

**2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)**

**between**

**THE CITY OF FONTANA  
a California municipal corporation**

**and**

**HDO4, LLC (or permitted assignee)  
a New Mexico limited liability company**

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**2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)**

This 2020 DISPOSITION AGREEMENT (Ventana at Duncan Canyon) (“**Agreement**”) is dated as of July \_\_, 2020 (“**Date of Agreement**”), for reference purposes only, and is entered into by and between the City of Fontana, a California municipal corporation (“**City**”), and HDO4, LLC, a New Mexico limited liability company (“**Developer**”). The City and the Developer are sometimes referred to in this Agreement individually as a “**Party**,” and collectively as the “**Parties.**”

**RECITALS**

This Agreement is entered into with reference to the following recitals of fact (“**Recitals**”) that the City and the Developer believe to be true as of the Effective Date of this Agreement:

A. The City is the owner of that certain real property in the City of Fontana (APN’s 0226-075-31; 0226-075-38; 0226-075-45; 1107-262-06; 1107-262-07; 1107-262-08) described in the attached Exhibit A-1 (“**Property**”). The Property is subject to the “Ventana at Duncan Canyon Specific Plan,” adopted by City Council Resolution 2007-34 on March 27, 2007 (“**Specific Plan**”), which regulates the development of the Property. A site map depicting the Property as divided into various planning areas (each, a “**Planning Area**”) is attached as Exhibit A-2. References in this Agreement to numbered Planning Areas mean the correspondingly-numbered Planning Areas as shown on Exhibit A-2. Certain planning areas identified in the Specific Plan are held by third parties and do not constitute a portion of the Property and the Developer has no rights or obligations to those planning areas.

B. On or about October 23, 2019, the City approved that certain “Exclusive Negotiation Agreement” (“**ENA**”) with the Developer for the potential development of the Property. The Developer proposed the acquisition and phased development of the Property as a mixed-use commercial/residential development.

C. The Developer’s proposed acquisition of the Property and subsequent construction and completion of the Project (as defined in Section 1.1.54) on the Property pursuant to the terms of this Agreement is in the best interest of the City and the health, safety and welfare of the City’s taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City’s general plan by: (i) strengthening the City’s land use and social structure, and (ii) alleviating economic and physical blight on the Property and in the surrounding community.

D. The City desires to sell the Property to the Developer for the development of the Project and the Developer desires to purchase the Property from the City for the same purpose.

E. The City and the Developer each desire to facilitate the development of the Property through the consideration and possible approval of one or more amendments to the Specific Plan that could (i) increase the value of the Property by increasing the number of housing units permitted to be developed upon the Property, (ii) increase the supply of housing within the City and supplement and facilitate the City’s efforts to meet its local housing obligations, and

(iii) provides a mechanism for the City to receive additional purchase consideration. In furtherance of the foregoing, the City and the Developer will, following the sale of the Property and subject to the City's compliance with all required hearings and other applicable requirements (including those under the California Environmental Quality Act), prepare and consider an amendment to the Specific Plan modifying the land use regulations applicable to the Property. The Developer will pay to the City any difference between the Purchase Price (as defined below) and the value of the Property following amendment of the Specific Plan's land use regulations, as more specifically provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the City and the Developer, the Parties agree as follows:

## TERMS AND CONDITIONS

### ARTICLE I

#### DEFINITIONS; REPRESENTATIONS AND WARRANTIES; EFFECTIVE DATE

**1.1 Definitions.** All initially capitalized terms not otherwise defined in this Agreement shall have the following meanings:

**1.1.1 "Additional Insureds"** has the meaning ascribed to such term in Section 2.5.3.

**1.1.2 "Additional Purchase Consideration"** has the meaning ascribed to the term in Sections 5.2.5 and 5.2.6.

**1.1.3 "Affiliate"** means and refers to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise.

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

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

**1.1.6 "City Delays"** means any delay in the processing of the Developer's applications, plan checks, and permits for the development of the Project that (i) are not attributable to material errors or omissions by the Developer, and (ii) exceed the reasonable and customary times for the processing of applications and permits by other similarly-sized cities located within Southern California.

**1.1.7 "City Manager"** means the City Manager of the City or his or her designee or successor in function.

**1.1.8 “City Requirements”** has the meaning ascribed to the term in Section 2.6.1.

**1.1.9 “City’s Title Notice Response”** means the written response of the City to the Developer’s Title Notice, in which the City either (i) elects in its sole and absolute discretion to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer’s Title Notice, or (ii) elects not to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer’s Title Notice.

**1.1.10 “Close of Escrow” or “Closing”** means the recording of the Grant Deed for the Property in the Official Records of the Recorder of the County, and completion of each of the actions set forth in ARTICLE III by the Escrow Holder for the City to sell the Property to the Developer and the Developer to purchase the Property from the City.

**1.1.11 “Commence Construction”** means the start of grading for either (i) any of the public or private improvements to be developed within a Planning Area, or (ii) the backbone public infrastructure improvements for the Project or a particular Planning Area within the Project.

**1.1.12 “Complete Construction”** means: (i) as to the private residential improvements within any Planning Area, the Developer is entitled to receive certificates of occupancy (or similar City approvals to occupy and/or use a particular improvement) for improvements constructed on no less than seventy-five percent (75%) of the developable residentially-zoned area within a Planning Area, and (ii) as to the private non-residential improvements within a Planning Area, the Developer has received final permit sign-off from the City for the shell and core improvements constructed on no less than seventy-five percent (75%) of the developable non-residentially-zoned area within a Planning Area; and (iii) as to the public improvements within any Planning Area, the City has accepted all public improvements required to be installed in connection with the improvements described in (i) and (ii), preceding.

**1.1.13 “Control”** means and refers to possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise.

**1.1.14 “Controlling” and “Controlled”** mean and refer to exercising or having Control.

**1.1.15 “County”** means the County of San Bernardino, California.

**1.1.16 “Date of Final Approval”** means the earlier of: (i) the date on which the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable) has been approved by the City and one hundred eighty days (180) days have elapsed from the posting of a notice of determination with respect to the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable) without any such challenge having been filed; and (ii) if a challenge is filed within such one hundred eighty (180) day period, the date on which the challenge has been finally and fully resolved on terms acceptable to the City and the Developer in their sole and

absolute discretion and all periods applicable to the filing of any further appeal have lapsed without the filing of an appeal.

**1.1.17 “Developer’s Title Notice”** means a written notice from the Developer to the City indicating the Developer’s acceptance of the state of the title to the Property, as described in the Preliminary Report, or the Developer’s objection to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Property, describing in suitable detail the actions that the Developer reasonably believes are indicated to cure or correct each of the Developer’s objections. All monetary liens and encumbrances of record against the Property, other than the lien for non-delinquent property taxes and assessments, are disapproved regardless of whether they are specifically referenced in the Developer’s Title Notice.

**1.1.18 “Developer’s Title Notice Waiver”** means a written notice from the Developer to the City waiving, in the Developer’s sole and absolute discretion, the Developer’s previous objection(s) in the Developer’s Title Notice to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Property.

**1.1.19 “Due Diligence Investigation Conclusion Notice”** means a written notice of the Developer delivered to the City and the Escrow Holder, prior to the end of the Due Diligence Period: (a) indicating, in the Developer’s sole and absolute discretion, the Developer’s unconditional acceptance of the condition of the Property and election to proceed with this Agreement, or (b) indicating, in the Developer’s sole and absolute discretion, the Developer’s rejection of the condition of the Property and refusal to accept a conveyance of fee title to the Property.

**1.1.20 “Due Diligence Investigations”** means the Developer’s due diligence investigations of the Property to determine the suitability of the Property for development and operation of the Project, including, without limitation, investigations of the environmental and geotechnical suitability of the Property, as deemed appropriate in the reasonable discretion of the Developer, all at the sole cost and expense of the Developer.

**1.1.21 “Due Diligence Period”** means the date commencing on the Effective Date and ending on the earlier of: (i) 5:00 p.m. on the ninetieth (90<sup>th</sup>) day following the Effective Date, and (ii) the Developer’s delivery of its Due Diligence Investigation Conclusion Notice.

**1.1.22 “Earnest Money Deposit”** means Fifty Thousand Dollars (\$50,000), which must be deposited with Escrow Holder within five (5) days following the Effective Date.

**1.1.23 “Effective Date”** has the meaning ascribed to the term in Section 1.3.

**1.1.24 “ENA”** means the Exclusive Negotiation Agreement (Ventana at Duncan Canyon), dated October 23, 2019 between the City and HDO4, LLC.

**1.1.25 “Environmental Claims”** has the meaning ascribed to the term in Section 6.2.

**1.1.26 “Environmental Laws”** means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability of standards of conduct concerning any hazardous substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 USC Section 1251 et seq.]; the Toxic Substances Control Act (“TSCA”) [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act (“HMTA”) [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

**1.1.27 “Environmental Matters”** has the meaning ascribed to the term in Section 6.2.

**1.1.28 “Escrow”** has the meaning ascribed to the term in Section 2.1.

**1.1.29 “Escrow Closing Date”** has the meaning ascribed to the term in Section 3.6.

**1.1.30 “Escrow Holder”** means Orange Coast Title Insurance Company.

**1.1.31 “Escrow Opening Date”** has the meaning ascribed to the term in Section 3.1.

**1.1.32 “Event of Default”** has the meaning ascribed to the term in Section 7.1.

**1.1.33 “FIRPTA Affidavit”** means an affidavit complying with Section 1445 of the United States Internal Revenue Code.

**1.1.34 “First Specific Plan Amendment”** means the Specific Plan Amendment defined in Section 5.1.

**1.1.35 “Grant Deed”** means a deed in the form of Exhibit B to this Agreement, conveying all of the City’s interest in the Property to the Developer.

**1.1.36 “Governmental Agency”** means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence, including the City.

**1.1.37 “Governmental Requirements”** means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency.

**1.1.38 “Guarantor”** means FH II, LLC, a California limited liability company.

**1.1.39 “Guaranty”** shall have the meaning set forth in Section 2.8.

**1.1.40 “Hazardous Substances”** means, without implied limitation, substances defined as “hazardous substances,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminate” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.; the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code or, as “hazardous substances” in Section 25316 of the California Health and Safety Code; other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 USC Section 1321 or listed pursuant to 33 USC Section 1317.

**1.1.41 “Indemnified Parties”** has the meaning ascribed to the term in Section 6.2.

**1.1.42 “Major Specific Plan Amendment(s)”** means any Specific Plan Amendment following the First Specific Plan Amendment that modifies permissible uses or increases the intensity or density of development, including but not limited increases in square footage, increases in the number of residential dwelling units, or increases to floor area ratio, when compared to the form of Specific Plan in effect immediately prior to the Specific Plan Amendment at issue.

**1.1.43 “Normal Business Hours”** means the normal business hours of the City, as may be modified. As of the Effective Date, the City’s normal business hours are Monday through Thursday, between the hours of 7:30 a.m. and 5:30 p.m. Pacific Time.

**1.1.44 “Notice of Agreement”** means the notice in the form of Exhibit C to this Agreement to be recorded against the Property at the Close of Escrow to provide constructive record notice of the existence and application of this Agreement to the Property.

**1.1.45 “Original Independent Land Value Analysis”** means the document attached as Exhibit E.

**1.1.46 “Original Land Value”** means the value of the Property established by the Original Independent Land Value Analysis.

**1.1.47 “Party”** means, individually, the City or the Developer, as applicable.

**1.1.48 “Parties”** means, collectively, the City and the Developer.

**1.1.49 “PCO Statement”** means a preliminary change of ownership statement provided for in California Revenue and Taxation Code Section 480.3.

**1.1.50 “Permitted Exceptions”** means (i) any and all items shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that the Developer accepts, pursuant to Section 2.3.1; (ii) any exceptions from coverage under the Title Policy resulting from the Developer’s activities on the Property; (iii) the lien for non-delinquent property taxes and assessments; (iv) this Agreement; or (v) the Grant Deed.

**1.1.51 “Permitted Transfer”** means and refers to any of the following types of Transfers by the Developer, where the person or entity to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument satisfactory to the City.

**1.1.51.1** Any Transfer of stock or equity of the Developer that does not change management or operational Control of the Property or the Project;

**1.1.51.2** [Intentionally Omitted];

**1.1.51.3** Any mortgage, lien, or other encumbrance incurred to secure the repayment of any loan or other obligation incurred in connection with the acquisition of the Property or development of the Project; and

**1.1.51.4** Any Transfer to a single purpose entity formed for the purpose of owning and developing one or more Planning Areas and that is Controlled by or under common Control with the Developer or any member of the Developer.

**1.1.52 “Planning Area 6” or “PA6”** means that portion of the Property identified as such on Exhibit A-2.

**1.1.53 “Preliminary Report”** means a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by legible copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed Title Policy. The Parties acknowledge that they may prepare one (1) or more Preliminary Reports for each parcel, or group of parcels, comprising the Property. In such case, all reports, notices, and objection letters which pertain to the Preliminary Report for the entirety of the Property shall apply separately to each Preliminary Report associated with a parcel or a group of parcels.

**1.1.54 “Project”** means the phased construction and development of the Property as a mixed use residential/commercial development in accord with the requirements of this Agreement, the Specific Plan, as it currently exists and as it may be modified by any Specific Plan Amendment(s), all City ordinances, including all required or associated on-site and off-site improvements, all hardscape and all landscaping.

**1.1.55 “Property”** means that unimproved real property legally described on Exhibit A-1 and commonly known as APN’s 0226-075-31; 0226-075-38; 0226-075-45; 1107-262-06; 1107-262-07; 1107-262-08.

**1.1.56 “Property Transfer”** means and refers to any “change in ownership,” as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Property.

**1.1.57 “Purchase Price”** means the amount of Eleven Million Five Hundred Seventy Thousand Dollars (\$11,570,000.00), payable in immediately available funds at the Close of Escrow.

**1.1.58 “Record”, “recorded”, “recording” or “recordation”** each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of San Bernardino, California.

**1.1.59 “Revised Independent Land Value Analysis”** has the meaning set forth in Section 5.2.2.

**1.1.60 “Revised Land Value”** has the meaning set forth in Section 5.2.2.

**1.1.61 “Specific Plan”** means the “Ventana at Duncan Canyon Specific Plan” adopted by the City Council on March 27, 2007 by Resolution 2007-34. The Specific Plan sets forth those land use regulations applicable to the Property’s development. As used herein, the term “Specific Plan” means the Specific Plan as it exists as of the Effective Date and as it will exist following the approval (if any) of any Specific Plan Amendment(s).

**1.1.62 “Specific Plan Amendment(s)”** means any amendment to the Specific Plan (including the First Specific Plan Amendment and any Major Specific Plan Amendment) that is approved by the City and becomes effective after the Effective Date.

**1.1.63 “Title Company”** means Orange Coast Title Insurance Company.

**1.1.64 “Title Policy”** means a standard CLTA owners’ policy of title insurance issued by the Title Company, with coverage in the full amount of the Purchase Price and insuring

fee title to the Property, subject only to the Permitted Exceptions. However, at the Developer's option, the Developer may acquire an ALTA extended coverage policy. The City shall pay for the standard CLTA policy and any endorsements agreed to by City pursuant to the terms of this Agreement. The Developer shall pay for any additional endorsements or ALTA extended coverage policy.

**1.1.65 "Transfer"** means any of the following:

**1.1.65.1** Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Developer of more than a 49% interest in the Developer's interest in this Agreement, the Property, or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Developer's interest in this Agreement, the Property or the Project; or

**1.1.65.2** Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Developer; or

**1.1.65.3** Any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or

**1.1.65.4** Any Property Transfer; or

**1.1.65.5** The recordation of any deed of trust, mortgage, lien or similar encumbrance against all or any portion of the Property or the Project.

