the following are true and correct as of the Effective Date.

(a) Organization. City is a municipal corporation, duly organized under the laws of the State of California.

(b) Authority of City. City has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by City, or to be executed and delivered by City pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(c) Authority of Persons Executing Documents. This Agreement, and all other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement, have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of City, and all actions required under City's governing documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of City, enforceable in

accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments that have been or that will be executed and delivered by City pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on City, or any provision of the governing documents of City, or will conflict with or constitute a breach of or a default under any agreement to which City is a party, or will result in the creation or imposition of any lien upon any assets or property of City, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to Developer prior to execution of this Agreement, neither City nor the Subject Property is in default under or in violation of any law or regulation or under any order of any court, board, commission or agency, and to the best knowledge of City, there are no claims, actions, suits or proceedings pending or, to the best knowledge of City, threatened in writing against or affecting City or the Subject Property, at law or in equity, before or by any court, board, commission or agency, in any such case where such default or violation or claim, action, suit or proceeding is reasonably likely to have a material adverse effect on the Subject Property or any portion thereof or the City's ability to perform its obligations under this Agreement. City is not the subject of any bankruptcy or insolvency proceeding, and no general assignment or 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.

(g) Condemnation. No condemnation proceedings relating to the Subject Property or its access to or from public streets or utilities are pending, nor has the City received written notice of any threatened condemnation proceedings relating to the foregoing.

(h) Other Agreements. Except as disclosed in writing to Developer, and except for matters of public record or matters shown as exceptions to title to the Subject Property in the Title Report City has not made any commitment or entered into any agreement of any kind with any governmental authority, or any adjoining property owner, group or other third party, which would in any way be binding on Developer or all or any portion of the Subject Property after the Close of Escrow.

(i) Environmental. With the exception of those matters disclosed in that certain Covenant to Restrict Use of Property Environmental Restriction recorded in the Official Records of San Mateo County on or about March 23, 2016 as Instruments No. 2016-025567 and 2016-025568, which shall be the subject of Hazardous Materials Remediation performed by Developer and subject to reimbursement by City as provided herein, City has no knowledge of any violation of Environmental Laws related to the Subject Property or the presence or release of Hazardous Material on or from the Property. To the best of City's knowledge, neither the Property nor any portion thereof has been used for the generation, treatment, storage, handling or

disposal of any Hazardous Material, in violation of any Environmental Laws, by the City or its predecessors-in-interest.

(j) No Tenants. There are no leases or occupancy agreements or licenses affecting the Property or any portion thereof or conferring on any person or entity the right to use, occupy or enter onto the Subject Property.

(k) No Service Contracts. There are no service contracts or other agreements affecting the Property or any portion thereof that will remain in effect after Close of Escrow.

(l) Property Information. To the best of City's knowledge, the items of Property Information delivered to Developer are true and complete copies of such items and such items contain no material information actually known by City to be false.

2.2 Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.3 Intentionally omitted.

2.4 Environmental Review; Design Review; Conditions of Approval. Prior to its approval of this Agreement, the City Council determined that the Project CEQA Documentation has adequately considered the environmental effects of the Project, and that no further analysis of the Project is required under CEQA. Prior to the City Council's consideration of this Agreement, Developer submitted, and the Planning Commission recommended approval of : (i) a site plan, elevations, and schematic drawings for the Project (**"Design Documents")**, and (ii) the application for the Planned Development zoning amendment. Concurrently with its approval of this Agreement, the City Council approved the Design Documents and the Planned Development zoning amendment.

In the event that the proposed Project is modified or other circumstances arise that would require additional review of the Project pursuant to CEQA, prior to submitting an application for any modified approvals for the Project, City shall cause to be performed, at Developer expense, any additional environmental studies required by the City in connection with environmental review of the Project in accordance with CEQA. Developer acknowledges that approval or disapproval of the Project following completion of any such additional required environmental review is within the sole and absolute discretion of the City without limitation by or consideration of the terms of this Agreement, and that the City makes no representation regarding the ability or willingness of the City to approve a modified Project at the conclusion of any supplemental environmental review process required by CEQA, or regarding the imposition of any mitigation measures required as a result thereof. Prior to the Close of Escrow, Developer shall have the right to terminate this Agreement by delivery of written notice to City if the City disapproves the Project following completion of any required supplemental environmental review or Developer determines that implementation of any additional environmental mitigation measures required as a result of such supplemental review or new and additional Conditions of Approval imposed in connection with such supplemental review would cause development of the Project to become economically infeasible.

2.5 Financial Capacity. Developer has submitted to City enough information and data to establish the financial capacity of Developer to perform its obligations under this Agreement. To the extent that Developer intends to secure financing for the construction of the Project, Developer shall submit copies of all loan documents for the City's approval, which shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE III

DISPOSITION OF THE PROPERTY; CONDITIONS PRECEDENT TO CLOSING

3.1 Purchase and Sale of Property; Review of Title. Developer acknowledges receipt of preliminary title reports for both the Developer Parking Area and the North-of-Westlake Parcels issued by Title Company on or about June 3, 2020 and dated May 6, 2020 (the "**Title Report"**). Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, City shall sell to Developer, and Developer shall purchase from City, the fee interest in the Subject Property in accordance with and subject to the terms, covenants and conditions of this Agreement subject to: (a) the provisions and effects of the City Documents, (b) applicable building and zoning laws and regulations, (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed and Reservation of Easement, (d) exceptions numbers 1 through 7 as shown on the Title Report for the Developer Parking Area, (e) exceptions numbers 1 through 4, 10 through 12, 16-10 as shown on the Title Report for the North of Westlake Parcels, (f) liens and encumbrances created or permitted by Developer or Developer's Affiliates, employees, or agents, and (g) such other conditions, liens, encumbrances, restrictions, easements and exceptions as Developer may approve in writing, which approval shall not be unreasonably withheld. All of the foregoing are collectively hereinafter referred to as "**Developer's Permitted Exceptions**." The Developer Parking Area shall be conveyed to Developer by Grant Deed and Reservation of Easement, in substantially in the form attached hereto as Exhibit G-1 (the "**Developer Parking Area Grant Deed and Reservation**"), which shall reserve to City an access easement to another parcel of land owned by City (*i.e.*, the City's "**Corporation Yard**," commonly known as 2157 Junipero Serra Boulevard, Daly City, San Mateo County Assessor's Parcels No. 002-342-250). The North-of-Westlake Parcels shall be conveyed to Developer by Grant Deed, in substantially in the form attached hereto as Exhibit G-2 ("**North-of-Westlake Grant Deed**").

For the avoidance of doubt, City intends to convey the balance of the Property, *i.e.*, the South-of-Westlake Parcels less the Developer Parking Area, to a third party, *i.e.*, KJE.

3.2 Purchase Price. City shall sell the Subject Property to Developer for the sum of Two Million, Six Hundred Eighty-Nine Thousand and 00/100 Dollars ($2,689,000) (the "**Total Purchase Price**") which is the fair market value of the Property as determined by that certain November 15, 2018 appraisal prepared by All Bay Valuation, Pete Doherty, MAI, the methodology of which has been approved by the Parties. The Purchase Price shall be allocated as follows, solely for purposes of establishing Developer's cost basis in the land:

(a) The total sum of Three Hundred Fifty and 00/100 Dollars ($350,000) shall be allocated to the Developer Parking Area ("**Developer Parking Area Allocaton**"); and

(b) The total sum of Two Million, Three Hundred Thirty Nine Thousand and 00/100 Dollars ($2,339,000) shal be allocated to North-of-Westlake Parcels ("**North-of-Westlake Purchase Price**").

The Purchase Price shall be paid in full to City by the North-of-Westlake Close of Escrow.

3.3 Independent Consideration; Good Faith Deposit.

(a) Independent Consideration. In addition to the Good Faith Deposit, below, Developer shall deposit with the Escrow Agent, within three (3) business days after the Effective Date an initial earnest money deposit in the amount of One Hundred and 00/100 Dollars ($100.00) ("**Independent Consideration**"). The Independent Consideration is non-refundable to Developer under any circumstances as independent consideration for the rights extended to Developer under this Agreement. The Independent Consideration shall be released to City immediately following Developer deposit of this Agreement into Escrow. The Independent Consideration shall not be applicable towards the Purchase Price.

(b) Good Faith Deposit

(i) As of the date of this Agreement, the Developer has delivered to the City the Good Faith Deposit, consisting of the sum of One-Hundred Thousand and 00/100 Dollars ($100,000.00) in cash. The City shall promptly deposit the Good Faith Deposit in a short-term interest-bearing account, such as the Local Agency Investment Fund or another fund or account in which the City typically invests funds on a short-term basis.

(ii) The Developer may elect not to proceed with construction of the Development. In such event, or in the event of termination of the Agreement, the City shall retain the Good Faith Deposit pursuant to Section 9.1 below. If this Agreement is terminated as a result of an Event of Default by Developer, the City shall retain the Good Faith Deposit. If this Agreement is terminated as a result of an Event of Default by the City, the Good Faith Deposit shall be returned to Developer.

(c) When the Closing occurs, the Good Faith Deposit shall be applied against the Purchase Price due the City from the Developer.

3.4 Escrow. City and Developer shall open escrow at the office of First American Title Company located at 2755 Campus Drive, Suite 125, San Mateo, California, Attn: Shelly Siegman, or such other title company as the Parties may agree upon ("**Escrow Agent**" or **"Title Company"**) in order to consummate the conveyance of the Property to Developer and the closing of escrow for the transactions contemplated hereby.

3.5 Costs of Closing and Escrow; Legal Fees. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Property and the financing of the Project, and Developer shall pay all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the acquisition of the Property and the financing of the Project. Property taxes and assessments shall be prorated as of the Developer Parking Area Closing Date and/or North-of-Westlake Closing Date, as applicable. City and Developer shall provide Escrow Agent with a copy of this Agreement, which together

with such supplemental instructions as City or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Developer, shall serve as escrow instructions for the Developer Parking Area Closing and/or North-of-Westlake Closing, as applicable. By no later than the Developer Parking Area Closing Date and/or North-of-Westlake Closing Date, as applicable, Developer shall pay City's reasonable legal and consulting fees incurred in connection with the transactions contemplated by this Agreement, including without limitation, reasonable attorneys' fees incurred in connection with the negotiation and preparation of this Agreement and the City Documents, and other documents required in connection with the conveyance of the Property, the financing of the Project, and the Developer Parking Area Close of Escrow and/or North-of-Westlake Close of Escrow, as applicable. Payment for City's legal and consulting fees may be drawn from the Good Faith Deposit paid by Developer pursuant to the ENA as such is replenished in accordance with the ENA, and Developer shall pay any additional amount due to City, in cash, on the Developer Parking Area Closing Date and/or North-of-Westlake Closing Date, as applicable.

