3rd & Broadway

Community Meeting-Meeting Minutes
October 8, 2019
Original Mike's Restaurant
6:00pm- 7:00pm

Meeting started at 6:00pm with a Meet and Greet of Guests and a Sign-in (see attached sign-in sheet). Presentation Boards were on display and guests were invited to browse and enjoy appetizers prior to power point presentation. Rod Gonzales, from Caribou Industries, was present and available for anyone requiring an interpreter.

William Beaubeaux, the developer's representative, provided an introduction of the team.

Tobin White, Architect, and Alison Bautista of Studio 1-11 provided the power point presentation of the project. Tobin shared the projects high lights, design and requirements. He also stated that is was a process in which we worked closely with the City of Santa Ana planning department and the required parameters.

After the presentation, Tobin White opened the floor for a question and answer period.

Questions and Answers from the presentation:

Q: Concern on the parking, how many stalls are being provided with the Project?

A: There will be 196 Residential Parking, 83 Hotel spaces and 211 designated Public Parking.

Q: How many parking stalls does the present garage Have?

A: Tobin stated he was unaware of the number of stalls the present garage holds; but the city requirement was to provide 211 parking spaces.

Someone in the audience said they thought there was 400 spaces presently in the garage.

Q: Will Sycamore Street be a promenade or thoroughfare?

A: Sycamore will be a thoroughfare, but designed to be pedestrian friendly street with opportunities for potential collapsible bollards for street fairs, farmers markets, etc.

Q: How many stories will the hotel be, how many stories will the residential be?

A: The hotel will be 10 floors and the residential will be 16 floors.

Q: Will all the residential units be apartments?

A: yes, all apartments, no condominiums.

Q: Were there any circulation studies done?
A: Yes, prior to the design process, a traffic and parking study was done. This was a requirement of the City.

Q: Did the Developer hire the consultant for the studies?

A: The studies were completed by a third party selected by the City of Santa Ana. And the final reports gave the guidelines for the design requirements.

Q: What is the timeline of the project?

A: Not sure. It depends on the building and Planning process then the construction phase. Once we have approvals from the city, construction will take approximately 2 years.

Q: While the project is under construction, will the lost parking be available or shifted?

A: This still needs to be determined. Past projects have been done in phases to provide parking while the rest of the project is under construction. This is a discussion that we need to have with the City.

Q: What is going to be done to prevent the residential and hotel from taking public parking spaces?

A: The hotel will be valet parking; the residential will have a separate controlled entrance for their assigned spaces. The residential guest parking will be a part of the residential parking area.

Q: What is the rent rate for the apartments?

A: The rent rates have not been established at this time.

Q: What is the rent rate for the low-income affordable units?

A: This will be established by the City of Santa Ana housing formula.

Q: What are residential units going to be?

A: There will be a mix of studio, one- and two-bedroom units. There will be a mixed ratio for the low-income units in this mix.

Q: Why is the building 16 stories?

A: The height of the building was dictated by the required retail on the ground floor, the required parking and ratio of the additional low-income units as well as adjusting the massing and carved out spaces for recreation decks and community spaces.

Q: Currently there is validation for third street parking, will this project have validations?

A: This will be determined later with the parking management of the garage. There will still be metered parking along third street.

Q: Are there any allowances for noise reduction measures for the surrounding buildings?

A: Not currently.

Q: How many parking stalls are provided for the residential units?

A: One stall per unit. This is very common in high rise urban residential developments. Some developments in LA do not have a parking allowance for their residential units.

Q: Is the Hotel going to be a boutique type hotel?

A: This is to be determined. Presently the size and design of the hotel lends itself to a boutique flag hotel.

Q: Is the project financed, self-funded or any public funding allocated for this project?

A: We do not have that information currently. The presentation today is to present the design concept.

Q: What are the community benefits for the project?

A: The city council requested community rooms be provided in the project and they have been added. There is also the potential to close sycamore street for street fairs and farmer market types of events. The concept is to activate to street level for the public and the community.

Q: Is there a cultural program provided or investment that would include cultural programs?

A: The community rooms would be available for art exhibits or other programs.

Q: What is on the roof top? Is there any green space?

A: The roof top will have the solar panels. Green space will be provided on multiple levels on different tiers of the project.

Q: Artwalk night there are no parking spaces, difficult for people to find spaces. What is the plan to accommodate outside visitors?

A: The streetcar should be able to reduce the some required downtown parking as well as possibly better signage to guide people to the several other parking garages in the downtown area. This concern will be discussed with City Planning.

Q: What are the amenities for the residential units?

A: Several outdoor decks, swimming pool, green areas, storage units, dog runs, and community rooms; more are in the planning stage.

Q: **Tobin asked,** "What would you, the community, like the use of the community space?"

A: Group stated, possibly a small theater or performance space.

Q: How was the public notified about this project?

A: Public notices were sent out to residents and property owners within a 500 foot radius as well as outreach to the surrounding neighborhood association presidents, Notice was posted on the City of Santa Ana web site, public notice was posted on the building, as well as posted in the Orange County Register.

Further discussion on the concern of parking and the possibilities on developing existing parking structures to accommodate more downtown parking; something City planning should investigate.

Meeting adjourned at 7:05pm, last guest left at 7:14 pm

SUMMARY AND SUBSIDY REPORT
Pursuant to Government Code Sections 52201 and 53083

For a Disposition and Development Agreement
between
the City of Santa Ana and
Caribou Industries at 201 W 3rd Street

The following Summary Report has been prepared pursuant to California Government Code Sections 52201 and 53083, the City Council of the City of Santa Ana must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public through the City's website regarding a proposed economic development subsidy provided by the City pursuant to a Development and Disposition Agreement between the City of Santa Ana and Caribou Industries (Agreement). Notice was published on the City's website for a public hearing to be held on October 20, 2020.

The report sets forth certain details of the proposed Disposition and Development Agreement required pursuant to Government Code Sections 52201 and 53083.

BACKGROUND

The following Summary Report is based upon information contained within the Agreement, and is organized into the following five sections.

I. **Salient Points of the Agreement:** This section includes a description of the project and the major responsibilities imposed on the City and the Development by the Agreement.

II. **Estimated Value of the Interests to be Conveyed Determined at the Highest and Best Use of the Property:** This section estimates the value of the interests to be conveyed determined at the highest use permitted under the existing zoning.

III. **Economic Incentive/Development Subsidy Provide, and the Cost of the Agreement**: This section details the economic incentive/development subsidy to be provided by the City and the costs to be incurred by the City associated with implementing the Agreement.

IV. **Consideration Received and Comparison with the Economic Incentive/Development Subsidy Provided**: This section describes the financial compensation to be received by the City pursuant to the Agreement.

V. **Creation of Economic Opportunity and Public Purpose**: This section describes how the Agreement will assist in the creation of economic opportunity in the City.

VI. **Job Creation**: This section describes the number of full-time, part-time, and temporary jobs created by effectuating the Agreement.

This Summary Report and Agreement are to be made available for public inspection prior to the approval of the Agreement.

I. SALIENT POINTS OF THE AGREEMENT

A. Project Description

The proposed project is located at 201 West 3rd Street, at the northeast corner of Broadway and 3rd Street. Caribou Industries, a local developer and property owner in the City, proposes to replace the existing City-owned, 3-level parking garage with a mixed-use development containing 171 housing units (with 19 for low income residents), a 75-room boutique hotel, 13,419 square feet of commercial space (including retail and food/beverage establishments), and rooftop amenities ancillary to residential and hotel uses.

The development would be comprised of two buildings: a 16-story, 194-foot-tall mixed-use (residential and commercial) building and a 10-story, 128-foot-tall hotel building. The buildings would be separated by an extension of Sycamore Street from the north edge of the project site to West 3rd Street. The proposed project would provide 490total structured parking spaces, including 211 public parking spaces and the hotel will provide 83 parking spaces.

The Agreement is with Caribou Industries, who proposes to redevelop an aging city-owned public parking structure at 210 W. 3rd Street into a residential and hotel project that will benefit from the economic development subsidy:

Caribou Industries
1130 N Broadway St
Santa Ana, CA 92701

B. City Responsibilities

This Agreement requires the City to:

1. Provide the land.

2. Fund the costs for public improvements to ready the site for development. This will include the demolition of the existing parking structure, preparation of the site for development, the construction of Sycamore Street reconnection and construction of 211 public parking spaces to replace the existing parking currently provided at the 3rd and Broadway parking structure. The estimated cost for public improvements is $7 million for the construction of the 211 public parking spaces and $6 million for the additional public improvements.

3. Upon the Developer obtaining entitlements, showing evidence of construction and permanent financing, issuance of all necessary building permits, the City would convey the land to Developer for the Mixed Use project. The City will retain ownership of parcel containing the public parking space.

C. Developer Responsibilities

This Agreement requires the Developer to:

1. Fund the design of the project, all costs related to entitlements, and all development costs for the apartments, retail, office and hotel.

2. Fund the entitlement application, including, but not limited to, any and all required General Plan and/or zoning amendments, and all related studies required for CEQA compliance.

3. Provide evidence of financing for construction, permanent loan(s) and equity and issuance of all necessary building permits.

4. Design and build a residential development in the heart of Downtown Santa Ana with 171 apartments and 19 very low income units.

5. Design and build the hotel to standards for typical hotel standards. During the first 5 years of operation, various economic thresholds would be established that would allow the Developer to convert the Hotel to residential as follow:
   - after 2 years if the Rev/Par* falls below $125
   - after 3 years if the RevPAR falls below $125
   - after 4 years if the RevPAR falls below $125
   - after 5 years if the RevPAR falls below $125

6. Develop a parking structure that will include 211 public parking spaces. These spaces will remain public in perpetuity.

7. Manage the Public Parking. The City would enter into a Parking Operation Agreement with the Developer to manage and operate the Public Parking and obligate the Developer to pay all costs including the debt service on the financing for the Public Improvements. The Developer would set the parking rates and either manage the parking directly or through a 3rd party. The Developer would guarantee no negative costs to the City and would keep any net revenue unless the Hotel is converted to residential per the terms of the DDA.

8. Guarantee the debt service and all operating costs and the City would not be responsible if the revenue is insufficient to service the debt.

II. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST AND BEST USE OF THE PROPERTY:

The property is presently improved with a three-story automobile parking structure of concrete construction. The building contains 144,699 square feet, and was originally constructed in 1983. A 2016 appraisal of the property with a hypothetical condition that the site is vacant and readily available for development appraised the property at $3.0 million. This assumes that the site is cleared and ready for development which for the City to demo and clear the site, prep it for development, the City's cost would exceed the value of the land. In addition, due to the aging parking structure's current condition, it was estimated that it would cost $8-10 million to bring the building up to current building and seismic codes, thus giving it a negative value.

III. ECONOMIC INCENTIVE/DEVELOPMENT SUBSIDY PROVIDED, AND THE COST OF THE AGREEMENT

The City is providing the following economic development subsidies to facilitate the development of this residential/hotel project:

A. Fund the costs of the following improvements at the start of construction with a cap of no more than $13 million.

- Demolition of the existing parking structure
- Site preparation for construction prepared to a rough grade condition
- Construction of 211 public parking spaces
- Construction of private street: Sycamore reconnection

It is important to note that the Developer will pay the City's debt service thru an Operating Agreement whereby the Developer will operate the Public Parking and pay all costs with no financial risk to the City

B. Provide the Land for the development.

IV. CONSIDERATION RECEIVED AND COMPARISON WITH THE ECONOMIC INCENTIVE/DEVELOPMENT SUBSIDY PROVIDED:

The City expects to generate new sources of income from the development of this project (see Table below on Estimated General Fund Revenue). Currently, the parking structure's operating expenses are higher than the revenues received. Due to the current pandemic, the gap between expenses and revenue has increased significantly which has put a major strain on the City's current General Fund budget. With the new development project and new sources of income, the City is anticipating adding over $600,000 yearly to the City's General Fund budget.

V. CREATION OF ECONOMIC OPPORTUNITY AND PUBLIC PURPOSE

Implementation of this agreement effectuates a new residential and hotel development in place of an aging parking structure that will cost the City between $8-10 million to bring it up to current building and seismic codes. The goals and objectives that are satisfied by this project are:

1. Additional revenue sources for the City to fund the services the community expects (Table below)
2. Increased employment through additional jobs created as a result of private sector investment and new hotel and commercial development.
3. Reconnection of Sycamore Street that allows improved access in the heart of Downtown Santa Ana.
4. New residential opportunities for mixed income individuals
5. New residential opportunities for very low income individuals
6. New residents in the downtown that will help downtown businesses grow and prosper.

This project also satisfies three of the Economic Opportunity Statutes per Government Code 52200 et. seq:

1. This project will result in an increase from $0 to $340,000 annually (satisfying the requirement of being a greater than 15% increase).
2. This project will create affordable housing as 19 very low income units will be constructed;
3. This project is considered a transit priority project per Public Resources Code Section 21155(b) that states the project shall contain: 1) at least 50 percent residential use based on total building square footage *(Proposed project = 63%)* and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75 *(Proposed project = 4.2 FAR*); 2) provide a minimum density of at least 20 dwelling units per acre *(Proposed project = 121 du/acre*); and be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. The proposed Project is also within a transit priority area as defined by Public Resources Code (PRC) Section 21099(a)(7).

Estimated General Fund Revenue from Proposed Project

Summary of Annual Estimated Revenue from Project	
	Total
Property Tax (Secured & Unsecured)	$210,000
Property Tax In-Lieu of VLF	$130,000
Sales & Use Tax (On-Site/Direct)	$57,000
Sales & Use Tax (Off-Site/Indirect)	$25,000
Transient Occupancy Tax ($90 RevPar)	$270,000
Utility User Tax	$45,000
Annual General Fund Revenues (ROUNDED):	**$620,000**

Source: Kosmont Companies, 2020

VI. JOB CREATION

Economic Benefits of Construction for 3rd and Broadway

	Employment	Labor Income

Direct (On-Site)	475	$49,000,000
Indirect	180	$14,000,000
Induced	200	$13,000,000
Total Countywide	**855**	**$76,000,000**
Estimated City Capture	**510**	**$53,000,000**

Source: Kosmont Companies, 2020

EXHIBIT 6

RECORDED AT REQUEST OF
CLERK, CITY COUNCIL CITY OF SANTA ANA

WHEN RECORDED RETURN TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92701
Attention: City Clerk

Exempt from Filing Fees Gov. Code Sections 27383, 6103

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

CITY OF SANTA ANA,

a California charter city in the County of Orange of the State of California,

and

CARIBOU INDUSTRIES, INC.,

a Nevada Corporation

[Dated as of October 5, 2020, for reference purposes only]

CITY OF SANTA AN

DISPOSITION AND DEVELOPMENT AGREEMENT

Downtown Hotel and Mixed-Use: Residential and Retail/Commercial Project At 3rd and Broadway

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is dated as of October 5, 2020 for reference purposes only, and is entered into by and between the City of Santa Ana, a California charter city in the County of Orange of the State of California (the "City"), and Caribou Industries, Inc. a Nevada Corporation (the "Developer") (collectively, the "Parties," and each a "Party"). The Parties enter into this Agreement with reference to the following recited facts (collectively, the "Recitals," and each a "Recital"):

RECITALS

A. The City owns that certain real property generally located at 201 West 3rd Street, Santa Ana, California 92701, and as more particularly described in the legal description(s) attached to this Agreement as Exhibit "A" and depicted as APN 398-264-13 on the site plan attached to this Agreement as Exhibit "F" (the "Property").

B. The Developer proposes the development of the Property with a Mixed Use Project including apartments, commercial (including retail and food/beverage establishments), a seventy-five (75) room Hotel Project and a Parking Structure which will contain 444 total parking spaces including 211 public parking spaces, as described in the definitions of "Project," "Mixed Use," "Hotel Project," and "Parking Structure" as set forth in ARTICLE 2 of this Agreement.

C. On April 27, 2017, City and Developer entered into an Exclusive Negotiating Agreement to discuss proposed terms for the disposition of the City Property and development of the proposed mixed-use hotel and commercial/retail project on the City Property and the Developer Property.

D. On July 5, 2017, the Parties entered into a First Amendment to the Exclusive Negotiation Agreement, and on January 11, 2019, the Parties entered in to a Second Amended and restated Exclusive Negotiation Agreement (No. A-2018-002) which expired on its own terms on April 28, 2019.

E. On May 7, 2019, the Parties entered into a Second Exclusive Negotiation Agreement (No. A-2019-062) which was effective until May 7, 2020.

F. On April 22, 2020, the Parties entered into the First Amendment to the Second Exclusive Negotiation Agreement which is effective until October 23, 2020.

G. The proposed Project and Parking Structure will result in the redevelopment of underutilized land and aging structures, development of apartments and extended stay hotel rooms to accommodate a demand in Downtown Santa Ana and to the nearby Orange County Courthouse facility, increased employment opportunities within the City and additional property taxes, sales

taxes and transient occupancy taxes produced from the Project Site.

H. Based on the reasons identified in Recital G, above, together with the commitments and obligations of the Developer to develop the Project Site as contained in this Agreement, the City has determined the conveyance of the Project Site to the Developer for development in accordance with this Agreement is in the best interest of the City.

I. The City desires to convey the Property and the Developer desires to accept the Property for the purpose of development of the Project including the Parking Structure on the Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH THE PARTIES ACKNOWLEDGE, AND PURSUANT TO THE PROMISES AND COVENANTS SET FORTH IN THIS AGREEMENT, THE PARTIES AGREE, AS FOLLOWS:

ARTICLE 1

PURPOSE, PARTIES, AND PROJECT SITE

1.1 Recitals. The Recitals are hereby incorporated into this Agreement.

1.2 Purpose. The purpose of this Agreement is to set forth the obligations of the Parties and the terms and conditions precedent for the conveyance of the City Property from the City to the Developer, and the design, development, construction and operation of the Project and Parking Structure on the Project Site.

The City has determined that the construction and operation of the Project by Developer within the City will stimulate direct and indirect economic activity within the City, will enhance the quality of life of residents and will provide substantial additional intangible benefits to the City. As such, the development of the Project Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City, and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

1.3 Parties.

1.3.1 The City. The City is the City of Santa Ana, a California charter city in the State of California. The principal office of the City is located at 20 Civic Center Plaza, Santa Ana, California, 92702.

1.3.2 The Developer. The Developer is Caribou Industries, Inc., a Nevada Corporation. The principal address of the Developer is 1103 N. Broadway, Santa Ana, CA 92701. Whenever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

(a) The qualifications and identity of the Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered

into this Agreement with the Developer. Except as otherwise provided in this Section 1.3.2 no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, and the Developer shall not assign all or any part of this Agreement without the prior written approval of the City, which approval will be in the City's sole discretion exercised in good faith. This Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in the management or control of the Developer without City's prior written approval, which approval will not be unreasonably withheld. Except as otherwise provided in this Agreement, for an approved assignment to be effective, the Developer and assignee shall enter into an assignment and assumption agreement in a form reasonably approved by the City.

(b) Notwithstanding the foregoing, the following assignments or transfers of this Agreement and the Project Site shall be permitted:

(i) the sale or lease of commercial, food or beverage space to tenants or end-users, for occupancy upon completion;

(ii) an assignment as security for a construction and/or development loan from a lender, subject to the approval by City pursuant to this Agreement, which approval shall not be unreasonably withheld, conditioned, or delayed;

(iii) any other assignment or transfer after the issuance of a certificate of occupancy for the Project.

1.4 The Project Site. The Project Site is comprised of (1) the Developer Property and (2) the City Property. The City Property and the Developer Property are generally shown on the Map of the Project Site attached hereto as Exhibit "G".

ARTICLE 2

DEFINITIONS

2.1 Defined Terms. In addition to the usage of certain words, terms or phrases that are defined in the initial paragraph, the Recitals or in the body of this Agreement, the following words, terms and phrases are used in this Agreement, as follows, unless the particular context of usage of a word, term or phrase requires another interpretation:

2.1.1 "Affiliate" of any specified Person means any other Person, directly or indirectly, Controlling or Controlled by or under common Control with such specified Person.

2.1.2 "Approvals" means any and all general plan amendments, zone changes, specific plans, licenses, permits, approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform, or complete any construction, demolition, installation, use, maintenance, repair, occupancy or operation of the Project.

2.1.3 "Automobile Liability Insurance" means insurance coverage 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 regarding the Project, 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.

2.1.4 "Bankruptcy Law" means Title 11, United States Code, and any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.1.5 "Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

2.1.6 "Builder's Risk Insurance" means "All Risk" builder's risk insurance on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than 100% of replacement value, including cost of debris removal, but excluding foundation and excavations, naming The City and The Developer, as their interests may appear. Such insurance shall also: (a) contain a waiver of subrogation against subcontractors; (b) state that "permission is granted to complete and occupy"; (c) cover, for replacement value, all materials and equipment on or about any offsite storage location intended for use for the Project; and (d) provide for a deductible not exceeding Ten Thousand Dollars ($10,000).

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

2.1.8 "CEQA Document" means any Addendum, Negative Declaration (mitigated or otherwise) or any Environmental Impact Report (including any addendum, amendment, subsequent or supplemental document) required by any Government to issue any discretionary Approval required for the Project.

2.1.9 "City Deed" means the deed in substantially the form of Exhibit "C" to this Agreement, conveying all of the City's interest in the Property to the Developer and containing a right of the City retake the Property under certain circumstances.

2.1.10 "City Funded Improvements" means the funding by the City of the actual reasonable costs up to a total of a maximum thirteen million dollars ($13,000,000) for the (i) the demolition of the existing three (3) level parking structure located on the Property, (ii) the preparation of the Project site for construction to a rough grade condition; (iii) the construction of Parcel A ("Public Parking Parcel") containing 211 public parking Spaces within the 10-story Parking Structure containing 444 parking spaces; (iv) construction of the private street reconnecting Sycamore Street between 3rd Street and 4th Street).

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

2.1.12 "City Parties" means, collectively, the City, its governing body, elected officials, employees, agents and attorneys.

2.1.13 "City Party" means, individually, the City, its governing body, elected officials, employees, agents or attorneys.

2.1.14 "City's Title Notice Response" means the written response of the City to the Developer's Title Notice, in which the City elects to either: (i) cause the removal from the Preliminary Report of any matter disapproved in the Developer's Title Notice, (ii) obtain title insurance in a form reasonably satisfactory to the Developer insuring against the effects of any matters disapproved or conditionally approved in the Developer's Title Notice, (iii) otherwise satisfy the Developer regarding any matter disapproved or conditionally approved in the Developer's Title Notice, or (iv) not to take any action described in either (i), (ii) or (iii).

2.1.15 "Claims" means any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort, contract or under statute, at law, in equity or otherwise), charges, awards, assessments, fines or penalties of any kind (including consultant and expert fees and expenses, Legal Costs of counsel retained by the City Parties, expert fees, costs of staff time and investigation costs of whatever kind or nature), and judgments, including, but not limited to, claims for: (i) injury to any Person (including death at any time resulting from that injury); (ii) loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction) regardless of where located, including the property of the City Parties; (iii) any workers' compensation claim or determination; (iv) any Prevailing Wage Action; or (v) any Environmental Claim.

2.1.16 "Close of Escrow" means the recording of the City Deed in the official records of the County and completion of each of the actions set forth in Section 4.7 by the Escrow Agent for the conveyance of the Property from the City to the Developer.

2.1.17 "Construction Management Team" means the people designated by the City Manager to monitor the construction of the Parking Structure and Sycamore Street between 3rd Street and 4th Street.

2.1.18 "Construction Period" means the time period between the Close of Escrow and the issuance of the last Certificate of Completion for the Project.

2.1.19 "Contractor's Insurance" means Contractor's comprehensive general and automobile liability insurance for not less than One Million Dollars ($1,000,000) for personal injury and One Million Dollars ($1,000,000) for broad form property damage, including premises-operations liability, contractor's protective liability for all subcontractors' operations, completed operations, contractual liability (referring to the indemnity provisions of the applicable construction contract(s)), and automobile liability (owned and non-owned), and for any foundation, excavation, or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted, which insurance may be in the form of a single limit policy or policies.

2.1.20 "Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

2.1.21 "Controlling" and "Controlled" mean exercising or having Control.

2.1.22 "County" means the County of Orange, California.

2.1.23 "Covenant Period" means the thirty (30) years commencing on the date of issuance of last Certificate of Completion for the Project.

2.1.24 "CPI" means the United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for Urban Wage Earners and Clerical Workers (CPI-W) published for the Anaheim-Santa Ana-Irvine Metropolitan Statistical Area, with a base of 1982-1984 = 100. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

2.1.25 " CPI Adjustment Factor" means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the Commencement Date.

2.1.26 "Default" means any Monetary Default or Non-Monetary Default.

2.1.27 "Developer Official Action" means the official action of the Developer authorizing the Developer's entry into and performance of this Agreement, in substantially the form attached to this Agreement as Exhibit "E," executed by the authorized representative(s) of the Developer.

2.1.28 "Developer Parties" means, collectively, the directors, officers, employees and agents of the Developer.

2.1.29 "Developer Party" means, individually, the directors, officers, employees or agents of the Developer.

2.1.30 "Developer's Title Notice" means a written Notice from the Developer to both the City and the Escrow Agent indicating the Developer's acceptance of the state of the title to the Property, as described in the Preliminary Report, or the Developer's disapproval of specific matters shown in Schedule B of the Preliminary Report, as exceptions to coverage under the proposed Title Policy, describing in suitable detail the actions that the Developer reasonably believes are indicated to obtain the Developer's approval of the state of the title to the Property.

2.1.31 "Developer's Title Notice Waiver" means a written Notice from the Developer to both the City and the Escrow Agent waiving the Developer's previous disapproval in the Developer's Title Notice of specific matters shown in Schedule B of the Preliminary Report, as exceptions to coverage under the proposed Title Policy.

2.1.32 "Due Diligence Completion Notice" means a written Notice of the Developer delivered to both the City and the Escrow Agent, prior to the end of the Due Diligence Period, indicating the Developer's unconditional acceptance of the condition of the Property or indicating the Developer's rejection or conditional acceptance of the condition of the Property and refusal to accept a conveyance of fee title to the Property, describing in reasonable detail the actions that the Developer reasonably believes are indicated to allow the Developer to unconditionally accept the condition of the Property.

2.1.33 "Due Diligence Investigations" means the Developer's due diligence investigations of the Property to determine the suitability of the Property for development or 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.

2.1.34 "Due Diligence Period" means the one hundred and eighty (180) calendar day period commencing on the day immediately following the Effective Date and ending at 5:00 p.m. Pacific Time on the one hundred eightieth (180^{th}) consecutive day thereafter.

2.1.35 "Effective Date" means the first date on which all of the following have occurred: (i) the City has received two (2) counterpart originals of this Agreement executed by the authorized representative(s) of the Developer; (ii) the City has received a certified copy of the Developer Official Action executed by the authorized representative(s) of the Developer; (iii) this Agreement has been approved by the City Council; (iv) this Agreement has been executed by the authorized representative(s) of the City; (v) an original of this Agreement executed by the authorized representative(s) of the City has been delivered by the City to the Developer.

2.1.36 "Environmental Claims" means 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, Legal Costs and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever directly or indirectly relating to or arising from any actual or alleged violation of any Environmental Law occurring during or arising from the Developer's Due Diligence Investigations, the Developer's ownership or occupancy of the Property, the Developer's construction, installation or operation of the Project or any other actions of or attributable to the Developer regarding the Property.

2.1.37 "Environmental Law" means any Law regarding any of the following at, in, under, above, or upon the Property: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances.

2.1.38 "Escrow" means an escrow, as defined in Civil Code Section 1057 and Financial Code Section 17003(a), that is conducted by the Escrow Agent with respect to the conveyance of Property from the City to the Developer, pursuant to this Agreement.

2.1.39 "Escrow Agent" means Fidelity National Title Company or such other Person mutually agreed upon in writing by the City and the Developer.

2.1.40 "Escrow Closing Date" means the earlier of: (i) on or before the fifth (5th) business day following the Escrow Agent'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 or (ii) September 30, 2022. If Developer is unable to meet the conditions precedent to the Close of Escrow within this time period, Developer shall have the right to request an extension of the Escrow Closing Date to September 30, 2023, which extension may be granted or withheld in the City Manager's reasonable discretion

2.1.41 "Escrow Opening Date" means the first date on which a fully executed copy of this Agreement and the Deposit are deposited with the Escrow Agent.