**1.1.66 "Unavoidable Delay"** means City Delays and any other delay that is caused exclusively by the other Party or that is beyond the reasonable control of either the City or the Developer, including, without limitation, delay caused by labor unrest; acts of God; third-party litigation challenging the approval or implementation of this Agreement, any Specific Plan Amendment(s), or any of the entitlements required for the Project's development; weather; inability to obtain labor or materials; embargoes; quarantines; epidemics; pandemics; orders of public authorities; inability to obtain governmental permits or approvals; governmental restrictions; civil commotion; fire; or similar causes that have a material adverse impact on a Party's ability to perform its obligations under this Agreement. Unavoidable Delays include any material changes in the market demand and absorption assumptions set forth in either the Original Independent Land Value Analysis or any Revised Independent Land Value Analysis, but exclude any delays attributable to the Developer's inability to obtain financing or perform any financial obligations unless such inability is attributable to material unfavorable changes in (i) interest rates above those interest rate assumptions set forth in either the Original Independent Land Value Analysis or any Revised Independent Land Value Analysis, or (ii) underwriting criteria as a result of changes in the national or local economy or financial markets.

**1.2 Representations and Warranties.**

**1.2.1 City Representations and Warranties.** The representations and warranties of the City contained in this Section 1.2.1 shall be based upon the actual knowledge of the City Manager as of the Effective Date. All representations and warranties contained in this Section 1.2.1 are made as of the Effective Date and again as of the Closing. The City's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. The City hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by the Developer has been made in material reliance by the Developer on such covenants, representations and warranties:

**1.2.1.1** The City is a California municipal corporation, duly formed and operating under the laws of the State of California. The City has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

**1.2.1.2** The persons executing any instruments for or on behalf of the City have been authorized to act on behalf of the City and this Agreement is valid and enforceable against the City in accordance with its terms, and each instrument to be executed by the City pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against the City in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of and compliance with this Agreement by the City.

**1.2.1.3** The City has taken all requisite action and obtained all requisite consents for agreements or matters to which the City is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

**1.2.1.4** The City (i) has not received any notice or is otherwise aware of the presence or discharge of any Hazardous Materials in, on, or under the Property and (ii) has not received any notice or is otherwise aware that the Property or any condition thereon violates any federal, state, or local law or regulation.

**1.2.1.5** If the City becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the City under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the City's knowledge and/or belief as of a certain date, the City will give immediate written notice of such changed fact or circumstance to the Developer.

**1.2.2 Developer Representations and Warranties.** The representations and warranties of the Developer contained in this Section 1.2.2 shall be based upon the actual knowledge of Richard Munkvold (Developer's Chief Financial Officer) as of the Effective Date. All representations and warranties contained in this Section 1.2.2 are made as of the Effective Date and again as of the Closing. The Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. The Developer hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement

by the City has been made in material reliance by the City on such covenants, representations and warranties:

**1.2.2.1** The Developer is a New Mexico limited liability company, lawfully entitled to do business in the State of California and the City. The Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of the Developer hereby represent and warrant that such persons have the power, right and authority to bind the Developer.

**1.2.2.2** The Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for the Developer's authorization to enter into Agreement.

**1.2.2.3** Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which the Developer is a party or by which the Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to the Developer or to the Property.

**1.2.2.4** This Agreement is, and all agreements, instruments and documents to be executed by the Developer pursuant to this Agreement shall be, duly executed by and shall be valid and legally binding upon the Developer and enforceable in accordance with their respective terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of in compliance with this Agreement by the Developer.

**1.2.2.5** If the Developer becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Developer under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Developer's knowledge and/or belief as of a certain date, the Developer will give immediate written notice of such changed fact or circumstance to the City.

**1.3 Effective Date.** This Agreement is dated July \_\_, 2020 for reference purposes only. This Agreement shall not become effective until the date on which all of the following have occurred ("**Effective Date**"): (i) this Agreement is executed by the appropriate authorities of the Developer and delivered to the City; (ii) the Developer has delivered to the City a certified copy of the official action taken by all required members of the Developer approving this Agreement, in the form attached to this Agreement as Exhibit D; (iii) following all legally required notices and hearings, this Agreement is approved by the City Council; and (iv) this Agreement is executed by the authorized representatives of the City.

## ARTICLE II

### PROPERTY DISPOSITION

**2.1 Purchase and Sale.** In exchange for the Purchase Price and the Developer's other covenants and undertakings set forth in this Agreement, the City shall sell the Property to the Developer and the Developer shall purchase the Property from the City pursuant to the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale from the City to the Developer and the purchase by the Developer from the City of the Property pursuant to the terms of this Agreement, the City and the Developer agree to open an escrow ("**Escrow**") with the Escrow Holder. ARTICLE III of this Agreement constitutes the joint escrow instructions of the Parties to the Escrow Holder for completion of the Escrow for the sale of the Property, as contemplated by this Agreement. The Developer and the City shall execute such further escrow instructions, consistent with the provisions of this Agreement, as may be reasonably requested by the Escrow Holder. In the event of any conflict between the provisions of this Agreement and any other escrow instructions requested by the Escrow Holder, the provisions of this Agreement shall control.

**2.2 Payment of Purchase Price.** The Developer shall deposit the Purchase Price into Escrow as provided in Section 3.3, subject to credit to the Developer for the Earnest Money Deposit.

**2.3 Earnest Money Deposit.** Within five (5) days following the Escrow Opening Date, the Developer shall deposit into Escrow the Earnest Money Deposit. The Earnest Money Deposit shall be nonrefundable except as otherwise provided by a specific provision of this Agreement, including Section 2.4, Section 2.5, Section 3.10, and Section 7.3. Upon the Close of Escrow, the Earnest Money Deposit shall be credited to the Developer toward the Purchase Price and paid to the City as part of the Purchase Price.

**2.3.1** Notwithstanding any contrary term of this Agreement, One Hundred Dollars (\$100) ("**Independent Consideration**") of the Earnest Money Deposit will be immediately paid over to the City upon the Escrow Opening Date. The Independent Consideration will not be returned to the Developer under any circumstances and is given in exchange for the City's entry into this Agreement and the granting to the Developer of the right to purchase the Property on the terms and conditions set forth in this Agreement.

**2.4 Title Approval.** Within fifteen (15) days after the Escrow Opening Date, the City shall obtain from Title Company the Preliminary Report and deliver a copy of the Preliminary Report to the Developer. Within fifteen (15) days following the Developer's receipt of a Preliminary Report for the entire Property, the Developer shall deliver the Developer's Title Notice to the City. If the Developer fails to deliver the Developer's Title Notice to the City within thirty (30) days following the Developer's receipt of the Preliminary Report, the Developer will be deemed to disapprove the status of title to the Property and refuse to accept title to the Property, in which case the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder. Within twenty (20) days following receipt by the City of the Developer's Title Notice, if any, the

City shall serve the City's Title Notice Response. If the Developer's Title Notice does not object to any matter in the Preliminary Report, the City shall not be required to serve the City's Title Notice Response. If the City does not serve the City's Title Notice Response, if necessary, within twenty (20) days following its receipt of the Developer's Title Notice, the City shall be deemed to elect not to remove any matter objected to in the Developer's Title Notice, if any, from the Preliminary Report. If the City elects in the City's Title Notice Response to cause the removal of any matter objected to in the Developer's Title Notice from the Preliminary Report, the City shall cause the removal of each such objectionable matter from the Preliminary Report no later than the Close of Escrow. If the City is unwilling or unable to cause the removal of any matter objected to in the Developer's Title Notice from the Preliminary Report or if the City is deemed to have elected to not remove any matter objected to in the Developer's Title Notice, then, within ten (10) days following the Developer's receipt of the City's Title Notice Response stating that the City is unwilling to remove or cause the removal of any matter objected to in the Developer's Title Notice or the expiration of the time by which the City was to have provided the City's Title Notice Response, the Developer may, in its sole and absolute discretion, either (1) refuse to accept the title to and conveyance of the Property, in which case the Parties shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement without liability to either Party or any other person, by delivery of a written notice of termination to the Escrow Holder, or (2) waive its objection to any items set forth in the Developer's Title Notice by delivering the Developer's Title Notice Waiver to the City. Failure by the Developer to deliver the Developer's Title Notice Waiver, where the City's Title Notice Response or the City's failure to serve the City's Title Notice Response indicates the City's election not to cause the removal of any matter objected to in the Developer's Title Notice from the Preliminary Report, for the City to deliver the City's Title Notice Response under this Agreement, will be deemed the Developer's continued refusal to accept the title to and conveyance of the Property, in which case the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder.

**2.4.1** If at any time prior to the Close of Escrow the Title Company issues an updated Preliminary Report containing any previously undisclosed matter affecting title to the Property (excluding any survey exception or any exception caused by Developer), or the City becomes aware of any previously undisclosed matter affecting title to the Property, following the delivery of the Developer's Title Notice, and the new matter has an adverse impact on the Property or Project, the City shall provide written notice to the Developer of such matter, together with any updated Preliminary Report related to such matter. The City and the Developer shall have such rights and obligations with respect to such previously undisclosed title matters as they did with respect to any title matters set forth in the original Preliminary Report as set forth in Section 2.4.1.

**2.4.2** Before exercising any right a Party may have under this Section 2.4 to cancel the Escrow and terminate this Agreement, the terminating Party shall notify the non-terminating Party in writing of its election to terminate and shall, upon the non-terminating Party's request, which must be delivered, if at all, within three (3) business days following its receipt of the terminating Party's notice of election to terminate, meet and confer with the non-terminating Party for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by either Party to negotiate, in good faith, methods and means by which the

objectionable title matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by either Party that an acceptable resolution of the objectionable title matter will be achieved, nor shall either Party be obligated to expend any funds or undertake any other action whatsoever with respect to such title matter unless such agreement is reduced to a writing which is approved by both Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving such title matter, or if any proposed agreement is disapproved by the City Council, the Escrow shall be cancelled, this Agreement shall be terminated without liability to either Party, and the Parties shall proceed pursuant to Section 3.10.

## **2.5 Developer Investigations.**

**2.5.1** The Developer shall have until the expiration of the Due Diligence Period to complete all of its Due Diligence Investigations with respect to the entirety of the Property. The Developer shall complete all of its Due Diligence Investigations within the Due Diligence Period and shall conduct all of its Due Diligence Investigations at its sole cost and expense. The Developer shall rely solely and exclusively upon the results of its Due Diligence Investigations of the Property, including, without limitation, investigations regarding geotechnical soil conditions, compliance with applicable laws pertaining to the use of the Property by the Developer and any other matters relevant to the condition or suitability of the Property for the Project, as the Developer may deem necessary or appropriate; provided, however, Developer shall not perform any intrusive testing on the Property without the consent of the City not to be unreasonably withheld or delayed. Except as expressly set forth in this Agreement, the City makes no representation or warranty to the Developer relating to the condition of the Property or suitability of the Property for any intended use or development by the Developer. The Developer shall conduct, during the Due Diligence Period, such environmental assessment(s) of the Property as the Developer deems appropriate. The Developer shall deliver a Due Diligence Investigation Conclusion Notice to the City and the Escrow Holder prior to the end of the Due Diligence Period. If the Developer does not unconditionally accept the condition of the Property by delivery of its Due Diligence Investigation Conclusion Notice indicating such acceptance prior to the end of the Due Diligence Period, the Developer shall be deemed to have rejected the condition of the Property. If the condition of the Property is rejected by the Developer, then the Developer shall have the right, following compliance with Section 2.5.4, to cancel the Escrow and terminate this Agreement, in the Developer's sole discretion, without liability to the City or any other person, by delivery of a written notice of termination to the City and Escrow Holder. The Developer shall accept all conditions of the Property, without any liability of the City whatsoever except as otherwise provided in this Agreement or by law upon the Developer's acceptance of the condition of the Property through the delivery of its Due Diligence Investigation Conclusion Notice. The Developer's delivery of its Due Diligence Investigation Conclusion Notice indicating the Developer's unconditional acceptance of the condition of the Property shall evidence the acceptance of the condition of the Property by the Developer in its existing "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition, subject only to those express representations or exceptions set forth in this Agreement. If such assessment(s) reveal the presence of any Hazardous Substances on the Property in levels that exceed applicable Governmental Requirements, then, as part of the negotiations described in Section 2.5.4, the City and the

Developer shall negotiate in good faith in an effort to reach agreement as to the allocation of responsibility and cost of remediation thereof.

DEVELOPER DOES HEREBY ACKNOWLEDGE AND AGREE THAT DEVELOPER IS PURCHASING THE PROPERTY IN AN "AS-IS, WHERE IS, WITH ALL FAULTS" CONDITION AS OF THE CLOSE OF ESCROW. EXCEPT AS SET FORTH IN THIS AGREEMENT, CITY HAS MADE NO REPRESENTATIONS OR WARRANTIES REGARDING THE PROPERTY; AND BY THE CLOSE OF ESCROW, DEVELOPER SHALL HAVE UNDERTAKEN ALL SUCH INSPECTIONS AND EXAMINATIONS IN CONNECTION WITH THE PROPERTY AS DEVELOPER DEEMS NECESSARY OR APPROPRIATE UNDER THE CIRCUMSTANCES (INCLUDING, WITHOUT LIMITATION, THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY, THE PROPERTY'S COMPLIANCE WITH APPLICABLE LAWS, THE CONDITION OF ANY IMPROVEMENTS ON THE PROPERTY), AND THAT BASED UPON THE SAME, DEVELOPER IS AND WILL BE RELYING STRICTLY AND SOLELY UPON SUCH INSPECTIONS AND EXAMINATIONS AND THE ADVICE OF ITS AGENTS, CONSULTANTS, CONTRACTORS, VENDORS AND REPRESENTATIVES. EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER CITY NOR ANY REPRESENTATIVE, AGENT, EMPLOYEE, AFFILIATE OR CONSULTANT OF CITY IS MAKING OR HAS MADE ANY WARRANTY OR REPRESENTATION (EITHER EXPRESS OR IMPLIED) WITH RESPECT TO ALL OR ANY PART OF THE PROPERTY AS AN INDUCEMENT TO DEVELOPER TO ENTER INTO THIS AGREEMENT AND THEREAFTER TO PURCHASE THE PROPERTY OR FOR ANY OTHER PURPOSE. DEVELOPER HEREBY EXPRESSLY DISCLAIMS (ON BEHALF OF ITSELF AND ANY PARTY AFFILIATED WITH OR RELATED TO DEVELOPER) ANY AND ALL CITY REPRESENTATIONS AND WARRANTIES (EITHER EXPRESS OR IMPLIED), EXCEPT TO THE EXTENT EXPRESSLY PROVIDED FOR IN THE AGREEMENT. BY REASON OF ALL OF THE FOREGOING, DEVELOPER SHALL ASSUME THE FULL RISK OF ANY LOSS OR DAMAGE OCCASIONED BY ANY FACT, CIRCUMSTANCE, CONDITION, OR DEFECT IN CONNECTION WITH THE PROPERTY.

