DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT is entered into as of February 8, 2017 by and between the CITY OF BELL, a California charter municipality ("City"), and ARROYO SECO DEVELOPMENT GROUP, a California Limited Liability Company or its duly-approved assignee ("Developer"). For and in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

RECITALS

A. The subject matter of this Agreement concerns real property parcels shown and described in Attachment A, including the following parcels:

1. City Parcels. Two parcels of real property owned by the City of Bell ("City") improved as parking lots located at (i) 6504 Clarkson, APN 6325-020-900, and (ii) 4460 Gage Avenue, APN 6325-020-903, in the City of Bell, County of Los Angeles, State of California which are adjacent to the Agency Parcels (collectively, "City Parcels"), which two City Parcels total approximately 17,880 square feet and are legally described in Attachment A-1 hereto;

2. Agency Parcels. Three parcels presently owned by the Successor Agency to the former Bell Community Redevelopment Agency ("Agency") located at (i) 6415 Atlantic Avenue, APN 6325-020-901, (ii) 6414 Clarkson Avenue, APN 6325-020-902, (iii) and 4472 Gage Avenue, APN 6325-020-904 (collectively, "Agency Parcels"), which three Agency Parcels are legally described in Attachment A-2 hereto and are the subject of a separate Disposition and Development Agreement between Agency and the Developer ("Agency DDA"); and

3. Private Parcels. Adjacent to the Agency Parcels and City Parcels, are two privately-owned parcels of real property located at (i) 4468 Gage Avenue, currently occupied by Yoli’s Flowers, APN 6325-020-406; and (ii) 4466 Gage Avenue, currently occupied by Guadalajara Inn Restaurant, APN 6325-020-405 (collectively “Private Properties”), which two Private Parcels are legally described in Attachment A-3 hereto and over which it is Developer’s sole responsibility to acquire Site Control, depending upon, or as appropriate to, the Project Alternative elected (as described below).
B. The City is the owner in fee of the City Parcels (Attachment A-1), which parcels are the subject of conveyance under this Agreement. The Agency Parcels, City Parcels and Private Parcels are collectively referred to herein as the “Site,” which Site is comprised of approximately 1.57 acres of land area. In the alternative, if Developer is unable to acquire sufficient Site Control (hereinafter defined) over the Private Parcels or portion thereof as needed to incorporate the Private Parcels into the Project, then the “Site” shall refer only to the Agency Parcels and City Parcels, and those Private Parcels over which Developer does have Site Control.

C. Developer desires to redevelop the Site with a restaurant/retail commercial center, which will be in compliance with all applicable laws and subject to City’s discretionary approval of all plans and specifications in accordance with the City ordinances and regulations including, but not limited to, the General and Specific Plans and zoning regulations (“Project”). In addition to the parking requirements for the Project, if Developer and Agency/City elect to proceed with the Project as provided in this Agreement, Developer will provide all required landscaping and on and off-site public works improvements, all in accordance with applicable City regulations and standards. The Project is subject to three Project alternatives, depending upon Developer’s ability to acquire interests in, or control over, all or a portion of the Private Parcels, depending upon the Project Alternative elected. Conceptual Site Plans and descriptions for the Project are attached hereto at Attachment B as follows:

1. “Large Site Alternative”: If Developer acquires Site Control over all the Private Parcels, then the Project shall be as described and depicted in the site plans at Attachment B-1 hereto and consisting of approximately 4,800 square feet in commercial space and 11,200 square feet of restaurant space;

2. “Reduced Site Alternative”: If Developer is (i) not able to acquire Site Control over the entirety of the Private Parcels (as contemplated by the Large Site Alternative), (ii) able to negotiate Site Control over a portion of the Private Parcels or otherwise negotiate a means of incorporating the Private Parcels into the Project, and (iii) for those portions of the Private Parcels over which Developer is unable to obtain Site Control, Developer negotiates a license and construction agreement with the Private Parcel interests such that Developer will improve such Private Parcels in design, utilities undergrounding, circulation and aesthetics to harmoniously incorporate such Private Parcels into the Project, then the Project shall be implemented around those Private Parcels over which Developer does not have Site Control. This Reduced Site Alternative necessitates, in any case, that Developer conclude negotiations with the Private Parcel interests to the end of obtaining either Site Control over a portion of the Private Parcels or otherwise improving the Parcels to incorporate them into the Project. The Reduced Site Alternatives are further described and depicted in the site plans at Attachment B-2 hereto, consisting of approximately 4,440 square feet in commercial space and 10,360 square feet of restaurant space.