2.1.42 "Event of Default" means the occurrence of any one or more of the following:

(a) Monetary Default. A Monetary Default that continues for seven (7) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

(b) Prohibited Liens. Failure of the Developer to cause any Prohibited Lien to be released within fifteen (15) days after Notice of such lien to the Developer.

(c) Bankruptcy or Insolvency. The Developer ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Developer's assets or the Developer's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) days).

(d) Transfer. The occurrence of a Transfer, other than a Permitted Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement.

(e) Non-Monetary Default. Any Non-Monetary Default, other than those specifically addressed in Sections 2.1.42(b) through 2.1.42(d), that is not cured within thirty (30) days after Notice to the Developer describing the Non-Monetary Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable due diligence be cured within thirty (30) days after such Notice, if the Developer does not do all of the following: (i) within thirty (30) days after the City's Notice, advise the City of the Developer's intention to take all reasonable steps to cure such Non-Monetary Default; (ii) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (iii) complete such cure within a reasonable time under the circumstances.

2.1.43 "Federal" means the government of the United States of America.

2.1.44 "Final" means, relative to an Approval or any CEQA Document, when all administrative appeal periods regarding such matter have expired, all administrative appeals or challenges regarding such matter (if any) have been resolved to both the City's and the Developer's reasonable satisfaction, all statutory periods for challenging such matter have expired, all litigation or other proceedings (if any) challenging any such matter have been resolved to both the City's and the Developer's reasonable satisfaction and all appeal periods relating to any such litigation or other proceedings have expired.

2.1.45 "FIRPTA Affidavit" means an affidavit complying with Section 1445 of the United States Internal Revenue Code.

2.1.46 "Form 593" means a California Franchise Tax Board Form 593-C.

2.1.47 "Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in the operation of a similar type hotel under the under the same or similar circumstances.

2.1.48 "Hazardous Substance" means flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum, petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as "hazardous substances" pursuant to 33 U.S.C. § 1321; (iii) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq*., as amended; (iv) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq*., or any so-called "superfund" or "superlien" law; (v) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (vi) defined as "hazardous waste" under 40 C.F.R. Part 260; (vii) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; any matter within the definition of "hazardous substance" set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, *et seq*.]; (ix) any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; (x) those substances listed in the United States Department of Transportation (DOT)Table [49 CFR 172.101]; (xi) any matter, waste or substances designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; (xii) any matter, waste or substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; (xiii) any substance defined as a "hazardous substance" in Section 25316 of the California Health and Safety Code; (xiv) any matter, waste, or substance that is subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (xv) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under any Laws or the regulations adopted pursuant to any Laws, including manure, asbestos, polychlorinated biphenyl, flammable explosives and radioactive material.

2.1.49 "Hazardous Substance Discharge" means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at on, under, into or from the Property, or during transportation of any Hazardous Substance to or from the Property (whether on its own or contained in other material or property), or that arises at any time from the use or

operation of the Project or any activities conducted at on, under or from the Property or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Property, whether or not caused by a Party or whether occurring before or after the Close of Escrow.

2.1.50 "Hotel Anniversary Date" means the annual anniversary of the date that the Hotel had the first guest completed the first overnight stay for compensation in the Hotel.

2.1.51 "Hotel Project" means the development of the hotel containing seventy-five (75) rooms, on the Property, including eighty-three (83) parking spaces which includes forty-two (42) stacking parking spaces, all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in Exhibit "F" attached hereto and incorporated herein by reference, and all to be developed in accordance with the terms and conditions of this Agreement, plans and specifications approved by the City and any conditions imposed by the City in its approval of the Developer's development application(s) related to the Hotel Project.

2.1.52 "Indemnify" means, where this Agreement states that any Indemnitor shall "indemnify" any Indemnitee from, against, or for a particular matter, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the particular matter; or (b) in enforcing the Indemnitor's indemnity obligation. "Indemnified" shall have the correlative meaning.

2.1.53 "Indemnitee" means any Person entitled to be Indemnified under the terms of this Agreement.

2.1.54 "Indemnitor" means a Party that agrees to Indemnify any other Person.

2.1.55 "Insurance Documents" means certified copies of insurance policies, original certificates of insurance or endorsements evidencing all insurance coverage required to be obtained by the Developer, pursuant to Section 5.9.

2.1.56 "Law" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government applicable to the Property or the Project, in any way, including any development, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting the Property or the Project, or relating to any taxes, or otherwise relating to this Agreement or any Party's rights or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.1.57 "Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses and consultant and expert witness fees.

2.1.58 "Liability Insurance" means general comprehensive public liability insurance against claims for Personal injury, death or property damage occurring upon, in, or about the Property, the Project adjoining streets or passageways, providing coverage for a combined single limit of One Million Dollars ($1,000,000) for any one occurrence. The City may increase such limit up to once every three (3) years, upon at least one hundred eighty (180) days' Notice to the Developer, provided that any increased limit: (a) does not exceed the limit initially set forth in this Section 2.1.58 multiplied by the CPI Adjustment Factor, rounded to the nearest multiple of One Hundred Thousand Dollars ($100,000).

2.1.59 "Maintenance Deficiency" shall have the meaning ascribed to the term in Section 8.1.2.

2.1.60 "Maintenance Standard" shall have the meaning ascribed to the term in Section 8.1.1.

2.1.61 "Mixed Use Project" means the development of the mixed use residential project, including an apartment complex with 171 residential units, 13,419 square feet of commercial space, and 196 residential parking spaces within the Parking Structure on the Property, including all required or associated on-site and off-site improvements, all hardscape and all landscaping, all as specifically described in Exhibit "F" attached hereto and incorporated herein by reference, and all to be developed in accordance with the terms and conditions of this Agreement, plans and specifications approved by the City and any conditions imposed by the City in its approval of the Developer's development application(s) related to the Mixed Use Project.

2.1.62 "Monetary Default" means any failure by either Party to pay or deposit, when and as this Agreement requires, any amount of money, or evidence of any insurance coverage, whether to or with a Party or a third-party.

2.1.63 "Non-Monetary Default" means the occurrence of any of the following, except to the extent constituting a Monetary Default: (i) any failure of a Party to perform any of its obligations under this Agreement; (ii) a Party's failure to comply with any material restriction or prohibition in this Agreement; or (iii) any other event or circumstance that, with passage of time or giving of Notice, or both, or neither, would constitute a Default under this Agreement.

2.1.64 "Notice" means any consent, demand, designation, election, Notice, or request relating to this Agreement, including any Notice of Default. All Notices must be in writing.

2.1.65 "Notice of Default" means any Notice claiming or giving Notice of a Default or alleged Default.

2.1.66 "Notice of Agreement" means a notice, in substantially the form of Exhibit "D" 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.

2.1.67 "Notify" means give a Notice.

2.1.68 "Parking Structure" means the 10 story parking structure containing 444 parking spaces 211 public parking spaces, and 196 residential parking spaces, and 83 Hotel parking

spaces which are accomplished by tandem as well as the use of mechanical lifts, as more particularly described in Exhibit "F" attached hereto and incorporated herein by reference.

2.1.69 "PCO Report" means a preliminary change of ownership report required under California Revenue and Taxation Code Section 480.3.

2.1.70 "Performance Schedule" means the schedule for the performance of certain actions by the City or the Developer, pursuant to the terms and conditions of this Agreement, attached to this Agreement as Exhibit "B."

2.1.71 "Permitted Encumbrance" means (i) any deed of trust or financing instrument in connection with Developer's construction financing or permanent financing of the Project, (ii) the Project approvals and all other entitlements, permits with respect to the Project obtained in accordance with this Agreement or otherwise with the approval of the City, (iii) all easements, encumbrances, licenses, and other use agreements in connection with the development of the Project and covenants, conditions, restrictions necessary or desirable in connection with the development, operation and use of the Project, and (iv) any other third party agreement contemplated in this Agreement or as reasonably necessary or desirable in connection with the development, use or occupancy of the Project.

2.1.72 "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 does not disapprove or conditionally approve or that are otherwise accepted or consented to by the Developer; (ii) any exceptions from coverage under the proposed Title Policy resulting from the Developer's activities on the Property; (iii) any lien for non-delinquent property taxes or assessments; (iv) any Laws applicable to the Property; (v) this Agreement; (vi) the City Deed; (vii) any other matter provided for in this Agreement.

2.1.73 "Person" means any association, corporation, governmental entity or City, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.1.74 "Pre-Closing Liquidated Damages Amount" means the amount of Twenty Five Thousand Dollars ($25,000).

2.1.75 "Preliminary Report" means a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by copies of all documents listed in Schedule B of the report, as exceptions to coverage under the proposed Title Policy.

2.1.76 "Prevailing Wage Action" means: (i) any determination by the State Department of Industrial Relations that prevailing wage rates should have been paid, but were not, (ii) any determination by the State Department of Industrial Relations that higher prevailing wage rates than those paid should have been paid, (iii) any administrative or legal action or proceeding arising from any failure to comply with the California Labor Code provisions regarding prevailing wage payments, including maintaining certified payroll records pursuant to California Labor Code 1776, or (iv) any administrative or legal action or proceeding to recover wage amounts pursuant to California Labor Code Section 1781.

2.1.77 "Project" means the development of the Mixed Use Project, Parking Structure, and Hotel Project as specifically described in Exhibit "F" attached hereto and incorporated herein by reference, and all to be developed in accordance with the terms and conditions of this Agreement, plans and specifications approved by the City and any conditions imposed by the City in its approval of the Developer's development application(s) related to the Project.

2.1.78 "Project Completion Date" means September 30, 2024 if the Escrow Closing Date is on or before September 30, 2022. If Developer was granted an extension of the Escrow Closing Date by the City Manager pursuant to Section 2.1.40 then the Project Completion Date shall be September 30, 2025.

2.1.79 "Property Insurance" means insurance providing coverage for the Project and the Property, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time, in an amount equal to one hundred percent (100%) of the Full Replacement Value (without deduction for depreciation) of the Project (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with "ordinance or law" coverage. Such insurance may contain a deductible clause not exceeding Five Thousand Dollars ($5,000) multiplied by the then current CPI Adjustment Factor. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property; coverage for terrorism; coverage against damage or loss by flood, if the Property is located in an area in which flood insurance is available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as such laws may be amended, modified or replaced from time to time; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

2.1.80 "Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by the Developer.

2.1.81 "Property Transfer" means any "change in ownership," as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Property.

2.1.82 "Public Parking Parcel" means Parcel A as shown in Exhibit K and incorporated herein by this reference as though fully set forth herein. The Public Parking Parcel is owned by the City and located within the Parking Structure and contains 211 public parking spaces.

2.1.83 "RevPAR" means revenue per available room and it is a performance metric used in the hotel industry. It is calculated by dividing a hotel's total room revenue by the total number of available rooms in the period being measured.

2.1.84 "Record," "recorded," "recording" or "recordation" each mean recordation of the referenced document in the official records of the Recorder of the County.

2.1.85 "State" means the State of California.

2.1.86 "Title Company" means First American Title Company or such other title insurance company as mutually agreed upon between the City and the Developer in writing.

2.1.87 "Title Policy" means a standard owner's policy of title insurance issued by the Title Company, with coverage in the amount of the Purchase Price and insuring fee title to the Property vested in the Developer, subject to the Permitted Exceptions.

2.1.88 "Transfer" of any property, right or obligation means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in "b" affecting any Equity Interest(s) or any other interest in such property, right or obligation or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "b" through "d," shall be deemed a Transfer by the Operator even though the Operator is not technically the transferor. A "Transfer" shall not, however, include any of the foregoing (provided that the other Party to this Agreement has received Notice of such occurrence) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (c) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

2.1.89 "Unavoidable Delay" means a delay in either Party performing any obligation required to be performed by such Party under this Agreement, except payment of money, arising from or on account of any cause whatsoever beyond the Party's reasonable control, despite such Party's reasonable diligent efforts, including acts of God, inclement weather, strikes, labor troubles or other union activities (but only to the extent such actions do not result from an act or omission of the Party), casualty, war, acts of terrorism or riots, governmental orders or actions, litigators seeking to challenge, prohibit, alter or delay the Project or any Approval related thereto, moratoria, delays that result from any pandemic or epidemic,including, but not limited to, public health orders issued by governmental authorities that contribute to or cause such a delay. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

2.1.90 "Usury Limit" means the highest rate of interest, if any, that Law allows under the circumstances.

2.1.91 "Waiver of Subrogation" means a provision in, or endorsement to, any Liability Insurance, Automobile Liability Insurance or Property Insurance policy, by which the insurance carrier agrees to waive rights of recovery by way of subrogation against any Person for any loss such policy covers.

2.1.92 "Workers' Compensation Insurance" means worker's compensation insurance complying with the provisions of State Law and an employer's liability insurance endorsement, with commercially standard limits, covering all employees of the Developer, its contractors and vendors.

ARTICLE 3

PROPERTY DISPOSITION

3.1 Prior to City Conveyance of Property. Prior to City conveying the Property to Developer and Developer accepting the property from the City, Developer shall provide sufficient evidence that is satisfactory to the City, in City's sole and absolute discretion, that the following have been completed:

3.1.1 Developer has obtained all entitlements for the entirety of the Project.

3.1.2 Developer has obtained proof of construction financing for the entirety of the Project.

3.1.3 Developer has obtained permanent financing for the entirety of the Project, which may include equity investment by the Developer or a third party.

3.1.4 Developer has obtained all necessary building permits for the entirety of the Project.

3.1.5 Developer and City have executed an agreement regarding the Bond Financing or other financing the City deems appropriate and Developer's obligation regarding repayment of the debt service obligations.

3.1.6 Developer and City have agreed upon an acceptable demolition schedule based upon contractors' schedule.

3.1.7 Developer and City have executed the Grant of Easements and Reciprocal Access, Parking Operation and Maintenance Agreement, attached hereto as Exhibit K.

3.1.8 Developer shall to provide to the City a draft of the Covenant, Conditions and Restrictions (CC&R's), in compliance with ARTICLE 6, for review and approval in compliance with Section 6.1.

3.1.9 City has satisfied the terms of Section 5.10.1.

3.2 Purchase and Sale. Once Developer has satisfied Section 3.1 and City has satisfied Section 5.10 City shall convey land to the Developer for the Mixed Use Project and the Developer shall accept the Property from the City, pursuant to the terms and conditions of this Agreement. City shall retain ownership of the parcel containing the 211 public parking spaces contained within the Parking Structure and Developer shall grant City an easement for street, highway and public utility purposes over, under and upon the private portion of Sycamore Street between 3rd Street and 4th Street which shall be constructed by Developer as part of this

Agreement. For the purposes of exchanging funds and documents to complete the conveyance of the Property from the City to the Developer, the City and the Developer agree to open Escrow with the Escrow Agent. The provisions of ARTICLE 4 of this Agreement are the joint escrow instructions of the Parties to the Escrow Agent for the conduct of Escrow. If requested by the Escrow Agent, the Developer and the City shall execute the Escrow Agent's reasonable standard or general escrow instructions. Any provision in the Escrow Agent's standard or general escrow instructions that purports to exculpate the Escrow Agent from or require the Developer or the City to indemnify the Escrow Agent against the Escrow Agent's negligence or willful misconduct shall be deemed "unreasonable" and shall not be included in any standard or general escrow instructions requested by the Escrow Agent. In the event of any conflict between the provisions of this Agreement and any such standard or general escrow instructions requested by the Escrow Agent, the provisions of this Agreement shall be controlling.

3.3 Title Approval.

3.3.1 Developer's Title Notice. Within five (5) days after the Effective Date of this Agreement, the City shall request the Preliminary Report from the Title Company, with instructions to the Title Company to deliver a copy of the Preliminary Report to the Developer concurrent with delivery of the Preliminary Report to the City. Within thirty (30) days following the Developer's receipt of the Preliminary Report, the Developer shall deliver the Developer's Title Notice to the City.

3.3.2 Failure to Deliver Developer's Title Notice. If the Developer fails to deliver 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.

3.3.3 City's Title Notice Response. Within fifteen (15) days following the earlier of the City's receipt of Developer's Title Notice or expiration of the time period provided in this Section 3.3.3 for delivery of Developer's Title Notice, the City shall serve City's Title Notice Response. If the Developer's Title Notice does not disapprove or conditionally approve any matter in the Preliminary Report or the Developer fails to deliver the Developer's Title Notice, the City shall not be required to serve City's Title Notice Response. If the City does not serve City's Title Notice Response, if necessary, within fifteen (15) days following its receipt of the Developer's Title Notice, the City shall be deemed to elect not to take any action in reference to the Developer's Title Notice. If the City elects in City's Title Notice Response to take any action in reference to the Developer's Title Notice, the City shall take such action, prior to the Escrow Closing Date. Notwithstanding the foregoing, the City agrees to remove prior to the Escrow Closing Date all monetary liens and encumbrances of the Property other than non-delinquent real property taxes and assessments. and such liens and encumbrances shall not constitute permitted exceptions.

3.3.4 Developer's Title Notice Waiver. If the City elects or is deemed to have elected not to take any action in reference to the Developer's Title Notice, then within seven (7) days following the earlier of (1) the Developer's receipt of City's Title Notice Response or (2) the expiration of the time period provided in Section 3.3.3 for delivery of City's Title Notice Response, the Developer shall either: (i) refuse to accept the title to and conveyance of the Property, or (ii) waive its disapproval or conditional approval of any matters set forth in the Developer's Title

Notice by delivering the Developer's Title Notice Waiver to the City. Failure by the Developer to timely deliver the Developer's Title Notice Waiver, where City's Title Notice Response or the City's failure to serve City's Title Notice Response indicates or results in the City's election not to take any action in reference to the Developer's Title Notice, will be deemed the Developer's continued refusal to accept the title to and conveyance of the Property, in which case either the City or the Developer shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, until such time (if ever) as the Developer delivers the Developer's Title Notice Waiver. Any termination of this Agreement and cancellation of the Escrow pursuant to this Section 3.3.4 shall be without liability to the other Party or any other Person, and shall be accomplished by delivery of a written Notice of termination to both the other Party and the Escrow Agent, in which case the Parties and the Escrow Agent shall proceed pursuant to Section 4.11.

3.4 Developer Due Diligence Investigations.

3.4.1 License to Enter. The City licenses and permits the Developer to enter the Property solely for the purpose of undertaking and completing such Due Diligence Investigations as the Developer deems necessary and appropriate. The license provided in this Section 3.4.1 shall expire upon the Close of Escrow or earlier termination of this Agreement. The Developer shall conduct all of its Due Diligence Investigations at its sole cost and expense. The Developer shall abide by any reasonable additional condition(s) of entry onto the Property required by the City, whether or not set forth in this Agreement. Any Due Diligence Investigations of the Property by the Developer shall not unreasonably disrupt any then existing use or occupancy of the Property or the operations of the City.

3.4.2 Limitations. The Developer shall not conduct any intrusive or destructive testing of any portion of the Property, other than low volume soil samples, without the City Manager's prior written consent which shall not be unreasonably withheld. Following the conduct of any Due Diligence Investigations on the Property, the Developer shall restore the Property to substantially its condition prior to the conduct of such Due Diligence Investigations.

3.4.3 Indemnity; Insurance. The activities of the Developer or its agents directly or indirectly related to the Developer's Due Diligence Investigations shall be subject to the Developer's indemnity, defense and hold harmless obligations under this Agreement. Prior to commencing any Due Diligence Investigations on the Property, the Developer shall deliver copies of policies or original certificates of all Liability Insurance required to be delivered pursuant to Section 5.9.

3.4.4 Due Diligence Completion Notice. The Developer shall deliver a Due Diligence Completion Notice to the City and the Escrow Agent 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 Completion 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 and refused to accept conveyance of title to the Property. If the condition of the Property is rejected or deemed rejected by the Developer, then the City or the Developer shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, until such time (if ever) as the City receives the Due Diligence Completion Notice stating the

Developer's unconditional acceptance of the condition of the Property. Any termination of this Agreement and cancellation of the Escrow, pursuant to this Section 3.4.4, shall be without liability to the other Party or any other Person, and shall be accomplished by delivery of a written Notice of termination to the other Party and the Escrow Agent, in which case the Parties and the Escrow Agent shall proceed pursuant to Section 4.11.

3.4.5 No Representations or Warranties. 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 all Laws applicable to the development or use of the Property by the Developer and any other matters relevant to the condition or suitability of the Property for the development or operation of the Project, as the Developer may deem necessary or appropriate. Except for the representations and warranties contained in this Agreement and any documents or instruments referenced herein or delivered in accordance herewith, the City makes no representation or warranty, express or implied, to the Developer relating to the condition of the Property or suitability of the Property for any intended use or development by the Developer.

3.4.6 Acceptance of Property "AS-IS." Except for the representations and warranties contained in this Agreement and any documents or instruments referenced herein or delivered in accordance herewith, the Developer shall accept all conditions of the Property, without any liability of the City Parties whatsoever, upon the Developer's unconditional acceptance of the condition of the Property indicated in its Due Diligence Completion Notice. The Developer's delivery of its Due Diligence Completion Notice indicating the Developer's unconditional acceptance of the condition of the Property shall evidence the Developer's unconditional and irrevocable acceptance of the Property in the Property's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, WITHOUT WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION and with full knowledge of the physical condition of the Property, the nature of the City's interest in and use of the Property, all Laws applicable to the Property, the Permitted Exceptions and of any and all conditions, restrictions, encumbrances and all matters of record relating to the Property. The Developer's delivery of its Due Diligence Completion Notice indicating the Developer's unconditional acceptance of the condition of the Property shall constitute the Developer's representation and warranty to the City that the Developer has received assurances acceptable to the Developer by means independent of the City or any agent of the City of the truth of all facts material to the Developer's acquisition of the Property pursuant to this Agreement, and that the Property is being acquired by the Developer as a result of its own knowledge, inspection and investigation of the Property and not as a result of any representation(s) made by the City or any employee, official, consultant or agent of the City relating to the condition of the Property, unless such statement or representation is expressly and specifically set forth in this Agreement. The City hereby expressly and specifically disclaims any express or implied warranties regarding the Property.

3.5 City Pre-Closing Document Approval.

3.5.1 Developer Delivery of Documents. The Developer shall deliver all of the following described documents to the City, at least, forty-five (45) calendar days prior to the Escrow Closing Date:

(a) All Insurance Documents;

(b) Any covenants, conditions or restrictions proposed for the Property; and

3.5.2 City Approval. Within thirty (30) calendar days after the City receives any item required to be delivered to the City by the Developer pursuant to Section 3.1, the City shall Notify the Developer whether or not such submitted matter is reasonably acceptable to the City. Any Notice from the City stating that a particular submitted matter is not acceptable to the City shall also state the actions that the City reasonably believes are required to make such matter acceptable to the City. Within thirty (30) calendar days after receipt of any Notice from the City stating that a submitted matter is not acceptable to the City, the Developer shall appropriately revise any matter disapproved by the City in a manner intended in good faith to obtain the City's approval of such matter and re-submit such matter to the City for approval. The process applicable to the City's consideration of the initial submittal of any matter shall apply to any re-submittal of such matter, following its disapproval by the City. If the City fails to Notify the Developer that it does not approve of any submitted matter within the requisite thirty (30) calendar period, then the City shall be deemed to have approved such matter.

3.6 City Relocation Assistance.

3.6.1 Relocation. The Property currently has a public parking structure. The City currently sells monthly parking passes, and thirty (30) parking spaces are leased to California State University, Fullerton Foundation. The lease with California State University, Fullerton Foundation is set to expire on December 31, 2028. The City will work with California State University, Fullerton Foundation to relocate the thirty (30) leased parking spaces. If the relocation cannot be accomplished the Developer will accommodate the lease as part of the 211 public parking spaces. The City has no known relocation and related obligations. Notwithstanding the foregoing, as between the City and the Developer, the City shall be responsible, at its sole cost and expense, for any and all relocation and related expenses attributable to the relocation of the occupants of the Property, if any. The City shall defend, indemnify and hold the Developer and its officers, employees, agents, attorneys, and contractors harmless from and against all liability for any relocation and related expenses attributable to the development of the Property and the relocation of its previous occupants.

ARTICLE 4

JOINT ESCROW INSTRUCTIONS

4.1 Opening of Escrow. The City and the Developer shall cause the Escrow to be opened no later than January 1, 2021. The Escrow Agent shall promptly confirm the Escrow Opening Date in writing to each of the Parties. The Escrow Closing Date shall be on or before September 30, 2022 unless the Escrow Closing Date is extended as provided in this Agreement. This ARTICLE 4 shall constitute the joint escrow instructions of the City and the Developer to the Escrow Agent for conducting of the Escrow.

4.2 Escrow Agent Authority. The City and the Developer authorize the Escrow Agent to:

4.2.1 Charge. Pay and charge the Developer for the applicable fees, charges and costs payable regarding the Escrow;

4.2.2 Settlement/Closing Statements. Release each Party's Escrow settlement/closing statement to the other Party; and

4.2.3 Document Recording. Record any instruments delivered for recording through the Escrow in the official records of the Recorder of the County, pursuant to the joint instructions of the Parties.

4.3 Developer's Conditions to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by the Developer, the Developer's obligation to accept the conveyance and title of the Property from the City on the Escrow Closing Date shall be subject to the satisfaction or waiver of each of the following conditions precedent, each of which can only be waived in writing by the Developer:

4.3.1 Title. The Developer agrees to accept the title to and conveyance of the Property, pursuant to Section 3.3;

4.3.2 Due Diligence. The Developer delivers its Due Diligence Completion Notice to both the City and the Escrow Agent indicating the Developer's unconditional acceptance of the condition of the Property, prior to the expiration of the Due Diligence Period;

4.3.3 Title Policy. The Title Company is, upon payment of the Title Company's standard premium for such an insurance policy, irrevocably and unconditionally committed to issue the Title Policy to the Developer, at the Close of Escrow;

4.3.4 Consistency Finding. The Planning Commission of the City has determined that the disposition of the Property to this Agreement is consistent with the City's General Plan, in accordance with Government Code Section 65402;

4.3.5 Approvals. Final issuance of all discretionary Approvals required from any Government to construct, install or operate the applicable portion of the Project on the Property, on terms and conditions reasonably acceptable to the Developer;

4.3.6 CEQA Documents. Final adoption, approval or certification of the CEQA Documents, if any;

4.3.7 City Escrow Deposits. The City deposits all of the items into the Escrow required by Section 4.6;

4.3.8 Settlement/Closing Statement. The Developer approves the Escrow Agent's final estimated closing/settlement statement; and

4.3.9 City's Material Obligations. The City performs all of its material obligations required to be performed by the City under this Agreement prior to the Close of Escrow and the City's representations and warranties set forth in this Agreement remain true in all material respects, and the City is not otherwise in default under this Agreement.

4.4 City's Conditions to Close of Escrow. Provided that the failure of any such condition to be satisfied is not due to a Default under this Agreement by the City, the City's obligation to convey the Property to the Developer on or before the Escrow Closing Date shall be subject to the satisfaction or waiver of each of the following conditions precedent, each of which can only be waived in writing by the City:

4.4.1 Title. The Developer agrees to accept the title to and conveyance of the Property, pursuant to Section 3.3;

4.4.2 Due Diligence. The Developer delivers its Due Diligence Completion Notice to both the City and the Escrow Agent indicating the Developer's unconditional acceptance of the Property, prior to the expiration of the Due Diligence Period;

4.4.3 Approvals. Final issuance of all discretionary Approvals required from any Government to construct, install or operate the applicable portion of the Project on the Property, on terms and conditions reasonably acceptable to the Developer, including but not limited to building permits;

4.4.4 CEQA Documents. Final adoption, approval or certification of the CEQA Documents, if any;

4.4.5 Title Policy. The Title Company is upon payment of the Title Company's standard premium for such insurance policy, irrevocably and unconditionally committed to issue the Title Policy to the Developer, at the Close of Escrow;

4.4.6 Insurance Documents. The Developer delivers the Insurance Documents and the City has approved all such evidence of insurance, all pursuant to Section 3.5;

4.4.7 Developer's Escrow Deposits. The Developer deposits all of the items into the Escrow required by Section 4.5;

4.4.8 Settlement/Closing Statement. The City approves the Escrow Agent's final estimated closing/settlement statement;

4.4.9 Consistency Finding. The Planning Commission of the City and the City Council have determined that the disposition of the Property pursuant to this Agreement is consistent with the City's General Plan, in accordance with Government Code Section 65402; and

4.4.10 Developer's Material Obligations. The Developer performs all of its material obligations required to be performed by the Developer under this Agreement prior to the Close of Escrow and the Developer's representations and warranties set forth in this Agreement remain true in all material respects, and the Developer is not otherwise in default under this Agreement..