Upon Closing, except as otherwise provided in this Agreement, Developer, fully, unconditionally, and irrevocably releases the Indemnified Parties from any and all claims that Developer may now have or hereafter acquire against any of the Indemnified Parties for any liabilities arising from or related to the Property, or any conditions existing or events occurring on, in or about the Property before the Closing, including without limitation any defects, or other conditions, latent or otherwise, including, without limitation, Hazardous Materials, environmental matters, affecting the Property or any portion thereof. This provision shall survive the Close of Escrow. This release includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Indemnified Parties. In connection with this release, Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**

**AND THAT IF KNOWN TO HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

\_\_\_\_\_  
Developer's Initials

**2.5.2** The Developer will have the right and license to enter upon the Property for purposes of conducting its Due Diligence Investigations at all reasonable times upon prior written notice to City. Any Due Diligence Investigations of the Property by the Developer shall not unreasonably disrupt any existing use or occupancy of the Property or the operations of the City. The Developer shall be liable for any damage or injury to any person or property to the extent attributable to the acts of the Developer, its employees, agents or representatives during the course of any Due Diligence Investigations on the Property and, except to the extent attributable to the negligence or willful misconduct of the Indemnified Parties, the Developer shall indemnify, defend with counsel reasonably acceptable to the City and hold harmless the Indemnified Parties from any and all actual or alleged liens, claims, demands or liability arising from any Due Diligence Investigations by the Developer on the Property. Prior to commencing any Due Diligence Investigations on the Property, the Developer shall deliver copies of policies or certificates of insurance to the City evidencing compliance by the Developer with the insurance requirements of Section 2.5.3. This Section shall survive any termination of this Agreement.

**2.5.3** In order to protect the City and its commissions, agents, attorneys, officers, employees and authorized representatives (collectively, "**Additional Insureds**") against any and all claims and liability for death, injury, loss and damage resulting from the Developer's Due Diligence Investigations, the Developer shall secure and maintain the insurance coverage described in and required by this Section 2.5.3. The Developer shall pay any deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Section 2.5.3.

**2.5.3.1** Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically covering all indemnity obligations of the Developer pursuant to this Agreement), Personal Injury (including bodily injury and death), and Property Damage. The commercial general liability insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate.

**2.5.3.2** Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used by the Developer with minimum limits for Bodily Injury and Property Damage of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

**2.5.3.3** All of the insurance coverage required under Section 2.5.3 shall be maintained by the Developer or its contractors, as required by the terms of this Agreement, until the Close of Escrow and shall not be reduced, modified, or canceled without, at least, thirty (30)

days prior written notice to the City. Also, phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Additional Insureds. The Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

**2.5.3.4** All insurance to be obtained and maintained by the Developer under Section 2.5.3 shall be issued by a company or companies listed in the then current “Best’s Key Rating Guide” publication with a minimum of an “A:VII” rating and be admitted to conduct business in the State of California by the State of California Department of Insurance.

**2.5.3.5** The City will not accept self-insurance in satisfaction of the insurance requirements of Section 2.5.3.

**2.5.3.6** All insurance obtained and maintained by the Developer in satisfaction of the requirements of this Agreement shall be primary to and not contributing to any insurance maintained by the Additional Insureds.

**2.5.3.7** The Developer’s obligations under this Section 2.5.3 will terminate as of the Close of Escrow.

**2.5.4** Before exercising any right the Developer may have under this Section 2.5 to cancel the Escrow and terminate this Agreement, the Developer shall notify the City in writing of its election to terminate and shall, upon the City’s request, which must be delivered, if at all, within three (3) business days following its receipt of the Developer’s notice of election to terminate, meet and confer with the City for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by either Party to negotiate, in good faith, methods and means by which the objectionable Due Diligence matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by either Party that an acceptable resolution of the objectionable Due Diligence matter will be achieved, nor shall either Party be obligated to expend any funds or undertake any other action whatsoever with respect to such Due Diligence matter unless such obligation is reduced to a writing which is approved by both Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving the objectionable Due Diligence matter, or if any proposed agreement is disapproved by the City Council, the Escrow shall be cancelled, this Agreement shall be terminated without liability to either Party, and the Parties shall proceed pursuant to Section 3.10.

## **2.6 Developer to Obtain all Project Entitlements.**

**2.6.1** The City’s zoning, building and land use regulations (whether contained in ordinances, the City’s municipal code, the Specific Plan (including any Specific Plan Amendment(s)) conditions of approval, policies, practice or elsewhere) (collectively, the “**City Requirements**”), shall be applicable to the use and development of the Project on the Property by the Developer. No action by the City with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any City Requirements regarding the Property, the

Project, the Developer, any successor-in-interest of the Developer, or any successor-in-interest to the Property. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. No entitlement, permit or other approval from the City for development of the Project on the Property shall become effective to allow the Developer to develop the Project on the Property until after the Close of Escrow. Under no circumstances shall the Developer commence development of the Project prior to the Close of Escrow.

**2.6.2** The Developer obtains no right to develop the Project on the Property or any portion of the Property by virtue of this Agreement, except that following the Close of Escrow, the Developer shall possess the same rights as any other owner of property within the Property that desires to develop its property in a manner consistent with the City Requirements.

**2.6.3** The Developer agrees to accept and comply fully with any and all lawful conditions of approval applicable to all approvals, permits and other governmental actions regarding the development or operation of the Project on the Property, so long as such conditions of approval are consistent with the Specific Plan and this Agreement in all material respects. Nothing in this Agreement is a waiver of or limitation upon the Developer's ability to fully contest any condition of approval or other requirement that the Developer believes to be erroneous, unlawful, or in violation of this Agreement.

**2.6.4** The Developer shall be solely responsible for paying for the costs of all design work, construction, labor, materials, fees and permit expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by the City, any other Governmental Agency and utility service providers, including the costs of preparation of all required construction, planning and other documents reasonably required by a Governmental Agency pertinent to the development or operation of the Project on the Property, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. The Developer shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the Project, whether located on or off of the Property. The Developer shall obtain any and all necessary approvals, prior to the commencement of applicable portions of construction, and the Developer shall take reasonable precautions to ensure the safety and stability of surrounding properties during said construction. In accordance with this Section 2.6.4, the Developer shall be responsible for the costs of the following:

**2.6.4.1** all fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by the Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Property or the Project or the negotiation of this Agreement that may be undertaken by the Developer; and

**2.6.4.2** all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City of any and

all applications and other documents and information to be submitted to the City by the Developer pursuant to this Agreement or otherwise associated with the Project.

**2.7 [Intentionally Omitted]**

**2.8 Guaranty.** Prior to the Effective Date of this Agreement, the Parties negotiated the form of a guaranty for performance of Developer's obligations under Sections 4.7, 6.1 and 7.5 of this Agreement ("**Guaranty**") (attached as Exhibit F). The Guaranty will be executed by the Guarantor and delivered to Escrow Holder as provide in Section 3.3.

**ARTICLE III**

**ESCROW INSTRUCTIONS**

**3.1 Opening of Escrow.** For purposes of this Agreement, the opening of Escrow shall be the first date on which a fully executed copy of this Agreement and the Earnest Money Deposit are deposited with Escrow Holder ("**Escrow Opening Date**"). The Developer shall cause the Escrow to be opened within five (5) days following the Effective Date. Escrow Holder shall promptly confirm in writing to each of the Parties the date of the Escrow Opening Date. This ARTICLE III shall constitute the joint escrow instructions of the City and the Developer to Escrow Holder for conduct of the Escrow to complete the purchase and sale of the Property between them, as contemplated in this Agreement.

**3.2 Conditions to Close of Escrow.** The conditions set forth below shall be satisfied or waived in writing by the respective benefited Party on or before the Escrow Closing Date or the Party benefited by any unsatisfied condition shall not be required to proceed to close Escrow.

**3.2.1 Developer's Conditions to Close of Escrow.** The Developer's obligation to purchase the Property from the City on the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, each of which can only be waived in writing by the Developer:

**3.2.1.1** The Developer delivered its Due Diligence Investigation Conclusion Notice to both the City and Escrow Holder indicating the Developer's unconditional acceptance of the condition of the Property, prior to the expiration of the Due Diligence Period;

**3.2.1.2** The City finds, pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan;

**3.2.1.3** The Title Company is unconditionally committed to issue the Title Policy for the Property, subject only to any Permitted Exceptions, to the Developer;

**3.2.1.4** The City deposits the items required by Section 3.4 into Escrow;

**3.2.1.5** The representations, warranties and covenants of the City set forth in Section 1.2.1 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date;

**3.2.1.6** The City has completed all of its material obligations required by this Agreement to be completed prior to the Close of Escrow; and

**3.2.1.7** All other matters stated in this Agreement to be conditions to the Close of Escrow for the Developer's benefit have been satisfied.

**3.2.2 City's Conditions to Close of Escrow.** The City's obligation to sell the Property to the Developer on or before the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, which can only be waived in writing by the City:

**3.2.2.1** The Developer has deposited the Purchase Price less the Earnest Money Deposit into Escrow;

**3.2.2.2** The Guarantor has executed the Guaranty in the form attached as Exhibit F and the Developer has caused the fully-executed original Guaranty to be deposited into Escrow;

**3.2.2.3** The Guarantor has provided to the City's special counsel the financial statements described in the Guaranty and the City Manager, on behalf of the City, has determined in his or her sole and absolute discretion that the Guarantor is financially capable of meeting its obligations under the Guaranty;

**3.2.2.4** The Developer delivered its Due Diligence Investigation Conclusion Notice to both the City and Escrow Holder indicating the Developer's unconditional acceptance of the physical condition of the Property, prior to the expiration of the Due Diligence Period;

**3.2.2.5** The City finds, pursuant to Government Code Section 65402, that the Project is consistent with the City's General Plan;

**3.2.2.6** The Title Company is unconditionally committed to issue the Title Policy for the Property, subject only to any Permitted Exceptions, to the Developer;

**3.2.2.7** The Developer has completed all of its material obligations required by this Agreement to be completed prior to the Close of Escrow;

**3.2.2.8** All other matters stated in this Agreement to be conditions to the Close of Escrow for the City's benefit have been satisfied;

**3.2.2.9** The representations, warranties and covenants of the Developer set forth in Section 1.2.2 are true and correct in all material respects on the Effective Date and on the Escrow Closing Date; and

**3.2.2.10** The Developer deposits the funds and items required by Section 3.3 into Escrow.

**3.3 Developer's Escrow Deposits.** The Developer shall deposit the following funds and documents into Escrow at least two (2) business days prior to the Escrow Closing Date:

**3.3.1** The Purchase Price, less the amount of the Earnest Money Deposit, plus any additional funds required to be deposited into Escrow by the Developer under the terms of this Agreement to close the Escrow, all in immediately available funds.

**3.3.2** A PCO Statement executed by the authorized representative(s) of the Developer.

**3.3.3** The certificate of acceptance of the Deed, in the form attached to the Grant Deed, executed by the authorized representative(s) of the Developer in recordable form.

**3.3.4** The Notice of Agreement executed by the authorized representative(s) of the Developer in recordable form.

**3.3.5** A fully-executed original of the Guaranty.

**3.3.6** All other documents required hereunder or otherwise reasonably required by Escrow Holder to be deposited by Developer for the Closing.

**3.4** **City's Escrow Deposits.** The City shall deposit the following documents into Escrow at least two (2) business days prior to the Escrow Closing Date:

**3.4.1** The Grant Deed executed by the authorized representative(s) of the City in recordable form.

**3.4.2** The FIRPTA Affidavit completed and executed by the authorized representative(s) of the City.

**3.4.3** The Notice of Agreement executed by the authorized representative(s) of the City in recordable form.

**3.4.4** All other documents required hereunder or otherwise reasonably required by Escrow Holder to be deposited by City for the Closing.

**3.5** **Closing Procedure.** When each of the Developer's Escrow required deposits, as set forth in Section 3.3, and each of the City's Escrow required deposits, as set forth in Section 3.4, are deposited into Escrow, Escrow Holder shall request confirmation in writing from both the City and the Developer that each of their respective conditions to the Close of Escrow, as set forth in Section 3.2, are satisfied or waived. Upon Escrow Holder's receipt of written confirmation from both the City and the Developer that each of their respective conditions to the Close of Escrow are either satisfied or waived, Escrow Holder shall close the Escrow for the Property by doing all of the following:

**3.5.1** File the following with the Office of the Recorder of the County, for recordation in the order set forth in Section 3.7 (i) the Grant Deed, with the Developer's certificate of acceptance attached, and (ii) the Notice of Agreement.

**3.5.2** Distribute each recorded document to the Party or person designated for such distribution in Section 3.7.

**3.5.3** File the PCO Statement with the Office of the Recorder of the County.

**3.5.4** File the FIRPTA Affidavit with the United States Internal Revenue Service.

**3.5.5** Obtain and deliver the Title Policy to the Developer.

**3.5.6** Deliver the Guaranty to City.

**3.5.7** Deliver the Purchase Price to the City, less the City's share of Escrow closing costs, and less any other charges to the account of the City, and return any remaining funds held by Escrow Holder for the account of the Developer to the Developer, less the Developer's share of Escrow closing costs, and less any other charges to the account of the Developer.

**3.6** **Close of Escrow.** Close of Escrow shall occur no later than the earlier of: (1) the tenth (10th) business day following Escrow Holder's receipt of written confirmation from both the City and the Developer of the satisfaction or waiver of all conditions precedent to the Close of Escrow for the Property, or (2) thirty (30) days from the end of the Due Diligence Period (the "**Escrow Closing Date**"). If for any reason the Close of Escrow has not occurred by the Escrow Closing Date, then any Party not then in default of this Agreement may cancel the Escrow and terminate this Agreement, subject to the notice and cure provisions of Section 7.1 (to the extent applicable), without liability to any other Party or any other person for such termination and cancellation, by delivering written notice of termination to the other Party(ies) and Escrow Holder and, thereafter, the Parties shall proceed pursuant to Section 3.10 if the non-terminating Party is not in default or pursuant to Section 7.2 or Section 7.3 (as applicable) if the non-terminating Party is in default. Without limiting the right of any Party to terminate this Agreement pursuant to the preceding sentence, if Escrow does not close on or before the Escrow Closing Date, and no Party has exercised its contractual right to cancel Escrow and terminate this Agreement before such time, then Escrow shall close as soon as reasonably possible following the first date on which Escrow Holder is in a position to close the Escrow pursuant to the terms and conditions of this Agreement.

**3.7** **Recordation and Distribution of Documents.** As applicable, Escrow Holder shall cause the following documents to be recorded in the official records of the Recorder of the County in the following order of priority at the Close of Escrow: (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) any other documents to be recorded through Escrow upon the joint instructions of the Parties. All recorded documents shall provide that they are to be returned to Escrow Holder after recordation. When originals of such recorded documents are returned to Escrow Holder, Escrow Holder shall deliver: (i) the original Grant Deed, with the Developer's original certificate of acceptance attached, to the Developer and copies to the City, each showing all recording information, (ii) the original of the Notice of Agreement to the City, with copies to the Developer, each showing all recording information, and (iii) the original of any other document recorded at the close of Escrow to the Party or other person designated in the joint escrow instructions of the Parties for such recordation and a copy of each such document to the other Party or Parties, each showing all recording information.

**3.8** **Escrow Closing Costs, Taxes, and Title Policy Premium.** The City and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as Escrow Holder

may charge for the conduct of the Escrow. Escrow Holder shall notify the Developer and the City of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Holder's estimated closing/settlement statement to both the City and the Developer at least four (4) business days prior to the Escrow Closing Date. The City shall pay the premium charged by the Title Company for the standard Title Policy for the Property, exclusive of any endorsements or other supplements to the coverage of such Title Policy that may be requested by the Developer, as well as any documentary transfer taxes and any and all other charges, fees and taxes levied by a Governmental Authority relative to the conveyance of any portion of the Property through the Escrow transaction contemplated in this Agreement. The Developer shall pay any and all recording fees relative to the conveyance of any portion of the Property through the Escrow transaction contemplated in this Agreement.