3. “Small Site Alternative”: If Developer is unable to obtain any Site Control over the Private Parcels and is unable to successfully negotiate a license/construction agreement with the Private Parcel interests as needed to enter and improve the Private Parcels as contemplated in the Reduced Site Alternative, then Developer may elect a “Small Site Alternative”. Pursuant to the Small Site Alternative,
Developer would implement the Project around the Private Parcels without any improvements to such Private Parcels; the Private Parcels would be left in an as-is condition and not fully incorporated into the Project. Developer’s design of the Small Site Alternative, however, must ensure continued access and parking for the Private Parcel occupants. The Small Site Alternative is further described and depicted in the site plans at Attachment B-3 hereto, consisting of approximately 4,080 square feet in commercial space and 9,520 square feet of restaurant space.

D. City and Developer desire to enter into this Agreement to accomplish the sale of the City Parcels to Developer and development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement are in the vital and best interests of the City of Bell 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. The sale of the Agency Parcels is (i) consistent with the Successor Agency’s approved PMP; (ii) the development of the Site pursuant to this Agreement is in the best interests of the City and its residents; and (iii) in accordance with the public purposes and provisions of applicable federal, state and local laws. As a material condition of City’s conveyance of the City Parcels to Developer, Developer shall adhere to the general Project timeline as shown on the Schedule of Performance attached hereto as Attachment F.

E. The fair market value of the City Parcels was appraised at Seven Hundred and Seventy Thousand Dollars ($770,000.00) on June 14, 2016 (as corrected by the appraiser on December 22, 2016). This fair market value shall constitute Developer’s “Purchase Price” for all two City Parcels. Developer shall purchase all City’s right, title and interests to the City Parcels upon satisfaction of all Developer due diligence, all conditions to Closing and deposit of the Purchase Price into Escrow. City shall provide Developer with appropriate information and assistance for Developer’s due diligence and acquisition of the City Parcels, but such assistance shall not include financial assistance.

F. This Agreement presents a range of Project Alternatives without any City or Developer commitment to any particular Alternative at this time. As such, the actual Project scope remains unknown, and will only be finally determined prior to the opening of escrow.

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

(§100) PURPOSE OF THE AGREEMENT.

A. (§101) Purpose of the Agreement.

Developer hereby agrees to purchase from City, and City agrees to sell to Developer all City’s rights, title and interests to the City Parcels upon the terms and conditions hereinafter set forth. This Agreement is intended to effectuate the designated use and development of the City Parcels in accordance with the best interests of the City of Bell, and the development of the Project thereon (Attachment B). The sale of the City Parcels is (i) in the best interests of the City and its residents; and (ii) in accordance with the public purposes and provisions of applicable federal, state and local laws.
Through this Agreement, it is the intent of the parties and the City that the Project will:
(i) Introduce a unique gathering place with multiple uses with central City street frontage,
(ii) Serve as a catalyst for the development of a “Downtown Bell” environment, (iii) Provide a
variety of choices for dining, entertainment and retail, (iv) Create redevelopment momentum
along Atlantic corridor, (v) Increase retail sales tax revenues, (vi) Create jobs, and (vii) Provide
practical and effective solutions for parking in the downtown area.

B. (§102) The Site; Site Control Matters.

Subject to Developer obtaining Site Control over all of the Private Parcels, the Site
consists of seven (7) parcels and is depicted as a whole in Attachment A, with a total surface area
of the Site is approximately 1.57 acres under various ownership as follows:

1. City Parcels. Two parcels of real property owned by the City of Bell (“City”)
improved as parking lots located at (i) 6504 Clarkson, APN 6325-020-900, and
(ii) 4460 Gage Avenue, APN 6325-020-903, in the City of Bell, County of Los
Angeles, State of California which are adjacent to the Agency Parcels
(collectively, “City Parcels”), which two City Parcels are legally described in
Attachment A-1 hereto;