4.5 Developer's Escrow Deposits. At least one (1) business day prior to the Escrow Closing Date scheduled by the Escrow Agent in a writing delivered to both of the Parties, the Developer shall deposit the following described funds and documents into the Escrow and, concurrently, provide a copy of each such document to the City:

4.5.1 PCO Report. A PCO Report executed by the authorized representative(s) of the Developer;

4.5.2 Insurance Documents. Any copies of insurance policies or original certificates of insurance required to be delivered to the City by the Developer on or before the Close of Escrow, pursuant to Section 3.5.1;

4.5.3 Acceptance of City Deed. The Certificate of Acceptance of the City Deed, in substantially the form attached to the City Deed, executed by the authorized representative(s) of the Developer in recordable form;

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

4.5.5 Other Funds and Documents. Such other funds or documents required from the Developer under the terms of this Agreement to close the Escrow or by the Escrow Agent in the performance of the Escrow Agent's contractual or statutory obligations regarding the Escrow.

4.6 City's Escrow Deposits. At least one (1) business day prior to the Escrow Closing Date scheduled by the Escrow Agent in a writing delivered to both of the Parties, the City shall deposit the following described funds and documents into the Escrow and, concurrently, provide a copy of each such document to the Developer:

4.6.1 City Deed. The City Deed executed by the authorized representative(s) of the City in recordable form;

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

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

4.6.4 Form 593. A Form 593 executed by the authorized representative(s) of the City; and

4.6.5 Other Funds and Documents. Such other funds or documents required from the City under the terms of this Agreement to close the Escrow or by the Escrow Agent in the performance of the Escrow Agent's contractual or statutory obligations regarding the Escrow.

4.7 Closing Procedure. When each of the Developer's Escrow deposits, as set forth in Section 4.5, and each of the City's Escrow deposits, as set forth in Section 4.6, are deposited into the Escrow, the Escrow Agent shall request confirmation in writing from both the Developer and the City that each of their respective conditions to the Close of Escrow, as set forth in Section

4.3 and Section 4.4, respective, are satisfied or waived. Upon the Escrow Agent'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, the Escrow Agent shall schedule the Escrow Closing Date by written Notice to both Parties and, thereafter, shall close the Escrow by doing all of the following:

4.7.1 Recordation and Distribution of Documents. Escrow Agent shall file the following documents with the office of the Recorder of the County for recording in the official records of the County, in the following order, at the Close of Escrow: (i) the City Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) any other documents to be recorded through the Escrow upon the joint instructions of the Parties. The Escrow Agent shall deliver conformed copies of all documents filed for recording in the official records of the County and originals or copies of all other documents delivered through the Escrow to the City, the Developer and any other Person designated in the joint escrow instructions of the Parties to receive an original or conformed copy of each such document. Each copy of a document filed for recording shall show all recording information. The Parties intend and agree that this Section 4.7 shall establish the relative priorities of the documents to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior in time to junior interests, as provided in this Section 4.7;

4.7.2 PCO Report. File the PCO Report with the office of the Recorder of the County of Riverside, California;

4.7.3 FIRPTA Affidavit. File the FIRPTA Affidavit with the United States Internal Revenue Service;

4.7.4 Form 593. File the Form 593 with the State of California Franchise Tax Board;

4.7.5 Title Policy. Obtain and deliver the Title Policy to the Developer;

4.7.6 Funds. Return all remaining funds held by the Escrow Agent for the account of the Developer to the Developer, less the Developer's share of the Escrow closing costs, and less any other charges to the account of the Developer.

4.7.7 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, the Escrow Agent shall report the gross proceeds of the purchase and sale of the Property to the Internal Revenue Service on Form 1099-B, Form W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Section 6045(e) or the associated Federal regulations. Upon the filing of such reporting form with the Internal Revenue Service, the Escrow Agent shall deliver a copy of the filed form to both the City and the Developer.

4.8 Close of Escrow. The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to the Escrow Agent. If for any reason the Close of Escrow has not occurred on or before the Escrow Closing Date, then any Party not then in default of this Agreement may cancel

the Escrow and terminate this Agreement, without liability to the other Party or any other Person for such cancellation and termination, by delivering written Notice of termination to both the other Party and the Escrow Agent. Thereafter, the Parties and the Escrow Holder shall proceed pursuant to Section 4.10 and Section 4.11. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement, pursuant to the first sentence of this Section 4.8, if the Escrow does not close on or before the Escrow Closing Date, and neither Party has exercised its contractual right to cancel the Escrow and terminate this Agreement before the first date on which the Escrow Holder is in a position to close the Escrow, then the Escrow shall close as soon as reasonably possible following the first date on which the Escrow Agent is in a position to close the Escrow, pursuant to the terms and conditions of this Agreement.

4.9 Escrow Closing Costs, Taxes and Title Policy Premium. The Developer shall pay all Escrow fees and such other costs as the Escrow Agent may charge for the conduct of the Escrow. The Developer shall pay the premium charged by the Title Company for the Title Policy, exclusive of any endorsements or other supplements to the coverage of the Title Policy that may be requested by the Developer, and any documentary transfer tax relating to the conveyance of the Property from the City to the Developer through the Escrow that is due at the Close of Escrow. The Developer shall pay any and all recording fees, any and all other charges, fees and taxes levied by a Government arising or relating to the conveyance of the Property through the Escrow and the cost of any endorsements or supplements to the coverage of the Title Policy requested by the Developer. The Escrow Agent shall Notify both the Developer and the City of the costs to be borne by Developer at the Close of Escrow by delivering the Escrow Agent's estimated closing/settlement statement to both the City and the Developer, at least four (4) business days prior to the Escrow Closing Date.

4.10 Escrow Cancellation Charges. If the Escrow fails to close due to an Event of Default attributable to the City, the City shall pay all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any. If the Escrow fails to close due to an Event of Default attributable to the Developer, the Developer shall pay all customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any. If the Escrow fails to close for any reason other than an Event of Default attributable to either the Developer or the City, the Developer and the City shall each pay one-half (1/2) of any customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any.

4.11 Escrow Cancellation. If the Escrow is cancelled and this Agreement is terminated pursuant to a contractual right granted to a Party in this Agreement to cancel the Escrow and terminate this Agreement, other than due to an Event of Default attributable to the other Party, the Parties shall pay any associated costs in accordance with Section 4.10 and do each of the following:

4.11.1 Cancellation Instructions. The Parties shall, within three (3) business days following receipt of the Escrow Agent's written request, execute any reasonable Escrow cancellation instructions requested by the Escrow Agent; and

4.11.2 Return of Funds and Documents. Within seven (7) days following receipt by the Parties of a settlement statement from the Escrow Agent of cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any: (i) the Developer or the Escrow

Agent, respectively, shall return to the City any documents previously delivered by the City to the Developer or the Escrow Agent regarding the Escrow, (ii) the City or the Escrow Agent, respectively, shall return to the Developer all documents previously delivered by the Developer to the City or the Escrow Agent regarding the Escrow; (iii) the Escrow Agent shall return to the Developer any funds deposited into the Escrow by the Developer, except as otherwise provided in Section 9.2, less the Developer's share of any customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any, in accordance with Section 4.10; and (iv) the Escrow Holder shall return to the City any funds deposited into the Escrow by the City, less the City's share of any customary and reasonable cancellation charges regarding cancellation of the Escrow and the Title Policy order, if any, in accordance with Section 4.10.

4.12 Escrow Notices. All notices and communications from the Escrow Agent to the Parties shall be given in the manner provided in Section 10.5 of this Agreement.

ARTICLE 5

PROJECT DEVELOPMENT

5.1 Developer Covenant to Develop Project. The Developer covenants to and for the exclusive benefit of the City that the Developer shall commence and complete the development of the Project on the Property, within the time period for such action set forth in the Performance Schedule. The Developer covenants and agrees for itself, its successors and assigns that the Property shall be improved and developed with the Project, in conformity with the terms and conditions of this Agreement and all applicable Laws and conditions of each Government. The covenants of this Section 5.1 shall run with the land of the Property, until the earlier of: (i) the date of issuance of the last Certificate of Completion or the Certificate of Occupancy for the Project.

5.2 Developer to Obtain all Project Approvals.

5.2.1 Submission of Development Application. The Developer shall, within the time period(s) for such actions set forth in the Performance Schedule, prepare and submit a complete development application and any other required application, document, fee, charge or other item (including, without limitation, deposit, fund or surety) required for construction or installation of the Project, pursuant to all applicable Laws and Approvals, to each necessary Government for review and approval. The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval or elsewhere) and the alternate procurement process (SAMC Section 33-204), shall be applicable to the construction and installation of the Project on the Property by the Developer, pursuant to this Agreement. The Developer acknowledges that all plans and specifications and any changes to any plans or specifications for the Project shall be subject to all applicable Laws and Approvals. The Developer shall obtain all entitlements, permits and other approvals for construction and installation of the Project on the Property from each Government, within the time periods for such actions set forth in the Performance Schedule, and prior to the commencement of any construction or installation of the applicable portion(s) of the Project.

5.2.2 Reservations. The approval of this Agreement by the City shall not be binding on the City Council, the Planning Commission, Design Review Committee or any other commission, committee, board or body of the City regarding any approvals of the Project required by such bodies. No action by the City with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required City permit, approval or authorization regarding the Property, the Project or the Developer. The Developer obtains no right, permit or entitlement to construct or install the Project on the Property or any portion of the Property by virtue of this Agreement.

5.2.3 Project Changes. If any revisions of the Project are required by a Government, the Developer shall promptly make any such revisions that are: (i) generally consistent with the Scope of Development and (ii) would not result in any material additional improvements not identified in the Developer's submitted application.

5.2.4 Conditions of Approval. Notwithstanding any provision to the contrary in this Agreement, the Developer agrees to accept and comply fully with any and all conditions of approval contained within any approvals, permits or other governmental actions regarding the construction or installation of the Project on the Property, that are both: (i) generally consistent with this Agreement and the Project Description and (ii) imposed after a public hearing in accordance with the City's approval process, where a public hearing is legally required for the issuance of the approval, permit or other governmental action.

5.2.5 Developer Payment of Costs and Fees. Except as set forth in Section 5.10, the Developer and the City agree that the City shall not provide any financial assistance to the Developer in connection with the construction or installation of the Project. The Developer shall be solely responsible for paying for the costs of all design work, construction, labor, materials, fees, permits, applications, and other expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by each Government and utility service providers, including the costs of preparation of all required construction, planning and other documents reasonably required by each Government or utility service provider pertinent to the construction, installation 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 obtain any and all necessary governmental approvals, prior to the commencement of applicable portions of construction and installation of the Project, and the Developer shall take reasonable precautions to ensure the safety and stability of surrounding properties during the construction and installation of the Project.

(a) Developer acknowledges and agrees that pursuant to Section 5.10 City will fund based on actual reasonable costs to a maximum cost of thirteen million dollars ($13,000,000) for (i) the demolition of the existing three (3) level parking structure located on the Property, (ii) the preparation of the Project site for construction to a rough grade condition; (iii) the construction of Public Parking Parcel; (iv) construction of the street reconnecting Sycamore Street between 3rd Street and 4th Street ("City Funded Improvements").

(i) Developer shall submit to City monthly invoices including supporting documentation showing the actual costs incurred for the City Funded Improvements.

(ii) City shall review the invoices and supporting documentation. In City's sole and absolute discretion determines additional information is needed City will specify the additional information or documentation that is needed, and Developer shall provide the requested documentation within fourteen (14) days, unless a City grants a longer period of time for compliance. Should Developer fail to timely provide the requested documentation the expense shall be deemed unreasonable.

(iii) City can object to any expenses the City determines is unreasonable contained in the monthly invoices. Within fourteen (14) days, Developer shall have the right to provide additional supporting documentation to justify the reasonableness of the expense to the City. City shall review any additional supporting documentation provided by Developer to reconsider the reasonableness of the expense for the City Funded Improvements.

(iv) City shall pay any reasonable costs for the construction of the City Funded Improvements within forty-five (45) days of receipt of monthly invoice or the receipt of the additionally requested documentation or additional information, whichever comes later.

(b) Developer acknowledges that Developer is solely responsible for the actual demolition and construction of the City Funded Improvements and is solely responsible for any costs of the City Funded Improvements that exceed thirteen million dollars ($13,000,000).

(c) The City Funded Improvements shall be completed prior to Developer requesting any Certificate of Completion or Certificate of Occupancy for any building or unit within the Project.

(d) Within ninety (90) days from the issuance of the last Certificate of Completion or Certification of Occupancy for any building or unit within the Project, Developer shall submit a complete accounting of the reasonable unreimbursed hard and soft costs for the Construction of the Hotel Project ("Hotel Project Accounting") and the reasonable unreimbursed hard and soft costs for the Construction the Mixed Use Project ("Mixed Use Project Accounting") shall be provided to City. The Hotel Project Accounting plus the Mixed Use Project Accounting equals Final Developer Accounting. ("Final Developer Accounting").

5.2.6 Developer shall obtain performance bonds, labor and material bonds for the amount required by the City prior to obtaining any building permits for any portion of the Project.

5.3 Developer Changes to Plans and Specifications During Course of Construction of Project. The Developer shall have the right, during the course of construction of the Mixed Use Project and Hotel 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 from the approved construction drawings, plans and specifications that have no substantial effect on the Project and are made in order to expedite the work of construction in response to field conditions. Nothing contained in this Section 5.3 shall be deemed to constitute a waiver of or change in any Approvals governing any such "minor field changes" or in any Approvals by any Government otherwise required for any such "minor field changes." Developer shall obtain prior written approval of the City Manager

or City Manager's designee for any change from the approved construction drawings, plans and specifications for the Parking Structure and Sycamore Street between 3rd Street and 4th Street.

5.4 Construction Start and Completion of Project.

5.4.1 The Developer shall commence construction and installation of the Project in accordance with the Performance Schedule. Thereafter, the Developer shall diligently proceed to complete the construction and installation of the Project, in a good and workmanlike manner, in accordance with the Performance Schedule and all applicable Laws and all Approvals for the Project issued by each Government.

5.4.2 Developer shall attend monthly meetings with the Construction Management Team. At least 24 hours prior to the meeting, Developer shall provide a written report of the progress of the Project that has occurred since the prior meeting and detailed financial reports of the expenditure of City funds. Developer shall provide any additional documentation requested by the Construction Management Team regarding the Parking Structure and Sycamore Street between 3rd Street and 4th Street. The Construction Management Team may at its sole discretion schedule the meetings with Developer on a more frequent basis.

5.4.3 On or before the Project Completion Date, the Developer shall:

(a) Record a Notice of Completion, in accordance with California Civil Code Section 3093, for the entirety of the Project;

(b) Cause the Project to be inspected by each Government and correct any defects and deficiencies that may be disclosed by any such inspection;

(c) Cause all occupancy certificates and other Approvals necessary for the occupancy and operation of the completed Project to be duly issued; and

(d) After commencement of the work of improvement of the Project, the Developer shall not permit the work of improvement of the Project to cease or be suspended for a time period in excess of forty-five (45) calendar days, either consecutively or in the aggregate, other than as a result of an Unavoidable Delay. The City Manager, in his or her sole and absolute discretion, may extend the Project Completion Date for up to an additional sixty (60) days, in the aggregate.

5.5 Compliance with Laws. All work performed in connection with the construction or installation of the Project shall comply with all applicable Laws and Approvals.

5.6 Performance Schedule. All planning construction, installation and other development obligations and responsibilities of the Developer related to the Project shall be initiated and completed within the times specified in the Performance Schedule, or within such reasonable extensions of such times granted by the City Manager or as otherwise provided for in this Agreement.

5.7 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 Park Improvements, such that such Person(s) can meaningfully respond to City staff questions regarding the progress of the Project, attend in-person or telephonic meetings with City staff or meetings of the City governing body, when requested to do so by City staff, with reasonable advance written Notice to the Developer.

5.8 PREVAILING WAGES AND COMMUNITY WORKFORCE AGREEMENT.

5.8.1 THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE CITY HAS INFORMED DEVELOPER THAT THE PROJECT IS SUBJECT TO PREVAILING WAGES. THE DEVELOPER AGREES WITH THE CITY THAT THE DEVELOPER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE CONSTRUCTION OR INSTALLATION OF THE PROJECT MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE, PURSUANT TO LABOR CODE SECTIONS 1720, ET SEQ.

5.8.2 THE DEVELOPER AGREES WITH THE CITY THAT THE DEVELOPER SHALL BE SUBJECT TO THE COMMUNITY WORKFORCE AGREEMENT DATED 2017, ATTACHED HERETO AS EXHIBIT H FOR ANY DEMOLITION OR CONSTRUCTION OF THE PROJECT. DEVELOPER SHALL OBTAIN A LETTER OF ASSENT (ATTACHMENT A OF THE WORKFORCE AGREEMENT) FOR EACH AND EVERY CONTRACTOR AWARDED WORK COVERED BY THE COMMUNITY WORKFORCE AGREEMENT PRIOR TO COMMENCING WORK ON THE PROJECT.

5.8.3 THE DEVELOPER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES THE CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTION 1781. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 5.8, WHICH READS AS FOLLOWS:

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

5.8.4 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 5.8:

_____
Initials of Authorized
Developer Representative

5.8.5 ADDITIONALLY, THE DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, PURSUANT TO SECTION 9.6, AGAINST ANY CLAIMS PURSUANT TO LABOR CODE SECTION 1781 ARISING FROM THIS AGREEMENT OR THE CONSTRUCTION OR INSTALLATION OF ALL OR ANY PORTION OF THE PROJECT.

5.9 Insurance. The Developer, to protect the City Parties against any and all claims and liability for death, injury, loss and damage resulting from the Developer's actions in connection with this Agreement, the Property and the Project, shall, at the Developer's sole cost and expense, until issuance of a Certificate of Completion for the Project, maintain the following insurance (or its then reasonably available equivalent): (a) Liability Insurance; (b) Property Insurance; (c) Builder's Risk Insurance; and (d) Worker's Compensation Insurance. Additionally, the Developer, to protect the City Parties, shall cause its contractors and subcontractors, at their sole cost and expense, until issuance of the last Certificate of Completion for the Project, to maintain Contractor's Insurance.

5.9.1 Nature of Insurance. All Liability Insurance, Property Insurance, Automobile Liability Insurance and Contractor's Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VII"; and (b) are admitted to do business in the State of California by the California Department of Insurance. The Developer may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property and the Project, which amount(s) shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Agreement.

5.9.2 Policy Requirements and Endorsements. All insurance policies this Agreement requires shall contain (by endorsement or otherwise) the following provisions:

(a) Insured. Liability Insurance, Automobile Liability Insurance and Contractor's Insurance policies shall name the City Parties as "additional insured." Property Insurance Policies shall name the City as a "loss payee." The coverage afforded to the City Parties shall be at least as broad as that afforded to the Developer and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to the Developer.

(b) Primary Coverage. All policies shall be written as primary policies, not contributing to or in excess of any coverage that the City Parties may carry.

(c) Contractual Liability. Liability Insurance policies shall contain contractual liability coverage, for the Developer's indemnity obligations under this Agreement. The Developer's obtaining or failure to obtain such contractual liability coverage shall not relieve the Developer from nor satisfy any indemnity obligation of the Developer under this Agreement.

(d) Deliveries to the City. Prior to the commencement of any Due Diligence Investigations, and no later than twenty (20) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, the Developer shall deliver to the City certificates of insurance evidencing the Developer's maintenance of all insurance this Agreement requires. Each insurance carrier shall give the City no less than thirty (30) calendar days' advance written Notice of any cancellation, non-renewal, material change in coverage or available limits of liability under any insurance policy required by this Agreement. 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 City Parties.

(e) Waiver of Certain Claims. The Developer shall attempt in good-faith to cause the insurance carrier for each Liability Insurance, Automobile Liability Insurance and Property Insurance policy to agree to a Waiver of Subrogation, if not already in the policy. To the extent that the Developer actually obtains insurance with a Waiver of Subrogation, the Parties release each other, and their respective authorized representatives, from any claims for damage to any Person or property that are caused by or result from risks insured against under such insurance policies.

(f) No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

(g) No Claims Made Coverage. None of the insurance coverage required under this Agreement may be written on a claims-made basis.

(h) Fully Paid and Non-Assessable. All insurance obtained and maintained by the Developer in satisfaction of the requirements of this Agreement shall be fully paid for and non-assessable.

(i) City Option to Obtain Coverage. During the continuance of an Event of Default arising from the Developer's failure to carry any insurance required by this Agreement, the City may, at its sole option, purchase any such required insurance coverage and the City shall be entitled to immediate payment from the Developer of any premiums and associated costs paid by the City for such insurance coverage. Any amount becoming due and payable to the City under this Section 5.9 that is not paid within fifteen (15) calendar days after written demand from the City for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of ten percent (10%) per annum or the maximum rate allowed by California law, whichever is less. Any election by the City to purchase or not to purchase insurance otherwise required by the terms of this Agreement to be carried by the Developer shall not relieve the Developer of its obligation to obtain and maintain any insurance coverage required by this Agreement.

(j) Cross-Liability; Severability of Interests. All Liability Insurance and Contractor's Insurance shall be endorsed to provide cross-liability coverage for the Developer and the City Parties and to provide severability of interests.

(k) Deductibles and Self-Insured Retentions. The Developer shall pay or cause to be paid any and all deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Agreement regarding any claims relating to the City Parties.

(l) No Separate Insurance. The Developer shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Agreement, unless endorsed in favor of the City, as required by this Agreement.

(m) Insurance Independent of Indemnification. The insurance requirements of this Agreement are independent of the Developer's indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit, or modify the Developer's indemnification or other obligations or to limit the Developer's liability under this Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude the City from taking such other actions as are available to it under any other provision of this Agreement or otherwise at law or in equity.

5.10 Development of the Project.

5.10.1 City Funded Improvements. Upon Developer's satisfaction of Section 3.1 City shall fund the following based on reasonable actual costs to a maximum cost of $13 million dollars ($13,000,000):

(a) The demolition of the existing three (3) level parking structure located on the Property.

(b) The preparation of the Project site for construction to a rough grade condition.

(c) The construction of a Public Parking Parcel.

(d) The construction of a private street reconnecting Sycamore Street between 3rd Street and 4th Street. Developer shall grant the City an easement for street, highway and public utility purposes over, under and upon Sycamore Street between 3rd Street and 4th Street.

5.10.2 City Financing. City retains its sole and unfettered discretion as to any and all decisions regarding the funding of the $13 million dollars ($13,000,000) for the City Funded Improvements listed in 5.10.1.

(a) If City utilizes bonds to finance the City Funded Improvements then Developer shall be solely financially responsible for all costs and debt service until the bonds have been repaid in their entirety.

(b) If the City utilizes an alternative source of private financing to finance the City Funded Improvements then Developer shall be solely financially responsible for all costs and debt service associated with the private financing until the

private financing has been repaid in its entirety.

(c) If the City utilizes City Funds to finance the construction of the City Funded Improvements then Developer shall pay City for all costs, including staff time associated with the City Self Financing, in addition to interest charged at Local Agency Investment Fund (LAIF) rate, said rate shall readjust July 1st of each year. The maximum term of the repayment shall be thirty (30) years.

(d) Developer shall personally guarantee the City Financing and said guarantee shall be recorded against the Property. Said guarantee shall prohibit the subdivision of the property until such time as the City Funded Improvements have been paid in their entirety. Should Developer fail to make a monthly payment, City shall be entitled to Foreclose upon the Property. City shall be entitled to recover the unpaid portion of the City Funded Improvements and any costs associated with the Funding and Foreclosure including but not limited to the time and expenses of the City Attorney's Office, other City staff, any Consultants or experts retained in connection with the Third Party Challenge, attorney's fees of City's selected outside counsel, and litigation costs shall be fully reimbursed to City by the funds obtained in the Foreclosure.

5.11 Mixed Use Project.

5.11.1 Upon satisfaction of the terms of Section 3.1, the City shall convey the parcels for the Mixed Use Project and Hotel Project to Developer as specifically described in Exhibit "C" attached hereto and incorporated herein by reference in compliance with the terms of this Agreement.

5.11.2 Developer shall construct the Mixed Use Project which shall contain:

(a) An apartment complex containing 171 residential units.

(b) 18,824 square feet of commercial space (including 3,449 square feet of office, 11,066 square feet retail, 4,309 square feet food and beverage)

(c) The Parking Structure containing 444 parking spaces which includes 196 residential parking spaces within the Public Parking Structure.

5.12 Hotel Project.

5.12.1 Developer will design and construct a hotel consistent with the Automobile Association of America (AAA) minimum acceptable conditions to be considered a AAA Hotel, containing seventy-five (75) rooms with eighty-three (83) parking spaces which includes forty-two (42) mechanical stacker spaces.

5.12.2 The Developer shall provide the following minimum amenities:

(a) Fitness Room

(b) Community Meeting Space

(c) Baggage Storage

(d) Elevators

(e) 24-hour Pantry Market

(f) Multi-Lingual Staff

(g) Safety Deposit Box

(h) ATM

5.12.3 Developer will use best efforts to execute an operating agreement with an established Hotel Chain. If Developer is unsuccessful in securing an Agreement with an established Hotel Chain Operator then Developer shall self-operate the Hotel in accordance with Good Industry Practices for a hotel. Hotel operations shall be subject to the Hotel Operating Agreement attached hereto as Exhibit "I".

(a) Within 120 days of execution of this Agreement, Developer shall provide City either a copy of a letter of interest from a recognized hotel operator or a detailed Alternative Management Plan for the operation of the Hotel.

(b) City may request additional information or documentation for the Alternative Management Plan; and Developer shall provide said requested information or documentation.

(c) Within ninety (90) days of City's approval of the construction drawings, Developer shall provide either proof of Hotel Operator Commitment or proof of sufficient financing to implement the Alternative Management Plan.

5.12.4 Hotel Conversion. The Developer shall only be entitled to submit an application to City to convert the hotel to apartments if any of the following thresholds are established:

(a) On the Third Hotel Anniversary Date, if for the period between the Second Hotel Anniversary Date through the day before the Third Hotel Anniversary the RevPAR falls below $125.00.

(b) On the Fourth Hotel Anniversary Date, if for the period between the Third Hotel Anniversary Date through the day before the Fourth Hotel Anniversary the RevPAR falls below $125.00.

(c) On the Fifth Hotel Anniversary Date if for the period between the Fourth Hotel Anniversary Date through the day before the Fifth Hotel Anniversary the RevPAR falls below $125.00.

(d) On the Sixth Hotel Anniversary Date if for the period between The Fifth Hotel Anniversary Date through the day before the Sixth Hotel Anniversary the RevPAR falls below $125.00.

5.12.5 Any application for conversion shall be subject to approval of all applicable City entitlements, including compliance with all affordable housing and inclusionary housing requirements. Developer understand and acknowledges that, in the context of processing the application to convert the hotel to apartments, the City cannot guarantee the ultimate outcome of any public hearings before the Planning Commission or the City Council or other public bodies of the City, nor prevent any opposition thereto by members of the public or other agencies affected by or interested in the Project. By entering into this Agreement, the City does not pre-commit or imply that the application to convert the hotel to apartments to be considered for approval will be approved. The City retains the discretion to approve, conditionally approve, or disapprove the application to convert the hotel to apartments.

5.13 Parking Structure and Sycamore Street.

5.13.1 City shall retain ownership of the Public Parking Parcel within the Parking Structure. Prior to issuance of any Certificate of Completion or Certificate of Occupancy, Developer shall provide an easement to the City for street, highway and public utility purposes over, under and upon Sycamore Street between 3rd Street and 4th Street.