**3.9 Escrow Cancellation Charges.** If the Escrow fails to close due to the City's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the City shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close due to the Developer's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close for any reason other than the material default of either the Developer or the City and the Escrow is cancelled and this Agreement is terminated, the Developer and the City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges.

**3.10 Escrow Cancellation.** If this Agreement is terminated and the Escrow cancelled pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement and cancel the Escrow, other than due to the material default of the other Party, the Parties shall do each of the following:

**3.10.1** The Parties shall, within three (3) business days of receipt of Escrow Holder's written request, execute any reasonable Escrow cancellation instructions requested by Escrow Holder;

**3.10.2** Within ten (10) days of receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Holder: (i) the Developer or Escrow Holder shall return to the City any documents previously delivered by the City to the Developer or Escrow Holder, (ii) the City or Escrow Holder shall return to the Developer all documents previously delivered by the Developer to the City or Escrow Holder; (iii) Escrow Holder shall return to the Developer any funds deposited by the Developer into Escrow, including the Earnest Money Deposit, less the Independent Consideration and less the Developer's share of customary and reasonable Escrow and title order cancellation charges, if any; and (iv) Escrow Holder shall return to the City any funds deposited by the City into Escrow if it has already been deposited, less the City's share of customary and reasonable Escrow and title order cancellation charges, if any.

**3.11 Report to IRS.** Following the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, Escrow Holder shall report the gross proceeds of the purchase and sale of the Property to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to

Section 6045(e). Upon the filing of such reporting form with the Internal Revenue Service, Escrow Holder shall deliver a copy of the filed form to the City and the Developer.

## ARTICLE IV

### PROJECT DEVELOPMENT

**4.1 Project Development Phasing.** The Developer will commence and complete the development of the Planning Areas conveyed by the City to the Developer as set forth in this Agreement generally and in Sections 4.1.1 through 4.1.10 below specifically.

**4.1.1** Within twelve (12) months following the Close of Escrow, the Developer will complete final engineering plans and Commence Construction of the backbone infrastructure for PA6. The Developer will Complete Construction within PA6 no later than three (3) years after Commencing Construction of the backbone infrastructure.

**4.1.2** Within six (6) months following the Completion of Construction of PA6, the Developer will complete final engineering plans and Commence Construction of another Planning Area selected by the Developer in its sole and absolute discretion. The Developer will Complete Construction within the Planning Area no later than three (3) years after Commencing Construction.

**4.1.3** Within six (6) months following the Completion of Construction of the Planning Area described in Section 4.1.2, the Developer will complete final engineering plans and Commence Construction of another Planning Area selected by the Developer in its sole and absolute discretion. The Developer will Complete Construction within the Planning Area no later than three (3) years after Commencing Construction.

**4.1.4** The development of subsequent Planning Areas will follow in the same manner and subject to the same obligations and requirements as described in Section 4.1.3 until the Developer has Completed Construction within all Planning Areas.

**4.1.5** The Developer may develop multiple Planning Areas concurrently. The Developer will Complete Construction within any Planning Area within three (3) years after Commencing Construction within that Planning Area.

**4.1.6** The Developer will Complete Construction within all Planning Areas no later than twelve (12) years following the Close of Escrow.

**4.1.7** All of the Developer's obligations under this Section 4.1 are subject to Unavoidable Delays.

**4.1.8** During any Specific Plan Amendment process, the Parties will meet in good faith to negotiate, and will not unreasonably withhold their approval of, those amendments to the timing and other requirements set forth in this Section 4.1 that are reasonably necessary to implement those changes incorporated into the Specific Plan Amendment. The City Manager, on behalf of the City, may approve without further Council action any such amendments. Developer

shall obtain Guarantor's written unconditional approval of the proposed amendment prior to approval by the City.

**4.1.9** The City's sole and exclusive remedy upon an Event of Default related to any of the Developer's obligations under this Section 4.1 is set forth in Section 7.5, all other rights and remedies being expressly waived.

**4.1.10** The City acknowledges that the obligations imposed on the Developer under this Section 4.1 are subject to the requirement that the City will expeditiously process the Developer's applications, plan checks, and permits. At the time of submission of an application, plan check, or permit, the City and the Developer will confer in good faith and establish a turnaround deadline for the processing of such application, plan check, or permit.

**4.2 Developer Changes to Plans and Specifications During Course of Construction.** The Developer shall have the right during the course of construction of the Project to make "**minor field changes,**" without seeking the approval of the City, if such changes do not affect the type of use to be conducted within all or any portion of a structure. "**Minor field changes**" shall be defined as those changes that have no substantial effect on the Project or are made in order to expedite the work of construction in response to field conditions. The Developer shall submit all other changes, i.e. those changes which are not "**minor field changes,**" to the City for its review and approval no less than fifteen (15) days prior to the date that the Developer intends to implement such changes. The City shall have ten (10) days from its receipt of such proposed changes to review the same and advise the Developer in writing whether such changes are acceptable to the City in its reasonable discretion. Any proposed changes which are not disapproved by the City within such ten (10) day period shall be deemed approved. Nothing contained in this Section 4.2 shall be deemed to constitute a waiver of or change in the City Requirements governing "**minor field changes**" or other changes or in any approvals by the City otherwise required for "**minor field changes**" or other changes. Nothing herein is intended to or does modify Developer's obligation to comply with state or local law, including the Building Code, requiring appropriate permits, inspections, or amendments to permits as required by law.

**4.3 Compliance with Laws.** All work performed in connection with the development of the Project shall comply with all Governmental Requirements.

**4.4 Developer Attendance at City Meetings.** The Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement and the development of the Project, such that such person(s) can meaningfully respond to City questions regarding the progress of the Project, attend the City Council meetings, when requested to do so on not less than ten (10) days prior written notice by the City staff.

**4.5 City's Right to Inspect Project and Property.** Officers, employees, agents and representatives of the City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project. Such officers, employees, agents or representatives of the City shall be those persons who are designated by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the Property shall identify themselves at the construction management office on the Property, upon their entrance on to the Property, and shall at all times

be accompanied by a representative of the Developer, while on the Property. The Developer shall make a representative of the Developer available for this purpose at all times during normal construction hours, upon reasonable notice from the City. The City shall indemnify and hold the Developer harmless from injury, property damage or liability arising out of the exercise by the City of the right of access to the Property provided in this Section 4.5, other than injury, property damage or liability arising from the negligence or willful misconduct of the Developer or its officers, agents or employees. The City shall inspect relevant portions of the Property, prior to issuing any written statements reflecting adversely on the Developer's compliance with the terms and conditions of this Agreement pertaining to development of the Project. If in the City's reasonable judgment it is necessary, the City shall have the further right, from time to time, to retain a consultant or consultants to inspect the Project and verify compliance by the Developer with the provisions of this Agreement. The Developer acknowledges and agrees that any such inspections are for the sole purpose of protecting the City's rights under this Agreement, are made solely for the City's benefit, that the inspections may be superficial and general in nature, and are for the purposes of informing the City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and that the Developer shall not be entitled to rely on any such inspection(s) as constituting an approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. The Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to the Developer.

**4.6 Cost of Construction.** The cost and expense of undertaking and completing the Project, including, without limitation, constructing all legally imposed on- and off-site improvements, and providing all utilities therefor, shall be borne by the Developer at its sole cost, expense and liability. The Developer shall be solely responsible for payment of all City land use, construction, inspection, plan check and development impact fees (collectively, "**Development Fees**") imposed by the City with respect to the development of the Project. The Developer shall bear all costs and expenses associated with the processing and obtaining of the entitlements and shall bear all costs and expenses (except to the extent expressly set forth otherwise in this Agreement), associated with any and all terms, conditions, requirements, mitigation measures and other exactions imposed on, or required in connection with, the entitlements.

**4.7 Prevailing Wages.** The Developer shall carry out the grading and construction through completion of the Project and the overall development of the Property in conformity with all applicable Governmental Requirements relating to the payment of prevailing wages and compliance with prevailing wage rules, including, without limitation, if applicable, the requirements to pay prevailing wages under federal law (the Davis-Bacon Act, 40 U.S.C. Section 3141, et seq., and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, "Davis-Bacon")) and California law (Labor Code Section 1720, et seq.). The Parties acknowledge that a financing structure utilizing certain federal and/or state funding sources and financing scenarios may trigger compliance with applicable state and federal prevailing wage laws and regulations. The Developer shall determine the applicability of federal, state, and local prevailing wage laws based upon the final financing structure and sources of funding of the Project.

**4.7.1** The Developer shall be solely responsible, expressly or impliedly and legally and financially, for determining and effectuating compliance with all applicable federal,

state, and local public works requirements, prevailing wage laws, and labor laws and standards, and City makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state, and local laws to the construction of the Project. The Developer expressly, knowingly, and voluntarily acknowledges and agrees that City has not previously represented to the Developer or to any representative, agent, or Affiliate of the Developer, or any contractor(s) or any subcontractor(s) for the demolition work, construction, or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction of the Project is (or is not) a “public work,” as defined in Section 1720 of the Labor Code or under Davis-Bacon.

**4.7.2** The Developer knowingly and voluntarily agrees that the Developer shall have the obligation to provide any and all disclosures or identifications as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. The Developer shall indemnify, protect, pay for, defend, and hold harmless the Indemnitees, with legal counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the demolition work, development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by the Developer or its contractor with any applicable local, state, and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages and hire apprentices); (ii) the implementation of Section 1781 of the Labor Code and/or of Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by the Developer to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the Parties that, in connection with the development and construction (as defined by applicable law or regulation) of the Project, including, without limitation, any and all public works (as defined by applicable law or regulation), the Developer shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state, and local law or regulation and/or the implementation of Labor Code Section 1781 and/or by Davis Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project by the Developer. The Guaranty shall cover the Developer’s indemnity obligation under this Section.

**4.7.3** “Increased costs,” as used in this Section 4.7.3, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time.

**4.8 Development Standards.** The Developer hereby covenants and agrees that: (i) no portion of the Property will be developed for any industrial warehouse or distribution facility use; and (ii) all improvements in the Project shall be of high quality and workmanship.

**ARTICLE V**

**SPECIFIC PLAN AMENDMENT/ADDITIONAL PURCHASE CONSIDERATION**

**5.1 First Specific Plan Amendment.** No later than eighteen (18) months following the Close of Escrow, the Developer will apply to the City for a Specific Plan Amendment (“**First Specific Plan Amendment**”) to modify the proposed land uses and densities set forth in the Specific Plan as it existed as of the Effective Date and thereafter may submit applications for other Specific Plan Amendments, including Major Specific Plan Amendments. The Parties will meet regularly and negotiate in good faith to negotiate the First Specific Plan Amendment and any subsequent Specific Plan Amendment, but no less often than once every thirty (30) days. Nothing herein is a commitment by either the City or Developer to approve any one or more provisions of the First Specific Plan Amendment or any subsequent Specific Plan Amendment, the approval of which may be given or withheld within the limits of the discretion given to each Party by law. Nothing herein is a commitment or obligation by the City or the Developer to approve any specific revision or any condition of approval or mitigation measure proposed in connection with the First Specific Plan Amendment or any subsequent Specific Plan Amendment. The Developer acknowledges that the City’s approval (if any) of the First Specific Plan Amendment or any subsequent Specific Plan Amendment is subject to statutorily required public noticing and hearings and compliance with the California Environmental Quality Act (Public Resources Code Section 2100, et seq.). Any approval is subject to third-party litigation, which the Parties acknowledge would constitute an Unavoidable Delay, and the defense of which would be subject to Section 6.1.

If the City does not approve the First Specific Plan Amendment within twenty-four (24) months following its receipt of a complete application from the Developer, or if the Date of Final Approval of the First Specific Plan Amendment has not occurred by the third (3<sup>rd</sup>) anniversary of the Effective Date of this Agreement, then (i) the Developer may proceed with the development of the Project in accord with the City Requirements applicable in the absence of the First Specific Plan Amendment, (ii) the Developer will be excused from any obligation to develop any hotel/hospitality use designated in the Specific Plan, and (iii) the Developer may continue to submit other Specific Plan Amendments, including Major Specific Plan Amendments.

**5.2 Additional Purchase Consideration.**

**5.2.1** The Parties acknowledge that, as of the Effective Date, the Purchase Price is no less than the land value (“**Original Land Value**”) of the Property established by the Original Independent Land Value Analysis. Both Parties have reviewed the Original Independent Land Value Analysis. A copy of the Original Independent Land Value Analysis is attached as Exhibit E.

**5.2.2** In connection with the First Specific Plan Amendment and any Major Specific Plan Amendment process, the City will, at the Party’s joint expense, contract with a firm reasonably acceptable to both Parties to conduct a residual land value analysis (“**Revised Independent Land Value Analysis**”) using a mutually-agreed methodology substituting the requirements and regulations of the Specific Plan as amended by the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable) for those set forth in the Specific

Plan in effect as of the Close of Escrow for purposes of determining the Property's revised land value ("**Revised Land Value**").

**5.2.3** Within twenty (20) days following their receipt of any Revised Independent Land Value Analysis, each Party will notify the other Party in writing of any objections to the Revised Land Value or any other aspect of the Revised Independent Land Value Analysis. A Party's failure to object in writing during this twenty (20)-day period will be deemed that Party's irrevocable approval of the Revised Land Value. If either Party objects in writing to the Revised Land Value or any other aspect of the Revised Independent Land Value Analysis within the twenty (20)-day period, then the Parties will meet and negotiate in good faith for no less than thirty (30) days for the purpose of attempting to resolve all objections related to the Revised Land Value or Revised Independent Land Value Analysis. If the Parties cannot reach agreement, then, notwithstanding any contrary provision of this Agreement, the dispute will be immediately submitted to mandatory binding arbitration under Code of Civil Procedure Section 1280, et seq., before a single arbitrator from JAMS (or other mutually agreeable arbitration service) at a location within a thirty (30) mile radius of the Property. The arbitrator shall be selected within ten (10) business days of submission of the matter to arbitration. In the event the Parties cannot agree upon an arbitrator, each Party shall submit three proposed arbitrators to the JAMS case administrator. The case administrator shall, without consulting either Party, first assign the matter to any arbitrator submitted by both Parties or thereafter select one by random. The Parties will have the right of discovery under Code of Civil Procedure Section 1283.05. The arbitrator will have the authority to make and enforce discovery orders. The arbitrator's determination must be rendered within sixty (60) days of submittal of the dispute to the arbitrator, and thereafter may be entered as a judgment in San Bernardino County Superior Court. The sole issue to be determined by the arbitrator is the Revised Land Value of the Property, determined in accord with the provisions of this Section 5.2. Notwithstanding, each Party will bear one-half (1/2) of the arbitrator's fees and costs and all of their own fees and costs (including legal fees and other expenses) related to the arbitration.

**5.2.4** Within fifteen (15) days following the determination of the Revised Land Value, either by agreement of the Parties or by the arbitrator, the Developer may, in its sole and absolute discretion, notify the City in writing that it has elected to abandon the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable). The City may, within ninety (90) days following receipt of the Developer's notice of abandonment and in the City's sole and absolute discretion, rescind the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable). Developer hereby irrevocably consents to and waives any objection of any kind to City rescinding the First Specific Plan Amendment or any Major Specific Plan Amendment as to which Developer has sent a notice of election to abandon as provided herein. If the City rescinds the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable) within the time provided in this Section 5.2.4, the Developer may proceed with the development of the Project in accord with the City Requirements applicable in the absence of the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable). If the City does not rescind the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable), then the Developer may proceed with the development of the Project in accord with the City Requirements, including the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable),

without payment of Additional Purchase Consideration (or any other consideration) relating to the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable) to the City.