3.6 Closing.

(a) The Closing Date(s) for Developer's acquisition of the Developer Parking Area and/or the North-of-Westlake Parcels shall be a date(s) that is/are mutually acceptable to the Parties, and which shall occur within thirty (30) days following the Parties' satisfaction or waiver of all conditions precedent to conveyance of the Developer Parking Area and/or North-of-Westlake Parcels as set forth in Sections 3.9.1 and 3.9.2, as well as 3.10.1 and 3.10.2. For the avoidance of doubt, the North-of-Westlake Closing Date shall be no later than six (6) months after the Developer Parking Area Closing Date.

(b) Provided that all conditions precedent to Close of Escrow have been satisfied or waived, City shall deposit into escrow the executed and acknowledged, as applicable, City Documents for the Developer Parking Area Close of Escrow and/or North-of-Westlake Close of Escrow, as applicable

(c) Provided that all conditions precedent to Close of Escrow have been satisfied or waived, Developer shall deposit into escrow the countersigned and acknowledged, as applicable, Developer Documents, the Purchase Price (*i.e.*, the Developer Parking Area Allocation or the North-of-Westlake Allocation, as applicable), and Developer's share of closing costs.

(d) On the Developer Parking Area Closing Date, the Escrow Agent shall cause the Developer Parking Area Grant Deed and Reservation of Easement to be recorded in the Official Records, followed by the Memorandum, as it relates to the Subject Property
.

(e) On the North-of-Westlake Closing Date, the Escrow Agent shall cause the North-of-Westlake Grant Deed to be recorded in the Official Records.

(e) Following the recordation of the closing documents, as provided herein, the Purchase Price (or, as applicable, the Developer Parking Area Allocation or the North-of-Westlake Allocation) shall be disbursed to City, less the sum of One Hundred Thousand and

00/100 Dollars ("**Hazardous Material Remediation Holdback**"), which funds shall be retained by Escrow and disbursed as provided herein. The Hazardous Material Remediation Holdback shall be used to reimburse Developer for the reasonable costs incurred to perform the Hazardous Materials Remediation. Subject to City's reasonable approval, Escrow shall pay to Developer such portions of the Hazardous Material Remediation Holdback following Developer's submission of reasonable evidence that Hazardous Materials Remediation was performed, and the costs incurred in the performance of such work. To the extent that the Hazardous Material Remediation Holdback is not exhausted when the Hazardous Materials Remediation completed, the balance of the Hazardous Material Remediation Holdback shall be disbursed to City. To the extent that the entirety of the funds which are the subject of the Hazardous Material Remediation Holdback are not disbursed within six (6) months after the Commencement Date, such remaining funds shall be disbursed to City.

3.7 Tax Free Exchange. If Developer notifies City prior to the Close of Escrow that Developer wishes to attempt to effectuate a "tax-free" exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the transaction contemplated in this Agreement, City will cooperate with Developer, at no cost, expense, or liability to City, in Developer's attempt to effectuate such exchange, but City makes no representations to Developer that any such exchange shall be treated as "tax-free" by the Internal Revenue Service. Developer agrees to indemnify City from all liability with respect to any action which Developer requests City to take pursuant to this Section, and to reimburse City for all fees, costs, and expenses (including reasonable attorneys' fees) incurred by City as a result of Developer's election to participate in a Section 1031 exchange. City shall not be required to hold title to any real estate or other assets in order to cooperate with Developer's Section 1031 exchange. The acquisition of the North-of-Westlake Parcels and the Developer Parking Area may be completed in two (2) transactions to facilitate the completion of the exchange, by which the North-of-Westlake Closing may occur as late as six (6) months after the Developer Parking Area Closing. Separate closings do not relieve Developer of its obligation to close escrow on both the North-of-Westlake Parcels and the Developer Parking Area.

3.8 Delivery of Disclosures/Property Information. City represents and warrants that it has disclosed to Developer all material information that impacts on the value or desirability of the Property, and has delivered to Developer the following items relating to the Subject Property (collectively, "**Property Information**"), to the extent within City's possession, custody, or control (but excluding any items that are protected from disclosure by the attorney-client privilege, or otherwise statutorily protected: (a) any environmental reports and a schedule listing any such reports; (b) all existing and currently effective plans, specifications, permits, approvals maps and surveys (including, without limitation, archaeological, boundary, topographic and tree surveys); (c) any soils and engineering reports; (d) all currently effective agreements with any governmental authority with respect to any zoning modification, variance, exception, platting or other matter relating to the zoning, use, development, subdivision or platting of the Subject Property; (e) copies of all agreements, studies, reports, correspondence and other documents relating to the presence or absence of any endangered species or environmentally sensitive areas on the Property; and (f) any leases, contracts or agreements relating to the Subject Property or services being provided or to be provided to the Subject Property, including, without limitation, any agreements with electric, cable, gas, telephone or other utility providers. City shall provide

to Developer any documents described above and coming into City's possession, custody, or control, or generated by City after the initial delivery above and prior to the Close of Escrow.

3.9.1 City's Conditions to Closing Developer Parking Area. City's obligations to convey the Developer Parking Area to Developer is conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.9.1, unless any such condition is waived in writing by the City acting in the discretion of its Authorized Representative.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Developer shall have delivered to City copies of all of the following, including updated versions of any of the following that have been amended or modified since the date of any prior delivery to City: (i) certificates of good standing, certified by the California Secretary of State, indicating that Developer is properly organized and in good standing under the laws of California; and (ii) certified copies of Developer's articles of incorporation; (iii) copies of Developer's bylaws, if any, certified by an authorized officer of each entity as accurate, complete, and in full force and effect; and (iv) resolutions adopted by Developer's Board of Directors, certified by an authorized officer of each entity, authorizing the execution of, and performance under, this Agreement and the other City Documents.

(d) Intentionally omitted.

(e) Execution, Delivery of Documents. Developer shall have executed, acknowledged as applicable, and delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation, a Memorandum of Option substantially in the form attached hereto as Exhibit F (the **"Memorandum"**), and a counter-signed original of the Developer Parking Area Grant Deed and Reservation of Easement and/or the North-of-Westlake Grant Deed, as applicable.

(f) Intentionally omitted.

(g) Approval of Financing Documents; Evidence of Availability of Funds. City shall have approved the loan documents for all financing sources for the Project, if any. At such time as Developer secures construction financing for the Project, Developer shall provide evidence reasonably satisfactory to City that (i) all conditions to the release and expenditure of the initial draw of funds from each construction financing source for the Project have been met and that such funds will be available, and (ii) all construction financing (including

draws subsequent to the initial draw of funds) will be available upon the satisfaction of the conditions set forth in the applicable documents.

(h) Payment of Fees. Developer shall have paid when due all fees and charges in connection with the processing of all applicable City permits and approvals, and Developer shall have paid City's legal fees and consulting fees pursuant to Section 3.4.

(i) Insurance; Payment and Performance Bonds. Developer shall have provided evidence satisfactory to City that Developer has obtained insurance coverage meeting the requirements set forth in Article X. If Developer obtains payment and performance bonds in connection with construction of the Project, City shall be named as co-obligee thereunder in which event Developer shall provide City with copies of such bonds, as approved by City Attorney promptly after the same are obtained.

(j) Mechanics' Liens. Developer shall have provided evidence reasonably satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project as a result of activities of Developer or its employees, contractors, or agents, and Developer's provision of full waivers or releases of lien claims if required by City.

(k) Other Documents. Developer's delivery to City, and City approval of such other documents related to the development and financing of the Project as City may reasonably request.

(l) Deposit of Funds. Developer shall have deposited into escrow the Purchase Price and funds in the amount of all other costs and expenses required to be paid by Developer through escrow.

(m) Settlement Statement. City shall have approved the final settlement statement for the Close of Escrow.

3.9.2 City's Conditions to Closing North-of-Westlake Parcels. In addition to the requirements to close escrow on the Developer Parking Area, City's obligations to convey the North-of-Westlake Parcels to Developer is conditioned upon the satisfaction of the terms and conditions set forth in Section 3.9.1 as well as this Section 3.9.2, unless any such condition is waived in writing by the City acting in the discretion of its Authorized Representative.

(a) Construction Contract, Plans, Budget and Schedule. City shall have approved the general contractor, the construction budget and schedule, and the construction contract for the Project, and City shall have approved the final Construction Plans and specifications for the Project. Developer shall have delivered an executed copy of the construction contract for the Project to the City. If City has not provided written objections to Developer regarding the general contractor, the construction budget and schedule, or the construction contract for the Project within fifteen (15) business days following their submittal to the City, such items shall be deemed to have been approved.

(b) Land Use Approvals. Developer shall have delivered evidence satisfactory to City that Developer has obtained all land use approvals required to construct the

Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve.

3.10.1 Developer's Conditions to Closing Developer Parking Area. Developer's obligation to proceed with the acquisition of the Developer Parking Area is subject to the satisfaction or Developer's waiver of the conditions stated in this Section 3.10.1, unless any such condition is waived in writing by Developer:

(a) No Default. City shall not be in default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects;

(b) Due Authorization and Good Standing. City shall have delivered to Developer resolutions or other evidence certified by an authorized officer or agent of City authorizing City's execution of and performance under this Agreement and the other City Documents.

(b) Execution of Documents. City shall have executed and acknowledged the Developer Parking Area Grant Deed and Reservation of Easements and the Memorandum, and all other City Documents to which the City is a party, and shall have delivered such documents into escrow;

(c) Parcel Map Approval. City shall have approved a Parcel Map, lot line adjustment, or other action as may be necessary to convey the Developer Parking Area to developer.

(d) Title Policies. The Title Company shall have committed, upon payment of the premium therefor, to issue an such Title Insurance Policies for the benefit and protection of Developer ("**Owner's Title Policy**") and/or Developer's Lender, if any ("**Lender's Title Policy**") showing title to the Developer Parking Area vested in Developer, subject only to Developer's Permitted Exceptions and containing such endorsements as Developer may reasonably require, with the cost of such Owner's Title Policy to be paid by Developer.

(d) Mechanics' Liens. City shall have provided evidence reasonably satisfactory to Developer and/or the Title Company that no mechanics' liens or stop notices have been served and/or recorded relating to the Developer Parking Area or the Project as a result of activities of City or its employees, contractors, or agents, and Developer's provision of full waivers or releases of lien claims if reasonably required by Developer and/or Title Company (or, in the alternative, verification that no construction activities have been performed on the Developer Parking Area within the sixty (60) days prior to Closing).

(e) Settlement Statement. Developer shall have approved the final settlement statement for the Developer Parking Area Close of Escrow.

3.10.2. Developer's Conditions to Closing North-of-Westlake Parcels. In addition to the requirements to close escrow on the Developer Parking Area, Developer's obligation to proceed

with the acquisition of the North-of-Westlake Parcels is subject to the satisfaction or Developer's waiver of the conditions stated in this Section 3.10.2, unless any such condition is waived in writing by Developer.