5.13.2 Upon completion of the Parking Structure, City will enter into a Parking Operation Agreement with the Developer and Developer shall agree to manage and operate the Public Parking Structure. The Parking Operation Agreement shall (1) require that 211 parking spaces be available as Public Parking spaces; (2) require the Developer to pay all costs including the debt service on the financing for the Public Improvements; (4) maintain the Parking Structure consistent with the terms of Article 8; (4) set forth that the Developer shall be entitled to set the parking rates of the Parking Structure subject to the advance written approval by the City; (5) require that Monthly Parking Permits can only be issued with advance written approval by the City agreeing to the number of Monthly Permits that are authorized to be issued and the amount that will be charged per Monthly Parking Permit; (6) will agree that if any public parking spaces within the Public Parking Structure are utilized by the Mixed Use Project or the Hotel Project the parking rates for the Parking Structure will apply; and (7) shall provide for reciprocal access as necessary for the use of the Parking Structure by the Parties. Developer may manage the Parking Structure or Developer may enter into an agreement with a third party to manage the Parking Structure (hereinafter "Third Party Parking Agreement"). Any Third Party Parking Agreement shall contain indemnification and insurance for the benefit of the City and the Third Party Parking Agreement shall be approved in writing by the City prior to Developer executing the Third Party Parking Agreement. A copy of the Grant of Easements and Reciprocal Access, Parking Operation and Maintenance Agreement that will be executed by the Parties is attached hereto as Exhibit K

5.13.3 For years zero (0) to thirty (30), any income from the Parking Structure shall be distributed in the following order:

(a) Payment of the Operator Fee as set forth in the Third Party Parking Agreement, if a one is executed by Developer in accordance with Section 5.13.2.

(b) Operating Expenses of the Parking Structure.

(c) City Debt Service.

(d) Net revenue to Developer, provided the Hotel is operational. Should the Hotel be converted to residential, then net parking revenue shall be distributed forty percent (40%) of the net parking revenue to the City and sixty percent (60%) of the net parking revenue to the Developer.

5.13.4 Should the income from the Parking Structure be insufficient to service the debt which is estimated to be approximately $750,000 then Developer shall be responsible for paying the debt service.

5.13.5 After the debt service for the Public Improvements is paid in its entirety, any income from the Parking Structure shall be distributed in the following order:

(a) Payment of the Operator Fee as set forth in the Third Party Parking Agreement, if a one is executed by Developer in accordance with Section 5.13.2.

(b) Operating Expenses of the Parking Structure.

(c) Net revenue shall be distributed forty percent (40%) of the net parking revenue to the City and sixty percent (60%) of the net parking revenue to the Developer.

5.13.6 All revenue and expenses deriving from the operation of the parking operations may be verified through an audit as requested by the City.

(a) At any time, and following 48 hours prior written notice to Developer, the City or its designee may enter and inspect the physical accounting records pertaining to the Developer's or third party pursuant to the Third Party Parking Agreement. City or its designee may request any other information it deems necessary to monitory compliance with the requirements set forth in this Agreement. City shall be permitted to inspect and photocopy same, and to retain copies, outside of the Developer's premises, of any and all records with appropriate safeguards, if such retention is deemed necessary by the City in its reasonable discretion. This information shall be kept by the City in strictest confidence allowed by law.

(b) All books, records, documents and any other evidence referenced in this Section 5.13.6 shall be maintained or made available in a single location in Santa Ana.

(c) Once every fiscal year, City may request an audit to be performed by an independent audit firm selected by City, Developer shall be solely responsible for the expense of this audit. City may perform additional audits during the fiscal year, but any additional audit(s) shall be at the sole expense of the City.

5.14 Developer's Option to Purchase Parking Structure.

5.14.1 Upon issuance of the last Certificate of Completion for the Project, City hereby grants to Developer the option to purchase the City Parcel within the Parking Structure

subject to a deed restriction that the Public Parking Parcel containing 211 public parking spaces shall remain public parking spaces available to members of the public in perpetuity pursuant to the Option to Purchase Agreement attached hereto as Exhibit "J".

5.14.2 The cost of the Parking Structure shall be as follows:

(a) For the first fifteen years (15) from the issuance of the last Certificate of Completion for the Project, the Developer shall have the option to purchase the Public Parking Parcel within the Parking Structure for Fifteen Million Dollars ($15,000,000).

(b) After fifteen (15) years from the issuance of the last Certificate of Completion for the Project until forty-five (45) years have elapsed, Developer shall have the option to purchase the Public Parking Parcel within the Parking Structure for the appraised value or Fifteen Million Dollars ($15,000,000) whichever is greater.

ARTICLE 6

COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S)

6.1 Developer and City shall enter into CC&R's for the Project and CC&R's shall be approved by the City Manager and the City Attorney shall approve as to form prior to recordation, and thereafter such CC&R's shall be recorded against the Property in the Orange County Recorder's office prior to the issuance of a Certificate of Occupancy for the Project or any portion thereof.

6.2 The CC&R's shall contain the following provisions:

6.2.1 Developer shall be solely responsible for any and all costs, expenses assessments, and taxes associated with the Association, including the formation of the Association, continual operation of the Association, the costs for drafting the CC&R's, and City costs to review the CC&R's or amendments including staff time and/or attorney fees.

6.2.2 Grant reciprocal easements for ingress/egress, passage of vehicles and pedestrians, over the parking lots and other common areas, and for maintenance purposes to allow access as reasonably necessary for the performance of maintenance of the Property.

6.2.3 Association shall maintain insurance for the benefit of the Association, City and Developer.

6.2.4 Developer and their successors and assigns shall be solely responsible for all costs and expenses incurred for operating and maintaining the Parking Structure including the Public Parking Parcel, and all common area, City shall not be liable for any costs or expenses for the operation or maintaining the Parking Structure, including the Public Parking Parcel or any common area.

6.2.5 Provisions of the Grant of Easements and Reciprocal Access, Parking Operation and Maintenance Agreement, dated October 5, 2020, for reference purposes (Parking Agreement), is attached hereto as Exhibit K, shall be incorporated into the terms of the CC&R's.

Any future amendments of the Parking Agreement shall be incorporated into the CC&R's without further action of the Parties.

6.2.6 Shall grant the authority, but not the obligation, to the City to enforce, in its discretion, the provisions the CC&R's, and the Parking Agreement, and shall contain provisions that the Association shall reimburse the City for any and all costs associated with the enforcement.

6.2.7 City shall have no obligation to provide security or safety for the Property and shall not be liable for (i) any unauthorized or criminal entry by third parties into the Property, or any Unit in the Property or any Improvements within the Property, (ii) any damage or injury to Persons, or (iii) any loss of property in and about the Property, any Unit within the Property or any Improvements within the Property, by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of security services and improvements provided by the Developer.

6.2.8 No Common Area on floors within the Parking Structure containing Public Parking Parcels be used for parking without the express written consent of the City, nor shall any Common Area necessary to access the Public Parking Area be used for parking without the express written consent of the City.

6.2.9 The CC&R's shall provide that the CC&R's shall not be amended or terminated without the prior written approval of the City Manager and approved as to form by the City Attorney.

ARTICLE 7

CITY PARTICIPATION IN THE PROFITS UPON SALE OF PROPERTY BY DEVELOPER

7.1 Should Developer sell any portion of the Project, City shall participate in the profits subject to the terms of this ARTICLE 7.

7.1.1 City Participation Formula. If the net sale of any portion of the Project exceeds the Developer Costs, including reasonable unreimbursed hard and soft costs, over the period of time the Developer has owned the project, then the City shall share in the net profits pursuant to the following calculation:

(a) City Costs shall equal City actual costs of City Funded Improvements plus the Parties have agreed that that City shall also receive a three million dollars ($3,000,000) additional allocation to be included in the City Costs which is in consideration that the City provided the land for the Project. ("City Costs").

(b) "Developer Costs" equals the reasonable unreimbursed hard and soft costs over the period of time Developer has owned the Project. ("Developer Costs")

(c) Total Costs shall equal Developer Costs plus City Costs. ("Total Cost)

(d) City shall receive a ratio of the of the Participation Amount which shall be calculated by dividing the Total Costs by the City Costs. ("City Ratio").

(e) Developer's profit shall be calculated by Developer Costs times fifteen percent (15%) equals "Developer's Profit". ("Developer's Profit")

(f) Developer Costs plus Developer's Profit equals Developer Priority Payment ("Developer Priority Payment").

(g) The Participation Amount shall be calculated as Sales Price minus Developer Priority Payment = Participation Amount. ("Participation Amount")

(h) City Share of the Participation Amount shall be calculated by multiplying the City Ratio by the Participation Amount = City's Share.

(i) Developer shall receive the remaining share of the Participation Amount after City's Share is subtracted from the Participation Amount. ("Developer Share")

7.1.2 The following example is for illustrative purposes of the above formula.

Example:

Sale Price:	$140 million
Developer's costs	$100 million
City's Costs ($13m+3m [land])	$16 million
Total costs	$116 million

City Share Ratio 16/116 = 13.7%
Developer's profit @15% of costs $100m = $15m

Sales Price: $140 million – (DEV priority payment $100m +$15m) $115m = Participation amount $25 million

City's share = 13.7% of $25 million = $3.4 million
Developer's share = 21.6 million
Developer's total proceeds $100m + $15m+ 21.6m = $136.6m

7.1.3 If Developer sells either the Hotel Project or the Mixed Use Project (but not both at the same time) then City's Costs shall be proportionally allocated to the Hotel Project or the Mixed Use Project based upon the percentage of portion of the Project being sold. The percentage shall be calculated by dividing the Final Developer Accounting (See Section 5.2.5(d)) by the portion of the Project being sold (either the Mixed Use Project or Hotel Project). This Percentage shall then be applied in the calculation in 7.1.1 to determine the City's proportional Costs.

(a) The following example is for illustrative purposes of the above formula as applied to a sale of only a portion of the project.

For example, if Developer sold the Mixed Use Project:

Mixed Use Project Accounting	$75 million

Hotel Accounting	$25 million
City's Total Costs (13m+3m)	$16 million
Total Costs	$116 million

Hotel Project/Final Developer Accounting = 25%

25% is applied to City's Costs (City's Proportional Costs) City's Proportional Costs for the Hotel is 4 Million (25% of 16 million)

City Proportional Share Ratio (4/29) = 13.7%

Sales price is 50 million

Developer's Priority Payment (25 million +3,750,000) = $28,750,000

50 million (Sales Price) - $28,750,000 (Developer's Priority Payment) = $21,250,000 Participation Amount

City's proportional Share 13.7% of $21,250,000 (Participation Amount) = = City Proportional Share Ratio

City's Share = $1,487,500
Developer's Share = $19,762,500

7.1.4 If Developer has exercised the option to purchase the City Parcel within the Parking Structure pursuant to Section 5.14 then that cost will be added to the Developer costs for purposes of calculating the City Participation Formula.

ARTICLE 8

SPECIAL DEVELOPMENT COVENANTS OF THE DEVELOPER

8.1 Maintenance Condition of the Property. The Developer for itself, its successors and assigns, covenants and agrees that:

8.1.1 Maintenance Standard. The entirety of the Property and the Project shall be maintained by the Developer at Developer's cost in good condition and repair and in a neat, clean and orderly condition, ordinary wear and tear and casualty excepted, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of the Developer, as necessary to maintain the appearance and character of the Project and the Property. The Developer's obligation to maintain the Project and the Property described in the immediately preceding sentence shall include, without limitation, (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed

or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; and (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping, all at the sole cost and expense of the Developer. The Developer's obligation to maintain the Project and the Property described in the two immediately preceding sentences is, collectively, referred to in this Agreement as the "Maintenance Standard." The Developer may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of the Developer with respect to the maintenance of the Project and the Property; provided, however, that the Developer shall remain responsible and liable for the maintenance of the Project and the Property, at all times.

8.1.2 Maintenance Deficiency. If, at any time following the Close of Escrow, there is an occurrence of an adverse condition on any area of the Project or the Property in contravention of the Maintenance Standard (each such occurrence being a "Maintenance Deficiency"), then the City may Notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following the Developer's receipt of Notice of the Maintenance Deficiency, the City may conduct a public hearing, following transmittal of written Notice of the hearing to the Developer, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether the Developer has failed to comply with the provisions of this Section 8.1. If, upon the conclusion of the public hearing, the City finds that a Maintenance Deficiency exists and remains uncured, the City shall have the right to enter the Project and the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section 8.1 shall be reimbursed to the City by the Developer, within thirty (30) calendar days after written demand for payment from the City. Any amount expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section 8.1 that is not reimbursed to the City by the Developer within thirty (30) calendar days after written demand to the Developer for such reimbursement, shall accrue interest at the lesser of: (i) the rate of ten percent (10%) per annum or (ii) the Usury Limit, until paid in full.

8.1.3 Graffiti. Graffiti, as defined in Government Code Section 38772, that has been applied to the interior of the Parking Structure, or any exterior surface of a structure or improvement on the Property, that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied or removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without Notice to the Developer. Any

sum expended by the City for the removal of graffiti Property pursuant to this Section 8.1 shall be reimbursed to the City by the Developer, within thirty (30) calendar days after written demand for payment from the City. Any amount expended by the City for the removal of graffiti pursuant to this Section 8.1 that is not reimbursed to the City by the Developer within thirty (30) calendar days after written demand to the Developer for such reimbursement, shall accrue interest at the lesser of: (i) the rate of ten percent (10%) per annum or (ii) the Usury Limit, until paid in full.

8.1.4 Lien Rights. The obligations of the Developer and its successors and assigns under this Section 8.1 shall be secured by a lien against the Property. The Developer hereby grants to the City a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property, in the manner provided in Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under this Section 8.1, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. The recordation of the City Deed and the Notice of Agreement shall provide record Notice of such security interest in favor of the City.

8.1.5 Covenant Running with the Land. The covenant of this Section 8.1 shall be a covenant running with the land of the Property, binding successive owners of the Property, throughout the Covenant Period, and shall be enforceable by the City.

8.2 Obligation to Refrain from Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of purchasers, the Developers, lessees, sub-the Developers, sub-lessees or vendees of the Property. The covenant of this Section 8.2 shall be a covenant running with the land of the Property and binding on successive owners of all or any portion of the Property, until the City issues the last Certificate of Completion for the Project.

8.3 Form of Non-discrimination and Non-segregation Clauses. The Developer covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to all or any portion of the Property, that the Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of all or any portion of the Property on the basis of gender, sexual orientation, marital status, race, color, religion, creed, ancestry or national origin of any Person. All deeds, leases or contracts pertaining to the Property or any part thereof shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

8.3.1 In Deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any Person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the

grantee or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Developers, lessees, sub-the Developers, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

8.3.2 In Leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any Person or group of persons, on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Developers lessees, sub-lessee, sub-the Developers, or vendees in the premises herein leased."

8.3.3 In Contracts: "There shall be no discrimination against or segregation of any Person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Developers, lessees, sub-lessees, sub-the Developers, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

8.4 Survival and Enforcement of Special Development Covenants.

8.4.1 Covenants Running with the Land. Each of the special development covenants set forth in this ARTICLE 8 touch and concern the Property and constitute covenants running with the Property and binding upon successive owners of the Property for the time period set forth in each specific covenant.

8.4.2 Survival. Each such special development covenant shall survive the Close of Escrow, execution and recordation of the City Deed and issuance and recordation of each and every Certificate of Occupancy and any other document related to conveyance of the Property or construction or installation of the Project, for the time period specifically set forth in each such special development covenant.

8.4.3 Enforcement. These special development covenants may be enforced by the City regardless of whether the City currently owns or continues to own an interest in any property benefited by any such covenants. The Developer irrevocably stipulates and agrees that breach of any of the special development covenants set forth in this ARTICLE 8 will result in great and irreparable damage to the City, and will result in damages to the City that are either impracticable or extremely difficult to quantify. Accordingly, upon the breach of any special development covenant set forth in this ARTICLE 8, the City may institute an action for injunctive relief and/or for damages regarding such breach.

ARTICLE 9

DEFAULTS, REMEDIES AND TERMINATION

9.1 Defaults.

9.1.1 Events of Default. In addition to other acts or omissions of a Party that may legally or equitably constitute a Default or breach of this Agreement, the occurrence of any of the following specific events shall constitute an "Event of Default" under this Agreement:

(a) Monetary Default. If a Monetary Default occurs and continues for seven (7) days after Notice from the City, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

(b) Bankruptcy or Insolvency. If the Developer ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Developer's assets or the Developer's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) days).

(c) Breach of Representation or Warranty. Any representation, warranty or disclosure made to the City by the Developer regarding this Agreement, the Property or the Project is materially false or misleading, whether or not such representation or disclosure appears in this Agreement.

(d) Deposit of Funds, Bonds or Other Security. If the Developer fails to make any deposit of funds or provide any bond or other security required under this Agreement within seven (7) days' after Notice of such Default to the Developer.

(e) Insurance. If the Developer fails to obtain, maintain or replace any insurance coverage required under this Agreement within seven (7) days' after Notice of such Default to the Developer.

(f) Material Deviation in Project. Any material deviation in the work of construction or installation of the Project from the approved Project description, without the prior written approval of the City that is not corrected within fifteen (15) days' following written Notice of such Default.

(g) Project Progress.

(i) The construction or installation of the Project does not commence by the time provided for such commencement in the Performance Schedule.

(ii) The construction or installation of the Project is delayed or suspended for a period in excess of that permitted under Section 5.4.3(d).

(iii) The Project is not completed by the Project Completion Date.

(h) Non-Monetary Default. If any Non-Monetary Default, other than those specifically addressed in Section 9.1, occurs and the Developer does not cure such Non-Monetary Default within thirty (30) days after Notice from the City describing the Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable due diligence be cured within thirty (30) days from such Notice, if the Developer shall not: (a) within thirty (30) days after the City's Notice, advise the City of the Developer's intention to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances.

(i) Transfer. The occurrence of a Transfer other than a Permitted Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement.

9.2 PRE-CLOSING LIQUIDATED DAMAGES TO THE CITY. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY MAY CANCEL THE ESCROW AND TERMINATE THIS AGREEMENT. UPON CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT, THE CITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY THE PROPERTY TO THE DEVELOPER. ANY SUCH ESCROW CANCELLATION AND TERMINATION OF THIS AGREEMENT SHALL BE WITHOUT ANY LIABILITY OF THE CITY TO THE DEVELOPER OR ANY OTHER PERSON. THE CITY AND THE DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF A DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THAT THE CITY WOULD SUFFER, IN THE EVENT OF A CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY AND THE DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT IS THE PRE-CLOSING LIQUIDATED DAMAGES AMOUNT. THEREFORE, UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT BY THE CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW, THE PARTIES AND THE ESCROW AGENT SHALL PROCEED PURSUANT TO SECTION 4.11 TO CANCEL THE ESCROW. THE ESCROW HOLDER SHALL IMMEDIATELY CANCEL THE ESCROW AND PAY THE PRE-CLOSING LIQUIDATED DAMAGES AMOUNT TO

THE CITY, FROM FUNDS OF THE DEVELOPER HELD IN THE ESCROW UPON ESCROW CANCELLATION. RECEIPT OF THE PRE-CLOSING LIQUIDATED DAMAGES AMOUNT SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW AND TERMINATION OF THIS AGREEMENT DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW.

Initials of Authorized City Representative	Initials of Authorized Developer Representative

9.3 DEVELOPER'S WAIVER OF RIGHT TO SPECIFIC PERFORMANCE AND LIMITATION ON RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW.

9.3.1 THE DEVELOPER WAIVES ANY RIGHT TO MAINTAIN AN ACTION AGAINST THE CITY FOR SPECIFIC PERFORMANCE OF ANY TERM OR PROVISION OF THIS AGREEMENT, PRIOR TO THE CLOSE OF ESCROW. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY THE CITY, PRIOR TO THE CLOSE OF ESCROW, THE DEVELOPER SHALL BE LIMITED TO RECOVERING ANY AMOUNTS ACTUALLY EXPENDED BY THE DEVELOPER IN REASONABLE RELIANCE ON THIS AGREEMENT, PRIOR TO THE DATE OF THE OCCURRENCE OF THE DEFAULT BY THE CITY, NOT TO EXCEED AN AGGREGATE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS ($100,000.00). THE DEVELOPER WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE CITY ARISING FROM A DEFAULT BY THE CITY, PRIOR TO THE CLOSE OF ESCROW. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 9.3, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

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

9.3.2 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 9.3.

Initials of Authorized
Developer Representative

9.4 Legal Actions. Following the Close of Escrow, either Party may institute 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, at law or in equity regarding any

Default. Any such legal action must be instituted in the Superior Court of the State of California in and for the County, in any other appropriate court within the County, or in the United States District Court with jurisdiction in the County.

9.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this Agreement are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

9.6 Indemnification.

9.6.1 Obligations. The City shall Indemnify the Developer Parties and the Developer shall Indemnify the City Parties against any wrongful intentional act or negligence of the Indemnitor. The Developer shall also Indemnify the City Parties against any and all of the following: (a) any Application made at the Developer's request; (b) any Due Diligence Investigations by the Developer; (c) use, occupancy, management or operation of the Project; (d) any agreements that the Developer (or anyone claiming through the Developer) makes regarding the Project; (e) the condition of the Project or, or of any vaults, tunnels, passageways or space under, adjoining or appurtenant to the Property; and (f) any accident, injury or damage whatsoever caused to any Person in or on the Property or the Project. Notwithstanding anything to the contrary in this Agreement, no Indemnitor shall be required to Indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence.

9.6.2 Limitation on Liability of the City. Following the Close of Escrow, the Developer is and shall be responsible for operation of the Property and the Project and the City shall not be liable for any injury or damage to any property (of the Developer or any other Person) or to any Person occurring on or about the Property or the Project, except to the extent caused by the City's wrongful intentional act or negligence.

9.6.3 Strict Liability. The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees.

9.6.4 Independent of Insurance Obligations. The Developer's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Developer's insurance or other obligations under this Agreement and is independent of the Developer's insurance and other obligations under this Agreement. The Developer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Developer's indemnification obligations under this Agreement and are independent of the Developer's indemnification and other obligations under this Agreement.

9.6.5 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations under this Agreement shall survive the expiration or earlier termination of this Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, absolutely and completely barred by applicable statutes of limitations.

9.6.6 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies immediately upon notice of a Claim, regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any amounts or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee, at any stage of any claim or suit, within the scope of the Indemnitor's indemnity obligations under this Agreement.

9.7 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

9.7.1 Prompt Notice. The Indemnitee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice of a Claim and such failure materially prejudices the Indemnitor in providing indemnity for such claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

9.7.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

9.7.3 Cooperation. The Indemnitee shall reasonably cooperate with the Indemnitor's defense of the Indemnitee, provided the Indemnitor reimburses the Indemnitee's actual out of pocket expenses (including Legal Costs) of such cooperation.

9.7.4 Settlement. The Indemnitor may, with the Indemnitee's consent, not to be unreasonably withheld, settle a claim. The Indemnitee's consent shall not be required for any settlement by which all of the following occur: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnitee from the subject claim(s) by which the Indemnitee need not make any payment to the claimant; (b) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits liability; (c) the continued effectiveness of this Agreement is not jeopardized in any way; and (d) the Indemnitee's interest in the Project is not jeopardized in any way.

9.7.5 Insurance Proceeds. The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

ARTICLE 10

GENERAL PROVISIONS

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

10.2 Restrictions on Change in Management or Control of the Developer, Assignment and Transfer.

10.2.1 Restrictions. The Developer acknowledges that the qualifications and identity of the Developer are of particular importance and concern 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 represents to the City that it has not made and agrees that it will not create or suffer to be made or created, any Transfer, other than a Permitted Encumbrance either voluntarily, involuntarily or by operation of law, without the prior written approval of the City, which may be given, withheld or conditioned in the City's sole and absolute discretion until after the issuance of a Certificate of Project Completion for the Project. Any Transfer made in contravention of this Section 10.2 shall be voidable at the election of the City. The Developer agrees that the restrictions on Transfers set forth in this Section 10.2 are reasonable. City acknowledges and agrees that at any time following the issuance of the last Certificate of Completion for the Project, Developer may Transfer the Property and/or refinance the Property without City approval or complying with Section 10.2.2 below, provided that all covenants set forth in Article 5 of this Agreement, entitled "Special Development Covenants of Developer" shall survive any such Transfer or refinancing and remain in full force and effect for the duration of the Covenant Period.

10.2.2 Delivery of Transfer Documents. All instruments and other legal documents proposed to effect any proposed Transfer shall be submitted to the City for review, at least, thirty-five (35) calendar days prior to the proposed date of the Transfer, and the written approval, disapproval or conditions of the City shall be provided to the Developer, within thirty (30) calendar days following the City's receipt of the Developer's request.

10.3 Legal Challenges. The Developer acknowledges that the City is a "public entity" and/or a "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, including, without limitation, CEQA. Also, as a public entity, the City's action in approving this Agreement may be subject to proceedings to challenge or 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 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, the City may terminate this Agreement on thirty (30) days advance written Notice to the Developer of the City's intent to terminate this Agreement, referencing this Section 10.3, without any further obligation to perform the terms of this Agreement and without any liability to the Developer or

any other Person resulting from such termination, unless the Developer unconditionally agrees in writing to indemnify and defend the City, with legal counsel acceptable to the City, against such third-party legal action, within thirty (30) calendar days following the date of the City's Notice of intent to terminate this Agreement, including without limitation paying all Legal Costs, 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. Any such written defense and indemnity agreement between the City and the Developer must be in a separate writing and reasonably acceptable to the City in both form and substance. Nothing contained in this Section 10.3 shall be deemed or construed to be an express or implied admission that the City may be liable to the Developer or any other Person for damages or other relief alleged regarding any alleged or established failure of the City to comply with any Law. If the City and the Developer have not entered into a written defense and indemnity agreement, pursuant to this Section 10.3, within thirty (30) calendar days following the date of the City's notice of intent to terminate this Agreement, then this Agreement shall terminate, without further Notice or action by either Party, on the fortieth (40^{th}) day following the date of the City's notice of intent to terminate this Agreement.

10.4 City Manager Implementation. The City shall implement this Agreement through its City Manager. The City Manager is hereby authorized by the City to issue approvals, interpretations, waivers and enter into certain amendments to this Agreement on behalf of the City, to the extent that any such action(s) does/do not materially or substantially change the Project or cause the City to incur any obligation exceeding Twenty-Five Thousand Dollars ($25,000). All other actions shall require the consideration and approval of the City governing body. Nothing in this Section 10.4 shall restrict the submission to the City governing body of any matter within the City Manager's authority under this Section 10.4, in the City Manager's sole and absolute discretion, to obtain the City governing body's express and specific authorization on such matter. The specific intent of this Section 10.4 is to authorize certain actions on behalf of the City by the City Manager, but not to require that such actions be taken by the City Manager, without further consideration by the City governing body.

10.5 Notices, Demands and Communications Between the Parties.

10.5.1 Notices. Any and all Notices submitted by either Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and transmitted to the principal office of the City or the Developer, as applicable, set forth in Section 10.5.2, by one or more of the following methods: (i) messenger for immediate Personal delivery, (ii) a nationally recognized overnight (one-night) delivery service (i.e., Federal Express, United Parcel Service, etc.) or (iii) registered or certified United States Mail, postage prepaid, return receipt requested. Such Notices may be sent in the same manner to such other addresses as either Party may designate from time to time, by Notice. Any Notice 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 (or when delivery has been attempted twice, as evidenced by the written report of the courier service) or four (4) calendar days after it is deposited with the United States Postal Service for delivery, as provided in this Section 10.5.1. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which

no Notice was given or other action by a Person to whom Notice is sent, shall be deemed receipt of the Notice.

10.5.2 Addresses. The following are the authorized addresses for the submission of Notices to the Parties, as of the Effective Date:

To the Developer:

Caribou Industries, Inc.
1103 North Broadway
Santa Ana, CA 92701

To the City:

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Attention: City Clerk

With courtesy copy to

City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Attention: City Attorney

10.6 Warranty Against Payment of Consideration for Agreement. The Developer represents and warrants that: (i) the Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of the Developer and (ii) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by the Developer or any of its agents, employees or representatives to any elected or appointed official or employee of the City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 10.6 shall automatically terminate this Agreement, without further notice to or action by either Party and the Developer shall immediately refund any payments made to the Developer by the City pursuant to this Agreement, prior to the date of any such termination.

10.7 Relationship of Parties. The Parties each understand and agree that the City and the Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

10.8 Survival of Agreement. All of the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or

following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods and all terms and conditions of this Agreement relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Agreement.