**5.2.5** Following determination of the Revised Land Value, either by agreement of the Parties or by the arbitrator, and provided that the Developer has not elected to abandon the First Specific Plan Amendment or Major Specific Plan Amendment (as applicable) as set forth in Section 5.2.4, the Parties will (i) as to the First Specific Plan Amendment, determine the “**Additional Purchase Consideration**” by subtracting the Purchase Price from the Revised Land Value applicable to the First Specific Plan Amendment; and (ii) with respect to any Major Specific Plan Amendment, determine the Additional Purchase Consideration by subtracting the sum of the Purchase Price and all (if any) previously-paid Additional Purchase Consideration from the Revised Land Value applicable to the Major Specific Plan Amendment. Any Additional Purchase Consideration will be paid by the Developer to the City in immediately available funds within one hundred twenty (120) days following the date of determination of the Additional Purchase Consideration.

**5.2.6** Notwithstanding any other provision of this Agreement and in addition to the Additional Purchase Consideration attributable to the First Specific Plan Amendment and any Major Specific Plan Amendment, if within twelve (12) years after the Effective Date the Developer receives the City’s approval of a final subdivision map for multifamily housing that provides it is a map for condominium purposes or proposes to convert rental multifamily housing to condominiums, the Developer shall, as a condition to map recordation or prior to conversion, pay Additional Purchase Consideration determined by preparing a Revised Independent Land Value Analysis limited solely to the property subject to the condominium map or conversion, comparing the value of the subject property as rental multifamily units versus for-sale condominiums. All provisions of Sections 5.2.3 through 5.2.5 will be applicable to the determination, calculation, and payment of any Additional Purchase Consideration due under this Section 5.2.6, except as specifically modified in this Section 5.2.6,

## ARTICLE VI

### DEVELOPER COVENANTS

**6.1 Developer Covenant to Defend this Agreement.** The Developer acknowledges that the City is a “**public entity**” and/or “**public agency**” as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities and public agencies including, without limitation, CEQA. Also, as a public body, the City’s action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. The Developer assumes the risk of delays and damages that may result to the Developer from any third-party legal actions related to the City’s approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal action regarding the City’s approval of this Agreement or the pursuit of the activities contemplated by this Agreement, either the City or the Developer may elect to terminate this Agreement on thirty (30) days written notice to the other Party of the electing Party’s intent to terminate this Agreement, referencing this Section 6.1, without any further obligation to perform the terms of this Agreement and without any liability to the other Party resulting from such

termination. However, the City may not elect to terminate this Agreement if the Developer unconditionally agrees to indemnify and defend the City, with legal counsel acceptable to the City, against such third-party legal action, as provided in the next sentence. Within thirty (30) days of receipt of the City's notice of intent to terminate this Agreement, the Developer may offer to defend the City, with legal counsel reasonably acceptable to the City, in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. The Guaranty shall cover the Developer's indemnity obligations under this Section 6.1. Any such offer from the Developer must be in writing and reasonably acceptable to the City in both form and substance. Nothing contained in this Section 6.1 shall be deemed or construed to be an express or implied admission that the City is liable to the Developer or any other person or entity for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA. Any such third-party actions as described in this Section 6.1 shall constitute an Unavoidable Delay.

**6.2 Environmental Indemnity of the City by the Developer.** The Developer agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend (with counsel selected by the Developer and approved by the City) the City and its commissions, agents, attorneys, officers, employees, and authorized representatives (collectively, the "**Indemnified Parties**"), from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever (collectively, "**Environmental Claims**") that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, the Indemnified Parties, directly or indirectly relating to or arising from any of the following "**Environmental Matters**" first arising during the Developer's ownership of the Property or construction or operation of the Project:

**6.2.1** The presence of Hazardous Materials on, in, under, from or affecting all or any portion of the Property or the Project.

**6.2.2** The storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Materials on, in, under, from or affecting the Property or the Project.

**6.2.3** The violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by the Developer, its agents or contractors, relating to or governing in any way Hazardous Materials on, in, under, from or affecting the Property or the Project.

**6.2.4** The failure of the Developer, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with the Developer's activities on the Property or regarding the Project.

**6.2.5** The implementation and enforcement by the Developer, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Materials on, in, under, from or affecting the Property or the Project.

**6.2.6** The failure of the Developer, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain, transport or dispose of any Hazardous Materials existing, stored or generated on, in, under or from the Property or the Project.

**6.2.7** Any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any Hazardous Materials on, in, under, from or affecting the Property or the Project or the violation of any Environmental Law relating to the Property or the Project.

**6.2.8** The Developer shall pay to the Indemnified Parties all costs and expenses including, without limitation, reasonable attorneys' fees and costs, incurred by the Indemnified Parties in connection with enforcement of the aforementioned environmental indemnity.

**6.2.9** Notwithstanding anything to the contrary in this Section 6.2 or elsewhere in this Agreement, the Developer's indemnity and defense obligations under this Section 6.2 or any other indemnity and defense obligation arising under this Agreement do not include the following, but nothing herein shall modify the release in Section 2.5.1:

**6.2.9.1** Any Environmental Claims to the extent attributable to the acts (or failures to act, as applicable) of any Indemnified Party.

**6.2.9.2** Any Environmental Claims to the extent that the Hazardous Materials existed on, in, or under, the Property prior to the Close of Escrow, whether known to the City or not, except those Hazardous Materials (if any) attributable to acts (or failures to act, as applicable) of the Developer or its employees, agents, representatives, or contractors.

## **ARTICLE VII**

### **DEFAULTS, REMEDIES, AND TERMINATION**

#### **7.1 Defaults - General.**

**7.1.1** Subject to any express extensions of time provided for in this Agreement, failure or delay by any Party to perform any term or provision of this Agreement shall constitute an "Event of Default" under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default, within thirty (30) calendar days after receipt of written notice from the injured Party specifying such default, and shall diligently and continuously prosecute such cure, correction or remedy to completion, such Party shall not be deemed to be in default under this Agreement and no Event of Default shall be deemed to have occurred.

**7.1.2** The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

**7.1.3** Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of its rights and/or remedies shall not deprive that Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

**7.1.4** Nothing in this Section 7.1 shall extend the deadline to Complete Construction for each Planning Area set forth in Section 4.1 and the City's right to the Section 4.1 Liquidated Damages Amounts under Section 7.5 below.

**7.2 LIMITATION ON RECOVERY OF DAMAGES BY THE CITY.** UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW THAT RESULTS IN THE FAILURE OF THE CLOSE OF ESCROW, THE CITY MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE CITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY THE PROPERTY OR ANY PORTION THEREOF AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE CITY TO THE DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. UPON SUCH A TERMINATION BY THE CITY, THE CITY SHALL BE ENTITLED TO RETAIN THE EARNEST MONEY DEPOSIT AND TO REIMBURSEMENT BY THE DEVELOPER OF ALL AMOUNTS ACTUALLY EXPENDED BY THE CITY IN REASONABLE RELIANCE ON THIS AGREEMENT PRIOR TO THE DATE OF THE OCCURRENCE OF THE EVENT OF DEFAULT BY THE DEVELOPER, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000). THE CITY WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE DEVELOPER ARISING FROM AN EVENT OF DEFAULT BY THE DEVELOPER RESULTING IN THE FAILURE OF THE CLOSE OF ESCROW.

THE CITY ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.2, WHICH CIVIL CODE SECTION READS 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, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.2.

CITY'S INITIALS \_\_\_\_\_

**7.3 DEVELOPER'S ELECTION RE: SPECIFIC ENFORCEMENT OF AGREEMENT OR WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW.** UPON THE OCCURRENCE OF A MATERIAL EVENT OF DEFAULT RELATING TO THE FAILURE TO CONVEY THE PROPERTY BY THE CITY TO DEVELOPER UNDER THIS AGREEMENT PRIOR TO CLOSE OF ESCROW, THE DEVELOPER SHALL, AS ITS SOLE AND EXCLUSIVE REMEDY, HAVE THE RIGHT TO EXERCISE ONE OF THE ALTERNATIVE REMEDIES DESCRIBED IN SECTIONS 7.3.1 AND 7.3.2. THE DEVELOPER'S ELECTION, ONCE MADE, SHALL BE IRREVOCABLE.

**7.3.1 WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES.** THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.2 AND MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW, THE DEVELOPER SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO PURCHASE OR ACCEPT TITLE TO THE PROPERTY AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE DEVELOPER TO THE CITY OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE DEVELOPER SHALL BE ENTITLED TO REIMBURSEMENT FROM THE CITY OF ANY AMOUNTS ACTUALLY EXPENDED BY THE DEVELOPER IN REASONABLE RELIANCE ON THIS AGREEMENT PRIOR TO THE DATE OF THE OCCURRENCE OF THE EVENT OF DEFAULT BY THE CITY, NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000). THE DEVELOPER WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE CITY ARISING FROM AN EVENT OF DEFAULT BY THE CITY RESULTING IN THE FAILURE OF THE CLOSE OF ESCROW. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.3.1, WHICH CIVIL CODE SECTION READS 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, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.3.1.

DEVELOPER'S INITIALS \_\_\_\_\_

IN CONNECTION WITH THE WAIVERS OF THIS SECTION 7.3.1, THE DEVELOPER FURTHER WAIVES THE RIGHT TO RECORD A NOTICE OF PENDENCY

OF ACTION AGAINST ALL OR ANY PORTION OF THE PROPERTY EXCEPT DEVELOPER MAY RECORD SUCH A NOTICE IN CONNECTION WITH ANY SUIT FOR SPECIFIC PERFORMANCE PERMITTED HEREUNDER IN THE EVENT DEVELOPER ELECTS NOT TO WAIVE ITS RIGHT TO SEEK SPECIFIC PERFORMANCE UNDER SECTION 7.3.2.

**7.3.2 SPECIFIC PERFORMANCE.** THE DEVELOPER MAY WAIVE THE REMEDIES SET FORTH IN SECTION 7.3.1 AND, IN ACCORDANCE WITH CIVIL CODE SECTION 3384, ET SEQ., INSTITUTE AN ACTION AGAINST THE CITY FOR SPECIFIC PERFORMANCE OF THE TERMS OR PROVISIONS OF THIS AGREEMENT WHICH WERE TO HAVE BEEN COMPLETED BY THE CITY PRIOR TO THE CLOSE OF ESCROW; PROVIDED, HOWEVER, THAT IN THE EVENT DEVELOPER ELECTS TO SUE CITY FOR SPECIFIC PERFORMANCE OF CITY'S OBLIGATIONS UNDER THIS AGREEMENT, DEVELOPER MUST HAVE FILED A PETITION WITH THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, SEEKING SPECIFIC PERFORMANCE OF CITY'S OBLIGATIONS UNDER THIS AGREEMENT, WITHIN NINETY (90) DAYS AFTER THE CLOSING DATE.

**7.4 City's Power of Termination Upon the Developer's Bankruptcy or Insolvency.**

**7.4.1** The City hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the City upon written notice to the Developer referencing this Section 7.4, to terminate the fee interest of the Developer in any portion of the Property as to which the Developer has not Commenced Construction (such portion, the "**Reverted Portion**") and revert such fee title in the City if, following the Close of Escrow, the Developer becomes a party or otherwise subject to a bankruptcy or insolvency proceeding under state or federal law.

**7.4.2** The City may proceed with its remedy set forth in Section 7.4.1 only if the Developer does not cause any bankruptcy or insolvency proceeding to be discharged within one hundred eighty (180) days following the Developer's receipt of the notice described in Section 7.4.1.

**7.4.3** The rights of the City under this Section 7.4 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

**7.4.3.1** Each lien recorded against the Reverted Portion as a Permitted Transfer;

**7.4.3.2** Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Reverted Portion.

**7.4.4** Upon the City's exercise of its power of termination pursuant to this Section 7.4, the Developer or its successors or assigns shall convey by grant deed to the City title to the Reverted Portion, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Developer and a notary in a manner suitable for recordation. The City may

enforce its rights pursuant to this Section 7.4 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

**7.4.5** Upon the revesting in the City of title to the Reverted Portion, whether by grant deed or court decree, the City shall exercise its reasonable good faith efforts to resell the Reverted Portion at its then fair market value, as soon and in such manner as the City shall, in its sole but reasonable discretion, find feasible, to a qualified and responsible person or persons (as reasonably determined by the City) who will assume the Developer's obligations to begin and/or complete and/or operate that portion of the Project located on the Reverted Portion, or such other replacement development acceptable to the City, in its sole and absolute discretion. Upon any such resale of the Reverted Portion (or any portion thereof), the proceeds to the City from such sale shall be applied as follows:

**7.4.5.1** First, to pay any and all amounts required to release/reconvey any lien recorded against all or any part of the Reverted Portion; and

**7.4.5.2** Second, to reimburse the City on its own behalf or on behalf of the City for all actual internal and third-party costs and expenses previously or currently incurred by the City related to the Reverted Portion, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Reverted Portion or any part thereof; all taxes, assessments and utility charges paid by the City with respect to the Reverted Portion or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Developer with respect to the acquisition of the Reverted Portion or the construction of the Project; and amounts otherwise owing to the City by the Developer or its successors or assigns pursuant to the terms of this Agreement; and

**7.4.5.3** Third, all remaining proceeds will be tendered to the Developer or its successors in interest.

**7.4.6** IMMEDIATELY FOLLOWING THE ONE HUNDRED EIGHTY (180) DAY PERIOD SPECIFIED IN SECTION 7.4.2, ABOVE, AND PROVIDED THAT THE DEVELOPER HAS NOT CAUSED THE DISMISSAL OR DISCHARGE OF THE BANKRUPTCY OR INSOLVENCY PROCEEDING REFERRED TO THEREIN, THE CITY, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE REVERTED PORTION WITHOUT FURTHER NOTICE. BY INITIALING BELOW, THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

DEVELOPER'S INITIALS \_\_\_\_\_

**7.4.7 THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE CITY'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 7.4 MAY WORK A FORFEITURE OF THE ESTATE IN THE REVERTED PORTION. THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE DEVELOPER MAY HAVE TO SUCH FORFEITURE, INCLUDING, BUT NOT LIMITED TO, THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE DEVELOPER FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE DEVELOPER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE CITY'S POWER OF TERMINATION PROVIDED IN THIS SECTION 7.4 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 7.4.6. AND THIS SECTION 7.4.7.**

DEVELOPER'S INITIALS \_\_\_\_\_

**7.5 LIQUIDATED DAMAGES TO THE CITY UPON DEVELOPER'S EVENT OF DEFAULT UNDER SECTION 4.1. THE PARTIES ACKNOWLEDGE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER SECTION 4.1 OF THIS AGREEMENT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE CITY AND THE DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT WOULD BE THE SUM OF ONE MILLION DOLLARS (\$1,000,000) (THE "SECTION 4.1 LIQUIDATED DAMAGES AMOUNT") FOR EACH PLANNING AREA AS TO WHICH AN EVENT OF DEFAULT OCCURS UNDER SECTION 4.1. THEREFORE, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER SECTION 4.1 WITH RESPECT TO A PARTICULAR PLANNING AREA, THE CITY WILL BE ENTITLED TO RECEIVE FROM THE DEVELOPER THE SECTION 4.1 LIQUIDATED DAMAGES AMOUNT. THE CITY WILL BE ENTITLED TO RECOVER ONLY ONE (1) SECTION 4.1 LIQUIDATED DAMAGES AMOUNT PER PLANNING AREA, WHICH WILL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY AT LAW OR EQUITY UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER SECTION 4.1. THE GUARANTY SHALL COVER DEVELOPER'S OBLIGATIONS TO PAY LIQUIDATED DAMAGES TO THE CITY UNDER THIS SECTION 7.5.**

CITY'S INITIALS: \_\_\_\_\_

THE CITY ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.5, WHICH CIVIL CODE SECTION READS 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, THE CITY KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.5

CITY'S INITIALS \_\_\_\_\_

**7.6 No Limitation on Certain Provisions.** No provision of Section 7.2, Section 7.3, or Section 7.5 shall limit or preclude any Party's right to recover attorneys' fees and other costs under Section 8.12, nor shall any provision of Section 7.2, Section 7.3, or Section 7.5 defeat or limit any Party's obligations under any general or special indemnity provision of this Agreement.