(a) No Default. City shall not be in default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects;

(b) Due Authorization and Good Standing. City shall have delivered to Developer resolutions or other evidence certified by an authorized officer or agent of City authorizing City's execution of and performance under this Agreement and the other City Documents.

(b) Execution of Documents. City shall have executed and acknowledged the North-of-Westlake Grant Deed and the Memorandum, and all other City Documents to which the City is a party, and shall have delivered such documents into escrow;

(c) Parcel Map Approval. City shall have approved a Parcel Map, lot line adjustment, or other action as may be necessary to convey the North-of-Westlake Parcels to developer.

(d) Title Policies. The Title Company shall have committed, upon payment of the premium therefor, to issue Owner's Title Policy and/or Lender's Title Policy showing title to the North-of-Westlake vested in Developer, subject only to Developer's Permitted Exceptions and containing such endorsements as Developer may reasonably require, with the cost of such Owner's Title Policy to be paid by Developer.

(d) Mechanics' Liens. City shall have provided evidence reasonably satisfactory to Developer and/or the Title Company that no mechanics' liens or stop notices have been served and/or recorded relating to the North-of-Westlake or the Project as a result of activities of City or its employees, contractors, or agents, and Developer's provision of full waivers or releases of lien claims if reasonably required by Developer and/or Title Company (or, in the alternative, verification that no construction activities have been performed on the North-of-Westlake within the sixty (60) days prior to Closing).

(e) Settlement Statement. Developer shall have approved the final settlement statement for the North-of-Westlake Close of Escrow.

(a) Land Use Approvals. Developer shall have obtained the Entitlements, all other land use approvals, required to construct the Project on the Subject Property (i.e., both the Developer Parking Area and the North-of-Westlake Parcels), subject only to such conditions as are reasonably acceptable to Developer, and all such approvals shall have been given by all required actions conducted in accordance with all applicable laws, ordinances, statutes, rules and regulations, and all appeal periods or periods within which such approvals can be challenged shall have expired without any appeal or challenge having been filed or any appeal or challenge

filed has been resolved to Developer's satisfaction and such resolution has become final and not subject to appeal (the "**Final Approval Date**").

ARTICLE IV

[Intentionally omitted.]

ARTICLE V

DEVELOPMENT AND USE OF THE PROPERTY

5.1 Development Schedule.

(a) Subject to Force Majeure, Developer shall commence construction of the Project no later than the Commencement Date and shall diligently prosecute to completion the construction of the Project to enable City to issue certificates of occupancy or equivalents for the Project within twenty-four (24) months following the Commencement Date., except as such date may be extended by written agreement of the Parties ("**Completion Date**"). Developer shall use diligent and commercially reasonable efforts to perform Developer's obligations under this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of final certificates of occupancy for the Project by the date specified in this Section 5.1. Subject to Force Majeure, Developer's failure to commence or complete construction of the Project in accordance with the time periods specified in this Section 5.1 shall be an Event of Developer Default hereunder.

(b) After Developer closes escrow on the Developer Parking Area, Developer may commence construction of surface parking lot improvements to the Developer Parking Area, *e.g.*, (a) site preparation, (b) pre-construction activities, and (c) construction staging activities, and Developer may use the Developer Parking Area for pedestrian and vehicular ingress and egress, as well as for parking. Such activities shall not be construed as "commencement" of work for purposes of this Section 5.1. Developer shall obtain any necessary permits to carry out such work.

5.2 Cost of Acquisition and Construction. With the exception of the costs associated with the Hazardous Materials Remediation, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. All costs of designing, developing and constructing the Project and compliance with the Conditions of Approval, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the City.

5.3 Permits and Approvals; Payment of Fees; Cooperation. Developer acknowledges that the execution of this Agreement by the City does not constitute City approval for the purpose of the issuance of building permits, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to apply for and to obtain from the City and all other agencies with jurisdiction over the Subject Property, all

necessary approvals, entitlements, and permits for the development of the Subject Property and the construction of the Project (including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the development of the Property (if any), and the approval of the Project in compliance with CEQA and if applicable, NEPA), nor does it limit in any manner the discretion of the City or any other agency in the approval process. Prior to the North-of-Westlake Close of Escrow, Developer shall have obtained all entitlements, permits, licenses and approvals required for the construction of the Project, or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve. Developer shall pay when due all customary and usual fees and charges in connection with the processing of all applicable permits and approvals. Developer shall not commence construction work on the Project prior to issuance of building permits required for such work. City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

5.4 Conditions of Approval. Developer shall develop the Property in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Subject Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

5.5 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Subject Property in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project.

5.6 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" means all construction documents upon which Developer and Developer's contractors shall rely in developing the Subject Property and constructing the Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of City.

5.7 Construction Pursuant to Plans. Developer shall develop each component of the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

5.8 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld, conditioned, or delayed if the Construction Plans, as modified by any proposed change, substantially conform to the requirements of this Agreement and any approvals issued by the City after the Effective Date. Unless a proposed change is rejected by City within thirty (30) days, it shall be deemed approved. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

5.9 Intentionally omitted.

5.10 City Disclaimer. Developer acknowledges that the City is under no obligation, and the City neither undertakes nor assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the Project or otherwise.

5.11 Defects in Plans. The City shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. To the greatest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold harmless the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (all of the foregoing, collectively, the "**Indemnitees**") from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans

whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. Developer's indemnification obligations pursuant to this Section shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees and are subject to the additional terms set forth in Section 10.2 below.

5.12 Certificate of Completion for Project. Promptly after completion of construction of the Project, and City's issuance of a final Certificate of Occupancy, the City will provide a certificate substantially in the form attached hereto as Exhibit E ("**Certificate of Completion**") so certifying, provided that at the time such certificate is requested all applicable work has been completed for the Project. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Property and construction of the Project. At Developer's option, the Certificate of Completion shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion of construction under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

5.13 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.14 Prevailing Wage Requirements. If required by applicable federal and state law, Developer and its contractors, subcontractors and agents shall comply with the California Labor Code Section 1720 *et seq*. and the regulations adopted pursuant thereto (and if applicable, the federal Davis Bacon Act and implementing regulations) (all of the foregoing, collectively, "**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to City a plan for monitoring payment of prevailing wages and at Developer's expense shall implement such plan and comply with all applicable reporting and recordkeeping requirements.

To the greatest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims that directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance

policies shall have been determined to be applicable to any such Claims. The provisions of this Section 5.14 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees and are subject to the additional terms set forth in Section 10.2 below.

5.15 Compliance with Laws. Developer shall carry out and shall cause its contractors and subcontractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations ("**Applicable Laws**"), including without limitation, all applicable Environmental Laws, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code, the City's zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq*., Government Code Section 4450, *et seq*., Government Code Section 11135, *et seq*., and the Unruh Civil Rights Act, Civil Code Section 51, *et seq*. To the greatest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Developer's defense and indemnification obligations set forth in this Section 5.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project and shall be subject to the additional terms set forth in Section 10.2 below.

5.16 Liens and Stop Notices. Until a Certificate of Completion has been issued, and subject to Developer's ability to dispute payment applications submitted by contractors, as permitted by California Civil Code sections 8800 and 8812, Developer shall not allow to be placed on the Subject Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project or the Subject Property or any part thereof, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged or take such other or additional action as the parties may agree in writing

5.17 Right of City to Satisfy Liens on the Property; Notice of Completion. Until a Certificate of Completion has been issued, if Developer fails to satisfy or discharge any lien or stop notice on the Subject Property or any part thereof pursuant to and within the time period set forth in Section 5.16 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer and all sums advanced by City for such purpose shall be an indebtedness owed by Developer to City. In such event Developer shall be liable for and shall immediately reimburse City for such paid

lien or stop notice. Alternatively, the City may require Developer to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Nothing contained in this Section 5.17 shall prevent Developer from challenging or contesting the validity of such liens and/or stop notices.

Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more and shall take all other reasonable steps to forestall the assertion of claims or liens against the Subject Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

5.18 Intentionally omitted.

5.19 Insurance Requirements. Until such time as Developer's construction obligations under this Agreement are satisfied, Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

5.20 Quarterly Performance Reporting. During construction of the Project, Developer shall submit to City a quarterly performance report within 30 days of the end of each quarter. The report shall be in the form of a narrative description of all activities performed in relation to the Project including all development activities. The report shall include a Project timeline, including a schedule for completing milestones and/or tasks, and indicate the status of the Project in relation to this timeline. Developer shall provide the quarterly reports described in this Section until construction of the Project is complete.

5.21 Intentionally omitted.

5.22 Intentionally omitted.

5.23 Maintenance. Commencing upon Developer's acquisition of the Subject Property, Developer shall at its own expense, maintain the Subject Property and the Improvements, including the landscaping and common areas, in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all Applicable Laws. Without limiting the foregoing, Developer agrees to maintain the Subject Property and the Improvements (including without limitation, landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Subject Property. Developer shall prevent and/or rectify any physical deterioration of the Improvements and shall make all repairs, renewals and replacements as may be reasonably necessary to keep the Subject Property and the Improvements in good condition and repair.

5.24 Taxes and Assessments. Commencing upon Developer's acquisition of the Subject Property, Developer shall pay all real and personal property taxes, and other taxes assessed against the Property and/or the Improvements, at such times and in such manner as to prevent any lien or charge from attaching to the Subject Property or Improvements; provided,

however, Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.25 Intentionally omitted.

ARTICLE VI

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

6.1 Access to Site; Inspections. Prior to the Close of Escrow, Developer and Developer's authorized representatives may enter upon and conduct reviews and assessments of the physical and environmental condition of the Subject Property and the condition of the existing improvements. City may require Developer to execute a commercially reasonable right of entry agreement satisfactory to City prior to entry onto the Subject Property for such purpose and shall require Developer to provide proof of liability insurance acceptable to City. Developer's inspection, examination, survey and review of the Subject Property shall be at Developer's sole expense. Developer shall provide City with copies of all third-party reports and test results promptly following completion of such reports and testing. Developer hereby agrees to notify the City twenty-four (24) hours in advance of its intention to enter the Subject Property and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must keep the Subject Property in a safe condition during its entry. Developer shall substantially repair, restore and return the Subject Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Subject Property prior to Close of Escrow, in connection with its site access and/or inspections as provided by this Section 6.1. Without limiting any other indemnity provisions set forth in this Agreement, to the greatest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Subject Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 6.1 except to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Developer's indemnification obligations set forth in this Section 6.1 shall survive the Close of Escrow and the termination of this Agreement and shall be subject to the additional terms and conditions set forth in Section 10.2 below.

6.2 Environmental Disclosure. To the extent the City has possession, custody or control of investigative reports concerning the Subject Property, it will provide copies to Developer; but the Parties acknowledge that City will not be conducting a public records search of any regulatory agency files—although the City urges Developer to do so to satisfy itself regarding the environmental condition of the Subject Property. By execution of this Agreement, Developer: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Subject Property; (ii) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Subject Property prior to the Close of

Escrow; and (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Subject Property and its sufficiency for its intended use.