2. Agency Parcels. Three parcels presently owned by the Successor Agency located
at (i) 6415 Atlantic Avenue, APN 6325-020-901, (ii) 6414 Clarkson Avenue,
APN 6325-020-902, (iii) and 4472 Gage Avenue, APN 6325-020-904
(collectively, “Agency Parcels”), which three Agency Parcels are legally
described in Attachment A-2 hereto and are the subject of a separate Disposition
and Development Agreement between Agency and the Developer (“Agency
DDA”);

3. Private Parcels. Adjacent to the Agency Parcels and City Parcels, are two
privately-owned parcels of real property located at (i) 4468 Gage Avenue,
currently occupied by Yoli’s Flowers, APN 6325-020-406; and (ii) 4466 Gage
Avenue, currently occupied by Guadalajara Inn Restaurant, APN 6325-020-405
(collectively “Private Parcels”), which two Private Parcels are legally described in
Attachment A-3 hereto and for which it is Developer’s sole responsibility to
acquire site control over.

This Agreement only pertains to the disposition of the City Parcels. The Agency Parcels
will be sold to Developer pursuant to a separate Agency DDA. Developer shall be solely
responsible for attempting to obtain “Site Control” (as defined in Section 222 hereof) over the
Private Parcels in order to assemble them into the Site. If Developer is unable to secure Site
Control over the Private Parcels, then the Project shall proceed pursuant to either (i) the Reduced
Site Alternative (Attachment B-2 hereto), or (ii) the Small Site Alternative (Attachment B-3).

C. (§103) No City Financial Assistance.

Developer acknowledges that City will not be providing financial assistance to
Developer in connection with Developer's acquisition of the Site or development of the Project.
Except as may otherwise be provided in this Agreement, Developer shall be responsible for all construction and development costs to construct the Project on the Site, including: grading and site preparation; building construction; site development and infrastructure; design; building permit and development fees; and financing. The Project is more particularly described in the Scope of Development, complete with Project Alternatives, at Attachment B.

D. (§104) Relocation/Site Control for Private Parcels Sole Responsibility of Developer.

The Private Parcels are currently owned by third parties and occupied by two businesses, Yoli’s Flowers and Guadalajara Inn Restaurant (the “Business Interests”). Developer shall be solely responsible, at its sole cost and expense, for one of the following:

1. Large Site Alternative. Obtaining Site Control over the Private Parcels in their entirety and incorporating such into the Project per the Large Site Alternative (Attachment B-1), or

2. Reduced Site Alternative. Negotiating Site Control over a portion of the Private Parcels or otherwise negotiating a means of incorporating the Private Parcels into the Project without obtaining Site Control and negotiating a license and construction agreement regarding the other Private Parcel interests such that Developer will improve such Private Parcels in design, utilities undergrounding, circulation and aesthetics to harmoniously incorporate such Private Parcels into the Project, per the Reduced Site Alternative (Attachment B-2).

3. Small Site Alternative. If Developer is unable to obtain any Site Control over the Private Parcels and is unable to successfully negotiate a license/construction agreement with the Private Parcel interests as needed to enter and improve the Private Parcels as contemplated in the Reduced Site Alternative, then Developer may elect a “Small Site Alternative” (Attachment B-3). Pursuant to the Small Site Alternative, Developer would implement the Project around the Private Parcels without any improvements to such Private Parcels; the Private Parcels would be left in an as-is condition and not fully incorporated into the Project. Developer’s design of the Small Site Alternative, however, must ensure continued access and sufficient parking for the Private Parcel occupants.

4. The parties do not anticipate any removal or relocation of the Business Interests from the Site; rather all Project Alternatives contemplate that the Business Interests will be either incorporated into the Project to some degree, or that the Project would be built-around the Private Parcels. All costs for the removal, relocation or installation of the Business Interests, or costs to secure or install utilities as well as ongoing utility costs to operate and maintain the Business Interests shall be Developer’s sole responsibility as negotiated with the Business Interests, and Developer shall not seek any reimbursement or contribution for such costs from City or Agency for any reason whatsoever.
Developer shall release, indemnify, defend and hold harmless the Agency and City, and their respective officers, directors, employees, agents, successors and assigns, as applicable, from any and all sums of money, claims, demands, damages, losses, liabilities, contracts, controversies, or compensation for costs related to searching assistance, moving expenses, storage, loss of inventory/merchandise, fixtures/furniture and equipment, increased occupancy expenses, loss of goodwill, and all compensation that may by claimed by Business Interests or other interests in the Private Parcels under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §4601 et seq.), the California Relocation Assistance Law, as amended (California Government Code §7260 et seq.), California Eminent Domain Law (California Code of Civil Procedure §1230.010 et seq.), and/or any other relocation law now or hereafter in effect in California (collectively, “Relocation Claims”). This shall include any and all causes of action whatsoever or of whatever kind or nature related to the Relocation Claims, whether known or unknown, or suspected or unsuspected.