10.9 Conflict of Interest. No member, officer, 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.

10.10 Non-liability of Officials, Employees and Agents. No City Party 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 or conditions of this Agreement, except as may arise from the negligence or willful intentional acts of such City Party.

10.11 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean and refer to consecutive business days of the City.

10.12 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and."

10.13 Governing Law. The Laws of the State shall govern the interpretation and enforcement of this Agreement, without application of 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.

10.14 City Attorney Fees and Costs. For the purposes of this Agreement, all references to reasonable attorneys' fees and costs in reference to the City are intended to include the salaries, benefits and costs of the City Attorney, as City General Counsel, and the lawyers employed in the

Office of the City Attorney who provide legal services regarding the particular matter, pro-rated to an hourly rate, in addition to any fees and costs of outside counsel to the City.

10.15 Unavoidable Delay; Extension of Time of Performance.

10.15.1Notice. Subject to any specific provisions of this Agreement stating that they are not subject to Unavoidable Delay or otherwise limiting or restricting the effects of an Unavoidable Delay, performance by either Party under this Agreement shall not be deemed, or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within ten (10) days after such Party knows of any such Unavoidable Delay; and (b) within five (5) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of receipt of written Notice of the occurrence of the Unavoidable Delay by the Party not claiming an extension of time to perform due to such Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise its commercially reasonable best efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

10.15.2ASSUMPTION OF ECONOMIC RISKS. EACH PARTY EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVE, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

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Representative(s) of City Representative(s) of Developer

10.16 Real Estate Commissions. The City shall not be responsible for any real estate brokerage or sales commissions, finder fees or similar charges that may arise from or be related to this Agreement. The Developer shall be solely responsible for any real estate brokerage or sales commissions, finder fees or similar charges that may arise from or be related to this Agreement that are claimed by any Person engaged by the Developer relating to the Property, the Project or this Agreement. Further, the Developer shall Indemnify the City from any such claims for real estate brokerage or sales commissions, finder fees or similar charges, in accordance with Section 9.7.

10.17 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

10.18 No Other Representations or Warranties. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

10.19 Tax Consequences. Developer acknowledges this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by the Developer related to this Agreement or the Close of Escrow.

10.20 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third-Person to any Party or give any third-Person any right of subrogation or action over or against any Party.

10.21 Execution in Counterparts. This Agreement may be executed in two or more counterpart originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

10.22 Entire Agreement.

10.22.1 Integrated Agreement. This Agreement includes 56 pages and 11 exhibits, which constitute the entire understanding and Agreement of the Parties regarding the Premises, conveyance of the Property and the other subjects addressed in this Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the Premises, conveyance of the Property and the other subjects addressed in this Agreement.

10.22.2 No Merger. None of the terms, covenants, restrictions, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to any portion of the Premises, any lease or sublease of any part of the Premises and this Agreement shall continue in full force and effect before and after any such instruments.

10.22.3 Waivers Must be in Writing. 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 both the City and the Developer.

10.23 Exhibits. The exhibits attached to this Agreement are described as follows:

Exhibit A: Property Legal Description
Exhibit B: Performance Schedule
Exhibit C: Form of City Deed
Exhibit D: Form of Notice of Agreement
Exhibit E: Form of Official Action of Developer
Exhibit F: Scope of Development/Site Plans
Exhibit G. Map of Project Site
Exhibit H. Community Workforce Agreement (2017)
Exhibit I. Hotel Operating Agreement
Exhibit J. Option to Purchase Agreement
Exhibit K. Grant of Easements and Reciprocal Access, Parking Operation and Maintenance Agreement

10.24 Execution of this Agreement. Following execution of three (3) counterpart originals of this Agreement and the Developer Official Action by the authorized representative(s) of the Developer and prompt delivery of such executed documents to the City this Agreement shall be subject to review and approval by the City governing body, in its sole and absolute discretion, no later than forty-five (45) calendar days after the date of such delivery to the City. If the City governing body has not approved this Agreement within the time period specified in the immediately preceding sentence, then no provision of this Agreement shall be of any force or effect for any purpose and any prior execution or approval of this Agreement by either Party shall be null and void.

10.25 Time Declared to be of the Essence. As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence.

10.26 No Waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Agreement shall not be deemed a waiver of such term, covenant, or condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Agreement at any one time or more times, be deemed a waiver or relinquishment of such right or power at any other time or times.

[Signatures on following page]

SIGNATURE PAGE
TO
2020 DISPOSITION AND DEVELOPMENT AGREEMENT
(CARIBOU INDUSTRIES, INC.)

IN WITNESS WHEREOF, the City and the Developer have executed this 2020 Disposition and Development Agreement (Caribou Industries, Inc.) by and through the signatures of their duly authorized representative(s) set forth below:

CITY OF SANTA ANA:

By:_____
Name:_____
Its:_____

Attest:

By:_____
City Clerk

APPROVED AS TO FORM:

By:_____ for _____
City Attorney

DEVELOPER:

CARIBOU INDUSTRIES, INC.

By:_____
Name:_____
Its:_____

By:_____
Name:_____
Its:_____

EXHIBIT "A"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
PROPERTY LEGAL DESCRIPTION

All of that certain real property situated in the State of California, County of Orange, City of Santa Ana, described as follows:

Parcel 1:

All of Lots 2, 3, 6 and the Southerly 10.00 feet of the Northerly 20.00 feet of Lot 5 in Block 11 and all of Lots 1, 2, 3, 4, 5, and 6 in Block 12 of the Town of Santa Ana, as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California. Together with that portion of Sycamore Street, 60.00 feet wide, as shown on said Map, as vacated and described in that certain Resolution No. 82-17 of the City Council of the City of Santa Ana, a certified copy of which was recorded February 11, 1982, as Document No. 82-051577 of Official Records of Orange County, California, bounded Southerly by the North line of Third Street, 60.00 feet wide, and bounded Northerly by a line parallel with and distant Northerly 140.00 feet, measured at right angles, from said North line of Third Street.

Excepting therefrom the Easterly 15.00 feet of said Lot 3 in said Block 11.

Parcel 2:

A perpetual easement for ingress and egress over the South 2.50 feet of the East 15.00 feet of Lot 3 in Block 11 of the Town of Santa Ana, as shown on Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, as reserved in the Deed of J.E. Lieberg et al, dated June 5, 1923 and recorded in Book 475, page 362 of Deeds, records of Orange County, California.

Parcel 3:

The right to use that portion of a brick wall of the building on Lot 1 in Block 11 of the Town of Santa Ana, as per Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, which adjoins the East boundary line of the South 25.00 feet of Lot 2 in said Block 11, as a party wall, as granted by that certain Agreement, dated July 1, 1919 by and between H.R. Andre, also known as Roy Andre, et al, as parties of the first part, and L.J. Carden et al, as parties of the second part, recorded August 19, 1919 in Book 341, page 362 of Deeds, Records of Orange County, California.

EXHIBIT "B"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT

PERFORMANCE SCHEDULE

A. Days shall be calendar days, unless otherwise specified.

B. The City Manager is authorized by the City to make minor changes to the schedule prior to the Project Completion Date resulting in an aggregate extension of the Project Completion Date of ninety (90) calendar days or less.

C. All specific dates set forth in parentheses in this schedule are estimates only and not binding on the Parties.

D. In the event of any conflict between this schedule and the Agreement, the terms and provisions of the Agreement shall control.

E. All defined terms indicated by initial capitalization used in this schedule shall have the meanings ascribed to the same terms in the Agreement.

I. GENERAL PROVISIONS

FUNCTION	TIME OF PERFORMANCE
1. **Execution of Disposition and Development Agreement by the City**. The City shall execute this Agreement, and if approved, shall deliver two (2) executed copies thereof to the Developer	Within fourteen (14) days after the approval of the Agreement by City Council following receipt by City of two copies executed by Developer.
2. **Property Investigation.** The City shall transmit to Developer all information in the City's possession with respect the environmental and physical condition of property.	Within **30 days** after execution of this Agreement.
3. **Letter of Interest from Hotel Operator or provide City with an Alternative Management Plan**	Within **120 days** after execution of this Agreement, Developer will obtain either a letter of interest from a recognized hotel operator or provide the City with an Alternative Management Plan.
4. **Submission of Basic Concept Drawings**. Developer submits Basic Concept Drawings to City.	Completed.
5. **City Approval or Disapproval of Basic Concept Drawings**. City shall	Completed.

review the Basic Concept Drawings and approve or disapprove same	
6. **Submission of Design Development Drawings for the Project**. The Developer shall prepare and submit to the City, complete Design Development Drawings	Completed.
7. **Review of Design Development Drawings and Approval or Disapproval Thereof**. The Planning and Building Agency shall consider and approve or disapprove the Design Development Drawings.	Completed.
8. **Submission of Application for Site Plan Review of the Project.** The Developer shall prepare and submit to the City a complete Application for site plan review.	Completed.
9. **Review of Project Application and Approval or Disapproval Thereof**. The Planning Commission shall consider and approve or disapprove the Application.	Completed.
10. **Review of Project Application and Approval or Disapproval Thereof**. The City Council shall consider and approve or disapprove the Application	Will be completed concurrently with entitlement and DDA approval by City Council.

II. CONSTRUCTION DRAWINGS AND GRADING PLANS

11. **Submission of Complete Construction Drawings and Grading Plans.** Developer shall submit to the Planning and Building Agency complete Construction Drawings and Grading Plans.	Within 8 month after City Council approval of Project, Developer will submit complete construction drawings and grading plans.
12. **Approval of Complete Construction Drawings**. The	Within 3 months after submittal of complete construction drawings and grading plans, the

Planning and Building Agency shall approve or disapprove the revisions submitted by the Developer, and Developer shall be ready to obtain building permits, provided that the revisions necessary to accommodate the Planning and Building Agency's comments have been made.	Planning and Building Agency will use best reasonable efforts to approve or disapprove any final revisions.

III. FINANCING AND HOTEL COMMITMENT

13. **Proof of Financing Commitments.** Developer shall submit Proof of Financing Commitments for all of the Developer Improvements to City.	Within 90 days of approval of construction drawings.
14. **Proof of Hotel Operator Commitment.** Developer shall submit proof of hotel operator commitment to City or shall provide proof of sufficient financing to implement the Alternative Management Plan	Within 90 days of approval of construction drawings.
15. **Financing for Public Improvements.** City shall provide Proof of financing commitments for Public Improvements	Within 90 days of receipt of Developer proof of financing.

V. CONVEYANCE

16. **Opening of Escrow.** The City shall open an Escrow with an Escrow Agent.	Within 60 days of receipt of Developer proof of financing.
17. **Conditions Precedent.** Developer and City satisfy all of their respective pre-closing conditions.	Within 90 days of opening of escrow.
18. **Demolition Schedule.** Developer and City shall agree on an acceptable demolition schedule based upon Contractors' schedule	Prior to close of escrow.
19. **Close of Escrow for the Conveyances.** City conveys the Site subject to the Grant Deed in Exhibit C	Within 90 days from all conditions being satisfied by both parties.

VI. CONSTRUCTION

15. **Issuance of Demolition and Grading Permit and Issuance of Building Permits for all of the Developer Improvements.** Developer shall obtain building permits from the Planning and Building Agency for all of the Developer Improvements.	Within 90 days of closing of escrow.
16. **Commencement of Construction.** Developer shall commence grading of the Site and construction of the Developer Improvements.	Within 60 days from completion of demolition and grading and site preparation.
17. **Completion of Construction.** Developer shall complete construction of all of the Developer Improvements.	On or before 24 months from start of construction.
18. **Opening Date**. A Conforming Hotel shall open for business	A conforming hotel shall open for business to the Public within ninety (90) days after the completion of construction.

EXHIBIT "C"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
FORM OF CITY DEED

[Attached behind this cover page]

AT THE REQUEST OF AND
WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-___)
P.O. Box 1988
Attention: City Clerk

	No recording fee required; this document is exempt from fee pursuant to Section 6103 of the California Government Code

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CITY DEED

(WITH REVESTMENT PROVISIONS, COVENANTS, RESTRICTIONS AND RESERVATIONS)

For a valuable consideration, receipt of which is hereby acknowledged.

The City of Santa Ana, a California charter city in the County of Orange of the State of California ("Grantor" or "City"), hereby grants to Caribou Industries, Inc., a Nevada Corporation ("Grantee" or "Developer"), that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property").

1. The Property is conveyed in accordance with and subject to that certain Disposition and Development Agreement ("DDA") dated _____, for reference purposes only, entered into between Grantor and Grantee, a copy of which is on file with the City at its offices as a Public Record and which is incorporated herein by reference. The DDA requires the Developer to construct and meet other requirements as set forth therein. All terms used herein shall have the same meaning as those used in the DDA.

2. The Grantee acknowledges and agrees that the Property is quitclaimed by the City to the Grantee in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS CONDITION," as of the date of recordation of this City Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Property, the presence or absence of any patent or latent environmental or other physical condition on or in the Property, or any other matters affecting the Property.

3. As provided in the Disposition and Development Agreement, Grantee shall promptly commence and complete development of the Property in accordance with plans and specifications approved by Grantor. Construction of improvements and development of the Property (the "Improvements") required by the Disposition and Development

Agreement shall commence and be prosecuted diligently to completion at the time specified in, and subject to the terms of, the Disposition and Development Agreement.

3.1. Grantee shall maintain the Improvements and any other improvements on the Property in good condition and order, shall keep the Property free from accumulation of debris and waste materials and shall permit no action or inaction on the Property such that the Property detracts from the surrounding neighborhood in any substantial manner.

3.2. All obligations imposed upon Grantee herein shall bind any and all successors of Grantee; provided, however, that upon sale or conveyance of the Project, the party selling or conveying shall be relieved of any such obligation to the extent that such obligation arises after the date of sale or conveyance.

4. Grantee covenants and agrees that prior to recordation of the last Certificate of Completion for the Property:

4.1. The Grantor shall have the additional right, at its option, to re-enter and take possession of the Property and all improvements on the Property and to terminate and revest the Property in the Grantor if the Grantee or its successors in interest shall, in accordance with and subject to the terms of the Disposition and Development Agreement:

4.1.1. Fail to commence or complete the construction of the Project and/or Improvements when required by the Disposition and Development Agreement and after sixty days written notice from the Grantor of Grantee's failure to timely commence or complete construction, provided that the Grantee shall not have obtained an extension or postponement to which Grantee may be entitled or that Grantee or Grantee's lender for the project have commenced and are diligently proceeding to cure such default; or

4.1.2. Abandon or substantially suspend construction of the Project and/or Improvements for a time period in excess of forty-five (45) calendar days, either consecutively or in the aggregate, other than as a result of an Unavoidable Delay. Grantor shall provide sixty days written notice to continue such construction, provided that Grantee shall not have obtained an extension or postponement to which Grantee may be entitled or that Grantee or Grantee's lender for the project have commenced and are diligently proceeding to cure such default; or

4.1.3. Transfer, or suffer any involuntary transfer, of all or any part of, or interest in, the Property, in violation of the Disposition and Development Agreement or this Grant Deed.

4.2. The right to re-enter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

4.2.1. Any mortgage or deed of trust permitted by the Disposition and Development Agreement or this Deed and duly approved by the Grantor; or

4.2.2. Any rights or interests provided for the protection of the holders of such mortgages or deed of trust.

4.3. The right to re-enter, repossess, terminate and revest with respect to the Property shall terminate when the last Certificate of Completion for the Project has been recorded by the Grantor.

4.4. In the event title to all or any part of the Property is revested in the Grantor as provided in this Section 4, the Grantor shall, pursuant to its responsibilities under California Law, use its best efforts to resell the Property or part as soon and in such manner as the Grantor shall find feasible to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of making or completing the Project and Improvements or such other improvements in their stead as shall be satisfactory to the Grantor and in accordance with the uses specified for such Property. Upon such resale of the Property the proceeds thereof shall be applied as follows:

4.4.1. First, the Grantor shall be reimbursed, on its own behalf or on behalf of the City of Santa Ana, California for all costs and expenses incurred by the Grantor, including but not limited to salaries of personnel incurred in connection with the recapture, management and resale of the Property or part (but less any income derived by the Grantor from the Property in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part (or, in the event the Property is exempt from taxation, assessment or such charges during the period of Grantor's ownership thereof, an amount equal to such taxes, assessments or charges as determined by the assessing official as would have been payable if the Property were not exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part at the time of revesting of title in the Grantor or to discharge or prevent such encumbrances or liens from attaching or being made by any subsequent successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Improvements; and any amounts otherwise owed to the Grantor by the Grantee and its successors or transferee; and

4.4.2. Second, to the extent possible, the Grantee shall be reimbursed in an amount not to exceed the sum of (1) the Purchase Price paid to the Grantor by the Grantee for the Property (or allocable to the part thereof); (2) the costs incurred for the development of the Property and for the improvements existing on the Property at the time of the reentry and repossession, (3) less any gains or income withdrawn or made by the Grantee from the Property or the Improvements; and

4.4.3. Third, any balance remaining after such reimbursements shall be retained by the Grantor.

4.4.4. To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted against the Grantor, the party for whose benefit it is created. This right of reverter shall, however, be interpreted in light of the fact that the Grantor is by this deed conveying the Property to the Grantee for development and not for speculation in

undeveloped land and that such development is a material element of the consideration received by Grantor for the Property.

5. Maintenance Condition of the Property. The Developer for itself, its successors and assigns, covenants and agrees that:

5.1. Maintenance Standard. The entirety of the Property and the Project shall be maintained by the Developer in good condition and repair and in a neat, clean and orderly condition, ordinary wear and tear and casualty excepted, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of the Developer, as necessary to maintain the appearance and character of the Project and the Property. The Developer's obligation to maintain the Project and the Property described in the immediately preceding sentence shall include, without limitation, (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; and (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping, all at the sole cost and expense of the Developer. The Developer's obligation to maintain the Project and the Property described in the two immediately preceding sentences is, collectively, referred to in this Agreement as the "Maintenance Standard." The Developer may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of the Developer with respect to the maintenance of the Project and the Property; provided, however, that the Developer shall remain responsible and liable for the maintenance of the Project and the Property, at all times.

5.2. Maintenance Deficiency. If, at any time following the Close of Escrow, there is an occurrence of an adverse condition on any area of the Project or the Property in contravention of the Maintenance Standard (each such occurrence being a "Maintenance Deficiency"), then the City may Notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following the Developer's receipt of Notice of the Maintenance Deficiency, the City may conduct a public hearing, following transmittal of written Notice of the hearing to the Developer, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether the Developer has failed to comply with the provisions of this Section. If, upon the conclusion of the public hearing, the City finds that a Maintenance Deficiency

exists and remains uncured, the City shall have the right to enter the Project and the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section shall be reimbursed to the City by the Developer, within thirty (30) calendar days after written demand for payment from the City. Any amount expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section that is not reimbursed to the City by the Developer within thirty (30) calendar days after written demand to the Developer for such reimbursement, shall accrue interest at the lesser of: (i) the rate of ten percent (10%) per annum or (ii) the Usury Limit, until paid in full.

5.3. Graffiti. Graffiti, as defined in Government Code Section 38772, that has been applied to the interior of the Parking Structure, or to any exterior surface of a structure or improvement on the Property, that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied or removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without Notice to the Developer. Any sum expended by the City for the removal of graffiti Property pursuant to this Section shall be reimbursed to the City by the Developer, within thirty (30) calendar days after written demand for payment from the City. Any amount expended by the City for the removal of graffiti pursuant to this Section that is not reimbursed to the City by the Developer within thirty (30) calendar days after written demand to the Developer for such reimbursement, shall accrue interest at the lesser of: (i) the rate of ten percent (10%) per annum or (ii) the Usury Limit, until paid in full.

6. Lien Rights. The obligations of the Developer and its successors and assigns under this Section shall be secured by a lien against the Property. The Developer hereby grants to the City a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property, in the manner provided in Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under this Section including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. The recordation of the City Deed and the Notice of Agreement shall provide record Notice of such security interest in favor of the City.

7. Obligation to Refrain from Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location,

number, use or occupancy of purchasers, the Developers, lessees, sub-the Developers, sub-lessees or vendees of the Property. The covenant of this Section shall be a covenant running with the land of the Property and binding on successive owners of all or any portion of the Property, until the City issues the last Certificate of Completion for the Project.

7.1. Form of Non-discrimination and Non-segregation Clauses. The Developer covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to all or any portion of the Property, that the Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of all or any portion of the Property on the basis of gender, sexual orientation, marital status, race, color, religion, creed, ancestry or national origin of any Person. All deeds, leases or contracts pertaining to the Property or any part thereof shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

7.1.1. In Deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any Person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Developers, lessees, sub-the Developers, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

7.1.2. In Leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any Person or group of persons, on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Developers lessees, sub-lessee, sub-the Developers, or vendees in the premises herein leased."

7.1.3. In Contracts: "There shall be no discrimination against or segregation of any Person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Developers, lessees, sub-lessees, sub-the Developers, or vendees of the premises herein transferred." The

foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

8. All covenants contained in this Deed shall be covenants running with the land and equitable servitudes thereon. The covenants contained in Section 4 of this Deed shall terminate upon issuance of the last Certificate of Completion for the Project. The covenants contained in this City Deed shall remain in effect in perpetuity unless specified otherwise; provided, however, that if the state law requiring such covenants changes such that such covenants are not required to remain in effect in perpetuity, such covenants shall terminate at such earlier date as may be permitted by state law.

9. The covenants in this City Deed shall be binding for the benefit of Grantor, the City of Santa Ana and, if applicable, any successor in interest to said parties. Such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The right to exercise all of the right and remedies, and to maintain any actions at law or suits in equity or contained and this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor and such aforementioned parties.

10. The covenants contained in this City Deed shall be deemed to be covenants running with the land and shall bind and benefit future purchasers, encumbrances and transferee.

EXECUTED ON _____, 2020 in _____, California.

CITY:

THE CITY OF SANTA ANA, a California charter city in the County of Orange of the State of California

Dated: _____

By: _____
Name:
Its:

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____

City Attorney

[NOTE: All signatures must be notarized]

EXHIBIT “A” TO

CITY DEED

RECORDING REQUESTED BY

82-361609

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

NAME Clerk of the Council
ADDRESS City of Santa Ana
CITY & STATE ZIP 20 Civic Center Plaza
Santa Ana, CA 92701

EXEMPT
C1

RECORDED IN OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA

9 00 AM OCT 14 '82

Lee A. Branch, County Recorder

Title Order No. Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

CANCEL TAXES	APPROVED AS TO FORM	APPROVED BY	A.P. NUMBER	MAP NO.	PROJECT NO.
			398-263-07 398-264-11		PARKING STRUCTURE

The undersigned declares that the documentary transfer tax is $ Exempt and is
☐ computed on the full value of the interest or property conveyed, or is
☐ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in
☐ unincorporated area ☒ city of Santa Ana and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The Community Redevelopment Agency of the City of Santa Ana, a public body, corporate and politic

hereby GRANT(S) to The City of Santa Ana, a municipal corporation

the following described real property in the City of Santa Ana
County of Orange, State of California:

All that certain real property situated in the State of California, County of Orange, City of Santa Ana, described in Exhibit "A", attached hereto and incorporated herein by this reference.

The Community Redevelopment Agency of the City of Santa Ana, a public body, corporate and politic.

ATTEST:

REX SWANSON
EXECUTIVE DIRECTOR/
RECORDING SECRETARY

GORDON BRICKEN
CHAIRMAN

Dated 10-4-82

STATE OF CALIFORNIA
COUNTY OF } ss.
On before me
the undersigned, a Notary Public in and for said County and State,
personally appeared
known to me to be the President, and
known to me to be the Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

Signature of Notary

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

L-2 (3 S. Rev. 10/75) (8 pt.)

6977

APPROVED LOCATION NOT Easterly of Third Street between Broadway & Main--SE

75A-283

RECORDING REQUESTED BY

82-361609

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

NAME Clerk of the Council
ADDRESS City of Santa Ana
CITY & STATE ZIP 20 Civic Center Plaza
Santa Ana, CA 92701

EXEMPT
C1

RECORDED IN OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA

9 00 AM OCT 14 '82

Lee A. Branch, County Recorder

Title Order No. Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Grant Deed

CANCEL TAXES	APPROVED AS TO FORM BY			398-263-07 398-264-11	MAP NO.	PROJECT NO. PARKING SUBSTRUCTURE

The undersigned declares that the documentary transfer tax is $Exempt and is
☐ computed on the full value of the interest or property conveyed, or is
☐ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in
☐ unincorporated area ☒ city of Santa Ana and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The Community Redevelopment Agency of the City of Santa Ana, a public body, corporate and politic

hereby GRANT(S) to The City of Santa Ana, a municipal corporation

the following described real property in the City of Santa Ana
County of Orange, state of California:

All that certain real property situated in the State of California, County of Orange, City of Santa Ana, described in Exhibit "A", attached hereto and incorporated herein by this reference.

6877

82-361609

This is to certify that the interest in real property conveyed by the deed or grant dated 10-4-82 from COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF SANTA ANA to the City of Santa Ana, a political corporation and/or governmental agency, is hereby accepted by the undersigned officer or agent on behalf of the City Council pursuant to authority conferred by Resolution No. 69-156 of the City Council adopted on October 6, 1969, and the grantee consents to recordation thereof by its duly authorized officer.

Dated 10-4-82 By
City Manager

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS

On 10-4-82 before me, a Notary Public in and for said State, personally appeared Rex Swanson and Gordon Bricken, known to me to be the Chairman and the Executive Director and Recording Secretary, respectively, of the Community Redevelopment Agency of the City of Santa Ana, California, a public body, corporate and politic, of the State of California, and known to me to be the persons who executed the within instrument on behalf of said agency, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Signature Micheal N. Green

Micheal N. Green
Name (typed or printed)

Civil Code Sec. 1191

OFFICIAL SEAL
MICHEAL N GREEN
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My comm. expires AUG 5, 1983

75A-284

EXHIBIT "D"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
FORM OF NOTICE OF AGREEMENT

[Attached behind this cover page]

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Attention: City Clerk

(Space Above Line For Use By Recorder)

[Recordation of this Document Is Exempt From Fees Payable to the Recorder Under Government Section Code 27383]

CITY OF SANTA ANA

Notice of Agreement

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that as of, 2020, Caribou Industries, Inc., a Nevada Corporation (the "Developer") and the City of Santa Ana, a California charter city in the County of Orange of the State of California (the "City"), entered into an agreement entitled "Disposition and Development Agreement" (the "Agreement"). A copy of the Agreement is on file with the City Clerk and is available for inspection and copying by interested persons as a public record of the City during the regular business hours of the City.

The Agreement affects the real property (the "Property") described in Exhibit "A" attached to this Notice of Agreement. The meaning of defined terms used in this Notice of Agreement shall be the same as set forth in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain community development covenants running with the land of the Site and other agreements between the Developer and the City affecting the Site, including, without limitation, (all section references are to the Agreement):

7.1 Maintenance Condition of the Property. The Developer for itself, its successors and assigns, covenants and agrees that:

7.1.1 Maintenance Standard. The entirety of the Property and the Project shall be maintained by the Developer in good condition and repair and in a neat, clean and orderly condition, ordinary wear and tear and casualty excepted, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other

improvements on or to the Property, now existing or made in the future by or with the consent of the Developer, as necessary to maintain the appearance and character of the Project and the Property. The Developer's obligation to maintain the Project and the Property described in the immediately preceding sentence shall include, without limitation, (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; and (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping, all at the sole cost and expense of the Developer. The Developer's obligation to maintain the Project and the Property described in the two immediately preceding sentences is, collectively, referred to in this Agreement as the "Maintenance Standard." The Developer may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of the Developer with respect to the maintenance of the Project and the Property; provided, however, that the Developer shall remain responsible and liable for the maintenance of the Project and the Property, at all times.

7.1.2 Maintenance Deficiency. If, at any time following the Close of Escrow, there is an occurrence of an adverse condition on any area of the Project or the Property in contravention of the Maintenance Standard (each such occurrence being a "Maintenance Deficiency"), then the City may Notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following the Developer's receipt of Notice of the Maintenance Deficiency, the City may conduct a public hearing, following transmittal of written Notice of the hearing to the Developer, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether the Developer has failed to comply with the provisions of this Section 7.1. If, upon the conclusion of the public hearing, the City finds that a Maintenance Deficiency exists and remains uncured, the City shall have the right to enter the Project and the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section 7.1 shall be reimbursed to the City by the Developer, within thirty (30) calendar days after written demand for payment from the City. Any amount expended by the City for the abatement of a Maintenance Deficiency pursuant to this Section 7.1 that is not reimbursed to the City by the Developer within thirty (30) calendar days after written demand to the Developer for such reimbursement, shall accrue interest at the lesser of: (i) the rate of ten percent (10%) per annum or (ii) the Usury Limit, until paid in full.