6.3 Property Sold and Conveyed "AS IS." Developer specifically acknowledges that the City is selling and Developer is purchasing the Subject Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its employees, board members, agents, or brokers as to any matters concerning the Subject Property. The City makes no representations or warranties as to any matters concerning the Subject Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Subject Property or the improvements (if any) located thereon, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Subject Property, (iv) the development potential of the Subject Property, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Subject Property for any particular purpose, (v) the zoning or other legal status of the Subject Property or any other public or private restrictions on use of the Subject Property, (vi) the compliance of the Subject Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Material, substances or wastes on, under or about the Subject Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Subject Property, (ix) the condition of title to the Subject Property, (x) the leases, service contracts, or other agreements (if any) affecting the Subject Property, or (xi) the economics of the operation of the Subject Property.

6.4 Developer to Rely on Own Experts. Developer understands that notwithstanding the delivery by City to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Subject Property.

6.5 Release by Developer. With the exception of the Hazardous Materials Remediation and City's associated obligation to fund such activities, as contemplated by this Agreement, effective upon the Close of Escrow for the Subject Property, Developer WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the Indemnitees and any person acting on behalf of the City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Developer now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Subject Property, the presence of Hazardous Material in, on, under or about the Subject Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws.

DEVELOPER ACKNOWLEDGES THAT DEVELOPER IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

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.

BY INITIALING BELOW, DEVELOPER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Developer's initials: _____

Notwithstanding the foregoing, the releases and waivers set forth in Sections 6.1 through 6.5, inclusive, shall not relieve City of its liability for (a) any breach of City's Representations; (b) any breach of any of Seller's covenants in this Agreement that expressly survive the Closing; (c) Seller's fraud or willful misconduct in connection with the Property or this Agreement, or (d) the City's obligation to reimburse Developer for the costs incurred to complete the Hazardous Materials Remediation contemplated by this Agreement.

6.6.1 City's Post-Closing Obligations.

(a) City hereby covenants and agrees that after Close of Escrow it will cooperate with Developer's reasonable requests to cause the removal of certain of-record easements and other encumbrances that burden the Property, as identified on the Title Report, to the extent that they may hamper or impede development of the Project. This obligation shall survive the Close of Escrow.

(b) City shall reasonably review and approve such documentation as is submitted by Developer in connection with its right to reimbursement of Hazardous Materials Remediation from the Hazardous Materials Remediation Holdback. To the extent that the Hazardous Materials Remediation Holdback is insufficient to fully reimburse Developer for the reasonable costs incurred in the performance of the Hazardous Materials Remediation, or the Hazardous Materials Remediation Holdback is released to City prior to the actual completion of the Hazardous Materials Remediation, City shall tender to Developer further reimbursement within ninety (90) days following Developer's submission of reasonable evidence that Hazardous Materials Remediation was performed, and the costs incurred in the performance of such work ("**Additional Hazardous Materials Remediation Reimbursement**").

6.6.2 Developer's Post-Closing Obligations. Developer hereby covenants and agrees that:

(a) Developer shall not knowingly permit the Subject Property, or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of

Hazardous Material in, on, under, about or from the Subject Property with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, use or maintenance of commercial properties and related parking facilities similar in nature to the Project, and used, stored and disposed of in compliance with Environmental Laws.

(b) Developer shall keep and maintain the Subject Property and each portion thereof in compliance with and shall not cause or permit the Project or the Subject Property, or any portion of the foregoing to be in violation of, any Environmental Laws.

(c) Developer shall undertake such activities as may reasonably be required to complete the Hazardous Materials Remediation, as contemplated by this Agreement. Following its performance of all or a portion of the Hazardous Materials Remediation, Developer shall submit to City and Escrow such evidence as is reasonable to establish that Hazardous Materials Remediation was performed, and the reasonable costs incurred in connection with such work. To the extent that the Hazardous Materials Remediation Holdback is insufficient to fully reimburse Developer for such reasonable costs, or the Hazardous Materials Remediation is disbursed to City prior to completion of the Hazardous Materials Remediation, such evidence shall be submitted solely to City for reimbursement.

(d) Upon receiving actual knowledge of the same, Developer shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Subject Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220, *et seq.,* or any regulation adopted in connection therewith, that may in any way affect the Subject Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**"). The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(e) Developer shall permit City to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

6.7 Environmental Indemnity. Except with respect to the Hazardous Materials Remediation, and City's obligation to reimburse Developer for the reasonable costs of completing such activities, to the greatest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Subject Property, or the transportation of any such Hazardous Material to or from, the Subject Property, or (ii) the failure of Developer, Developer's employees, agents, contractors,

subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, except to the extent caused by the City's gross negligence or willful misconduct. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Subject Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws.

Developer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) the accuracy or inaccuracy of any representation and warranty made by Developer under this Agreement or by Developer or any other party under any City Document, and (iv) the release of Developer or any other person, by City or by operation of law, from performance of any obligation under any City Document.

The provisions of this Section 6.7 shall be in addition to any and all other obligations and liabilities that Developer may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether City or that Indemnitee has exercised any rights against the Subject Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the City Documents or applicable law. The obligations of Developer to indemnify the Indemnitees under this Section shall survive any foreclosure proceeding, any foreclosure sale, and any delivery of any deed in lieu of foreclosure. Developer's indemnification obligations under this Section shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees and are subject to the additional terms set forth in Section 10.2 below.

6.8 Intentionally omitted.

6.9 Intentionally omitted.

6.10 Intentionally omitted.

6.11 Definitions.

6.11.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", infectious waste", toxic substance", toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate,

and methyl tert-butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

6.11.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq*.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.), the Clean Air Act (42 U.S.C. § 7401 *et seq*.), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq*.), the Oil Pollution Act (33 U.S.C. § 2701 *et seq*.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq*.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq*.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq*.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq*.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq*.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq*.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq*.).

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its Key Principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its Key Principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to City's issuance of final certificates of occupancy or equivalent for the Project, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly voluntarily involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, encumbrance, assignment (including without limitation, any assignment for security purposes) or lease (collectively, "**Transfer**") of the whole or any part of the Subject Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing,

prior to City's issuance of final certificates of occupancy or equivalent for the Project, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (a) the granting of temporary easements or permits to facilitate development of the Subject Property; (b) the dedication of any property required pursuant to this Agreement; (c) the lease or rental of commercial and retail space in the Project; (d) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project, as may be approved by the City, and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (e) a Transfer to an entity under the direct control of or under common control with Developer, a Key Principal, or Affiliate, including without limitation Duggan's; (f) a Transfer to a limited partnership (or a limited liability company) in which Developer, a Key Principal, or an Affiliate of Developer is the managing general partner (or managing member), including without limitation Duggan's; (g) the admission of limited partners (or non-managing members), and any transfer of limited partnership (or non-managing member) interests in accordance with Developer's agreement of limited partnership or limited liability company operating agreement, as applicable; (h) transfers by individual shareholders or members of Developer, or any of its Key Principals for estate planning purposes; or (i) the removal of the general partner (or managing member) of Developer by the investor limited partners (or non-managing members) for a default under Developer's partnership agreement (or limited liability company operating agreement), provided that the replacement general partner (or managing member) is an entity reasonably satisfactory to City. Developer shall provide notice to City of the occurrence of a Permitted Transfer within ten (10) business days after such Permitted Transfer.

7.3.3 To the extent that the Subject Property is leased at any time prior to the recording of the Certificate of Completion as permitted by Section 7.3.1(b) of this Agreement, the lease documents shall require the lessee to provide a commercially-reasonable estoppel to City at any time, and from time to time, within fifteen (15) days after receipt of written request from City to Developer, certifying that (i) the lease is in full force and effect and binding on the parties (if such be the case), (ii) the lease has not been modified or amended, or if so amended, identifying the amendments, and (iii) Developer is not in default in the performance of its obligations under the lease, or if in default, describing the nature of any such defaults. In the event that the relevant lease is terminated, Developer shall notify City within fifteen (15) business days after such termination.

7.4 Requirements for Proposed Transfers. City will consent to a proposed Transfer of this Agreement, the Subject Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in Section 7.3):

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Subject Property, the Improvements or this Agreement, including without limitation, the organizational documents and authorizing resolution of the proposed transferee, and such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations), and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement. The assumption of such obligations shall be documented in an assignment and assumption agreement in form approved by City.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Developer, the proposed Transfer shall be deemed approved.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 It shall be an Event of Developer Default hereunder entitling City to pursue remedies including without limitation, termination of this Agreement if without the prior written approval of the City, Developer assigns or Transfers this Agreement, the Improvements, or the Subject Property, or any part thereof or interest therein, or undertakes any other Transfer (including without limitation any assignment for security or encumbrance of the Property or any part thereof) in violation of Article VII. This Section 7.5.2 shall not apply to Transfers described in Section 7.3).

7.6 Recovery of City Costs. Within ten (10) days following City's delivery to Developer of an invoice detailing such costs, Developer shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and

other legal documents proposed to effect a Transfer of this Agreement, the Subject Property or the Improvements, or part thereof or interest therein, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

7.7 Termination of Transfer Restrictions on Project Completion. After the Completion Date or upon Developer's Transfer of the Project to a third party, Developer shall have no further obligations or liabilities under this Agreement except with respect to matters arising during such Developer's period of ownership of the Subject Property, which matters expressly survive the termination or expiration of this Agreement.

ARTICLE VIII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Subject Property or the Improvements only for the purpose of securing loans for the purpose of financing the acquisition of the Subject Property, the design and construction of the Improvements, and other expenditures reasonably necessary for the development of the Project pursuant to this Agreement. Developer shall not enter into any conveyance for such financing without the prior written approval of the City, provided by the City's Authorized Representative or his or her designee, which shall not be unreasonably withheld, conditioned, or delayed. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.2 Intentionally omitted.

8.3 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to complete construction of the Project or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Subject Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses, or improvements provided for or authorized by this Agreement.

8.4 Notice of Default and Lender Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Subject Property or the Improvements, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer. In the event that possession of the Subject Property or the Improvements (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Subject Property or Improvements, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such

default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to City under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to City that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement.

8.5 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by Developer in completion of construction of the Project, the holder of record of any mortgage or deed of trust has not exercised its option to construct the Project, or having first exercised such option, has not proceeded diligently with such work, City shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

8.6 City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Subject Property or the Improvements, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach.

8.7 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the Subject Property or the Improvements.