**7.7 Legal Actions.**

**7.7.1** Except as otherwise provided by Section 5.2.3, Section 7.2, Section 7.3, Section 7.5, or Section 7.10, any Party may institute a legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity. Except as provided by Section 5.2.3 or Code of Civil Procedure Section 394, such legal actions must be instituted in San Bernardino County Superior Court.

**7.7.2** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to its conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Fontana, County of San Bernardino, California.

**7.8 Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this ARTICLE VII are non-exclusive and cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party(ies).

**7.9 Mutual Indemnification.** In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement, and except as may be limited by Section 7.2, Section 7.3, or Section 7.5, each Party agrees to indemnify, defend (upon written

request by the indemnified Party and with counsel reasonably acceptable to the indemnified Party and hold harmless the other Party, its officers, officials, employees, agents, representatives, and contractors, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses, including, but not limited to reasonable attorney's fees of counsel retained by the indemnified Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature, to the proportionate degree directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of the indemnifying Party or its officers, agents, employees, independent contractors or subcontractors of any tier, relating in any manner to this Agreement, any work to be performed by the indemnifying Party related to this Agreement, the Property, or the Project, or any authority or obligation exercised or undertaken by the indemnifying Party under this Agreement. Without limiting the generality of the foregoing, the indemnifying Party's obligation to indemnify includes injury or death to any person or persons, damage to any property, regardless of where located, including the property of the indemnified Party, any workers' compensation or prevailing wage determination, claim or suit or any other matter arising from or connected with any goods or materials provided or services or labor performed regarding the Project or the Property on behalf of the indemnifying Party by any person or entity.

**7.10 Unavoidable Delays.** The Developer will notify the City in writing (“**Delay Notice**”) within sixty (60) days following the Developer's obtaining information with respect to the occurrence of any event or circumstance constituting any Unavoidable Delay, together with: (i) reasonable supporting documentation; (ii) the estimated duration of the Unavoidable Delay; and (iii) whether the Unavoidable Delay will extend the deadlines for performance with respect to a particular Planning Area and/or overall Project completion. The Developer's failure to provide the Delay Notice within this sixty (60)-day period will not constitute an Event of Default or preclude the Developer from asserting the existence of an Unavoidable Delay. The period of Unavoidable Delay will commence upon delivery of the Delay Notice and will continue until the cessation of the event or circumstance causing the Unavoidable Delay. The Developer will exercise commercially reasonable efforts to remove or mitigate the cause of the Unavoidable Delay, but the Developer will not be required to incur any material expense or liability in connection therewith. The Developer will provide the city with written notice upon cessation of the event or circumstance constituting the Unavoidable Delay.

Within thirty (30) days following receipt of the Developer's Delay Notice, the City will notify the Developer in writing if the City disapproves of the Delay Notice and will provide a reasonably detailed explanation of the City's reasons for disapproval. The City's failure to provide written notice of disapproval within this thirty (30)-day period will constitute the City's irrevocable approval of the Delay Notice. If the City disapproves of the Delay Notice, then the City and the Developer will meet and confer in good faith to attempt to resolve the reasons for the City's disapproval for a period of thirty (30) days following the Developer's receipt of the City's disapproval notice. If the Parties have not been able to resolve the dispute, then the dispute may, at the election of either Party, be immediately referred to mandatory binding arbitration, subject to the legal and procedural requirements set forth in Section 5.2.3

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**8.1 Incorporation of Recitals.** The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

**8.2 Restrictions on Transfers.**

**8.2.1** The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to the City. The Developer further recognizes and acknowledges that the City has relied and is relying on the specific qualifications and identity of the Developer in entering into this Agreement with the Developer and, as a consequence, Transfers are permitted only as expressly provided in this Agreement. The Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of the Developer, as well as any and all changes in the interest or the degree of control of the Developer by any such person, of which information the Developer or any of its partners, members or officers are notified or may otherwise have knowledge or information.

**8.2.2** Except as expressly permitted in this Agreement, the Developer represents to the City that it has not made and agrees that it will not make or create, or suffer to be made or created, any Transfer other than a Permitted Transfer, either voluntarily, involuntarily or by operation of law; provided, however, that the City may approve in its reasonable discretion, Transfers other than Permitted Transfers prior to the Close of Escrow. In deciding whether to approve or disapprove any proposed Transfer, the City may consider the proposed transferee's financial strength and the experience of the proposed transferee and its senior management in undertaking and successfully completing projects of a similar type and size as the Project or that portion of the Project proposed to be transferred. Any Transfer made in contravention of this Section 8.2 shall be voidable at the election of the City and this Agreement may be terminated by the City or the City may exercise any other remedy available to the City under the terms of this Agreement, provided, however, that (i) the City shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to cure the default of the Developer and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

**8.2.3** In connection with the City's review of any request for approval of any proposed Transfer under this Section 8.2, the Developer agrees to reimburse the City for those third party costs and expenses, not to exceed Five Thousand Dollars (\$5,000), incurred by the City in connection with its review of the Developer's request for approval, including, without implied limitation, the reasonable fees and costs of those outside consultants and legal counsel retained by the City to assist it in its review of the Developer's request, including the City Attorney.

**8.3 Notices, Demands, and Communications Between the Parties.**

**8.3.1** Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States Mail, postage prepaid, return receipt requested, to the principal office of the City or the Developer, as applicable, as designated in

Section 8.3.2. The term “**writing**” also includes notices, demands, and communications delivered by electronic mail if addressed to the email addresses identified in Section 8.3.2 and if the sender sends a confirming non-electronic hard copy of the notice to the recipient by any method of delivery authorized by this Section 8.3.1 other than electronic mail within three (3) business days following delivery of the electronic writing. For this purpose, the date of deemed receipt of the notice, demand, or communication will be the date of the electronic mail notice and not of the confirming hard copy. All written notices, demands, or communications may be sent in the same manner to such other addresses as either Party may from time to time designate in writing. Each Party’s counsel may give notice on their behalf. Any notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally recognized overnight courier service, on the date of delivery by electronic mail, or three (3) calendar days after it is placed in the United States Mail, as provided in this Section 8.3.1.

**8.3.2** The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

TO DEVELOPER: HDO4, LLC  
Attn: Richard Munkvold  
2151 E. Convention Center Way, Suite 222  
Ontario, CA 91764  
Email: rmunkvold@frontier-enterprises.com

COPY TO: Gresham Savage Nolan & Tilden, PC  
Attn: Mark A. Ostoich  
550 E. Hospitality Lane, Suite 300  
San Bernardino, CA 92408  
Email: Mark.Ostoich@GreshamSavage.com

TO CITY: City of Fontana  
Attn: City Manager  
8353 Sierra Avenue  
Fontana, CA 92335  
Email: mdenny@fontana.org

COPY TO: Rutan & Tucker, LLP  
Attn: Pat Munoz  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626  
Email: pmunoz@rutan.com

**8.4 Conflict of Interest.** No member, official or employee of the City, having any conflict of interest, direct or indirect, related to this Agreement, the Property, or the development or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

**8.5 Warranty Against Payment of Consideration for Agreement.** The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 8.5, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Developer.

**8.6 Non-liability of City, Officials, and Employees.** No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any default or breach by the City under this Agreement or for any amount that may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

**8.7 Extension of Time of Performance.** Performance by any Party under this Agreement shall not be deemed, or considered to be, in default where any such default is due to an Unavoidable Delay that is not attributable to the fault of the Party claiming an extension of time to perform. An extension of time for any Unavoidable Delay shall be for the period of the Unavoidable Delay and shall commence to run as provided in Section 7.10.

**8.8 Inspection of Books and Records.** The City shall have the right at all reasonable times, at the City's sole cost and expense, to inspect the books and records of the Developer pertaining to the Property and/or the Project, to the extent relevant to the Developer's obligations under this Agreement. The Developer shall also have the right at all reasonable times, at the Developer's sole cost and expense, to inspect the books and records of the City pertaining to the Property and/or the Project, to the extent relevant to the Developer's obligations under this Agreement. Nothing in this Section 8.8 or elsewhere in this Agreement shall, however, constitute a waiver or modification of any right or privilege which any Party may have with respect to any document, statement, or other record, including, without implied limitation, the attorney-client privilege, the attorney-work product privilege, any privilege arising under any state or federal evidentiary code or rule, or any privilege or exclusionary right arising under any state or federal freedom of information or public records disclosure law.

**8.9 Real Estate Commissions.** The City shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement. The Developer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

**8.10 Binding on Successors and Assigns.** Subject to the limitations on Transfers under this Agreement, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**8.11 Entire Agreement.**

**8.11.1** This Agreement shall be executed in three (3) duplicate originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement includes forty-four (44) pages (exclusive of signature pages) and six

(6) exhibits, that constitute the entire understanding and agreement of the Parties regarding the Property, the Project, and the other subjects addressed in this Agreement.

**8.11.2** This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all prior or contemporaneous oral or written negotiations and previous agreements between the Parties with respect to the Property, the Project, and the other subjects addressed in this Agreement, including the ENA.

**8.11.3** None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property and this Agreement shall continue in full force and effect before and after such conveyances.

**8.11.4** All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of all Parties.

**8.12 Attorneys' Fees.** If any Party commences any legal action or proceeding against any other Party or Parties to interpret or enforce this Agreement, the prevailing Party in that action or proceeding, as determined by the court, will be entitled, in addition to damages, injunctive or other relief, to recover its reasonable costs and expenses incurred in the underlying action or proceeding (and any appeal proceedings), including litigation costs, reasonable attorneys' fees, and expert witness costs. The term "**prevailing Party**" includes a Party who obtains a dismissal (with or without prejudice) of the action or proceeding from the other Party or otherwise obtains an order of dismissal of the action or proceeding.

**8.13 Execution of this Agreement.** Following execution of three (3) originals of this Agreement by the authorized representative(s) of the Developer and prompt delivery of such originals, thereafter, to the City, accompanied by an official action of the governing body of the Developer authorizing the individuals executing this Agreement on behalf of the Developer to execute and perform this Agreement, in form and substance acceptable to the City, this Agreement shall be subject to the review and approval by the City Council, in their sole and absolute discretion, no later than forty-five (45) calendar days after such date of delivery to the City. If the City have not approved, executed, and delivered an original of this Agreement to the Developer within the foregoing time period, then no provision of this Agreement shall be of any force or effect for any purpose.

**8.14 Survival of Indemnity Obligations.** Notwithstanding anything in this Agreement to the contrary, all general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement and the execution or recordation of the Grant Deed.

**8.15 Time Declared to be of the Essence.** As to the performance of any obligation hereunder as to which time is a component thereof, the performance of such obligation within the time provided is of the essence.

SIGNATURE PAGE  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

**CITY:**

THE CITY OF FONTANA  
a California municipal corporation

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_

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

SIGNATURE PAGE  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

**DEVELOPER:**

HDO4, LLC, a New Mexico limited liability  
company

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

Richard Munkvold

Its: Chief Financial Officer

EXHIBIT A-1  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

Legal Description of the Property

The land referred to in this report is situated in the City of Fontana, the County of San Bernardino, State of California, and is described as follows:

Parcel A:

That portion of the Southeast 1/4 of the Southeast 1/4 of Section 13, Township 1 North, Range 6 West, San Bernardino Meridian, of the Official Map approved by the surveyor general, dated November 13, 1885, in the City of Fontana, County of San Bernardino, State of California, lying South and East of the Southeasterly line of State Highway No. 31 (Interstate 15), as conveyed to the state of California, for freeway purposes by deed recorded November 26, 1973 in Book 8314, Page 57, of Official Records, said Southeasterly line being further described as follows:

Commencing at a 3/4 inch iron pipe marking the South 1/4 corner of said Section 13; thence North 89° 21' 55" East along the South line of said Southeast 1/4, 1315.99 feet to the West line of said Southeast 1/4 of the Southeast 1/4 and the point of beginning of the line to be described; thence North 00° 26' 36" East along said West line, 51.49 feet; thence South 89° 21' 56" West, 154.46 feet; thence North 83° 48' 27" West, 145.45 feet to the beginning of a tangent curve to the right, with a radius of 50.00 feet; thence Northwesterly along said curve, 92.61 feet through a central angle of 106° 07' 27" to the beginning of a tangent compound curve to the right, with a radius of 2942.00 feet; thence Northeasterly along said curve, 1205.95 feet through a central angle of 23° 29' 10"; thence North 45° 48' 10" East, 265.13 feet to the beginning of a tangent curve to the right, with a radius of 9850.00 feet; thence Northeasterly along said curve, 1081.63 feet through a central angle of 6° 17' 30" to the East line of said Section 13 and the terminus of the line being described.

Also excepting therefrom, that portion described as follows:

Beginning at the Southwest corner of said Southeast 1/4 of the Southeast 1/4 of Section 13; thence North 89° 21' 55" East along the South line of said Section 13, 420.75 feet; thence North 00° 26' 36" East parallel with the West line of said Southeast 1/4 of the Southeast 1/4, 206.25 feet; thence South 89° 21' 55" West parallel with the South line of said Section 13, 72.50 feet; thence North 00° 26' 36" East parallel with the West line of said Southeast 1/4 of the Southeast 1/4, 159.87 feet; thence South 89° 21' 55" West parallel with the South line of said Section 13, 348.25 feet to the West line of said Southeast 1/4 of the Southeast 1/4; thence South 00° 26' 36" West along said West line, 366.12 feet to the point of beginning.

Parcel B:

The Northerly 380 feet of the Easterly 330 feet of the Northwest 1/4 of the Northeast 1/4 of Section 24, Township 1 North, Range 6 West, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the official plat of said land.

Except therefrom that portion described in the deed to the State of California recorded March 17, 1975 in Book 8636, Page 3 of Official Records, in the office of the County Recorder of said County.

Parcel C:

The North East one-quarter of the Northeast one-quarter of Section 24, Township 1 North Range 6 West, San Bernardino Meridian, in the County of San Bernardino, State of California, according to United States Government Township Plat approved by the surveyor general, November 13, 1885.

Excepting therefrom all that portion of said Northeast one-quarter lying Southerly of the Northerly line of the property conveyed to Southern Surplus Realty Co., recorded in Book 8285, Page(s) 65 in the office of the County Recorder of said County.

Parcel D:

The Northwest 1/4 of the Northeast 1/4 Section 24, Township 1 North, Range 6 West, San Bernardino Base and Meridian, in the City of Fontana, County of San Bernardino, State of California, according to the official plat of said land, approved by the surveyor general date April 23, 1974.

Excepting therefrom the Northerly 380 feet of the Easterly 330 feet thereof.