7.1.3 Graffiti. Graffiti, as defined in Government Code Section 38772, that has been applied to the interior of the Parking Structure, or to any exterior surface of a structure or improvement on the Property, that is visible from any public right-of-way adjacent or contiguous

to the Property, shall be removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied or removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without Notice to the Developer. Any sum expended by the City for the removal of graffiti Property pursuant to this Section 7.1 shall be reimbursed to the City by the Developer, within thirty (30) calendar days after written demand for payment from the City. Any amount expended by the City for the removal of graffiti pursuant to this Section 7.1 that is not reimbursed to the City by the Developer within thirty (30) calendar days after written demand to the Developer for such reimbursement, shall accrue interest at the lesser of: (i) the rate of ten percent (10%) per annum or (ii) the Usury Limit, until paid in full.

7.1.4 Lien Rights. The obligations of the Developer and its successors and assigns under this Section 8.1 shall be secured by a lien against the Property. The Developer hereby grants to the City a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property, in the manner provided in Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and it successors under this Section 7.1, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. The recordation of the City Deed and the Notice of Agreement shall provide record Notice of such security interest in favor of the City.

7.1.5 Covenant Running with the Land. The covenant of this Section 8.1 shall be a covenant running with the land of the Property, binding successive owners of the Property, throughout the Covenant Period, and shall be enforceable by the City.

7.2 Obligation to Refrain from Discrimination. The Developer covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of purchasers, the Developers, lessees, sub-the Developers, sub-lessees or vendees of the Property. The covenant of this Section 7.2 shall be a covenant running with the land of the Property and binding on successive owners of all or any portion of the Property, until the City issues the last Certificate of Completion for the Project.

7.3 Form of Non-discrimination and Non-segregation Clauses. The Developer covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to all or any portion of the Property, that the Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of all or any portion of the Property on the basis of gender, sexual orientation, marital status, race, color, religion, creed, ancestry or national origin of any Person. All deeds, leases or contracts pertaining to the Property or any part thereof shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

7.3.1 In Deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any Person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Developers, lessees, sub-the Developers, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

7.3.2 In Leases: "The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any Person or group of persons, on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Developers lessees, sub-lessee, sub-the Developers, or vendees in the premises herein leased."

7.3.3 In Contracts: "There shall be no discrimination against or segregation of any Person or group of persons on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any Person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of the Developers, lessees, sub-lessees, sub-the Developers, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

THIS NOTICE OF AGREEMENT is dated as of _____, 2020, and has been executed on behalf of the parties to the Agreement on the date indicated next to the signatures of their authorized officers. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

CITY

CITY OF SANTA ANA

Dated:_____ By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

DEVELOPER

CARIBOU INDUSTRIES, INC.

Dated:_____ By: _____
Its _____

[ALL SIGNATURES MUST BE NOTARIZED]

EXHIBIT "A"
TO
NOTICE OF AGREEMENT

Property Legal Description

[Attached behind this cover page]

EXHIBIT "A"
TO
NOTICE OF AGREEMENT
PROPERTY LEGAL DESCRIPTION

All of that certain real property situated in the State of California, County of Orange, City of Santa Ana, described as follows:

Parcel 1:

All of Lots 2, 3, 6 and the Southerly 10.00 feet of the Northerly 20.00 feet of Lot 5 in Block 11 and all of Lots 1, 2, 3, 4, 5, and 6 in Block 12 of the Town of Santa Ana, as shown on a Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California. Together with that portion of Sycamore Street, 60.00 feet wide, as shown on said Map, as vacated and described in that certain Resolution No. 82-17 of the City Council of the City of Santa Ana, a certified copy of which was recorded February 11, 1982, as Document No. 82-051577 of Official Records of Orange County, California, bounded Southerly by the North line of Third Street, 60.00 feet wide, and bounded Northerly by a line parallel with and distant Northerly 140.00 feet, measured at right angles, from said North line of Third Street.

Excepting therefrom the Easterly 15.00 feet of said Lot 3 in said Block 11.

Parcel 2:

A perpetual easement for ingress and egress over the South 2.50 feet of the East 15.00 feet of Lot 3 in Block 11 of the Town of Santa Ana, as shown on Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, as reserved in the Deed of J.E. Lieberg et al, dated June 5, 1923 and recorded in Book 475, page 362 of Deeds, records of Orange County, California.

Parcel 3:

The right to use that portion of a brick wall of the building on Lot 1 in Block 11 of the Town of Santa Ana, as per Map recorded in Book 2, page 51 of Miscellaneous Records of Los Angeles County, California, which adjoins the East boundary line of the South 25.00 feet of Lot 2 in said Block 11, as a party wall, as granted by that certain Agreement, dated July 1, 1919 by and between H.R. Andre, also known as Roy Andre, et al, as parties of the first part, and L.J. Carden et al, as parties of the second part, recorded August 19, 1919 in Book 341, page 362 of Deeds, Records of Orange County, California.

EXHIBIT "E"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
FORM OF OFFICIAL ACTION OF DEVELOPER

[
[Attached behind this cover page]

CERTIFICATION OF CORPORATION AUTHORITY

Caribou Industries, Inc., a Nevada Corporation (the "Corporation"), does certify that any one (1) of the following named persons:

X Michael E. Hanna

X _____

are, authorized and empowered for and on behalf of and in the name of the Corporation to execute and deliver that certain DISPOSITION AND DEVELOPMENT AGREEMENT, dated 10/5/20 for reference purposes only (the "Agreement"), to purchase certain property, generally, located at 201 West Third Street California, to perform the other obligations of the Corporation set forth in the Agreement and all other documents to be executed 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.

The authority conferred shall be considered retroactively, 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 shall have received notice in writing from the Corporation of the revocation of this certificate.

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

Corporation:

Caribou Industries, Inc.

Name: Michael E. Hanna

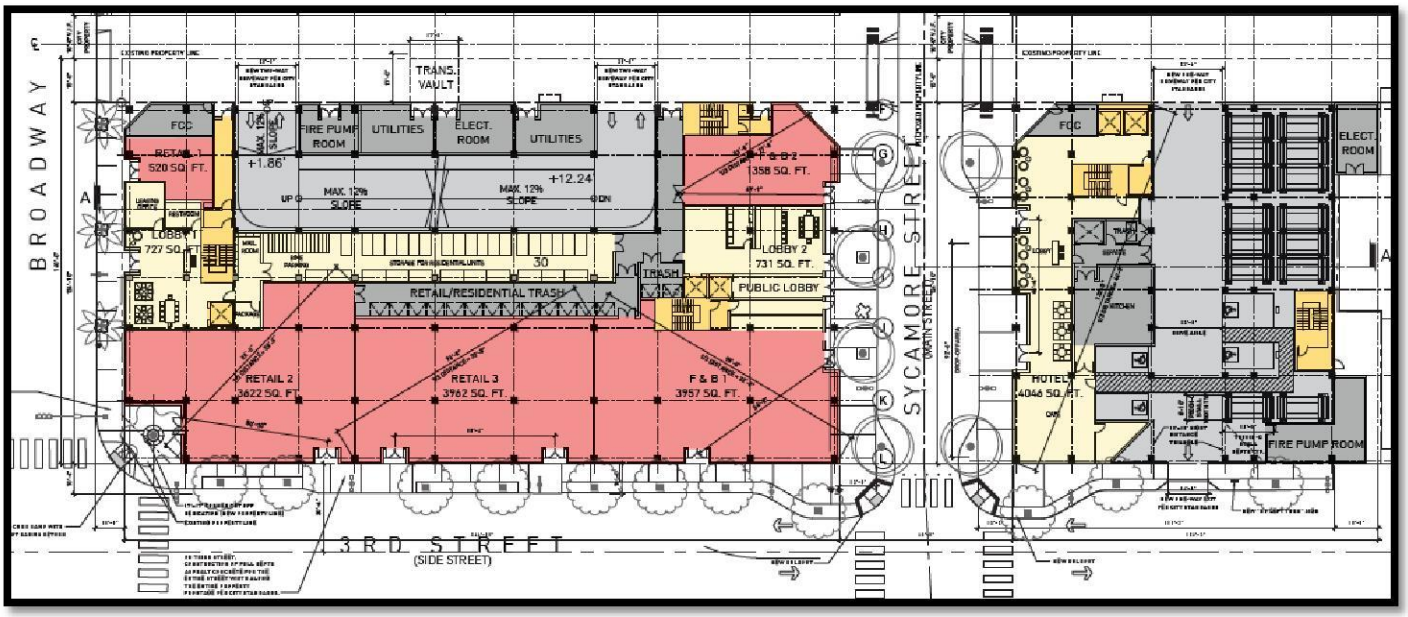
Title: Pres.

_____

Name: _____

Title: _____

EXHIBIT "F-1"
AND
EXHIBIT "F-2"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
Scope of Development/Site Plans



Scope of Development		
171 Residential Units		75 Room Hotel
13,419 Commercial Space		46 Parking spaces
444 Parking Spaces		

EXHIBIT "G"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
Map of Project Site

201 West 3rd Street, Santa Ana CA 92701
APN: 398-264-13

THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.
© COPYRIGHT ORANGE COUNTY ASSESSOR 2006

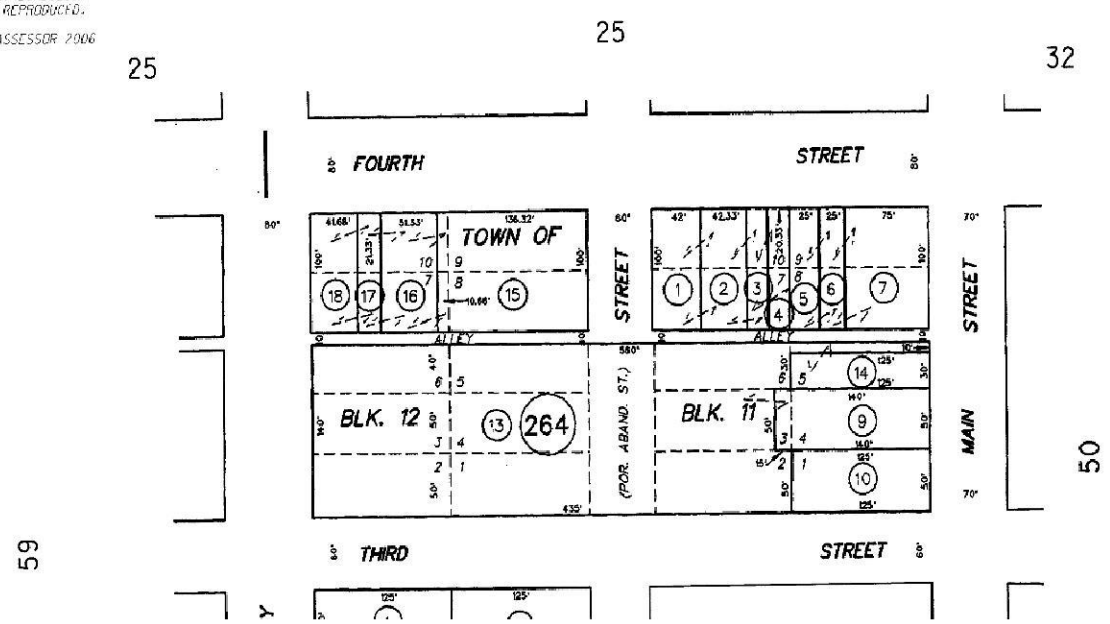


EXHIBIT "H"
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
COMMUNITY WORKFORCE AGREEMENT (2017)

INSURANCE NOT REQUIRED
WORK MAY PROCEED
CLERK OF COUNCIL
DATE: SEP 0 1 2017

A-2017-189

0: CAO (2)
Sonia Carvalho

COMMUNITY WORKFORCE AGREEMENT

BY AND BETWEEN

THE CITY OF SANTA ANA

AND

LOS ANGELES/ORANGE COUNTIES

BUILDING AND CONSTRUCTION TRADES COUNCIL

AND THE SIGNATORY CRAFT COUNCILS AND UNIONS

TABLE OF CONTENTS

CITY OF SANTA ANA
COMMUNITY WORKFORCE AGREEMENT

This Community Workforce Agreement ("Agreement") is entered into effective as of _____, 2017, by and between the City of Santa Ana, a municipal corporation ("City"), the Los Angeles/Orange Counties Building and Construction Trades Council ("Trades Council"), and the signatory Craft Councils and Local Unions signing this Agreement (collectively, the "Union" or "Unions"). This Agreement establishes the labor relations policies and procedures for the City, the Contractors awarded contracts for Project Work and for the crafts persons employed by the Contractors and represented by the Unions engaged in the Project Work as more fully described below. The City, Trades Council and Unions are hereinafter referred to herein, as the context may require, as "Party" or "Parties."

It is understood by the Parties to this Agreement that for the duration of this Agreement, it shall be the policy of the City for all Project Work (as defined in Section 2.2.) to be contracted exclusively to Contractors who agree to execute and be bound by the terms of this Agreement, directly or through the Letter of Assent (a form of which is attached as **"Attachment A"**), and to require each of its subcontractors, of whatever tier, to become so bound. The City shall include, directly or by incorporation by reference, the requirements of this Agreement in the advertisement of and/or specifications for each and every contract for Project Work to be awarded by the City.

It is further understood that the City shall actively administer and enforce the obligations of this Agreement to ensure that the benefits envisioned from it flow to all Parties, the Contractors and crafts persons working under it, and the residents of the City. The City shall therefore designate a "CWA Administrator," either from its own staff or an independent contractor, to serve as the City's liaison for Contractors and other persons; monitor compliance with this Agreement; assist, as the authorized representative of the City, in developing and implementing the programs referenced herein, all of which are critical to fulfilling the intent and purposes of the Parties and this Agreement; and to otherwise implement and administer this Agreement.

ARTICLE 1
DEFINITIONS

Section 1.1 "Agreement" or "CWA" means this Community Workforce Agreement.

Section 1.2 "Apprentice" means those employees indentured and participating in a Joint Labor/Management Apprenticeship Program approved by the State of California, Department of Industrial Relations, Division of Apprenticeship Standards.

Section 1.3 "Construction Contract" or "Construction Contracts" means any contract entered into by the City, for the construction of Project Work as specified in Section 2.2.

Section 1.4 "Contractor" means any individual firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and which has entered into a Construction Contract with the City or any of its contractors or any of

the City's or contractor's subcontractors of any tier, with respect to the construction of any part of a Project under contract terms and conditions approved by the City and which incorporate this Agreement.

Section 1.5 "City" means the City of Santa Ana.

Section 1.6 "Joint Labor/Management Apprenticeship Program" means a joint Union and Contractor administered apprenticeship program certified by the State of California, Department of Industrial Relations, Division of Apprenticeship Standards.

Section 1.7 "Letter of Assent" means the document that each Contractor (of any tier) must sign and submit to the City before beginning any Project Work, which formally binds such Contractor(s) to adherence to all the forms, requirements and conditions of this Agreement in the form attached hereto as "**Attachment A.**"

Section 1.8 "CWA Administrator" means the City's authorized representative who will be the liaison between the City, Contractors, and the Unions; responds to inquiries about the CWA; charged with monitoring compliance with the CWA, developing and implementing programs set forth in the CWA including but not limited to grievance procedures.

Section 1.9 "Project", "Project Work" or "City Project" means the demolition and construction work to be performed on City property or within easements secured by the City consisting of the construction of public works, pursuant to a Construction Contract entered into by the City

Section 1.10 "Specialty Contracts" means a contract for Project Work with a specialty contractor which is either limited to a particular single trade or craft or limited to a singular scope of work (i.e. installing a toilet.)

Section 1.11 "Master Labor Agreements" means the local collective bargaining agreements of the signatory Unions having jurisdiction over the Project Work and which have signed this Agreement.

Section 1.12 "Subscription Agreement" means the contract between a Contractor and a Union's Labor/Management Trust Fund(s) that allows the Contractor to make the appropriate fringe benefit contributions in accordance with the terms of the Master Labor Agreements.

Section 1.13 The use of masculine or feminine gender or titles in this Agreement should be construed as including both genders and not as gender limitations unless the Agreement clearly requires a different construction. Further, the use of Article titles and/or Section headings are for information only, and carry no legal significance.

ARTICLE 2
SCOPE OF THE AGREEMENT

Section 2.1 General This Agreement shall apply to all of the City's Project Work, as defined in Section 1.9, performed by those Contractor(s) of whatever tier that have contracts awarded for such work, for the development of the City's facilities which, jointly, constitute the Project, and have been designated by the City for construction or rehabilitation.

Section 2.2 Specific Project Work covered by this Agreement is defined and limited to:

2.2.1 All construction and major rehabilitation work pursuant to "prime multi-trade construction contracts" that exceed two hundred and fifty thousand dollars ($250,000) and all subcontracts flowing from these prime multi-trade contracts; and

2.2.2 All prime "Specialty Contracts," as defined in Section 1.10 that exceed one hundred thousand ($100,000) and all subcontracts flowing from these specialty contracts; and

2.2.3 The City may, at any time and at its sole discretion, determine to build additional buildings, facilities, and other projects under this Agreement which are not otherwise covered as Project Work.

2.2.4 This Agreement is not intended to, and shall not apply to any work performed at any time prior to the effective date, or after the expiration or termination of this Agreement, except as otherwise provided herein. This Agreement shall in no way limit the City's right to terminate, modify or rescind any construction contract and/or any related subcontract or agreement. Should the City remove or terminate any contract or agreement for construction that does not fall within the scope of this Agreement and thereafter authorize that work be commenced on any contract for such construction, the contract for construction shall be performed under the terms of this Agreement.

Section 2.3 Bundling of Contracts

2.3.1 The City, in its sole discretion, may seek to group (or "bundle") for bidding, contracts not meeting the threshold of Section 2.2 above. (Small contracts for like types of work, scheduled to be undertaken at the same facility or on the same project site, and within the same timeframe, will be considered for such bundling, consistent with economies of scale, and the purposes of this Agreement); and

2.3.2 Project Work will not be intentionally split, divided or otherwise separated for contract award purposes to avoid application of this Agreement.

Section 2.4 Applicability This Agreement shall not apply to any work of any Contractor other than that on Project Work specifically covered by this Agreement.

Section 2.5 Exclusions Items specifically excluded from the scope of this Agreement include the following:

2.5.1 Work of non-manual employees, including but not limited to: superintendents; teachers; supervisors (except those covered by Master Labor Agreements above the level of general foreman); staff engineers; time keepers; mail carriers; clerks; office workers; messengers; guards; safety personnel; emergency medical and first aid technicians; and other professional, engineering, executive, administrative, supervisory and management employees;

2.5.2 Equipment and machinery owned or controlled and operated by the City;

2.5.3 All off-site manufacture and handling of materials, equipment or machinery; provided, however, that lay down or storage areas for equipment or material and manufacturing (prefabrication) sites, dedicated solely to the Project, and the movement of materials or goods between such locations and a Project site are within the scope of this Agreement;

2.5.4 All work performed by City employees, the CWA Administrator, design teams (including, but not limited to architects engineers and master planners), or any other consultants for the City (including, but not limited to, project managers and construction managers and their employees where not engaged in Project Work) and their sub-consultants, and other employees of professional service organizations, not performing manual labor within the scope of this Agreement; provided, however, that it is understood and agreed that Building/Construction Inspector and Field Soils and Materials Testers (Inspectors) are a covered craft under the Agreement. This inclusion applies to the scope of work defined in the State of California Wage Determination for said Craft. This shall also specifically include such work where it is referred to by utilization of such terms as "quality control" or "quality assurance." Every Inspector performing under the wage classification of Building/Construction Inspector and Field Soils and Material Testers under a professional services agreement or a construction contract shall be bound to all applicable requirements of the PLA. Covered Work as defined by this Agreement shall be performed pursuant to the terms and conditions of this Agreement regardless of the manner in which the work was awarded;

2.5.5 Any work performed near, or leading to a site of work covered by this Agreement and undertaken by state, county or other governmental bodies, or their Contractors; or by public utilities, or their Contractors; and/or by adjacent third party landowners; and/or by the City or its Contractors (for work which is not within the scope of this Agreement);

2.5.6 Off-site maintenance of leased equipment and on-site supervision of such work;

2.5.7 Work by employees of a manufacturer or vendor supervising the work of Craft employees under this Agreement, necessary to maintain such manufacturer's or vendor's warranties or guaranty;

2.5.8 Non-construction support services contracted by the City, City consultants, the CWA Administrator, or Contractor in connection with a Project;

2.5.9 Laboratory work for testing.

2.5.10 Coverage Exception This Agreement shall not apply if the City receives funding or assistance from any Federal, State, local or other public entity for the Construction Contract if a requirement, condition or other term of receiving that funding or assistance, at the time of the awarding of the contract, is that the City not require, bidders, contractors, or other persons or entities to enter into an agreement with one or more labor organizations. The City agrees that it will make every effort to establish the enforcement of this Agreement with any governmental agency or granting authority.

Section 2.6 Awarding of Contracts for Project Work

2.6.1 The City and/or the Contractors, as appropriate, have the absolute right to award contracts or subcontracts on Project Work to any Contractor notwithstanding the existence or non-existence of any agreements between such Contractor and any Union parties, provided only that such Contractor is ready, willing, and able to execute and comply with this Agreement should such Contractor be awarded work covered by this Agreement.

2.6.2 It is agreed that all Contractors of whatever tier, who have been awarded Project Work contracts, shall be required to accept and be bound to the terms and conditions of this Agreement, and shall evidence their acceptance by the execution of the Letter of Assent set forth in "**Attachment A**" hereto, prior to the commencement of any Project Work. At the time that any Contractor enters into a subcontract with any subcontractor of any tier providing for the performance of the construction contract, the Contractor shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a part of accepting the award of a construction subcontract, to agree in writing in the form of a Letter of Assent to be bound by each and every provision of this Agreement prior to the commencement of work on the Project. No Contractor or subcontractor shall commence Project Work without having first provided a copy of the Letter of Assent as executed by it to the CWA Administrator and to the Trades Council before the commencement of Project Work.

Section 2.7 Master Labor Agreements

2.7.1 The provisions of this Agreement, including the Master Labor Agreements as such may be changed from time-to-time and which also are incorporated herein by reference, shall apply to Project Work. This Agreement is not intended to supersede such Master Labor Agreements between any of the Employers performing construction work on the Project and a Union signatory thereto except to the extent the provisions of this Agreement are inconsistent with such Master Labor Agreements, in which event the provisions of this Agreement shall apply. However, such does not apply to work performed under the National Cooling Tower Agreement, the National Stack Agreement, the National Transit Division Agreement (NTD), work within the jurisdiction of the International Union of Elevator Constructors, and all instrument calibration and loop checking work performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians except that Article 9 dealing with Strikes, Work Stoppages and Lock-Outs, Work Assignments and Jurisdictional Disputes, and Settlement of Grievances and Disputes shall apply to such work. Where a subject is covered by the provisions of a Master Labor Agreement and not in conflict with the provisions of this Agreement, the provisions of the Master Labor Agreement shall apply. It is specifically

agreed that no later agreement shall be deemed to have precedence over this Agreement unless signed by all parties signatory hereto who are then currently employed or represented at the Project. Any dispute as to the applicable source between this Agreement and any Master Labor Agreements for determining the wages, hours of working conditions of employees on this Project shall be resolved under the procedures established in Article 10.

2.7.2 It is understood that this Agreement, together with the referenced Master Labor Agreements, constitutes a self-contained, stand-alone agreement and by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local, area or national collective bargaining agreement as a condition of performing work within the scope of this Agreement (provided, however, that the Contractor may be required to sign a uniformly applied, non-discriminatory Subscription Agreement at the request of the trustees or administrator of a trust fund established pursuant to Section 302 of the Labor Management Relations Act, and to which such Contractor is bound to make contributions under this Agreement, provided that such Subscription Agreement does not purport to bind the Contractor beyond the terms and conditions of this Agreement and/or expand its obligation to make contributions pursuant thereto). It shall be the responsibility of the prime Contractor to have each of its subcontractors sign the appropriate Subscription Agreement, with the appropriate Craft Union prior to the subcontractor beginning work on Project Work.

Section 2.8 Binding Signatories Only This Agreement shall only be binding on the signatory Parties hereto, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such Party not performing Project Work.

Section 2.9 Other City Work Nothing contained herein shall be interpreted to prohibit, restrict, or interfere with the performance of any other operation, work or function not covered by this Agreement, which may be performed by City employees or contracted for by the City for its own account, on its property or in and around a Project site.

Section 2.10 Separate Liability It is understood that the liability of the Contractor(s) and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the City or CWA Administrator and/or any Contractor.

Section 2.11 Completed Project Work As areas of Project Work are accepted by the City, this Agreement shall have no further force or effect on such items or areas except where the Contractor is directed by the City or its representatives to engage in repairs, modification, check-out and/or warranties functions required by its contract(s) with the City under the original contract.

ARTICLE 3
UNION RECOGNITION AND EMPLOYMENT

Section 3.1 Recognition The Contractor recognizes the Trades Council and the Unions as the sole and exclusive bargaining representative for the employees engaged in Project Work.

Contractors further recognize that the Unions shall be the primary source of all craft labor employed on the Projects. In the event that a Contractor has its own core workforce, said Contractor shall follow the procedures outlined below.

Section 3.2 Contractor Selection of Employees The Contractor shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdiction, and shall have the sole responsibility for selecting employees to be laid off, consistent with Section 3.3 and Section 4.3, below. The Contractor shall also have the right to reject any applicant referred by a Union for any reason, subject to any reporting pay required by Section 6.6; provided, however, that such right is exercised in good faith and not for the purpose of avoiding the Contractor's commitment to employ qualified workers through the procedures endorsed in this Agreement.

Section 3.3 Referral Procedures

3.3.1 For signatory Unions now having a job referral system contained in a Master Labor Agreement, the Contractor agrees to comply with such system and it shall be used exclusively by such Contractor, except as modified by this Agreement. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations which require equal employment opportunities and non-discrimination. All of the foregoing hiring procedures, including related practices affecting apprenticeship, shall be operated so as to consider the goals of the City to encourage employment of City residents on the Project, and to facilitate the ability of all Contractors to meet their employment needs.

3.3.2 The local Unions will exert their best efforts to recruit and refer sufficient numbers of skilled craft workers to fulfill the labor requirements of the Contractor, including specific employment obligations to which the Contractor may be legally and/or contractually obligated; and to refer apprentices as requested to develop a larger, skilled workforce. The Unions will work with their affiliated regional and national unions, and jointly with the CWA Administrator and others designated by the City, to identify and refer competent craft persons as needed for Project Work, and to identify and hire individuals, particularly residents of the City, for entrance into joint labor/management apprenticeship programs, or to participate in other identified programs and procedures to assist individuals in qualifying and becoming eligible for such apprenticeship programs, all maintained to increase the available supply of skilled craft personnel for Project Work and future construction of maintenance work to be undertaken by the City.

3.3.3 The Union shall not knowingly refer an employee currently employed by a Contractor on a covered Project to any other Contractor.

Section 3.4 Non-Discrimination in Referral, Employment, and Contracting The Unions and Contractors agree that they will not discriminate against any employee or applicant for employment in hiring and dispatching on the basis of race, color, religion, sex, gender, national origin, age, membership in a labor organization, sexual orientation, political affiliation, marital status or disability. Further, it is recognized that the City has certain policies, programs, and

goals for the utilization of local small business enterprises. The Parties shall jointly endeavor to assure that these commitments are fully met, and that any provisions of this Agreement which may appear to interfere with local small business enterprises successfully bidding for work within the scope of this Agreement shall be carefully reviewed, and adjustments made as may be appropriate and agreed upon among the Parties, to ensure full compliance with the spirit and letter of the City's policies and commitment to its goals for the significant utilization of local small businesses as direct Contractors or suppliers for Project Work.