(§200) DEFINITIONS.

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

A. (§201) Agency Parcels.

The term “Agency Parcel(s)” shall refer to any one or all of those three parcels owned by the Successor Agency as of the Effective Date of this Agreement within the Site, located at (i) 6415 Atlantic Avenue, APN 6325-020-901, (ii) 6414 Clarkson Avenue, APN 6325-020-902, (iii) and 4472 Gage Avenue, APN 6325-020-904 (collectively, “Agency Parcels”), which three Agency Parcels are legally described and depicted in Attachment A-1 hereto. The Agency Parcels shall be transferred to Developer in accordance with the terms of an Agency DDA.

B. (§202) City Parcel Delivery Date.

The term “City Parcel Delivery Date” shall mean the date on or before the date on which the City Parcel Escrow shall have closed, which shall be no later than March 1, 2019.

C. (§203) Agreement.

The term “Agreement” shall mean this entire Disposition and Development Agreement, including all attachments, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

D. (§204) Business Interests.

The term “Business Interests” shall mean any and all business, commercial, manufacturing, retail, or restaurant operations existing upon the Private Parcels, whether by fee, tenancy or other right of occupancy, as of the Effective Date hereof.

E. (§205) City.

The term “City” shall mean the City of Bell, a California charter municipal corporation.
F. (§206) City Parcels.

The term “City Parcels” shall mean two parcels of real property owned by the City improved as parking lots located at (i) 6504 Clarkson, APN 6325-020-900, and (ii) 4460 Gage Avenue, APN 6325-020-903, in the City of Bell, County of Los Angeles, State of California which are adjacent to the Agency Parcels, which two City Parcels are legally described in Attachment A-1 hereto.

G. (§207) Closing.

The term “Closing” shall mean the closing of the Escrow by the Escrow Agent’s distribution of the funds and documents received through Escrow to the party entitled thereto as provided herein, which closing shall occur on or before the date established in the Schedule of Performance (no later than March 1, 2019).

H. (§ 208) Covenants or CC&Rs.

The term “Covenants” or “CC&Rs” shall refer to that certain Regulatory Agreement and Declaration of Covenants and Restrictions executed by and between the City and Developer, a copy of which is attached hereto as Attachment C, pursuant to which Developer agrees to develop and maintain the Project on the Site.

I. (§209) Days.

The term “days” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

J. (§210) Effective Date.

The Effective Date of this Agreement shall occur on the date this Agreement is executed on behalf of the City after public hearing, and receipt of final approval of the DOF pursuant to the RDA Dissolution Bills.

K. (§211) Enforced Delay.

The term “Enforced Delay” shall mean any delay described in Section 1003 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 1003.

L. (§212) Escrow.

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

M. (§213) Entitlements.

The term “Entitlements” shall mean any and all final, non-appealable approvals, authorizations and Entitlements relating to land use from governmental authorities with
jurisdiction that Developer deems necessary or appropriate in order to develop and improve the Site with the Project, including those necessary to engage in the retail sale at the Site of beer, wine and liquor for on or off-premises consumption.

N. (§214) Escrow Agent.

The term “Escrow Agent” shall mean Commonwealth Land Title Escrow, at the address of 888 S. Figueroa St, suite 2100, Los Angeles, CA, with the escrow officer being Barbie Hendon who may be contacted at phone (949) 724-3161.

O. (§215) Grant Deed.

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

P. (§216) Permits.

The term “Permits” shall mean any and all permissions, permits, licenses and other indicia of governmental approvals from governmental authorities, including permits relating to alcoholic beverages.