Also Excepting therefrom that portion lying Southerly of the most Northerly line of the following described property:

That portion of the Northwest 1/4 of the Northeast 1/4 of Section 24, Township 1 North, Range 6 West, San Bernardino Base and Meridian, lying within a strip of land 330 feet wide, the sidelines of said strip of land 230.00 being feet Northwesterly and 100.00 feet Southeasterly, measured at right angles respectively from the following described surveyed referenced line:

Beginning at a point in the East line of said Section 24, said point being South 1° 10' 03" East 751.58 feet, measured along said East line from found 2 inch iron pipe at the Northeast corner of said Section, said point also being North 1° 10' 03" West 1888.29 feet, measured along said East line from a found "PK" Nail at the East 1/4 corner of said Section 24; thence South 71° 113' 46" West 5516.12 feet to a point in the West line of said Section, said point being North 0° 50' 30" West, 173.14 feet, measured along said West line from a 1 inch iron pipe at the West 1/4 corner of said Section 24, said point also being South 0° 50' 30" East 2468.74 feet, measured along said West line from a found County and surveyor's monument at the Northwest corner of said Section.

Exhibit A-1

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Also Excepting therefrom that portion as described in final order of Condemnation by the State of California, recorded September 10, 1976 in Book 9009 Page(s) 656, Official Record, more particularly described as follows:

Beginning at a 3/4 inch pipe marking the North 1/4 corner of said Section; thence along the North line of said Section North 89° 21' 55" East 985.99 feet to a point on the West line of the Easterly 330 feet of said Northwest 1/4 of said Northeast 1/4; thence along said West line South 0° 45' 40" East 202.98 feet to a point on a non-tangent curve concave Northwesterly having a radius of 1033 feet; thence Southwesterly along said curve from a tangent bearing of South 44° 34' 17" West, through an angle of 21° 28' 12" a distance 387.09 feet; thence South 66° 02' 29" West 424.08 feet to the beginning of a tangent curve to the left having a radius of 2967 feet; thence Southwesterly along said curve, through an angle of 5° 53' 34" a distance of 305.15 feet to the West line of said Northeast 1/4; thence along said West line North 1° 11' 24" West 721.41 feet to the point of beginning.

Assessor's Parcel Numbers(s):

- 1: 0226-075-31
- 2: 1107-262-06
- 3: 0226-075-38
- 4: 0226-075-45
- 5: 1107-262-07
- 6: 1107-262-08

EXHIBIT A-2  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

PLANNING AREAS DEPICTION

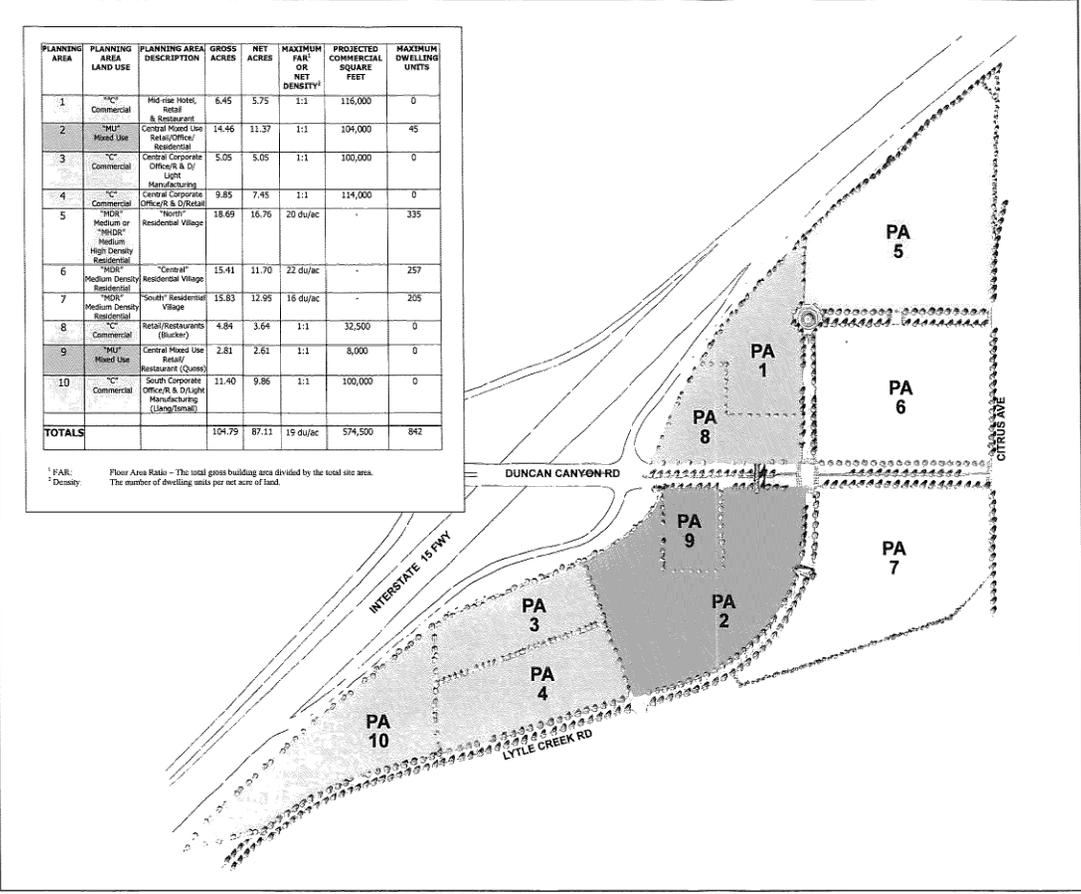
[see attached]



**SPECIFIC PLAN**

- C = Commercial
- MU = Mixed Use
- MDR = Medium Density Residential
- MHDR = Medium High Density Residential

**FIGURE 8  
PLANNING AREA  
SUMMARY**



PLANNING AREA	PLANNING AREA LAND USE	PLANNING AREA DESCRIPTION	GROSS ACRES	NET ACRES	MAXIMUM FAR <sup>1</sup> OR NET DENSITY <sup>2</sup>	PROJECTED COMMERCIAL SQUARE FEET	MAXIMUM DWELLING UNITS
1	"C" Commercial	Mid-rise Hotels, Retail & Restaurant	6.45	5.75	1:1	116,000	0
2	"MU" Mixed Use	Central Mixed Use Retail/Office/Residential	14.46	11.37	1:1	104,000	45
3	"C" Commercial	Central Corporate Office/R & D/ Light Manufacturing	5.05	5.05	1:1	100,000	0
4	"C" Commercial	Central Corporate Office/R & D/Retail	9.85	7.45	1:1	114,000	0
5	"MDR" Medium or "MHDR" Medium High Density Residential	"North" Residential Village	18.69	16.76	20 du/ac	-	335
6	"MDR" Medium Density Residential	"Central" Residential Village	15.41	11.70	22 du/ac	-	257
7	"MDR" Medium Density Residential	"South" Residential Village	15.83	12.95	18 du/ac	-	205
8	"C" Commercial	Retail/Restaurants (User-defined)	4.84	3.64	1:1	32,500	0
9	"MU" Mixed Use	Central Mixed Use Retail/Restaurant (User-defined)	2.81	2.61	1:1	8,000	0
10	"C" Commercial	South Corporate Office/R & D/Light Manufacturing (User-defined)	11.40	9.86	1:1	100,000	0
<b>TOTALS</b>			<b>104.79</b>	<b>87.11</b>	<b>19 du/ac</b>	<b>574,500</b>	<b>642</b>

<sup>1</sup> FAR: Floor Area Ratio - The total gross building area divided by the total site area.  
<sup>2</sup> Density: The number of dwelling units per net acre of land.

\* Planning Areas 8 and 10 are owned by others and are not subject to the Disposition Agreement.

EXHIBIT B  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

FORM OF GRANT DEED

**[Attached Behind This Page]**

**RECORDING REQUESTED BY:**

\_\_\_\_\_

**WHEN RECORDED RETURN TO  
AND MAIL TAX STATEMENTS TO:**

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

---

**GRANT DEED**

---

APN: \_\_\_\_\_

(Space Above This Line For Recorder's Use)

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_

Computed on full value of property conveyed, or  computed on full value less value of liens or encumbrances remaining at time of sale,

Unincorporated area:  City of Fontana, and

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF FONTANA, a California municipal corporation ("**Grantor**"),

hereby grants and conveys to

HDO4, LLC, a New Mexico limited liability company ("**Grantee**")

that certain real property located in the City of Fontana, County of San Bernardino, State of California, specifically described in the attached Exhibit A, subject to all matters of record.

The Property is conveyed subject to that certain 2020 Disposition Agreement (Ventana at Duncan Canyon), dated as of \_\_\_\_\_, 2020, between the Grantor and the Grantee ("**Agreement**"). The provisions of the Agreement are incorporated into this Grant Deed by this referenced and are deemed to be a part hereof, as though fully set forth.

Exhibit B

-1-

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be executed by its authorized representative(s) on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**GRANTOR:**

CITY OF FONTANA, a California municipal corporation

By: \_\_\_\_\_  
City Manager

This Notary Acknowledgement is attached to a document entitled GRANT DEED from the City of Fontana, a California municipal corporation, to HDO4, LLC, a New Mexico limited liability company, dated \_\_\_\_\_, 2020.

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

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit B

EXHIBIT A  
TO  
GRANT DEED

Property Legal Description

CERTIFICATE OF ACCEPTANCE OF  
GRANT DEED

The undersigned hereby acknowledges acceptance by HDO4, LLC, a New Mexico limited liability company, the Grantee in the within Grant Deed, of the delivery of the subject Property described in the within Grant Deed from the City of Fontana.

**GRANTEE:**

HDO4, LLC, a New Mexico limited liability company

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Richard Munkvold

Its: Chief Financial Officer

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

STATE OF CALIFORNIA  
COUNTY OF

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit B

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EXHIBIT C  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

FORM OF NOTICE OF AGREEMENT

**[Attached Behind This Page]**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Fontana  
Attn: City Manager  
8353 Sierra Avenue  
Fontana, CA 92335

---

Exempt from Recording fee  
pursuant to Gov't Code § 27383

NOTICE OF AGREEMENT

2020 Disposition Agreement  
(Ventana at Duncan Canyon)

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that HDO4, LLC, a New Mexico limited liability company (the “**Developer**”), and the City of Fontana, a California municipal corporation (the “**City**”) entered into an agreement entitled 2020 Disposition Agreement (Ventana at Duncan Canyon), dated as of \_\_\_\_\_, 2020 (the “**Agreement**”). A copy of the Agreement is on file with the City and is available for inspection and copying by interested persons as a public record of the City at the City’s offices located at 8353 Sierra Avenue, Fontana, California 92335, during the City’s regular business hours.

The Agreement affects the real property described in Exhibit A attached to this Notice of Agreement (the “**Property**”).

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain agreements between the Developer and the City affecting the Property, as more particularly set forth in the Agreement.

This NOTICE OF AGREEMENT is dated as of \_\_\_\_\_, 2020, and has been executed on behalf of the Developer and the City by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in

Exhibit C

-1-

counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

**CITY:**

THE CITY OF FONTANA  
a California municipal corporation

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_

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

**DEVELOPER:**

HDO4, LLC, a New Mexico limited liability company

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Richard Munkvold  
Its: Chief Financial Officer

This Notary Acknowledgement is attached to a document entitled NOTICE OF AGREEMENT between HDO4, LLC, a New Mexico limited liability company, and City of Fontana, a California municipal corporation, dated \_\_\_\_\_, 2020.

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

STATE OF CALIFORNIA  
COUNTY OF

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

This Notary Acknowledgement is attached to a document entitled NOTICE OF AGREEMENT between HDO4, LLC, a New Mexico limited liability company, and City of Fontana, a California municipal corporation, dated \_\_\_\_\_, 2020.

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

STATE OF CALIFORNIA  
COUNTY OF

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A  
TO  
NOTICE OF AGREEMENT  
Legal Description of Property

EXHIBIT D  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

FORM OF OFFICIAL ACTION OF DEVELOPER

CERTIFICATION OF LLC AUTHORITY

The undersigned members of HDO4, LLC, a New Mexico limited liability company (the “**LLC**”), do certify that we are all of the members of the LLC and that there are no other members.

We further certify that the following named person,

Richard Munkvold, Chief Financial Officer,

is authorized and empowered for and on behalf of and in the name of the LLC to execute and deliver that certain 2020 Disposition Agreement (Ventana at Duncan Canyon), dated \_\_\_\_\_, 2020, between the City of Fontana, a California municipal corporation, (“**City**”), and the LLC (the “**Agreement**”), to purchase certain real property located in the City of Fontana, California, as specifically described in the Agreement, and all other documents to be executed by the LLC in connection with the transactions contemplated in the Agreement, and to take all actions that may be considered necessary to conclude the transactions contemplated in the Agreement and perform the other obligations of the LLC pursuant to the Agreement.

The authority conferred shall be considered retroactive, and any and all acts authorized in this document that were performed before the execution of this Certificate are approved and ratified. The authority conferred shall continue in full force and effect until the City of Fontana, a California municipal corporation shall have received notice in writing from the LLC of the revocation of this Certificate.

We further certify that the activities covered by the foregoing certifications constitute duly authorized activities of the LLC; that these certifications are now in full force and effect; and that there is no provision in any document under which the LLC is organized and/or that governs the LLC’s continued existence, limiting the power of the undersigned to make the certifications set forth in this certificate, and that such certifications are in conformity with the provisions of all such documents.

LLC Members:

James L. Previti, Jr., Manager/Member

EXHIBIT E  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

ORIGINAL INDEPENDENT LAND VALUE ANALYSIS

**[Attached Behind This Page]**

EXHIBIT F  
TO  
2020 DISPOSITION AGREEMENT  
(Ventana at Duncan Canyon)

FORM OF GUARANTY

**[Attached Behind This Page]**

## GUARANTY

THIS GUARANTY (this “Guaranty”) is made as of \_\_\_\_\_, 2020, by [\_\_\_\_\_] a [\_\_\_\_\_] (“Guarantor”), in favor of CITY OF FONTANA, a California municipal corporation (“City”).

## RECITALS

A. City and HDO4, LLC, a New Mexico limited liability company (the “Developer”) have, or concurrently herewith are, entering into that certain 2020 Disposition Agreement (Ventana at Duncan Canyon) dated \_\_\_\_\_, 2020 (the “Disposition Agreement”). All initially capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Disposition Agreement. Unless otherwise indicated section references used herein shall be to those sections of the Disposition Agreement.

B. Pursuant to the Disposition Agreement, Guarantor is to be unconditionally liable for and guarantee the payment and performance of Developer’s obligations to City to the extent arising under Sections 4.7 (Prevailing Wages), 6.1 (Covenant to Defend), and/or 7.5 (Liquidated Damages) (collectively, the “Guaranteed Obligations”).

NOW, THEREFORE, Guarantor, intending to be legally bound, represents and warrants to City and covenants and agrees with City as follows:

## AGREEMENT

1. Guaranty. Guarantor unconditionally, absolutely and irrevocably: (a) guarantees and promises to pay to City, in lawful money of the United States of America, in immediately available funds, all Guaranteed Obligations arising under the Disposition Agreement when due; and (b) guarantees the full and complete discharge and performance of each of the Guaranteed Obligations. If Guarantor fails promptly to perform its obligations under this Guaranty, City may from time to time, and without first requiring performance by Developer or any other Person, bring any action at law or in equity or both to compel Guarantor to perform its obligations under this Guaranty, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by City as a direct or indirect consequence of the failure of Guarantor to perform such obligations. Any amounts due under this Section 1 will be in addition to amounts due under any other guaranty or indemnity agreement executed by Guarantor in favor of City. This Guaranty is a guaranty of payment not merely a guaranty of collection.