Section 3.5 Employment of City Residents

3.5.1 The Unions and Contractors agree that, to the extent allowed by law, and as long as they possess the requisite skills and qualifications, the Unions will exert their best efforts to refer and/or recruit sufficient numbers of skilled craft "Local Residents" as defined herein, as well as Veterans, to fulfill the requirements of the Employers. In recognition of the fact that the City and the communities surrounding Project Work will be impacted by the construction of the Project Work, the parties agree to support the hiring of workers from the residents of these surrounding areas, as well as Veterans, for Project Work. Towards that end, the Unions shall exert their best efforts to encourage and provide referrals and utilization of qualified workers residing in those U. S. Postal Service zip codes which overlap all of the City of Santa Ana, as set forth in "**Attachment B**" attached hereto, as well as Veterans, regardless of where they reside. If the Unions cannot provide the Contractors in the attainment of a sufficient number of Veterans and Local Residents from within the first tier zip codes, the Unions shall exert their best efforts to then recruit and identify for referral Local Residents residing within Orange County.

3.5.2 A goal of 30% of the total work hours shall be performed from workers residing within the areas described in Section 3.5.1, as well as Veterans, regardless of where they reside.

3.5.3 The Unions agree to support the operation of pre-apprentice referral programs in the City. Further, the Unions agree to place on their referral roles or in their apprentice training programs, as appropriate and needed, qualified persons sent to them by designated City organizations or other organizations working with the City to increase construction industry work opportunities for City residents.

Section 3.6 Requirements on Contractors To facilitate the dispatch of Local Residents and Veterans, all Contractors will be required to utilize the Craft Employee Request Form whenever they are requesting the referral of any employee from a Union referral list for any Covered Project, a sample of which is attached as "**Attachment C**." When Local Residents and Veterans are requested by the Employers, the Unions will refer such workers regardless of their place in the Unions' hiring halls' list and normal referral procedures.

Section 3.7 Helmets to Hardhats The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of Veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of non-profit Veterans support organizations, including but not limited to, the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation,

assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties. For purposes of this Agreement the term "Eligible Veteran" shall have the same meaning as the term "veteran" as defined under Title 5, Section 2108(1) of the United States Code as the same may be amended or re-codified from time to time. It shall be the responsibility of each qualified applicant to provide the Unions with proof of his/her status as an Eligible Veteran.

3.7.1 The Unions and Contractors agree to coordinate with non-profit Veteran organizations, including, the Center to create and maintain an integrated database of veterans interested in working on this Project Work and of apprenticeship and employment opportunities for working on Project Work. To the extent permitted by law, the Unions will give credit to such Veterans for bona fide, provable past experience.

Section 3.8 Core Employees

3.8.1 Contractors not currently signatory to a Master Labor Agreement may employ, as needed, first, a member of his core workforce, then an employee through a referral from the appropriate Union hiring hall, then a second core employee, then a second employee through the referral system, and so on until a maximum of five (5) core employees are employed, thereafter, all additional employees in the affected trade or craft shall be requisitioned from the craft hiring hall in accordance with Section 3.3. In the laying off of employees, the number of core employees shall not exceed one-half plus one of the workforce for an employer with 10 or fewer employees, assuming the remaining employees are qualified to undertake the work available. As part of this process, and in order to facilitate the contract administration procedures, as well as appropriate fringe benefit fund coverage, all Contractors shall require their core employees and any other persons employed other than through the referral process, to register with the appropriate Union hiring hall, if any, prior to their first day of employment at a project site.

3.8.2 The core work force is comprised of those employees whose names appeared on the Contractor's active payroll for sixty (60) of the one hundred (100) working days immediately before award of Project Work to the Contractor; who possess any license required by state or federal law for the Project Work to be performed; who have the ability to safely perform the basic functions of the applicable trade and who have been residing within Orange County for the one hundred (100) working days immediately prior to the award of Project Work to the Contractor.

3.8.3 Prior to each Contractor performing any work on the Project, each Contractor shall provide a list of his core employees to the CWA Administrator and the Trades Council. Failure to do so will prohibit the Contractor from using any core employees. Upon request by any Party to this Agreement, the Contractor hiring any core employee shall provide satisfactory proof (i.e., payroll records, quarterly tax records, driver's license, voter registration, postal address and such governmental documentation) evidencing the core employee's qualification as a core employee to the CWA Administrator and the Trades Council.

Section 3.9 Time for Referral If any Union's registration and referral system does not fulfill the requirements for specific classifications requested by any Contractor within forty-eight (48) hours (excluding Saturdays, Sundays and holidays), that Contractor may use employment sources other than the Union registration and referral services, and may employ applicants meeting such classification from any other available source. The Contractors shall inform the Union of any applicants hired from other sources and such applicants shall register with the appropriate hiring hall, if any, before commencing work.

Section 3.10 Lack of Referral Procedure If a signatory Union does not have a job referral system as set forth in Section 3.3 above, the Contractors shall give the Union equal opportunity to refer applicants. Contractors shall notify the Union of employees so hired, as set forth in Section 3.5.

Section 3.11 Union Membership No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of Project Work; provided, however, that any employee who is a member of the referring Union at the time of referral shall maintain that membership in good standing while employed under this Agreement. All employees shall, however, be required to comply with the Union security provisions of the applicable Master Labor Agreement for the period during which they are performing on-site Project Work to the extent, as permitted by law, of rendering payment of the applicable monthly and working dues only, as uniformly required of all craft employees while working on the Project and represented by the applicable signatory Union.

Section 3.12 Individual Seniority Except as provided in Section 4.3, individual seniority shall not be recognized or applied to employees working on Project Work; provided, however, that group and/or classification seniority in a Union's Master Labor Agreement as of the effective date of this Agreement shall be recognized for purposes of layoffs.

Section 3.13 Foremen The selection and number of craft foreman and/or general foreman shall be the responsibility of the Contractor. All foremen shall take orders exclusively from the designated Contractor representatives. Craft foreman shall be designated as working foreman at the request of the Contractors.

Section 3.14 Out of State Workers In determining compliance with the targeted hiring goals of Section 3.5 above, hours of Project Work performed by residents of states other than California will be excluded from the calculation.

ARTICLE 4
UNION ACCESS AND STEWARDS

Section 4.1 Access to Project Sites Authorized representatives of the Union shall have access to Project Work, provided that they do not interfere with the work of employees and further provided that such representatives shall notify the person charged with on-site project supervision and fully comply with posted visitor, security and safety rules.

Section 4.2 Stewards

4.2.1 Each signatory Union shall have the right to dispatch a working journeyperson as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.

4.2.2 In addition to his/her work as an employee, the steward should have the right to receive, but not to solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward should be concerned only with the employees of the steward's Contractor and, if applicable, subcontractor(s), and not with the employees of any other Contractor. A Contractor will not discriminate against the steward in the proper performance of his/her Union duties.

4.2.3 When a Contractor has multiple, non-contiguous work locations at one site, the Contractor may request and the Union shall appoint such additional working stewards as the Contractor requests to provide independent coverage of one or more such locations. In such cases, a steward may not service more than one work location without the approval of the Contractor.

4.2.4 The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

Section 4.3 Steward Layoff/Discharge Contractor agrees to notify the appropriate Union twenty-four (24) hours before the layoff of a steward, except in the case of disciplinary discharge for just cause. If the steward is protected against such layoff by the provisions of the applicable Master Labor Agreement, such provisions shall be recognized when the steward possesses the necessary qualifications to perform the remaining work. In any case in which the steward is discharged or disciplined for just cause, the appropriate Union will be notified immediately by the Contractor, and such discharge or discipline shall not become final (subject to any later filed grievance) until twenty-four (24) hours after such notice has been given.

ARTICLE 5
WAGES AND BENEFITS

Section 5.1 Wages All employees covered by this Agreement shall be classified in accordance with work performed and paid by the Contractors the hourly wage rates for those classifications in compliance with the applicable prevailing wage rate determination established pursuant to applicable law. If a prevailing rate increases under law, the Contractor shall pay that rate as of its effective date under the law. This Agreement does not relieve Contractors directly signatory to a Master Labor Agreement with one of the Unions signing this Agreement from paying all of the wages set forth in such Agreements.

Section 5.2 Benefits

5.2.1 Contractors shall pay contributions to the established employee benefit funds in the amounts designated in the appropriate Master Labor Agreement and make all employee–authorized deductions in the amounts designated in the appropriate Master Labor Agreement, however, such contributions shall not exceed the contribution amounts set forth in the applicable prevailing wage determination. This Agreement does not relieve Contractors directly signatory to one or more of the Master Labor Agreements from making all contributions set forth in those Master Labor Agreements without reference to the foregoing.

5.2.2 The Contractor adopts and agrees to be bound by the written terms of the applicable, legally established, trust agreement(s) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds for its employees. The Contractor authorizes the Parties to such trust funds to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.

5.2.3 Each Contractor and subcontractor is required to certify to the CWA Administrator that it has paid all benefit contributions due and owing to the appropriate Trust(s) prior to the receipt of its final payment and/or retention. Further, upon timely notification by a Union to the CWA Administrator, the CWA Administrator shall work with any prime Contractor or subcontractor who is delinquent in payments to assure that proper benefit contributions are made, to the extent of requesting the City or the prime Contractor to withhold payments otherwise due such Contractor, until such contributions have been made or otherwise guaranteed.

Section 5.3 Wage Premiums Wage premiums, including but not limited to pay based on height of work, hazard pay, scaffold pay and special skills shall not be applicable to work under this Agreement, except to the extent provided for in any applicable prevailing wage determination.

ARTICLE 6
HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 6.1 Hours of Work Eight (8) hours per day between the hours of 6:00 a.m. and 5:30 p.m., plus one-half (½) hour unpaid lunch approximately mid-way through the shift, shall constitute the standard work day. Forty (40) hours per week shall constitute a regular week's work. The work week will start on Sunday and conclude on Saturday. The foregoing provisions of this Article are applicable unless otherwise provided in the applicable prevailing wage determination, or unless changes are permitted by law and such are agreed upon by the Parties. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week, or a Monday through Friday standard work schedule.

Section 6.2 Place of Work Employees shall be at their place of work (as designated by the Contractor), at the starting time and shall remain at their place of work, performing their assigned functions, until quitting time. The place of work is defined as the gang or tool box or equipment at the employee's assigned work location or the place where the foreman gives

instructions. The Parties reaffirm their policy of a fair day's work for a fair day's wage. Except as provided in Section 6.6, there shall be no pay for time not worked unless the employee is otherwise engaged at the direction of the Contractor.

Section 6.3 Overtime Overtime shall be paid in accordance with the requirements of the applicable prevailing wage determination. There shall be no restriction on the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who will work overtime. There shall be no pyramiding of overtime (payment of more than one form of overtime compensation for the same hour) under any circumstances.

Section 6.4 Shifts and Alternate Work Schedules

6.4.1 Alternate starting and quitting time and/or shift work may be performed at the option of the Contractor upon three (3) days' prior notice to the affected Union(s), unless a shorter notice period is provided for in the applicable Master Labor Agreement If two shifts are worked, each shall consist of eight (8) hours of continuous work exclusive of a one-half (½) hour non-paid lunch period, for eight (8) hours pay. The last shift shall start on or before 6:00 p.m. The first shift starting at or after 6:00 a.m. is designated as the first shift, with the second shift following.

6.4.2 Contractors, the Trades Council and the Union recognize the economic impact upon the City and City residents of the Project being undertaken by the City and agree that all Parties to this Agreement desire and intend Project Work to be undertaken in a cost efficient and effective manner to the highest standard of quality and craftsmanship. Recognizing the economic conditions, the Parties agree that, except to the extent permitted by law, employees performing Project Work shall not be entitled to any differentials or additional pay based upon the shift or work schedule of the employees. Instead, all employees working on Project Work shall be paid at the same base rate regardless of shift or work schedule worked.

6.4.3 Because of operational necessities, the second shift may, at the City's direction, be scheduled without the preceding shift having been worked. It is recognized that the City's operations and/or mitigation obligations may require restructuring of normal work schedules. Except in an emergency or when specified in the City's bid specification, the Contractor shall give affected Union(s) at least three (3) days' notice of such schedule changes.

Section 6.5 Holidays Recognized holidays for Project Work shall be those set forth and governed by the prevailing wage determination(s) applicable to such Project Work.

Section 6.6 Show-up Pay

6.6.1 Except as otherwise required by State law, Employees reporting for work and for whom no work is provided, except when given prior notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Employees who are directed to start work shall receive four (4) hours of pay at the regular straight time hourly rate. Employees who work beyond four (4) hours shall be paid for actual hours worked. Whenever reporting pay is provided for employees, they will be required to remain at the Project Site and available for

work for such time as they receive pay, unless released earlier by the principal supervisor of the Contractor(s) or his/her designated representative. Each employee shall furnish his/her Contractor with his/her current address and telephone number, and shall promptly report any changes to the Contractor.

6.6.2 An employee called out to work outside of his/her shift shall receive a minimum of two (2) hours pay at the appropriate rate. This does not apply to time worked as an extension of (before or after) the employee's normal shift.

6.6.3 When an employee leaves the job or work location of his/her own volition, or is discharged for cause or is not working as a result of the Contractor's invocation of Section 12.3, the employee shall only be paid for actual time worked.

Section 6.7 Meal Periods The Contractor will schedule a meal period of no more than one-half hour duration at the work location at approximately mid-point of the schedule shift; provided, however, that the Contractor may, for efficiency of the operation, establish a schedule which coordinates the meal periods of two or more crafts. An employee may be required to work through his meal period because of an emergency or a threat to life or property, or for such other reasons as are in the applicable Master Labor Agreement, and if he is so required, he shall be compensated in the manner established in the applicable Master Labor Agreement.

Section 6.8 Make-up Days To the extent permitted by the applicable general wage determination, when an employee has been prevented from working for reasons beyond the control of the employer, including, but not limited to inclement weather or other natural causes, during the regularly scheduled work week, a make-up day may be worked on a non-regularly scheduled work day for which an employee shall receive eight (8) hours pay at the straight time rate of pay or any premium rate required for such hours under the state prevailing wage law.

ARTICLE 7
WORK STOPPAGES AND LOCK-OUTS

Section 7.1 No Work Stoppages or Disruptive Activity The Trades Council and the Unions signatory hereto agree that neither they, and each of them, nor their respective officers or agents or representatives, shall incite or encourage, condone or participate in any strike, walk-out, slow-down, picketing, observing picket lines or other activity of any nature or kind whatsoever, for any cause or dispute whatsoever with respect to or in any way related to Project Work, or which interferes with or otherwise disrupts, Project Work, or with respect to or related to the City or Contractors, including, but not limited to, economic strikes, unfair labor practice strikes, safety strikes, sympathy strikes and jurisdictional strikes whether or not the underlying dispute is arbitrable. Any such actions by the Trades Council, or Unions, or their members, agents, representatives or the employees they represent shall constitute a violation of this Agreement. The Trades Council and the Union shall take all steps necessary to obtain compliance with this Article and neither should be held liable for conduct for which it is not responsible.

Section 7.2 Employee Violations The Contractor may discharge any employee violating Section 7.1 above and any such employee will not be eligible for rehire under this Agreement.

Section 7.3 Standing to Enforce The City, the CWA Administrator, or any Contractor affected by an alleged violation of Section 7.1 shall have standing and the right to enforce the obligations established therein.

Section 7.4 Expiration of Master Labor Agreement If the Master Labor Agreement, or any local, regional, and other applicable collective bargaining agreements expire during the term of the Project, the Union(s) agree that there shall be no work disruption of any kind as described in Section 7.1 above as a result of the expiration of any such agreement(s) having application on this Project and/or failure of the involved Parties to that agreement to reach a new contract. Terms and conditions of employment established and set at the time of bid shall remain established and set. Otherwise to the extent that such agreement does expire and the Parties to that agreement have failed to reach concurrence on a new contract, work will continue on the Project on one of the following two (2) options, both of which will be offered by the Unions involved to the Contractors affected:

7.4.1 Each of the Unions with a contract expiring must offer to continue working on the Project under interim agreements that retain all the terms of the expiring contract, except that the Unions involved in such expiring contract may each propose wage rates and employer contribution rates to employee benefit funds under the prior contract different from what those wage rates and employer contributions rates were under the expiring contracts. The terms of the Union's interim agreement offered to Contractors will be no less favorable than the terms offered by the Union to any other employer or group of employers covering the same type of construction work in Orange County.

7.4.2 Each of the Unions with a contract expiring must offer to continue working on the Project under all the terms of the expiring contract, including the wage rates and employer contribution rates to the employee benefit funds, if the Contractor affected by that expiring contract agrees to the following retroactive provisions: if a new Master Labor Agreement, local, regional or other applicable labor agreement for the industry having application at the Project is ratified and signed during the term of this Agreement and if such new labor agreement provides for retroactive wage increases, then each affected Contractor shall pay to its employees who performed work covered by this Agreement at the Project during the hiatus between the effective dates of such expired and new labor agreements, an amount equal to any such retroactive wage increase established by such new labor agreement, retroactive to whatever date is provided by the new labor agreement for such increase to go into effect, for each employee's hours worked on the Project during the retroactive period. All Parties agree that such affected Contractors shall be solely responsible for any retroactive payment to its employees.

7.4.3 Some Contractors may elect to continue to work on the Project under the terms of the interim agreement option offered under paragraph 7.4.1 and other Contractors may elect to continue to work on the Project under the retroactivity option offered under paragraph 7.4.2. To decide between the two options, Contractors will be given one week after the particular labor agreement has expired or one week after the Union has personally delivered to the Contractors in writing its specific offer of terms of the interim agreement pursuant to paragraph 7.4.1,

whichever is the later date. If the Contractor fails to timely select one of the two options, the Contractor shall be deemed to have selected the provisions of 7.4.2.

Section 7.5 No Lockouts Contractors shall not cause, incite, encourage, condone or participate in any lock-out of employees with respect to Project Work during the term of this Agreement. The term "lock-out" refers only to a Contractor's exclusion of employees in order to secure collective bargaining advantage, and does not refer to the discharge, termination or layoff of employees by the Contractor for any reason in the exercise of rights pursuant to any provision of this Agreement, or any other agreement, nor does "lock-out" include the City's decision to stop, suspend or discontinue any Project Work or any portion thereof for any reason.

Section 7.6 Best Efforts to End Violations

7.6.1 If a Contractor contends that there is any violation of this Article or Section 8.3, it shall notify, in writing, the Executive Secretary of the Trades Council, the Senior Executive of the involved Union(s) and the CWA Administrator. The Executive Secretary and the leadership of the involved Union(s) will immediately instruct, order and use their best efforts to cause the cessation of any violation of the relevant Article.

7.6.2 If the Union contends that any Contractor has violated this Article, it will notify that the Contractor and the CWA Administrator, setting forth the facts which the Union contends violate the Agreement, at least twenty-four (24) hours prior to invoking the procedures of Section 7.8. The CWA Administrator shall promptly order the involved Contractor(s) to cease any violation of the Article.

Section 7.7 Withholding of services for failure to pay wages and fringe benefits

7.7.1 Notwithstanding any provision of this Agreement to the contrary, it shall not be a violation of this Agreement for any Union to withhold the services of its members (but not the right to picket) from a particular Contractor who:

(a) fails to timely pay its weekly payroll; or

(b) fails to make timely payments to the Union's Joint Labor/Management Trust Funds in accordance with the provisions of the applicable Master Labor Agreements. Prior to withholding its members' services for the Contractor's failure to make timely payments to the Union's Joint Labor/Management Trust Funds, the Union shall give at least ten (10) days (unless a lesser period of time is provided in the Union's Master Labor Agreement, but in no event less than forty-eight (48) hours) written notice of such failure to pay by registered or certified mail, return receipt requested, and by facsimile transmission to the involved Contractor and to the City. Union will meet within the ten (10) day period to attempt to resolve the dispute.

7.7.2 Upon the payment of the delinquent Contractor of all monies due and then owing for wages and/or fringe benefit contributions, the Union shall direct its members to return to work and the Contractor shall return all such members back to work.

Section 7.8 Expedited Enforcement Procedure Any party, including the City, which the Parties agree is a Party to the Agreement for purposes of this Article and an intended beneficiary of this Article, or the CWA Administrator, may institute the following procedures, in lieu of or in addition to any other action at law or equity, when a breach of Section 7.1 or 7.5, above, or Section 8.3 is alleged.

7.8.1 The Party invoking this procedure shall notify Fred Horowitz, or Louis Zigman, who have been selected by the negotiating Parties, and whom the Parties agree shall be the permanent arbitrators under this procedure. If the permanent arbitrators are unavailable at any time, any one of the permanent Arbitrators who is notified shall appoint his alternate to hear the matter. Expenses incurred in arbitration shall be borne equally by the Parties involved in the arbitration and the decision of the arbitrator shall be final and binding on the Parties, provided, however, that the arbitrator shall not have the authority to alter or amend or add to or delete from the provisions of this Agreement in any way. Notice to the arbitrator shall be by the most expeditious means available, with notices to the Parties alleged to be in violation, and to the Trades Council if it is a Union alleged to be in violation. For purposes of this Article, written notice may be given by telegram, facsimile, hand delivery or overnight mail and will be deemed effective upon receipt.

7.8.2 Upon receipt of said notice, the arbitrator named above or his/her alternate shall sit and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after notice has been dispatched to the Executive Secretary and the Senior Official(s) as required by Section 7.6, as above.

7.8.3 The arbitrator shall notify the Parties of the place and time chosen for this hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed 24 hours unless otherwise agreed upon by all Parties. A failure of any Party or Parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

7.8.4 The sole issue at the hearing shall be whether or not a violation of Sections 7.1 or 7.5, above, or Section 8.3 has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any Party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such award shall be served on all Parties by hand or registered mail upon issuance.

7.8.5 Such award shall be final and binding on all Parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to herein above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other Party. In any judicial proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all Parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any Party's right to participate in a hearing for a final order of enforcement. The court's

order or orders enforcing the arbitrator's award shall be served on all Parties by hand or by delivery to their address as shown on this Agreement (for a Union), as shown on their business contract for work under this Agreement (for a Contractor) and to the representing Union (for an employee), by certified mail by the Party or Parties first alleging the violation.

7.8.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the Parties to whom they accrue.

7.8.7 The fees and expenses of the arbitrator shall be equally divided between the Party or Parties initiating this procedure and the respondent Party or Parties.

ARTICLE 8
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

Section 8.1 Assignment of Work The assignment of Project Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 8.2 The Plan All jurisdictional disputes on Project Work between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

8.2.1 If a dispute arising under this Article involves the Southwest Regional Council of Carpenters or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the Trades Council within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

Section 8.3 No Work Disruption Over Jurisdiction All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 8.4 Pre-Job Conferences As provided in Article 16, each Contractor will conduct a pre-job conference with the appropriate affected Union(s) prior to commencing work. The Trades Council and the CWA Administrator shall be advised in advance of all such conferences and may participate if they wish.

Section 8.5 Resolution of Jurisdictional Disputes If any actual or threatened strike, sympathy strike, work stoppage, slow down, picketing, hand-billing or otherwise advising the public that a

labor dispute exists, or interference with the progress of Project Work by reason of a jurisdictional dispute or disputes occurs, the Parties shall exhaust the expedited procedures set forth in the Plan, if such procedures are in the plan then currently in effect, or otherwise as in Article 7 above.

ARTICLE 9
MANAGEMENT RIGHTS

Section 9.1 Contractor and City Rights The Contractors and the City have the sole and exclusive right and authority to oversee and manage construction operations on Project Work without any limitations unless expressly limited or required by a specific provision of this Agreement or an MLA. In addition to the following and other rights of the Contractors enumerated in this Agreement, the Contractors expressly reserve their management rights and all the rights conferred upon them by law. The Contractor's rights include, but are not limited to, the right to:

(a) Plan, direct and control operations of all work;

(b) Hire, promote, transfer and layoff their own employees, respectively, as deemed appropriate to satisfy work and/or skill requirements;

(c) Promulgate and require all employees to observe reasonable job rules and security and safety regulations;

(d) Discharge, suspend or discipline their own employees for just cause;

(e) Utilize, in accordance with City approval, any work methods, procedures or techniques, and select, use and install any types or kinds of materials, apparatus or equipment, regardless of source of manufacture or construction; assign and schedule work at their discretion; and

(f) Assign overtime, determine when it will be worked and the number and identity of employees engaged in such work, subject to such provisions in the applicable Master Labor Agreement (s) requiring such assignments be equalized or otherwise made in a nondiscriminatory manner.

Section 9.2 Specific City Rights In addition to the following and other rights of the City enumerated in this Agreement, the City expressly reserves its management rights and all the rights conferred on it by law. The City's rights (and those of the Contract Administrator on its behalf) include but are not limited to the right to:

(a) Inspect any construction site or facility to ensure that the Contractor follows the applicable safety and other work requirements;

(b) Require Contractors to establish a different work week or shift schedule for particular employees as required to meet the operational needs of the Project Work at a particular location;

(c) At its sole option, terminate, delay and/or suspend any and all portions of the covered work at any time; prohibit some or all work on certain days or during certain hours of the day to accommodate the ongoing operations of the City's Facilities and/or to mitigate the effect of ongoing Project Work on businesses and residents in the neighborhood of the Project site; and/or require such other operational or schedule changes it deems necessary, in its sole judgment, to effectively maintain its primary mission and remain a good neighbor to those in the area of its facilities. (In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the CWA Administrator, and the affected Contractor(s) and Union(s) with reasonable notice of any changes it requires pursuant to this section; provided, however, that if notice is not provided in time to advise employees not to report for work, show-up pay shall be due pursuant to the provision of Article 6, Section 6.6);

(d) Approve any work methods, procedures and techniques used by Contractors whether or not these methods, procedures or techniques are part of industry practices or customs; and

(e) Investigate and process complaints, through the CWA Administrator, in the matter set forth in Articles 7 and 10.

Section 9.3 Use of Materials There should be no limitations or restriction by Union upon a Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and utilization, of equipment, machinery, packaging, precast, prefabricated, prefinished, or preassembled materials, tools or other labor saving devices, subject to the application of the State Public Contracts and Labor Codes as required by law. The onsite installation or application of such items shall be performed by the craft having jurisdiction over such work.

Section 9.4 Special Equipment, Warranties and Guaranties

9.4.1 It is recognized that certain equipment of a highly technical and specialized nature may be installed at Project Work sites. The nature of the equipment, together with the requirements for manufacturer's warranties, may dictate that it be prefabricated pre-piped and/or pre-wired and that it be installed under the supervision and direction of the City's and/or manufacturer's personnel. The Unions agree to install such equipment without incident.

9.4.2 The Parties recognize that the Contractor will initiate from time to time the use of new technology, equipment, machinery, tools, and other labor-savings devices and methods of performing Project Work. The Union agrees that they will not restrict the implementation of such devices or work methods. The Unions will accept and will not refuse to handle, install or work with any standardized and/or catalogue: parts, assemblies, accessories, prefabricated items, preassembled items, partially assembled items, or materials whatever their source of manufacture or construction.

9.4.3 If any disagreement between the Contractor and the Unions concerning the methods of implementation or installation of any equipment, or device or item, or method of work, arises, or whether a particular part or pre-assembled item is a standardized or catalog part

or item, the work will precede as directed by the Contractor and the Parties shall immediately consult over the matter. If the disagreement is not resolved, the affected Union(s) shall have the right to proceed through the procedures set forth in Article 10.

Section 9.5 No Less Favorable Treatment The parties agree that Project Work will not receive less favorable treatment than that on any other project which the Unions, Contractors and employees work.

ARTICLE 10
SETTLEMENT OF GRIEVANCES AND DISPUTES

Section 10.1 Cooperation and Harmony on Site

10.1.1 This Agreement is intended to establish and foster continued close cooperation between management and labor. The Trades Council shall assign a representative to this Project for the purpose of assisting the local Unions, and working with the CWA Administrator, together with the Contractors, to complete the construction of the Project economically, efficiently, continuously and without any interruption, delays or work stoppages.

10.1.2 The CWA Administrator, the Contractors, Unions, and employees collectively and individually, realize the importance to all Parties of maintaining continuous and uninterrupted performance Project Work, and agree to resolve disputes in accordance with the grievance provisions set forth in this Article or, as appropriate, those of Article 7 or 8.

10.1.3 The CWA Administrator shall oversee the processing of grievances under this Article and Articles 7 and 8, including the scheduling and arrangements of facilities for meetings, selection of the arbitrator from the agreed-upon panel to hear the case, and any other administrative matters necessary to facilitate the timely resolution of any dispute; provided, however, it is the responsibility of the principal parties to any pending grievance to insure the time limits and deadlines are met.