8.8 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

8.9 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer hereunder ("**Event of Developer Default**"):

(a) Developer fails to commence or complete construction of the Project within the time period set forth in Section 5.1, or subject to Force Majeure, abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

(b) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(c) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default, after notice, within five (5) days;

(d) Subject to Developer's rights pursuant to Section 5.24 above, Developer fails to pay prior to delinquency taxes or assessments due on the Subject Property or the Improvements, or fails to pay when due any other charge that may result in a lien on the Subject Property or the Improvements, and Developer fails to cure such default within twenty (20) days after notice of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Subject Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(g) If Developer, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"): (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(h) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of Developer seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or

liquidation of Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within sixty (60) days;

(i) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (h) or (i) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(j) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(k) An event of material default arises under any City Document and remains uncured beyond any applicable cure period; or

(l) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Developer Default shall not arise hereunder if Developer, as applicable, commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

9.2 City Default. An event of default on the part of City ("**Event of City Default**") shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days [cure periods to mirror each other] after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within sixty (60) days, City fails to commence to cure the default within sixty (60) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 City's Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 City's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period,

City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Seek specific performance to enforce the terms of the City Documents;

(b) Terminate this Agreement pursuant to Section 9.3; and

(c) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

9.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, Developer may , at its election, exercise one or more of the following remedies: (a) bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, (b) terminate this Agreement, and/or (c) pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of this Agreement and Developer's rights hereunder.

9.6 Remedies Cumulative; No Consequential or Punitive Damages. 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 such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary contained in this Agreement, the Parties each expressly waive all rights to seek or recover consequential or punitive damages in connection with any default in the performance of this Agreement, or breach thereof.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Power of Termination. If following conveyance of the Subject Property to Developer, Developer (i) fails to begin construction of the Project within the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction work for a period of sixty (60) days after written notice from City, (iii) fails to complete construction of the Project by the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Subject Property or part thereof or this Agreement in violation of Article VII, the City may re-enter and take possession of the Subject Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revest in the City the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.8 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from the City's option to purchase the Subject Property under the same

or similar conditions specified in Section 9.9. City's rights pursuant to this Section 9.8 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

Upon revesting in the City of title to the Subject Property or any portion thereof as provided in this Section 9.8, the City shall use its best efforts to resell the Subject Property or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of completing and operating the Project in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to the City. Upon such resale of the Subject Property or any portion thereof, the sale proceeds shall be applied as follows:

(a) First, to reimburse the City for all costs and expenses incurred by City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Subject Property; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Subject Property at the time of revesting of title thereto in the City or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Subject Property; and any other amounts owed to the City by Developer and its successors or transferee pursuant to the City Documents or otherwise.

(b) Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the Developer's default (which shall not include consequential or punitive damages).

(c) Third, to reimburse the Developer, its successor or transferee, up to the amount equal to:

(1) The payment made to the City for the Subject Property; plus

(2) The fair market value of any new improvements constructed by Developer and existing on the Subject Property at the time of City's exercise of its rights under this Section; less

(3) Any gains or income withdrawn or made by the Developer from the Subject Property or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Subject Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the power of termination.

(4) Any balance remaining after such reimbursements shall be retained by the City.

The rights established in this Section 9.8 are to be interpreted in light of the fact that the City will convey the Subject Property to the Developer for completion of the Project as specified herein and not for speculation.

9.9 Option to Purchase, Enter and Possess Upon Default. The City shall have the additional right at its option to purchase, enter and take possession of the Subject Property with all improvements thereon (the "**Repurchase Option**"), if after conveyance of the Property, Developer (i) fails to begin construction of the Project within the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the Project for a period of sixty (60) days after written notice from City, (iii) fails to complete construction of the Project by the time specified in Section 5.1 as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Subject Property or part thereof or this Agreement in violation of Article VII. If it exercises Repurchase Option A, the City shall pay to the Developer cash in an amount equal to:

(i) The Purchase Price; plus

(ii) The fair market value of any new improvements constructed on the Subject Property by Developer and existing on the Subject Property at the time of exercise of the Option; less

(iii) Any gains or income withdrawn or made by the Developer from the applicable portion of the Subject Property or the improvements thereon; less

(iv) The value of any liens or encumbrances on the applicable portion of the Subject Property which the City assumes or takes subject to; less

(v) Any amounts owed to the City by Developer and its successors or transferee pursuant to the City Documents or otherwise; less

(vi) All taxes, assessments and utility charges payable with respect to the Subject Property for the period prior to the date the City acquires title to the Subject Property; less

(vii) The amount of any payments necessary to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; less

(viii) Any damages to which the City is entitled under this Agreement by reason of Developer's default.

In order to exercise the Repurchase Option, the City shall give Developer written notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide City with a summary of all of Developer's costs incurred as described in this Section 9.9. Within

thirty (30) days of City's receipt of such summary, City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.9, and Developer shall execute and deposit into such escrow a grant deed transferring to City all of Developer's interest in the Subject Property, or portion thereof, as applicable, and the improvements located thereon.

9.10 Memorandum of Power of Termination/Option to Purchase. The Parties shall cause a memorandum of the rights granted the City in Sections 9.8 and 9.9 of this Agreement to be recorded in the Official Records at the time of the Close of Escrow for conveyance of the Subject Property to Developer. In addition, the rights afforded City pursuant to Sections 9.8 and 9.9 may be described in the Grant Deed.

9.11 Rights of Mortgagees. Any rights of the City under this Article IX shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or return of the Subject Property to the City pursuant to this Article IX shall be subject to mortgages and deeds of trust permitted by this Agreement.

9.12 Prohibition on Assignment. The City shall not have the right to assign the Repurchase Option to any other governmental entity or private party.

9.13 Intentionally omitted.

ARTICLE X

INDEMNITY AND INSURANCE

10.1 Indemnity. To the greatest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims (including without limitation, Claims arising from any injury, death, illness, property damage, or loss of property) arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Project or the Subject Property, or any part thereof by Developer or Developer's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Developer, or otherwise arising out of or in connection with Developer's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the development, operation or management of the Project, or relating to approval of the Project or approval of this Agreement. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of Indemnitees and are subject to the additional terms set forth in Section 10.2 below. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

10.2 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.2 shall apply to all provisions of this Agreement that pertain to Developer's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 5.11, 5.14, 5.15, 6.1, 6.7, 10.1, and 11.1. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Developer that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

(b) Developer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) the accuracy or inaccuracy of any representation and warranty made by Developer under this Agreement or by Developer or any other party under any City Document, and (iv) the release of Developer or any other person, by City or by operation of law, from performance of any obligation under any City Document.

10.3 Liability, Workers Compensation, and Property Insurance.

(a) Commercial General Liability. Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a commercial general liability policy including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage with coverage limits in the greater of: (a) the amounts required by the construction and permanent lenders for the Project, or (b) Two Million Dollars ($2,000,000) each occurrence, Two Million Dollars ($2,000,000) annual aggregate, together with Five Million Dollars ($5,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Automobile. Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a comprehensive automobile liability coverage in the amount of Two Million Dollars ($2,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Worker's Compensation; Employer's Liability. Developer shall furnish or cause to be furnished to City evidence satisfactory to City that Developer, and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement, carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of Two Million Dollars ($2,000,000) per accident.

(d) Builder's Risk. On or before the Commencement Date and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk

insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee as its interests may appear.

(e) Professional Liability/Errors and Omissions. Professional Liability/Errors and Omissions insurance as appropriate for design/build operations with limits not less than Two Million Dollars ($2,000,000) each claim. If the professional liability/errors and omissions insurance is written on a claims made form: (i) the retroactive date must be shown and must be before the Effective Date, (ii) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of Project construction, and (iii) if coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Developer must purchase extended period coverage for a minimum of three (3) years after completion of construction.

(f) Property. From and after closing on the Developer Parking Area and/or the North-of-Westlake Parcels, as applicable, and through the Completion Date, Developer shall maintain property insurance covering all risks of loss including earthquake (if required) and flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

(f) Intentionally omitted.

(g) Insurance Providers. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII.

(h) Evidence of Insurance; Endorsements; Policies. From and after closing on the Developer Parking Area and/or the North-of-Westlake Parcels, as applicable, and through the Completion Date, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraphs (a), (b), (c), and (e) above, duly executed endorsements evidencing the Indemnitees' status as additional insured, and all other endorsements and coverage required hereunder pertaining to such coverage. Prior to the Commencement Date, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the insurance coverage required under paragraph (d) above.

All insurance certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal. Upon City's request, Developer shall, within thirty (30) days of the request, provide or arrange for the insurer to provide to City, complete certified copies of all insurance policies required under this Agreement. City's failure to make such request shall not constitute a waiver of the right to require delivery of the policies in the future.

(i) Additional Insured Endorsements. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(j) Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within five (5) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(k) Primary Coverage; Waiver of Subrogation; Annual Aggregate Limits. All coverage shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. Each insurance policy shall contain a waiver of subrogation for the benefit of the City. If any of the required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs are included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(l) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to the approval by, City's Risk Manager, which approval shall not be unreasonably withheld, conditioned, or delayed. To the extent that payment of deductibles or self-insured retentions is required as a prerequisite to a defense or indemnity being provided by an insurance carrier, such shall be funded by Developer.

(m) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances that may include increases in the cost of construction that may impact builders' risk or casualty coverage(s). City shall give written notice to Developer of any such adjustments, and Developer shall provide City with amended or new insurance certificates or endorsements evidencing compliance with such adjustments within thirty (30) days following receipt of such notice.

(n) Additional Insured Coverage; Liability Limits. For all liability insurance required by this Agreement, Developer (and Developer's contractors, as applicable) shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Developer (and Developer's contractors) to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Developer (or Developer's contractors, as applicable), but in no event less than the minimum amounts specified in this Agreement. In the event that Developer (or Developer's contractors as applicable) obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

Nothing contained in this Article X shall prohibit Developer from satisfying its insurance obligations by means of an Owner Controlled Insurance Program, provided that the coverage under such policy satisfies the minimum requirements herein and is approved by the City.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by any of the following ("**Force Majeure**"): war, insurrection, strikes, lockouts or other labor disturbances, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, court order, suits or litigation filed by unrelated third parties concerning or arising out of this Agreement, provided the Party subject to such litigation is actively mounting a defense to such litigation; unusually severe weather conditions; inability to secure necessary materials, provided that the Party claiming such as an event of Force Majeure has taken reasonable action to obtain such materials on a timely basis; delays resulting from changes in Applicable laws or the imposition of a development moratorium, as defined in section 66452.6(f) of the California Government Code; subject to the limitations set forth below, delays resulting from Economic Force Majeure or Hazardous Material Delay; and any other causes affecting the development and/or construction of the Project which are beyond the reasonable control of the Party claiming any extension of time.

11.2.1 Notice; Duration of Force Majeure Delay. An extension of time for any of the above specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within sixty (60) calendar days after Developer obtains actual knowledge of the commencement of the cause. In the event that the period of Force Majeure exceeds twelve (12) months, City and Developer shall meet and confer in good faith regularly for the duration of the event to discuss mutually acceptable changes to the Project that will allow development of the Project to proceed to the extent possible notwithstanding the event or events causing such Force Majeure.