2. Guarantor’s Agreements.

a. Guarantor hereby expressly waives any and all benefits or defenses which otherwise might be available to Guarantor under California Civil Code Sections 2808, 2810, 2815, 2819, 2820, 2838, 2839, 2845, 2899 and 3433. Guarantor further waives all rights and defenses arising out of an election of remedies by the City;

b. that this Guaranty may be contractually impaired or modified only by: (i) a contract or other agreement materially increasing Developer’s payment or performance

obligations to the City, to which the Developer, the City and the Guarantor give their written consent, and (ii) a modification, extension, renewal, increase, release or other alteration of any of the Guaranteed Obligations to which the Developer, the City and the Guarantor give their written consent;

c. that the liability of the Guarantor hereunder is direct and unconditional and due immediately upon the expiration of all periods of cure applicable to any default by the Developer of its obligations under Sections 4.7, 6.1 and/or 7.5 following written notice to the Guarantor but without requiring the City first to resort to any other right, remedy or security;

d. that, until the Guaranteed Obligations are fully satisfied, Guarantor waives its rights of subrogation, reimbursement, indemnification and contribution, any right of recourse to security for the obligations of the Developer to the City and any other rights and defenses that are or may become available to Guarantor, including without limitation, under California Civil Code Sections 2787 to 2855, inclusive (with the exception of Civil Code Section 2799, 2809, 2821, 2822, 2849, and 2850 inclusive); and acknowledges that such a waiver is intended by Guarantor to be effective to the maximum extent permitted by applicable law;

e. that this Guaranty is, as to the Guarantor, a continuing guaranty of the Guaranteed Obligations. Revocation of this Guaranty, if permitted by applicable law, shall be effective only upon the close of the next business day after written notice thereof is received by an officer of the City by certified or registered mail, return receipt requested at the City's address set forth below. Any such revocation shall be effective only as to the revoking party and shall not affect that party's obligations with respect to Guaranteed Obligations existing before the revocation became effective. Notwithstanding any revocation hereof, this Guaranty shall not be terminated until the City has received payment and performance in full of all Guaranteed Obligations;

f. that termination, release or limitation of any guaranty of the Guaranteed Obligations by any other guarantor shall not affect the continuing liability hereunder of the Guarantor;

g. except as otherwise provided in this Guaranty, that nothing shall discharge or satisfy the liability of the Guarantor hereunder except the full indefeasible payment and performance of all of the Guaranteed Obligations;

h. that this Guaranty shall not be affected by any fraudulent, illegal or improper act by the Developer, the legal incapacity or any other defense of the Developer or any other person obligated to the City consequential to transactions with the Developer nor by the invalidation, by operation of law or otherwise, of all or any part of the Guaranteed Obligations, including but not limited to any mere personal disability of the Developer though the disability be such as to make the contract void against the Developer;

i. that any and all present and future debts and obligations of the Developer to Guarantor are hereby waived and postponed in favor of and subordinated to the full

indefeasible payment and performance of all present and future obligations of the Developer to the City;

j. that if at any time payment of all or any part of the Guaranteed Obligations is rescinded or otherwise must be restored by the City to the Developer or Guarantor, or to the creditors of the Developer or Guarantor, or any representative of the Developer or Guarantor or representative of the Developer's or Guarantor's creditors as a voidable preference or fraudulent transfer or conveyance upon the insolvency, bankruptcy or reorganization of the Developer or the Guarantor, this Guaranty shall continue to be effective or be reinstated, as the case may be, as though such payments had not been made, and shall survive as an obligation of the Guarantor, and shall not be discharged or satisfied by said payment or payments, notwithstanding the return of the original of this Guaranty to the Guarantor or to the Developer, or any other apparent termination of Guarantor's obligations hereunder;

k. that any rights and remedies available to the City under this Guaranty are cumulative and not exclusive of any rights and remedies otherwise available to the City at law or in equity;

l. that the City's delay or omission in exercising any of the City's rights and remedies shall not constitute a waiver of these rights and remedies, nor shall the City's waiver of any right or remedy operate as a waiver of any other right or remedy available to the City. The City's waiver of any right or remedy on any one occasion shall not be considered a waiver of same on any subsequent occasion, nor shall this be considered to be a continuing waiver;

m. City may declare Guarantor in default under this Guaranty upon the occurrence of any of the following events: (i) Guarantor fails to pay or perform any of Guarantor's obligations under this Guaranty; or (ii) any representation or warranty made or given by Guarantor to City proves to be false or misleading in any material respect; or (iii) a petition or action for relief shall be filed by or against Guarantor, pursuant to the Federal Bankruptcy Code (Title 11, U.S. Codes) in effect from time to time, or under any other law relating to bankruptcy, insolvency, reorganization, moratorium, creditor composition, arrangement or other relief from debts; the appointment of a receiver, trustee, custodian or liquidator of or for any property of Guarantor; (iv) or upon the insolvency, dissolution, or termination of the business of Guarantor; or (v) Guarantor revokes or attempts to revoke this Guaranty;

n. Guarantor represents and warrants to the City that: (i) the City has made no representation to Guarantor in regard to the Developer, the Guaranteed Obligations or any matters pertaining thereto, upon which Guarantor is relying in giving this Guaranty; and (ii) Guarantor has established adequate means and assumes the responsibility for being and keeping informed of all matters relating to the Guaranteed Obligations, the financial condition of Developer and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations which diligent inquiry would reveal, and the City shall have no duty to advise Guarantor of information known to the Developer regarding such condition or any such circumstance;

o. to pay to the City, on demand, attorneys' fees and all other costs and expenses which may be incurred by the City in the collection or attempted collection from Developer of any Guaranteed Obligation and/or in the interpretation, enforcement or attempted enforcement by the City of this Guaranty, including, but not limited to, proceedings in any bankruptcy or other insolvency case or other proceedings affecting in any way the Guaranteed Obligations or this Guaranty, or both, in any manner, whether or not legal proceedings or suit are instituted, together with interest thereon at the maximum legal rate applicable to the Guaranteed Obligations and including, without limitation, all attorneys' fees and related costs of enforcement of any and all judgments and awards and upon any appeal relating thereto;

p. that this Guaranty incorporates all discussions and negotiations between the City and the Guarantor concerning the guaranty and indemnification provided by the undersigned hereby, and that no such discussions or negotiations shall limit, modify, or otherwise affect the provisions hereof, there are no preconditions to the effectiveness of this Guaranty and that no provision hereof may be altered, amended, waived, canceled or modified, except by a written instrument executed and acknowledged by the City's and the Guarantor's duly authorized officers;

q. that this Guaranty and all documents which have been or may be hereinafter furnished by the Guarantor to the City may be reproduced by the City by any photographic, photostatic, microfilm, xerographic or similar process, and that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business);

r. Guarantor represents and warrants that any financial statements, tax returns or other documents of Guarantor heretofore delivered to City are true and correct in all respects. Such statements were prepared in accordance with generally accepted accounting principles, consistently applied and fairly present the financial position of Guarantor as of the date thereof. Guarantor further represents and warrants that no material adverse change has occurred in Guarantor's financial position since the date of such statements. Upon the City's written request, made no more often than once per year, Guarantor covenants and agrees to provide to City with updated financial statements, current tax returns, and any and all financial information reasonably requested by City. Guarantor further covenants and agrees to immediately notify City of any material adverse change in Guarantor's financial status. The disclosure of any of Guarantor's financial statements and other financial information made at any time and for any reason will be made in accordance with and subject to the requirements and conditions of that certain "Nondisclosure and Confidentiality Agreement" dated \_\_\_\_\_, 2020 between Guarantor and the City.

s. subject to the requirements of the Disposition Agreement with respect to amendments and the written consent of the Guarantor thereto, upon five (5) days' prior written notice to Guarantor, and without affecting Guarantor's continuing liability hereunder, the City may from time to time (i) change the time or manner of payment of any Guaranteed Obligation by modification, renewal, extension, acceleration or otherwise,

(ii) amend or change any other provision of any Guaranteed Obligation, (iii) accept partial payment on any Guaranteed Obligation, (iv) accept new or additional instruments, agreements or documents relative to any Guaranteed Obligation, (v) enter into forbearances with the Developer even though the result of such forbearance is to increase cost, fees and/or expenses attributable to the Guaranteed Obligations, (vi) amend or modify the terms of any guaranty executed by a co-guarantor, including the maximum liability thereunder, (vii) obtain collateral for the payment of any Guaranteed Obligation and/or any guaranty thereof, (viii) subordinate payment of all or any part of the Guaranteed Obligations to other creditors of the Developer or other persons on such terms as the City deems appropriate, and (ix) exercise any right or remedy it may have with respect to any Guaranteed Obligation, this Guaranty or any other guaranty;

t. except as otherwise provided in this Guaranty, Guarantor waives: notice of acceptance hereof, presentment and protest of any instrument and notice thereof. To the extent that it lawfully may, and except as permitted by or reserved to Guarantor under this Guaranty, Guarantor hereby further agrees not to invoke any law that might cause delay in or impede the enforcement of the City's rights under this Guaranty or otherwise respecting the Guaranteed Obligations, and to the extent that it lawfully may do so, and except as permitted by or reserved to Guarantor under this Guaranty, the Guarantor hereby irrevocably waives the benefits of all such laws;

u. Guarantor will from time to time execute and deliver to the City, and take or cause to be taken, all such other further action as the City may request in order to effect and confirm or vest more securely in the City all the rights contemplated in this Guaranty (including, without limitation, to correct clerical errors) or respecting any of the obligations guaranteed hereby or to comply with applicable statute or law;

v. this Guaranty shall be interpreted and enforced in accord with the procedural and substantive laws of the State of California, without regard to its conflicts of laws principles, except to the extent that federal law is applicable to any bankruptcy or insolvency proceedings initiated under federal law. This Guaranty is binding upon the heirs, executors, administrators, successors and assigns of the Guarantor and shall inure to the benefit of the City's successors and assigns. The City may, with or without notice, assign this Guaranty in whole or in part;

w. if any provision of this Guaranty is found to be invalid, illegal or unenforceable, the validity of the remainder of the Guaranty shall not be affected;

x. to the maximum extent permitted by law, Guarantor specifically waives the benefit of the statute of limitations affecting its liability hereunder, or the enforcement hereof, or the collection of any Guaranteed Obligation. Any partial payment by Developer that operates to toll any statute of limitations as to Developer shall likewise toll the statute of limitations as to Guarantor;

y. this Guaranty constitutes the entire agreement between the parties with respect to the subject matter of this Guaranty, and any and all previous or contemporaneous correspondence, statements, or agreements by or between the parties hereto with respect to

the subject matter of this Guaranty (but not previous or other guarantees given to the City by Guarantor) are superseded hereby. This Guaranty may be modified only by a written instrument signed by the Guarantor and the City;

z. if Guarantor has executed more than one guaranty of Guaranteed Obligations owed to City, any limits of liability thereunder and hereunder shall be cumulative, and a subsequent guaranty executed by Guarantor shall not supersede or replace this Guaranty unless such subsequent guaranty so provides;

aa. all notices required or permitted under this Guaranty shall be in writing and furnished: [\_\_\_\_\_];

bb. GUARANTOR AGREES THAT EACH OF THE WAIVERS, WARRANTIES AND PROMISES SET FORTH IN THIS GUARANTY ARE MADE WITH GUARANTOR'S UNDERSTANDING OF THEIR SIGNIFICANCE AND CONSEQUENCES AND THAT THEY ARE REASONABLE. IF ANY WAIVERS, WARRANTIES AND PROMISES ARE DETERMINED TO BE CONTRARY TO ANY APPLICABLE LAW OR PUBLIC POLICY, SUCH WAIVERS, WARRANTIES AND PROMISES SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED BY LAW. BEFORE SIGNING THE GUARANTY, GUARANTOR HAS EITHER SOUGHT THE ADVICE OF COUNSEL TO EXPLAIN THE WAIVERS OF ITS RIGHTS AND DEFENSES AS STATED HEREIN AND THE EFFECT THEREOF, OR HAS HAD THE OPPORTUNITY TO SEEK SUCH COUNSEL, AND IN ANY EVENT, INTENDS THIS GUARANTY TO BE AS UNRESTRICTED AS POSSIBLE CONSISTENT WITH ITS TERMS. EXCEPT AS SPECIFICALLY PROVIDED AND RESERVED IN THIS GUARANTY, GUARANTOR THEREFORE HAS CONSCIOUSLY AND INTENTIONALLY WAIVED ALL DEFENSES OF GUARANTOR AND RIGHTS WHICH COULD EXONERATE GUARANTOR HEREUNDER TO THE FULL EXTENT PERMITTED BY THE LAWS OF THE STATE OF CALIFORNIA, WHETHER OR NOT EACH AND EVERY DEFENSE, RIGHT OR WAIVER IS EXPLAINED OR DESCRIBED IN DETAIL IN THIS GUARANTY;

cc. GUARANTOR ACKNOWLEDGES THAT NEITHER CITY NOR ANY OF THE CITY'S OFFICERS, REPRESENTATIVES OR EMPLOYEES HAVE MADE ANY PROMISE OR REPRESENTATION, NOT INCORPORATED HEREIN, WHETHER ORAL, WRITTEN OR IMPLIED, TO CAUSE GUARANTOR TO SIGN THIS GUARANTY. GUARANTOR IS NOT SIGNING THIS GUARANTY IN RELIANCE ON ANY PROMISE, CONDITION OR THE ANTICIPATION OF THE OCCURRENCE OF ANY EVENT, AND THERE ARE NO ORAL UNDERSTANDINGS, STATEMENTS OR AGREEMENTS WHICH HAVE NOT BEEN INCLUDED IN THIS GUARANTY. GUARANTOR UNDERSTANDS THAT CITY HAS THE RIGHT TO ENFORCE THE GUARANTEED OBLIGATIONS AGAINST THE DEVELOPER OR GUARANTOR IN ANY ORDER AND CITY IS NOT OBLIGATED TO OBTAIN ANY OTHER OR ADDITIONAL GUARANTORS OR TO TAKE ANY OTHER COURSE OF ACTION;

dd. WAIVER OF RIGHT TO TRIAL BY JURY; JUDICIAL REFERENCE IN THE EVENT OF JURY TRIAL WAIVER UNENFORCEABILITY. GUARANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (1) ARISING UNDER THIS GUARANTY, OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (2) IN ANY WAY CONNECTED WITH, OR RELATED OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS GUARANTY, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND GUARANTOR HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, GUARANTOR HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE. PURSUANT TO SUCH JUDICIAL REFERENCE, GUARANTOR AGREES TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE ITS BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES TO THE DISPUTE ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. GUARANTOR ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER AND THE AGREEMENTS CONTAINED HEREIN. GUARANTOR AGREES THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARM'S-LENGTH BASIS, WITH GUARANTOR AGREEING TO THE SAME KNOWINGLY, AND BEING AFFORDED THE OPPORTUNITY TO HAVE GUARANTOR'S LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THE RIGHT TO TRIAL BY JURY AND THE AGREEMENTS CONTAINED HEREIN REGARDING THE APPLICATION OF JUDICIAL REFERENCE IN THE EVENT OF THE INVALIDITY OF SUCH JURY TRIAL WAIVER; and

ee. venue for any action or proceeding arising out of or relating to this Guaranty will be determined in accord with California law applicable to disputes and actions between a city and a private party. Guarantor irrevocably waives, to the fullest extent it may

effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Guarantor's address set forth in subparagraph aa, above, as it may be subsequently modified by written notice to the City; and (ii) by serving the same upon the Guarantor in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Guarantor.

Executed and dated \_\_\_\_\_, 2020.

GUARANTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_