Section 10.2 Processing Grievances Any questions arising out of and during the term of this Agreement involving its interpretation and application, which includes applicable provisions of the Master Labor Agreement, but not jurisdictional disputes or alleged violations of Section 7.1 and 7.4 and similar provisions, shall be considered a grievance and subject to resolution under the following procedures.

Step 1. Employee Grievances When any employee subject to the provisions of this Agreement feels aggrieved by an alleged violation of this Agreement, the employee shall, through his local Union business representative or, job steward, within ten (10) working days after the occurrence of the violation, give notice to the work site representative of the involved Contractor stating the provision(s) alleged to have been violated. A business representative of the local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to resolve the matter within ten (10) working days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within ten (10) working days thereafter, pursue Step 2 of this grievance procedure provided the

grievance is reduced to writing, setting forth the relevant information, including a short description thereof, the date on which the alleged violation occurred, and the provision(s) of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 shall be non-precedential except as to the parties directly involved.

Union or Contractor Grievances Should the Union(s) or any Contractor have a dispute with the other Party(ies) and, if after conferring within ten (10) working days after the disputing Party knew or should have known of the facts or occurrence giving rise to the dispute, a settlement is not reached within five (5) working days, the dispute shall be reduced to writing and processed to Step 2 in the same manner as outlined in Step 1 above for the adjustment of an employee complaint.

Step 2. The business manager of the involved Union or his designee, together with the site representative of the involved Contractor, and the labor relations representative of the CWA Administrator, shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. If the Parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days after the initial meeting at Step 2.

Step 3. (a) If the grievance shall have been submitted but not resolved under Step 2, either the Union of Contractor Party may request in writing to the CWA Administrator (with copy(ies) to the other Party(ies) within seven (7) calendar days after the initial Step 2 meeting, that the grievance be submitted to an arbitrator selected from the agreed upon list in "Attachment (D)" attached hereto, on a rotational basis in the order listed. The CWA Administrator shall notify the parties to the grievance of the date, time and location of the hearing. The failure of any party to attend said hearing shall not delay the hearing of evidence or the issuance of any decision by the arbitrator. The decision of the arbitrator shall be final and binding on all parties. Should any party seek confirmation of the award made by the arbitrator, the prevailing party shall be entitled to receive its reasonable attorney fees and costs.

(b) Failure of the grieving Party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by consent of the Parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented and shall not have the authority to change, amend, add to or detract from any of the provisions of this Agreement.

(c) The fees and expenses incurred by the arbitrator, as well as those jointly utilized by the Parties (i.e. conference room, court reporter, etc.) in arbitration, shall be divided equally by the Parties to the arbitration, including Union(s) and Contractor(s) involved.

Section 10.3 Limit on Use of Procedures The procedures contained in this Article shall not be applicable to any alleged violation of Articles 7 or 8, with a single exception that any employee discharged for violation of Section 7.2, or Section 8.3, may resort to the procedures of this Article to determine only if he/she was, in fact, engaged in that violation.

Section 10.4 Notice The CWA Administrator (and the City, in the case of any grievance regarding the Scope of this Agreement), shall be notified by the involved Contractor of all actions at Steps 2 and 3, and further, the CWA Administrator shall, upon its own request, be permitted to participate fully as a party in all proceedings at such steps.

ARTICLE 11
REGULATORY COMPLIANCE

Section 11.1 Compliance with All Laws The Trades Council and all Unions, Contractors, and their employees shall comply with all applicable federal and state laws, ordinances and regulations including, but not limited to, those relating to safety and health, employment and applications for employment. All employees shall comply with the safety regulations established by the City, the CWA Administrator or the Contractor. Employees must promptly report any injuries or accidents to a supervisor.

Section 11.2 Prevailing Wage Compliance All Contractors shall comply with the state laws and regulations, as well as Santa Ana Municipal Code section 33-206 on prevailing wages. Compliance with this obligation may be enforced by the appropriate parties through Article 10 above, or by pursing the remedies available under state law through the Labor Commissioner or the Department of Industrial Relations.

Section 11.3 Violations of Law Should there be a finding by a Court or administrative tribunal of competent jurisdiction that a Contractor has violated federal and/or state law or regulation, the City, upon notice to the Contractor that it or its subcontractors is in such violation (including any finding of non-compliance with the California prevailing wage obligations as enforced pursuant to DIR regulations), the City, and in the absence of the Contractor or subcontractor remedying such violation, may take such action as it is permitted by law or contract to encourage that Contractor to come into compliance, including, but not limited to, assessing fines and penalties and/or removing the offending Contractor from Project Work.

ARTICLE 12
SAFETY AND PROTECTION OF PERSON AND PROPERTY

Section 12.1 Safety

12.1.1 It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the City or the Contractor, whichever is most restrictive shall apply. It is understood that employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the City.

12.1.2 Employees shall be bound by the safety, security and visitor rules established by the Contractor and/or the City. These rules will be published and posted. An employee's failure to satisfy his/her obligations under this section will subject him/her to discipline, up to and including discharge.

12.1.3 The Parties shall adopt the Substance Abuse Policy attached hereto as **Attachment "E,"** which shall be the policy and procedure utilized under this Agreement.

Section 12.2 Suspension of Work for Safety A Contractor may suspend all or a portion of the job to protect the life and safety of employees. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the Contractor requests employees to remain at the site and be available for work, the employees will be compensated for stand-by time at their basic hourly rate of pay.

Section 12.3 Water and Sanitary Facilities The Contractor shall provide adequate supplies of drinking water and sanitary facilities for all employees as required by state law or regulation.

ARTICLE 13
TRAVEL AND SUBSISTENCE

Travel expenses, travel time, subsistence allowances, zone rates and parking reimbursements shall be paid in accordance with the applicable Master Labor Agreement unless superseded by the applicable prevailing wage determination.

ARTICLE 14
APPRENTICES

Section 14.1 Importance of Training The Parties recognize the need to maintain continuing support of the programs designed to develop adequate numbers of competent workers in the construction industry, the obligation to capitalize on the availability of the local work force in the area served by the City, and the opportunities to provide continuing work under the construction program. To these ends, the Parties will facilitate, encourage, and assist local residents to commence and progress in Labor/Management Apprenticeship and/or training Programs in the construction industry leading to participation in such apprenticeship programs. The City and the Trades Council, will work cooperatively to identify, or establish and maintain, effective programs and procedures for persons interested in entering the construction industry and which will help prepare them for the formal joint labor/management apprenticeship programs maintained by the signatory Unions.

Section 14.2 Use of Apprentices

14.2.1 Apprentices used on Projects under this Agreement shall be registered in Joint Labor Management Apprenticeship Programs approved by the State of California. Apprentices may comprise up to thirty percent (30%) of each craft's work force (calculated by hours worked) at any time, unless the standards of the applicable joint apprenticeship committee confirmed by the Division of Apprenticeship Standards ("DAS"), establish a lower or higher maximum percentage. Where the standards permit a higher percentage, such percentage shall apply on Project Work. Where the applicable standards establish a lower percentage, the applicable Union will use its best efforts with the Joint Labor Management apprenticeship committee and, if necessary, the DAS to permit up to thirty percent (30%) apprentices on the Project.

14.2.2 The Unions agree to cooperate with the Contractor in furnishing apprentices as requested up to the maximum percentage. The apprentice ratio for each craft shall be in compliance, at a minimum, with the applicable provisions of the Labor Code relating to utilization of apprentices. The City shall encourage such utilization, and, both as to apprentices and the overall supply of experienced workers, the CWA Administrator will work with the Trades Council to assure appropriate and maximum utilization of apprentices and the continuing availability of both apprentices and journey persons.

14.2.3 The Parties agree that apprentices will not be dispatched to Contractors working under this Agreement unless there is a journeymen working on the project where the apprentice is to be employed who is qualified to assist and oversee the apprentice's progress through the program in which he is participating.

14.2.4 All apprentices shall work under the direct supervision of a journeyman from the trade in which the apprentice is indentured. A journeyman shall be defined as set forth in the California Code of Regulations, Title 8 [apprenticeship] section 205, which defines a journeyman as a person who has either completed an accredited apprenticeship in his or her craft, or has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeyman in the apprenticeable occupation. Should a question arise as to a journeyman's qualification under this subsection, the Contractor shall provide adequate proof evidencing the worker's qualification as a journeyman to the Trades Council.

ARTICLE 15
WORKING CONDITIONS

Section 15.1 Meal and Rest Periods There will be no non-working times established during working hours except as may be required by applicable state law or regulations. Meal periods and Rest periods shall be as provided for in Wage Order 16. Individual coffee containers will be permitted at the employees' work location; however, there will be no organized coffee breaks.

Section 15.2 Work Rules The City, the CWA Administrator, and/or relevant Contractor shall establish such reasonable work rules as they deem appropriate and not inconsistent with this Agreement. These rules will be posted at the work sites by the Contractor and may be amended thereafter as necessary. Failure to observe these rules and regulations by employees may be grounds for discipline up to and including discharge.

Section 15.3 Emergency Use of Tools and Equipment There should be no restrictions on the emergency use of any tools by any qualified employee or supervisor, or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or equipment involved and is compliance with applicable governmental rules and regulations.

Section 15.4 Access Restrictions for Cars Recognizing the nature of the work being conducted on the site, employee access by a private automobile may be limited to certain roads and/or parking areas.

ARTICLE 16
PRE-JOB CONFERENCES

Section 16.1 Each Primary Contractor which is awarded a Construction Contract by the City for Project Work shall conduct a Pre-Job conference with the appropriate affected Union(s) prior to commencing work. All Contractors who have been awarded contracts by the Primary Contractor shall attend the Pre-Job conference. The Trades Council and the CWA Administrator shall be advised in advance of all such conferences and may participate if they wish. All work assignments shall be disclosed by the Primary Contractor and all Contractors at the Pre-Job conference in accordance with industry practice. Should there be any formal jurisdictional dispute raised under Article 8, the CWA Administrator shall be promptly notified. Primary Contractor shall have available at the Pre-Job conference the plans and drawing for the work to be performed on the Project. Should additional Project Work not previously included within the scope of the Project Work be added, the Contractors performing such work will conduct a separate pre-job for such newly included work.

ARTICLE 17
LABOR/MANAGEMENT COOPERATION

Section 17.1 Joint Committee The Parties to this Agreement may establish a six (6) person Joint Administrative Committee (JAC). This JAC shall be comprised of three (3) representatives selected by the City and three (3) representatives selected by the Trades Council to monitor compliance with the terms and conditions of this Agreement and to recommend amendments to this Agreement, with the exception of the dollar threshold specified in Section 2.2(a) and the term of this Agreement under Section 22.1, when doing so would be to the mutual benefit of the Parties. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. A quorum will consist of at least two (2) representatives selected by the City and at least two (2) representatives selected by the Trades Council. For voting purposes, only an equal number of City and Union representatives present may constitute a voting quorum.

Section 17.2 Functions of Joint Committee The Committee shall meet on a schedule to be determined by the Committee or at the call of the joint chairs, to discuss the administration of the Agreement, the progress of the Project, general labor management problems that may arise, and any other matters consistent with this Agreement. Substantive grievances or disputes arising under Articles 7, 8 or 10 shall not be reviewed or discussed by this Committee, but shall be processed pursuant to the provisions of the appropriate Article. The CWA Administrator shall be responsible for the scheduling of the meetings, the preparation of the agenda topics for the meetings, with input from the Unions the Contractors and the City. Notice of the date, time and place of meetings, shall be given to the Committee members at least three (3) days prior to the meeting. The CWA Administrator shall prepare quarterly reports on apprentice utilization and the training and employment of City residents, and a schedule of Project Work and estimated number of craft workers needed. The Committee or an appropriate subcommittee, may review such reports and make any recommendations for improvement, if necessary, including increasing

the availability of skilled trades, and the employment of local residents or other individuals who should be assisted with appropriate training to qualify for apprenticeship programs.

ARTICLE 18
SAVINGS AND SEPARABILITY

Section 18.1 Savings Clause It is not the intention of the City, the CWA Administrator, Contractor or the Union parties to violate any laws governing the subject matter of this Agreement. The Parties hereto agree that in the event any provision of this Agreement is finally held or determined to be illegal or void as being in contravention of any applicable law or regulation, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Parties agree that if and when any provision(s) of this Agreement is finally held or determined to be illegal or void by a court of competent jurisdiction, the Parties will promptly enter into negotiations concerning the substantive effect of such decision for the purposes of achieving conformity with the requirements of any applicable laws and the intent of the Parties hereto. If the legality of this Agreement is challenged and any form of injunctive relief is granted by any court, suspending temporarily or permanently the implementation of this Agreement, then the Parties agree that all Project Work that would otherwise be covered by this Agreement should be continued to be bid and constructed without application of this Agreement so that there is no delay or interference with the ongoing planning, bidding and construction of any Project Work.

Section 18.2 Effect of Injunctions or Other Court Orders The Parties recognize the right of the City to withdraw, at its absolute discretion, the utilization of the Agreement as part of any bid specification should a Court of competent jurisdiction issue any order, or any applicable statute which could result, temporarily or permanently in delay of the bidding, awarding and/or construction on the Project. Notwithstanding such an action by the City, or such court order or statutory provision, the Parties agree that the Agreement shall remain in full force and the fact on covered Project Work to the maximum extent legally possible.

ARTICLE 19
WAIVER

A waiver of or a failure to assert any provisions of this Agreement by any or all of the Parties hereto shall not constitute a waiver of such provision for the future. Any such waiver shall not constitute a modification of the Agreement or change in the terms and conditions of the Agreement and shall not relieve, excuse or release any of the Parties from any of their rights, duties or obligations hereunder.

ARTICLE 20
AMENDMENTS

The provisions of this Agreement can be renegotiated, supplemented, rescinded or otherwise altered only by mutual agreement in writing, hereafter signed by the negotiating Parties hereto.

In the event of any conflict or ambiguity between this Agreement and any Attachment or exhibit, the provisions of this Agreement shall govern.

ARTICLE 21
DURATION OF THE AGREEMENT

Section 21.1 Duration

21.1.1 This Agreement shall be effective from the date signed by all Parties and shall remain in effect for an initial period of five (5) years. Any covered Project Work awarded during the term of this Agreement shall continue to be covered hereunder, until completion of the Project Work, notwithstanding the expiration date of this Agreement.

21.1.2 This Agreement may be extended by written mutual consent of the City, as directed by the City Council and the signatory Unions for such further periods as the Parties shall agree to.

Section 22.2 Turnover and Final Acceptance of Completed Work

22.2.1 Construction of any phase, portion, section, or segment of Project Work shall be deemed complete when such phase, portion, section or segment has been turned over to the City by the Contractor and the City has accepted such phase, portion, section, or segment. As areas and systems of the Project are inspected and construction-tested and/or approved and accepted by the City or third parties with the approval of the City, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the City to engage and repairs or modifications required by its contract(s) with the City.

22.2.2 Notice of each final acceptance received by the Contractor will be provided to the Trades Council with the description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch" list, and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the City and Notice of Completion is issued by the City or its representative to the Contractor. At the request of the Union, complete information describing any "punch" list work, as well as any additional work required of a Contractor at the direction of the City pursuant to Section 22.2.1 above, involving otherwise turned-over and completed facilities which have been accepted by the City, will be available from the CWA Administrator.

[This section intentionally left blank]

IN WITNESS whereof the Parties have caused this Community Workforce Agreement to be executed as of the date and year above stated.

CITY OF SANTA ANA

By: _____
Cynthia J. Kurtz
Interim City Manager

LOS ANGELES/ORANGE COUNTIES BUILDING & CONSTRUCTION TRADES COUNCIL

By: _____
Ron Miller
Executive Secretary

ATTEST:

By _____
Maria D. Huizar
Clerk of Council

APPROVED AS TO FORM:

_____
Sonia R. Carvalho
City Attorney

LOS ANGELES/ORANGE COUNTIES BUILDING AND CONSTRUCTION
TRADES COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS

Asbestos Heat & Frost Insulators (Local 5)

Boilermakers (Local 92)

Bricklayers & Allied Craftworkers (Local 4)

Cement Masons (Local 500)

District Council of Laborers

Electricians (Local 441)

Elevator Constructors (Local 18)

Gunite Workers (Local 345)

Iron Workers (Reinforced – Local 416)

Iron Workers (Structural – Local 433)

Laborers (Local 300) (remediation)

Laborers (Local 652)

Operating Engineers (Local 12)

Operating Engineers (Local 12)

Operating Engineers (Local 12)

Painters & Allied Trades DC 36

Pipe Trades (Local 250)

Pipe Trades (Local 345)

Pipe Trades (Plumbers/Fitters Local 582)

Pipe Trades (Sprinkler Fitters Local 709)

Plasterers (Local 200)

Plaster Tenders Local (1414)

Roofers & Waterproofers (Local 220)

Sheet Metal Workers (Local 105)

Teamsters (Local 952)

Southwest Regional Council of Carpenters

ATTACHMENT A – LETTER OF ASSENT

To be signed by all contractors awarded work covered by the City of Santa Ana Community Workforce Agreement prior to commencing work.

[Contractor's Letterhead]
CWA Administrator
City of Santa Ana
1234 address
City, state, zip code
Attn: _____

Re: Community Workforce Agreement - Letter of Assent

Dear Sir:

This is to confirm that [name of company] agrees to be party to and bound by the City of Santa Ana Community Workforce Agreement effective _____, 2017, as such Agreement may, from time to time, be amended by the negotiating parties or interpreted pursuant to its terms. Such obligation to be a party and bound by this Agreement shall extend to all work covered by the agreement undertaken by this Company on the project and this Company shall require all of its contractors and subcontractors of whatever tier to be similarly bound for all work within the scope of the Agreement by signing and furnishing to you an identical letter of assent prior to their commencement of work.

Sincerely.

[Name of Construction Company]

By: [_____] Name and Title of Authorized Executive

Contractor State License No.: _____

[Copies of this letter must be submitted to the CWA Administrator and to the Trades Council Consistent with Section 2.6 (b).]

ATTACHMENT B

FIRST TIER ZIP CODES (CITY BOUNDARY)
***Some Zip Codes shared with neighboring cities**

92701
92702
92703
92704
92705
92706
92707
92711
92712
92725
92735
92799
*92866
*92868

ATTACHMENT B – Continued

SECOND TIER ZIP CODES
REMAINDER OF ORANGE COUNTY,

Zip Code	City
90620	Buena Park
90621	Buena Park
90622	Buena Park
90623	La Palma
90624	Buena Park
90630	Cypress
90631	La Habra
90632	La Habra
90633	La Habra
90680	Stanton
90720	Los Alamitos
90721	Los Alamitos
90740	Seal Beach
90742	Sunset Beach
90743	Surfside
92602	Irvine
92603	Irvine
92604	Irvine
92605	Huntington Beach
92606	Irvine
92607	Laguna Niguel
92609	El Toro
92610	Foothill Ranch
92612	Irvine
92614	Irvine
92615	Huntington Beach
92616	Irvine
92617	Irvine
92618	Irvine
92619	Irvine
92620	Irvine
92623	Irvine
92624	Capistrano Beach
92625	Corona Del Mar
92626	Costa Mesa
92627	Costa Mesa
92628	Costa Mesa

92629	Dana Point
92630	Lake Forest
92637	Laguna Woods
92646	Huntington Beach
92647	Huntington Beach
92648	Huntington Beach
92649	Huntington Beach
92650	East Irvine
92651	Laguna Beach
92652	Laguna Beach
92653	Laguna Hills
92654	Laguna Hills
92655	Midway City
92656	Aliso Viejo
92657	Newport Coast
92658	Newport Beach
92659	Newport Beach
92660	Newport Beach
92661	Newport Beach
92662	Newport Beach
92663	Newport Beach
92672	San Clemente
92673	San Clemente
92674	San Clemente
92675	San Juan Capistrano
92676	Silverado
92677	Laguna Niguel
92678	Trabuco Canyon
92679	Trabuco Canyon
92683	Westminster
92684	Westminster
92685	Westminster
92688	Rancho Santa Margarita
92690	Mission Viejo
92691	Mission Viejo
92692	Mission Viejo
92693	San Juan Capistrano
92694	Ladera Ranch
92697	Irvine
92698	Aliso Viejo
92708	Fountain Valley
92709	Irvine
92710	Irvine
92728	Fountain Valley
92780	Tustin
92781	Tustin

92782	Tustin
92801	Anaheim
92802	Anaheim
92803	Anaheim
92804	Anaheim
92805	Anaheim
92806	Anaheim
92807	Anaheim
92808	Anaheim
92809	Anaheim
92811	Atwood
92812	Anaheim
92814	Anaheim
92815	Anaheim
92816	Anaheim
92817	Anaheim
92821	Brea
92822	Brea
92823	Brea
92825	Anaheim
92831	Fullerton
92832	Fullerton
92833	Fullerton
92834	Fullerton
92835	Fullerton
92836	Fullerton
92837	Fullerton
92838	Fullerton
92840	Garden Grove
92841	Garden Grove
92842	Garden Grove
92843	Garden Grove
92844	Garden Grove
92845	Garden Grove
92846	Garden Grove
92850	Anaheim
92856	Orange
92857	Orange
92859	Orange
92861	Villa Park
92862	Orange
92863	Orange
92864	Orange
92865	Orange
92866	Orange
92867	Orange

92868	Orange
92869	Orange
92870	Placentia
92871	Placentia
92885	Yorba Linda
92886	Yorba Linda
92887	Yorba Linda
92899	Anaheim

ATTACHMENT C

CITY OF SANTA ANA
CRAFT REQUEST FORM

TO THE CONTRACTOR: Please complete and fax this form to the applicable union to request craft workers that fulfill the hiring requirements for this project. After faxing your request, please call the Local to verify receipt and substantiate their capacity to furnish workers as specified below. Please print your Fax Transmission Verification Reports and keep copies for your records.

The City of Santa Ana Community Workforce Agreement establishes a goal that 30% of the total work hours shall be from Veterans, regardless of where they reside, and workers residing: first, in those first tier zip codes which overlap all of the City of Santa Ana, as attached hereto, second, residing within Orange County. For Dispatch purposes, employees residing within either of these two (2) areas, as well as Veterans, regardless of where they reside, shall be referred to as Local Residents.

TO THE UNION: Please complete the "Union Use Only" section on the next page and fax this form back to the requesting Contractor. Be sure to retain a copy of this form for your records.

CONTRACTOR USE ONLY

To: Union Local # _____ **Fax#** (___) _____ **Date:** _____

Cc: CWA Administrator

From: Company: _____ Issued By: _____

Contact Phone :(___) _____ Contact Fax: (___) _____

PLEASE PROVIDE ME WITH THE FOLLOWING UNION CRAFT WORKERS.

Craft Classification (i.e., plumber, painter, etc.)	Journeyman or Apprentice	Local Resident, Veteran or General Dispatch	Number of workers needed	Report Date	Report Time
TOTAL WORKERS REQUESTED = _____					

Please have worker(s) report to the following work address indicated below:

Project Name: _____ Site: _____ Address: _____

Report to: _____ On-site Tel: _____ On-site Fax: _____

Comment or Special Instructions: _____

75A-336

UNION USE ONLY

Date dispatch request received:
Dispatch received by:
Classification of worker requested:
Classification of worker dispatched:

WORKER REFERRED

Name:
Date worker was dispatched:
Is the worker referred a: (check all that apply)

JOURNEYMAN	Yes _____	No _____
APPRENTICE	Yes _____	No _____
LOCAL RESIDENT	Yes _____	No _____
VETERAN	Yes _____	No _____
GENERAL DISPATCH FROM OUT OF WORK LIST	Yes _____	No _____

ATTACHMENT D

List of Neutral Arbitrators

Mark Burstein
Walter Daugherty
Fred Horowitz
Michael Prihar
Louis Zigman

ATTACHMENT "E"

SUBSTANCE ABUSE POLICY

The Parties recognize the problems which drug and alcohol abuse have created in the construction industry and the need to develop drug and alcohol abuse prevention programs. Accordingly, the Parties agree that in order to enhance the safety of the work place and to maintain a drug and alcohol free work environment, individual Employers may require applicants or employees to undergo drug and alcohol testing.

1. It is understood that the use, possession, transfer or sale of illegal drugs, narcotics, or other unlawful substances, as well as being under the influence of alcohol and the possession or consuming alcohol is absolutely prohibited while employees are on the Employer's job premises or while working on any jobsite in connection with work performed under the Community Workforce Agreement ("CWA").

2. No Employer may implement a drug testing program which does not conform in all respects to the provisions of this Policy.

3. No Employer may implement drug testing at any jobsite unless written notice is given to the Union setting forth the location of the jobsite, a description of the project under construction, and the name and telephone number of the Project Work Supervisor. Said notice shall be addressed to the office of each Union signing the PLA. Said notice shall be delivered in person or by registered mail before the implementation of drug testing. Failure to give such notice shall make any drug testing engaged in by the Employer a violation of the PLA, and the Employer may not implement any form of drug testing at such jobsite for the following six months.

4. An employer who elects to implement drug testing pursuant to this Agreement shall require all employees on the Project Work to be tested. With respect to individuals who become employed on the Project Work subsequent to the proper implementation of this drug testing program, such test shall be administered upon the commencement of employment on the project, whether by referral from a Union Dispatch Office, transfer from another project, or another method. Individuals who were employed on the project prior to the proper implementation of this drug testing program may only be subjected to testing for the reasons set forth in Paragraph 5(f) (1) through 5(f) (3) of this Policy. Refusal to undergo such testing shall be considered sufficient grounds to deny employment on the project.

5. The following procedure shall apply to all drug testing:

a. The Employer may request urine samples only. The applicant or employee shall not be observed when the urine specimen is given. An applicant or employee, at his or her sole option, shall, upon request, receive a blood test in lieu of a urine test. No employee of the Employer shall draw blood from a bargaining unit employee, touch or handle urine specimens, or in any way become involved in the chain of custody of urine or blood specimens. A Union Business Representative, subject to the approval of the individual applicant or employee, shall be

permitted to accompany the applicant or employee to the collection facility to observe the collection, bottling, and sealing of the specimen.

b. The testing shall be done by a laboratory approved by the Substance Abuse & Mental Health Services Administration (SAMHSA), which is chosen by the Employer and the Union.

c. An initial test shall be performed using the Enzyme Multiplied Immunoassay Technique (EMZT). In the event a question or positive result arises from the initial test, a confirmation test must be utilized before action can be taken against the applicant or employee. The confirmation test will be by Gas Chromatography Mass Spectrometry (GC/MS). Cutoff levels for both the initial test and confirmation test will be those established by the SAMHSA. Should these SAMHSA levels be changed during the course of this agreement or new testing procedures are approved, then these new regulations will be deemed as part of this existing agreement. Confirmed positive samples will be retained by the testing laboratory in secured long-term frozen storage for a minimum of one year. Handling and transportation of each sample must be documented through strict chain of custody procedures.

d. In the event of a confirmed positive test result the applicant or employee may request, within forty-eight (48) hours, a sample of his/her specimen from the testing laboratory for purposes of a second test to be performed at a second laboratory, designated by the Union and approved by SAMHSA. The retest must be performed within ten (10) days of the request. Chain of custody for this sample shall be maintained by the Employer between the original testing laboratory and the Union's designated laboratory. Retesting shall be performed at the applicant's or employee's expense. In the event of conflicting test results the Employer may require a third test.

e. If, as a result of the above testing procedure, it is determined that an applicant or employee has tested positive, this shall be considered sufficient grounds to deny the applicant or employee his/her employment on the Project Work.

f. No individual who tests negative for drugs or alcohol pursuant to the above procedure and becomes employed on the Project Work shall again be subjected to drug testing with the following exceptions:

1. Employees who are involved in industrial accidents resulting in damage to plant, property or equipment or injury to him/herself or others may be tested pursuant to the procedures stated hereinabove.

2. The Employer may test employees following thirty (30) days advance written notice to the employee(s) to be tested and to the applicable Union. Notice to the applicable Union shall be as set forth in Paragraph 3 above and such testing shall be pursuant to the procedures stated hereinabove.

3. The Employer may test an employee where the Employer has reasonable cause to believe that the employee is impaired from performing his/her job.