11.2.2 Economic Force Majeure; Hazardous Material Delay.

"Economic Force Majeure" means a significant decline in the commercial real estate market. during the preceding twelve (12) month period, measured on a quarterly basis. Economic Force Majeure shall commence upon Developer's delivery of written notice to City of the Economic Force Majeure (together with appropriate backup evidence). Economic Force

Majeure shall continue prospectively on a quarterly basis and remain in effect until the commercial real estate market increases for three (3) successive quarters during the preceding twelve (12) month period; provided that the cumulative total Economic Force Majeure shall not exceed sixty (60) months.

City and Developer acknowledge that, with the exception of Economic Force Majeure as defined above, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of Force Majeure pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability (not constituting Economic Force Majeure), whether or not foreseeable as of the Effective Date. Without limiting the generality of the foregoing, Developer's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless such inability, failure, or delay is a result of Economic Force Majeure or another event of Force Majeure.

"**Hazardous Material Delay**" means delay caused by (1) the requirement by an environmental regulatory agency to perform investigation or remedial action beyond the segregation, characterization and proper disposal (including reuse) required by any applicable Site Management Plan for any Hazardous Materials (A) not previously identified at the Subject Property (based on information included in the Hazardous Materials documents obtained by Developer prior to the Effective Date), (B) previously identified at the Subject Property, but that are encountered in a previously unidentified location or in concentrations in excess of those previously identified (each based on information included in the Hazardous Materials documents obtained by Developer prior to the Effective Date), or (C) encountered in the construction of any off-site infrastructure or other improvements and not previously identified at the Property as described in clause (A) or clause (B) preceding; (2) the requirement by an environmental regulatory agency to perform investigation or remedial action for Hazardous Materials beyond the preparation of work plans for additional sampling or investigation, the implementation of such approved work plans and the preparation of closure reports necessary to address or obtain closure for non-CERLCA Hazardous Materials located at the Subject Property to the extent such investigation or remedial action is necessary to permit the uses identified in the Development Agreement; or (3) the requirement by and environmental regulatory agency to perform investigation or remedial action for Hazardous Materials that are the result of any additional remediation required at a formerly closed site by any regulatory agency due to resolution in accordance with Applicable Law by any regulatory agency of the applied remediation strategy or any change in law or regulation related to remediation standards, including without limitation any change in risk screening levels. Further, to the extent that construction activities are delayed as a result of Developer's inability to obtain approval of construction activities as a result of restrictions contained in that certain Covenant to Restrict Use of Property Environmental Restriction recorded in the Official Records of San Mateo County on or about March 23, 2016 as Instruments No. 2016-025567 and 2016-025568, despite reasonable diligence and submittal of the requisite Soil Management Plan and Health and Safety Plan, such shall be characterized as a "Hazardous Material Delay."

11.2.3 Agreement to Extend Time of Performance. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of the Authorized Representative unless he or she determines in his or her discretion to refer such matter to the City Council).

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other City Document shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Daly City
333 90th Street
Daly City, CA 94015
Attention: Director of Economic and Community Development

Copy to: City of Daly City
333 90th Street, Third Floor
Daly City, CA 94015
Attention: City Attorney

Developer: Sierra Enterprises, Inc.,
A California corporation
c/o Winifred D. Sullivan, Chief Executive Officer
Daniel M. Duggan, Chief Financial Officer
123 Rancho Bonita Way
Sonoma, CA 94586

Copy to: Mark Hudak
Law Offices of Mark D. Hudak
177 Bovet Road
Suite 600
San Mateo, CA 94402-3122

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the reasonable costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements, whether such action sounds in tort or contract, and irrespective of whether the action proceeds to final judgment.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. All representations made by Developer hereunder, Developer's obligations pursuant to Sections 5.11, 5.14, 5.15, 6.1, 6.5, 6.6.2, 6.7, 10.1 and 11.1, and City's rights and obligations under Sections 3.6, 6.6.2, 9.8 and 9.9, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement. Except as otherwise expressly provided in this Agreement, Developer's obligations under this Agreement shall cease to be effective at such time as Developer is entitled to the issuance of the Certificate of Completion.

11.8 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the City Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Daly City shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Authorized Representative determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other City Documents, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control, as determined by the City's Authorized Representative. In the event of a conflict between this Agreement and the other City

Documents, the more restrictive requirements shall control, as determined by the Authorized Representative.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third-Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Developer and City is and shall remain solely that of a buyer and seller, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Developer (except as expressly provided in this Agreement) or to any third party with respect to the Project or the City financing described herein. Developer and its employees are not employees of City but rather are and shall always be considered independent contractors. Furthermore, Developer and its employees shall at no time hold themselves out as employees or agents of City. Except as City may specify in writing, Developer shall not have any authority to act as an agent of City or to bind City to any obligation.

11.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of the State of California.

11.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

11.17 Maintenance and Inspection of Books and Records. Developer shall keep and maintain at the Property or elsewhere with City's consent, full, complete, and adequate books, records and accounts relating to the Project, including such books, records, and accounts necessary to document Developer's compliance with this Agreement and the City Documents.

11.18 Political Activity. None of the materials, property or services provided by City to Developer under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.19 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount which may become due to the Developer or its successor or on any obligation under the terms of this Agreement.

11.20 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.,* no person who is a director, officer, partner, trustee or employee or consultant of Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.,* its implementing regulations manual and codes, and Government Code Section 1090.

11.21 Intentionally omitted.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

DEVELOPER:

SIERRA ENTERPRISES, INC., a California corporation

_____
By: Winifred D. Sullivan
Its: Chief Executive Officer

_____
By: Daniel M. Duggan
Its: Chief Financial Officer

CITY:

City of Daly City, a municipal corporation

By: _____
, City Manager

APPROVED AS TO FORM:

_____
Rose Zimmerman, City Attorney

Exhibit A-1
Legal Description – North-of-Westlake Parcels

[Attached]

Exhibit A-2
Legal Description – South-of-Westlake Parcels

[Attached]

Exhibit A-3
Legal Description – City Parking Area

[Attached]

Exhibit A-4
Site Map – Property

[Attached]

Exhibit A-5
Site Map – Developer Parking Area

[Attached]

Exhibit A-6
Legal Description – Developer Parking Area

[Attached]

Exhibit A-7
Site Map – North-of-Westlake Parcels

[Attached]

Exhibit A-8
Legal Description – North-of-Westlake Parcels

[Attached]

Exhibit E
Form of Certificate of Completion

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

REUBEN, JUNIUS & ROSE, LLP
One Bush Street
Suite 600
San Francisco, CA 94104
Attn: 11489.01.MDV.CAE

(Space above line for Recorder's use only)

APN: 002-352-160
002-352-290
002-352-310
002-362-330
002-342-250 (portion)
002-352-250 (portion

EXEMPT FROM RECORDING FEES PER
CAL. GOVN'T CODE §§ 6103 and 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is: $0.00
( ) computed on full value of property conveyed, or
( ) computed on full value of less of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (x) City of Daly City

CERTIFICATE OF COMPLETION

This Certificate of Completion (this "**Certificate**") is made by the City of Daly City, a California municipal corporation ("**City**") effective as of _____ ___, 20___.

A. City and Sierra Enterprises, Inc., a California corporation ("**Developer**"), entered into that certain Disposition and Development Agreement dated as of _____ ___, 20___. (the "**DDA**") concerning the development of certain real property located in the City of Daly City, San Mateo County, California and more particularly described in **Exhibit A** attached hereto (the "**Property**"). A Memorandum of the DDA was recorded in the Official Records of San Mateo County ("**Official Records**") on _____ ___, 20___, as Instrument No. ____ , Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA

B. Pursuant to Section 5.12 of the DDA, the City is required to furnish the Developer or its successors with a Certificate of Completion upon completion of development of the Project in accordance with the DDA.

C. The City has determined that the development of the Project has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, City hereby certifies as follows:

1. Development of the Project has been satisfactorily completed in conformance with the DDA.

2. All indemnity, use, maintenance, and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Developer's compliance with those covenants in the DDA that survive the issuance of this Certificate.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust securing money loaned to finance the Project or any part thereof and does not constitute a notice of completion under California Civil Code Section 9204.

4. Nothing contained in this instrument shall 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 Completion as of the date first written above.

CITY OF DALY CITY
a California municipal corporation

_____
By:
Its: City Manager

_____
By:
Its: City Clerk

_____
By:
Its: City Attorney

Exhibit A
Legal Description

APN:

Exhibit F

Form of Memorandum of Option and Disposition And Development Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

REUBEN, JUNIUS & ROSE, LLP
One Bush Street
Suite 600
San Francisco, CA 94104
Attn: 11489.01.MDV.CAE

(Space above line for Recorder's use only)

APN: 002-352-160
002-352-290
002-352-310
002-362-330
002-342-250 (portion)
002-352-250 (portion)

EXEMPT FROM RECORDING FEES PER
CAL. GOVN'T CODE §§ 6103 and 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is: $0.00
( ) computed on full value of property conveyed, or
( ) computed on full value of less of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (x) City of Daly City

MEMORANDUM OF OPTION AND DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Option and Disposition And Development Agreement ("**Memorandum**") dated as of _____ ___, 20___, is entered into by and between the City of Daly City, a California municipal corporation ("**City**") and Sierra Enterprises, Inc., a California corporation ("**Developer**"). City and Developer are hereinafter collectively referred to as the "Parties."

1. **Agreement: Conveyance**. Pursuant to that certain Disposition and Development Agreement dated as of _____ ___, 20___. (the "**Agreement**") executed by and between City and Developer, the City has agreed to convey to Developer, and Developer has agreed to develop certain real property located in the City of Daly City, San Mateo County, California, identified as San Mateo County Assessor's Parcels No. 002-352-160, 002-352-290, 002-352-310, 002-362-330, and a portion of both 002-342-250 and 002-352-250, and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (collectively the "**Property**").

2. **Schedule for Construction**. Among other conditions, the Agreement provides that Developer shall have commenced and completed, by dates set forth in the Agreement as such dates may be extended pursuant to the terms of the Agreement, construction of a commercial development project (the "**Project**") on the Property.

3. **Certificate of Completion**. Promptly following completion of construction of the improvements comprising the Project (the "**Improvements**") and the issuance of a final certificate of occupancy or equivalent for the Improvements, the City will furnish Developer with an instrument so certifying (a "**Certificate of Completion**"). Such Certificate of Completion shall constitute

conclusive determination of satisfactory completion of construction of the Improvements and compliance with the covenants in the Agreement and the Grant Deed and Reservation of Easement, and Grant Deed, each of which is executed pursuant the terms of the Agreement, regarding the dates for the commencement and completion of such construction.

4. **Restrictions on Transfer**. The Agreement provides that the Property will be used for the purposes of timely development as set forth in the Agreement and not for speculation in landholding. Developer recognizes that the City entered into the Agreement and agreed to convey the Property to Developer in reliance on the qualifications and identity of Developer, and that the qualifications of Developer are of particular concern to the City in view of the reliance by the City upon the unique qualifications and ability of Developer to develop, operate and manage the Property. The Agreement further provides that (i) except as permitted by the Agreement, prior to the issuance of final certificates of occupancy or equivalent for the Project, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the Project without the prior written approval of the City; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the Agreement which pertain to the portion of the Property transferred, including, without limitation, the provisions of the Regulatory Agreement.

5. **Power of Termination**. Subject to and in accordance with the procedures and provisions of Section 9.8 of the Agreement, the City has the right, at its option, to re-enter and take possession of the Property, or portion thereof, with all Improvements thereon, and revest in the City the estate conveyed to Developer, in the event of a default arising under and specifically described in Section 9.8 of the Agreement.

6. **Option to Repurchase**. Subject to and in accordance with the procedures and provisions of Section 9.9 of the Agreement, the City has the right, at its option, to purchase and take possession of the Property, or portion thereof, with all Improvements thereon, and revest in the City the estate conveyed to Developer, in the event of a default arising under and specifically described in Section 9.9 of the Agreement.

7. **Agreement Controls**. The Parties have executed and recorded this instrument to give notice of the Agreement and the respective rights of the Parties thereunder. Copies of the unrecorded Agreement are available at the offices of the City, 333 90th Street Daly City, CA 94015, and such document is incorporated by reference in its entirety in this Memorandum. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.

8. **Interpretation; Counterparts**. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

9. **Binding Effect**. The Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject to the provisions of the Agreement concerning assignment.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed and issued this Memorandum as of the date first written above.

SIERRA ENTERPRISES, INC.,
A California corporation

By: Winifred D. Sullivan
Its: Chief Executive Officer

CITY OF DALY CITY
a California municipal corporation

By:
Its: City Manager

By:
Its: City Clerk

By:
Its: City Attorney

Exhibit A
Legal Description

APN:

Exhibit G-1
Form of Developer Parking Area Grant Deed and Reservation of Easement

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

REUBEN, JUNIUS & ROSE, LLP
One Bush Street
Suite 600
San Francisco, CA 94104
Attn: 11489.01.MDV.CAE

(Space above line for Recorder's use only)

APN: 002-342-250 (portion)
002-352-250 (portion)

EXEMPT FROM RECORDING FEES PER
CAL. GOVN'T CODE §§ 6103 and 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is: $0.00
( ) computed on full value of property conveyed, or
( ) computed on full value of less of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (x) City of Daly City

GRANT DEED AND RESERVATION OF EASEMENT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Daly City, a California municipal corporation ("**Grantor**" or "**City**") hereby grants and conveys to Sierra Enterprises, Inc., a California corporation ("**Grantee**" or "**Sierra**"), that real property located in the City of Daly City, County of San Mateo, California, consisting of a portion of both San Mateo County Assessor's Parcels No. 002-342 and 002-352-250, and more particularly described in **Exhibit A** (the "**Property**") attached hereto and incorporated in this Grant Deed and Reservation of Easement ("**Grant Deed**") by this reference. The conveyance is subject to easement reserved by Grantor over the surface of that portion of the Property more particularly described in **Exhibit B** ("**Easement Area**") attached hereto and incorporated in this Grant Deed by this reference, which may be used by Grantor, on a non-exclusive basis, for pedestrian and vehicular access ("**Easement**") to Grantor's real property commonly known as 2157 Junipero Serra Boulevard, Daly City, California, a portion of San Mateo County Assessor's Parcel No. 002-342-250, and more particularly described in **Exhibit C** ("**City Parking Area**") attached hereto and incorporated in this Grant Deed by this reference. Grantor and Grantee are sometimes referred to herein as "**Parties**." The effective date of this Grant Deed is _____ ___, 2020.

A. **"Conditions on Conveyance."** Grantor's conveyance of the Property to Grantee is made and accepted subject to the following terms and conditions:

1. **Development Requirements**. The Property is conveyed subject to that certain Disposition and Development Agreement entered into by and between the Grantor and Grantee, dated as of _____ ___, 2020 (the "**Agreement**"). The Grantor and the Grantee have executed a Memorandum of the Agreement dated as of the date hereof (the "**Memorandum**") which will be recorded in the Official Records of San Mateo County ("**Official Records**") substantially concurrently herewith.

2. **Development of Improvements**. The Grantee hereby acknowledges and agrees, for itself and its successors and assigns, that the Property is being conveyed to Grantee in

accordance with and subject to the requirements of the Agreement, including without limitation in accordance with the provisions of the Agreement that specify the required number of residential units to be constructed on the Property and the time period within which construction of such improvements (the "**Improvements**") must be completed, as such time period may be extended pursuant to the terms of the Agreement.

3. **Non-Discrimination**. Grantee shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status of any person. Grantee covenants for itself and all persons claiming under or through it, and this Grant Deed is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in the Civil Rights Act of 1964, as amended, or Section 51 of the California Civil Code [Unruh Civil Rights Act], in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation. with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property or part thereof.

4. **Duration of Covenants**. The covenants against discrimination contained in Section 3 shall remain in effect in perpetuity.

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

6. **Binding on Successors**.

a. The covenants contained in Sections 3 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property and Improvements or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

b. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property and Improvements in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and Improvements.

7. **Grantee's Acknowledgement**. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

B. **"Conditions on Reservation."** City and Sierra, in connection with City's reservation of the Easement, covenant and agree as follows:

1. **Use of Non-Exclusive Easement**. The Easement shall be used by City on a non-exclusive basis, and only in compliance with the following conditions:

a. The Easement shall be used by City solely for pedestrian and vehicular ingress and egress to and from the City Parking Area;

b. City shall cooperate with Sierra's construction of improvements on the Property, including without limitation the Easement Area;

c. Except during periods of construction and maintenance as contemplated by the Agreement, the Easement Area shall at all times be kept clear and open, and City shall cooperate with Sierra to keep the Easement Area free from loitering, litter, graffiti, and any other unauthorized use; and

d. City's use of the Easement Area shall not unreasonably interfere with Sierra's ability to the Property, or any portion therein, including without limitation the Easement Area.

2. **Location of Easement Area**. Sierra shall have the right on thirty (30) days' notice to City, to relocate and/reconfigure the Easement Area for purposes of managing the path of vehicular and pedestrian traffic to the City Parking Area, provided that such relocation/reconfiguration does not unreasonably interfere with City's use of the Easement or its access to the City Parking Area.

3. **Construction Activities**. Improvements may be made in the Easement Area consistent with the Agreement, at Sierra's sole cost and expense. The Parties agree to the following in connection with the making of the Improvements, or such other improvement as Sierra may make in the future:

a. During portions of construction and/or future maintenance activities required by the Agreement, access to and use of the Easement Area may be temporarily restricted to construction vehicles and the transport of construction materials and equipment and other uses as may be permitted by Sierra from time-to-time, in its sole and absolute discretion.

b. Sierra shall make reasonable efforts to avoid interruptions to the use of the Easement Area, and shall endeavor to provide reasonable notice to City of such potential interruptions consistent with the terms of this Agreement.

4. **Modification or Revocation**. This Agreement may not be modified, revoked or terminated without the written consent of the City and Sierra, or their successors-in-interests, and any such modification, revocation or termination is recorded in the Official Records of San Mateo County.

5. **Easements Appurtenant**. The Easement described herein shall be appurtenant to, and shall pass with title to, the Property and City Parking Area, and each of them. Each and all of the foregoing covenants, conditions and restrictions (i) shall run with the land; (ii) shall be binding upon, and shall inure to the benefit of the Parties, each owner and any person having or acquiring any interest in any portion of the Property, and all of their respective heirs, successors, and assigns; and (iii) shall be binding upon, and shall inure to the benefit of the properties and each of them, and to each and every portion thereof and interest therein.

6. **No Public Dedication**. Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this document be strictly limited to and for the purposes expressed.

7. **Termination**. The Easement is personal to City, and shall terminate as such time as City no longer holds fee title or a possessory interest in the City Parking Area, unless earlier terminated by a voluntary agreement of the parties.

8. **Indemnity**. To the fullest extent permitted by law, each party hereto shall defend, indemnify, and hold harmless each of the other and their respective principals, members, shareholders, managers, agents, and employees from and against all claims, damages, losses and expenses, including, without limitation, attorneys' fees arising out of or resulting from: (a) the use of the Easement conveyed by this Agreement; (b) that party's use of the Easement Area, or that of the party's agents, guests, or invitees, (c) the negligence or wrongful conduct of a contractor engaged by a party to perform construction, repair, or maintenance of the Easement Area; (d) a release of hazardous materials on or about the Easement Area by a party, or other person for whom a party is legally responsible. No party shall have an obligation to defend, indemnify or hold harmless any other party to the extent any claims, demands, losses and expenses result from the negligence or willful misconduct of the party seeking indemnity.

9. **Insurance Obligations**. Each party to this Agreement shall procure and maintain, at its sole cost and expense, Commercial General Liability Insurance that covers the Easement Area, written on an occurrence form, with policy limits of not less than One Million and 00/100 Dollars ($1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars ($2,000,000.00) general aggregate coverage, and providing coverage for claims that include (i) bodily injury, sickness, disease, or death of any person; (ii) personal and advertising injury; (iii) damages because of physical damage to or destruction of tangible property, including the loss of use of such property; (iv) the indemnity obligations provided in this Agreement. All such insurance policies shall be issued by reputable insurance companies that are licensed to do business in the State of California, and shall name the other party to this Agreement as additional insureds. The Parties acknowledge that City is self-insured pursuant to California Government Code section 990. The City may satisfy the liability insurance obligations imposed by this Agreement through such program of self-insurance, through Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA), or through a similar public entity risk management authority.

10. **Maintenance of Easement Area**. After completion of the Improvements, Sierra shall manage and maintain the Easement Area in good condition, repair, and appearance ("**Maintenance**"). However, to the extent that maintenance or repair is made necessary by the negligence or misconduct of City, the costs associated with such maintenance or repair work shall be borne by Sierra.

11. **No Change of Boundary**. Nothing in this Agreement shall be construed to change or modify the existing location of the boundary lines between the Property and the City Parking Area.

C. **Miscellaneous**. The following terms are generally applicable to both the Conditions on Conveyance and the Conditions on Reservation:

1. **Amendments**. Only the City, its successors and assigns, on the one hand, and Sierra and the successors and assigns of Sierra in and to all or any part of the fee title to the Property and Improvements, on the other, shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained herein.

2. **Conflict Among Documents**. In the event there is a conflict between the provisions of this Grant Deed and the Agreement, it is the intent of the parties that the Agreement shall control.

3. **Counterparts**. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed and issued this Grant Deed and Reservation of Easement as of the date first written above.

GRANTOR:	GRANTEE:
CITY OF DALY CITY a California municipal corporation	SIERRA ENTERPRISES, INC., a California corporation
By: Its: City Manager	By: Winifred D. Sullivan Its: Chief Executive Officer
By: Its: City Clerk	
By: Its: City Attorney	y

Exhibit A
Legal Description

APN:

Exhibit B
Easement Area

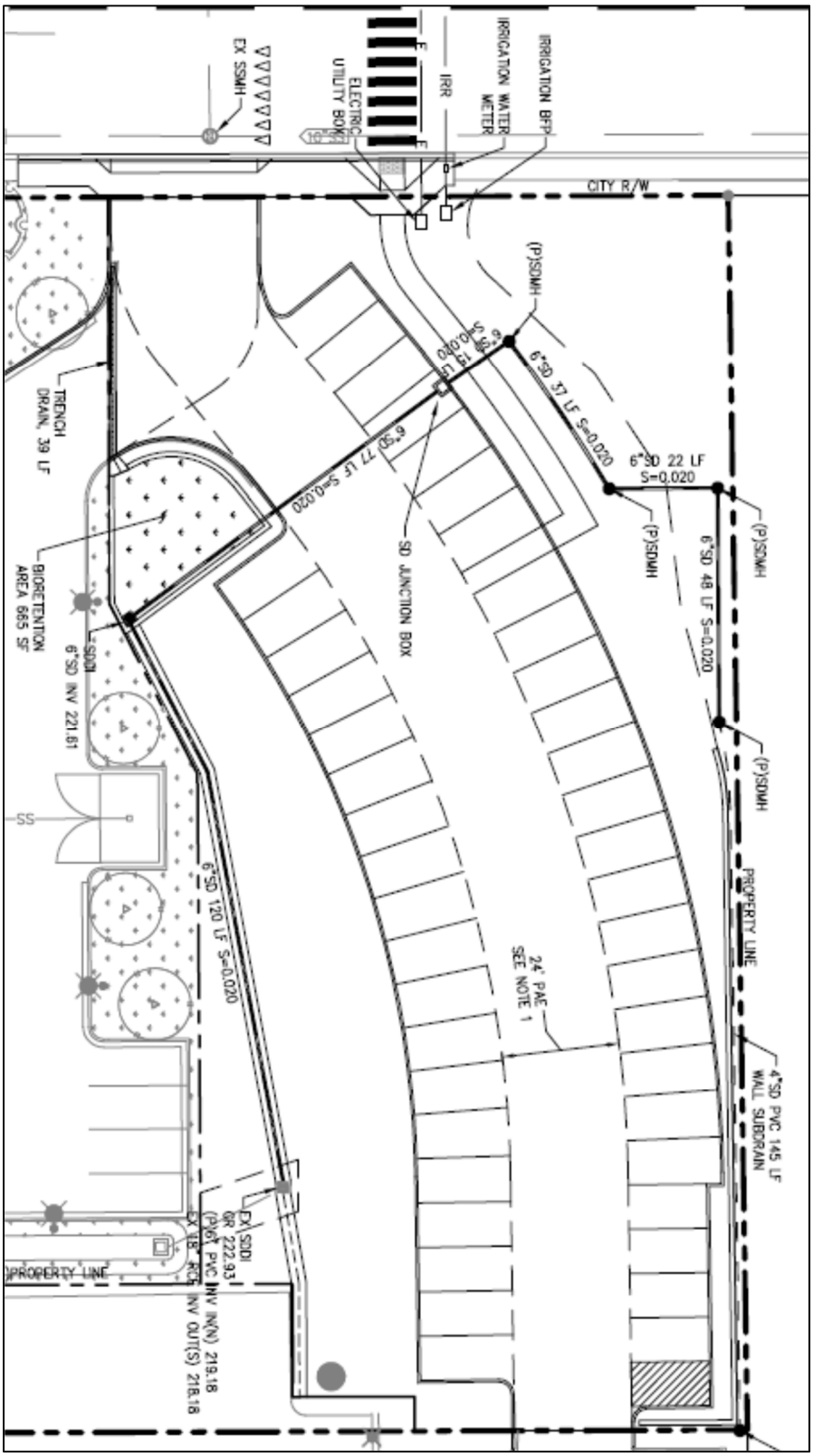

Exhibit C
City Parking Area – 2157 Junipero Serra Boulevard

Exhibit G-2
Form of North-of-Westlake Grant Deed

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

REUBEN, JUNIUS & ROSE, LLP
One Bush Street
Suite 600
San Francisco, CA 94104
Attn: 11489.01.MDV.CAE

(Space above line for Recorder's use only)

APN: 002-352-160
002-352-290
002-352-310
002-362-330

EXEMPT FROM RECORDING FEES PER
CAL. GOVN'T CODE §§ 6103 and 27383

The undersigned grantor(s) declare(s):
Documentary Transfer Tax is: $0.00
( ) computed on full value of property conveyed, or
( ) computed on full value of less of liens and encumbrances remaining at time of sale.
( ) unincorporated area: (x) City of Daly City

GRANT DEED

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Daly City, a California municipal corporation ("**Grantor**") hereby grants and conveys to Sierra Enterprises, Inc., a California corporation ("**Grantee**"), that real property located in the City of Daly City, County of San Mateo, California, consisting of San Mateo County Assessor's Parcels No. 002-352-160, 002-352-290, 002-352-310, 002-362-330, and more particularly described in **Exhibit A** (the "**Property**") attached hereto and incorporated in this Grant Deed by this reference. Grantor and Grantee are sometimes referred to herein as "**Parties**." The effective date of this Grant Deed is _____ ___, 2020.

Grantor's conveyance of the Property to Grantee is made and accepted subject to the following terms and conditions:

1. **Development Requirements**. The Property is conveyed subject to that certain Disposition and Development Agreement entered into by and between the Grantor and Grantee, dated as of _____ ___, 2020 (the "**Agreement**"). The Grantor and the Grantee have executed a Memorandum of the Agreement dated as of the date hereof (the "**Memorandum**") which will be recorded in the Official Records of San Mateo County ("**Official Records**") substantially concurrently herewith.

2. **Development of Improvements**. The Grantee hereby acknowledges and agrees, for itself and its successors and assigns, that the Property is being conveyed to Grantee in accordance with and subject to the requirements of the Agreement, including without limitation in accordance with the provisions of the Agreement that specify the required number of residential units to be constructed on the Property and the time period within which construction of such improvements (the "**Improvements**") must be completed, as such time period may be extended pursuant to the terms of the Agreement.

3. **Non-Discrimination**. Grantee shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status of any person. Grantee covenants for itself and all persons claiming under or through it, and this Grant Deed is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in the Civil Rights Act of 1964, as amended, or Section 51 of the California Civil Code [Unruh Civil Rights Act], in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or segregation. with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property or part thereof.

4. **Duration of Covenants**. The covenants against discrimination contained in Section 3 shall remain in effect in perpetuity.

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

6. **Binding on Successors**.

a. The covenants contained in Sections 3 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property and Improvements or any part thereof, for the benefit of Grantor, and its successors and assigns, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

b. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property and Improvements in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and Improvements.

7. **Amendments**. Only the City, its successors and assigns, on the one hand, and Sierra and the successors and assigns of Sierra in and to all or any part of the fee title to the Property and Improvements, on the other, shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained herein.

8. **Conflict Among Documents**. In the event there is a conflict between the provisions of this Grant Deed and the Agreement, it is the intent of the Parties that the Agreement shall control.

9. **Counterparts**. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

10. **Grantee's Acknowledgement**. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed and issued this Grant Deed as of the date first written above.

GRANTOR:	GRANTEE:
CITY OF DALY CITY a California municipal corporation	SIERRA ENTERPRISES, INC., a California corporation
By: Its: City Manager	By: Winifred D. Sullivan Its: Chief Executive Officer
By: Its: City Clerk	
By: Its: City Attorney	y

Exhibit A
Legal Description

APN:

Exhibit H
Leases and Service Contracts

Leases:

None.

Service Contracts:

None.

Exhibit I
Form of Assignment of Intangible Property

ASSIGNMENT OF INTANGIBLE PROPERTY

This Assignment of Intangible Property (this "**Assignment**") is executed and delivered as of _____ _____, 2020 pursuant to that certain Disposition and Development Agreement (the "**Agreement**") dated _____ _____, 2020 by and between the City of Daly City, California municipal corporation ("**Assignor**"), and Sierra Enterprises, Inc., a California corporation ("**Assignee**"), covering the real property described in **Exhibit A** attached hereto (the "**Real Property**").

FOR VALUE RECEIVED, Assignor hereby conveys, assigns, transfers, and sets over unto Assignee all the right, title and interest of Assignor in and to any and all intangible property relating to the Real Property, including, without limitation: all licenses, approvals, authorizations, permits and entitlements issued by any governmental authority or otherwise now or hereafter in effect with respect to the Real Property; all warranties, indemnities and guaranties relating to the Real Property or any of the other Intangible Property described herein; all agreements relating to the development of the Real Property; all plans, specifications, maps, drawings and renderings relating to the Real Property; all development rights benefiting the Real Property; all rights to receive a reimbursement, credit or refund of any deposits or fees paid in connection with the Real Property; all claims, counterclaims, defenses or actions, whether at common law or pursuant to federal, state or local laws or regulations, against third parties relating to the existence of any Hazardous Materials in, at, on or under the Real Property; all rights as "declarant" under any covenants, conditions and restrictions affecting the Real Property; all contracts and agreements relating to services provided with respect to the Real Property; all of the foregoing being, collectively, the "**Intangible Property**"; provided, however, that the Intangible Property does not include any service contracts or other contracts or agreements except those listed on **Exhibit B** attached hereto (the "**Assumed Contracts**").

Assignee hereby assumes all of the obligations and liabilities arising after the date of this Assignment under the Assumed Contracts, if any. Assignor agrees that it will perform all of the obligations under, and be responsible for all of the liabilities arising under, the Assumed Contracts prior to the date of this Assignment.

This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns; shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be wholly performed within said State without regard to any choice of law principles; and may not be modified or amended in any manner other than by a written agreement signed by the party to be charged therewith. Venue for all court proceedings or alternative forms of dispute resolution proceedings shall be San Mateo County, California. In the event of any litigation or arbitration proceeding between Assignor and Assignee arising out of this Assignment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in any such action. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law

This Assignment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement; signatures may be delivered by facsimile transmission or by e-mail in portable document format (.pdf) or another electronic format. In the event either party hereto now or hereafter shall consist of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations shall be jointly and severally liable as parties under this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Intangible Property as of _____ _____, 2020, which instrument is effective as of such date.

ASSIGNOR:

CITY OF DALY CITY
a California municipal corporation

_____
By:
Its: City Manager

_____
By:
Its: City Clerk

_____
By:
Its: City Attorney

ASSIGNEE:

SIERRA ENTERPRISES, INC.,
a California corporation

_____
By: Winifred D. Sullivan
Its: Chief Executive Officer

y

Exhibit A to Assignment of Intangible Property
Legal Description

Exhibit B to Assignment of Intangible Property
Assumed Contracts