Q. (§217) Private Parcels.

The term “Private Parcels” shall mean two privately-owned parcels of real property located at (i) 4468 Gage Avenue, currently occupied by Yoli’s Flowers, APN 6325-020-406; and (ii) 4466 Gage Avenue, currently occupied by Guadalajara Inn Restaurant, APN 6325-020-405, which two Private Parcels are legally described in Attachment A-3 hereto and for which it is Developer’s sole responsibility to acquire site control over.

R. (§218) Project.

The term “Project” shall mean all of the improvements to be constructed by Developer on the Site pursuant to this Agreement, including, but not limited to, construction of the buildings, glass and concrete work, landscaping, construction of parking areas, and related improvements. The Project is more particularly described in the Scope of Development, attached hereto as Attachment B, which Project is subject to three Project Alternatives, depending upon whether Developer secures Site Control over the Private Parcels:

1. “Large Site Alternative”: If Developer acquires Site Control over all the Private Parcels, then the Project shall be as described and depicted in the site plans at Attachment B-1 hereto and consisting of approximately 4,800 square feet in commercial space and 11,200 square feet of restaurant space;

2. “Reduced Site Alternative”: If Developer is not able to acquire Site Control over the entirety of the Private Parcels (as contemplated by the Large Site Alternative), but is able to negotiate Site Control over a portion of the Private Parcels or otherwise negotiate a means of incorporating the Private Parcels into the Project...
without obtaining Site Control (i.e., negotiating a license and construction agreement regarding the other Private Parcel interests such that Developer will improve such Private Parcels in design, utilities undergrounding, circulation and aesthetics to harmoniously incorporate such Private Parcels into the Project). This Reduced Site Alternative necessitates, in any case, that Developer conclude negotiations with the Private Parcel interests to the end of obtaining either Site Control over a portion of the Private Parcels or otherwise improving the Parcels to incorporate them into the Project. The Reduced Site Alternatives are further described and depicted in the site plans at Attachment B-2 hereto, consisting of approximately 4,440 square feet in commercial space and 10,360 square feet of restaurant space.

3. “Small Site Alternative”: If Developer is unable to obtain any Site Control over the Private Parcels and is unable to successfully negotiate a license/construction agreement with the Private Parcel interests as needed to enter and improve the Private Parcels as contemplated in the Reduced Site Alternative, then Developer may elect a “Small Site Alternative”. Pursuant to the Small Site Alternative, Developer would implement the Project around the Private Parcels without any improvements to such Private Parcels; the Private Parcels would be left in an as-is condition and not fully incorporated into the Project. Developer’s design of the Small Site Alternative, however, must ensure continued access and parking for the Private Parcel occupants. The Small Site Alternative is further described and depicted in the site plans at Attachment B-3 hereto, consisting of approximately 4,080 square feet in commercial space and 9,520 square feet of restaurant space.

Developer shall have determined to proceed with the Large, Reduced, or Small Site Alternative no later than 5:00 PM PST on the day that is Ninety (90) days after the Effective Date of this Agreement, and provide the City with written notice of such determination.

S. (§219) Release of Construction Covenants.

The term “Release of Construction Covenants” shall mean that document prepared in accordance with Section 714 of this Agreement, in the form attached as Attachment E, which shall evidence that the construction and development of the improvements required by this Agreement has been satisfactorily completed.

T. (§220) Schedule of Performance.

The term “Schedule of Performance” shall mean that certain Schedule of Performance attached hereto as Attachment F.

U. (§221) Site and Site Map.

The term “Site” bears the meaning described in Recitals B and C, and Section 102 hereof. The City Parcels, Agency Parcels and Private Parcels are collectively referred to herein as the “Site,” which Site is comprised of approximately 1.57 acres of land area. In the alternative, if Developer is unable to acquire sufficient Site Control over the Private Parcels as needed to incorporate the Private Parcels into the Project, then the “Site” shall refer only to the Agency Parcels, City Parcels, and those Private Parcels over which Developer does have Site Control.
V. (§222) Site Control.

Site Control shall mean Developer has obtained an enforceable right by deed or lease to utilize the Private Parcels or any portion thereof for assembly into the Project, legally given in writing from all fee owners of, and business occupants/tenants of, the Private Parcels. Site Control may include, without limitation, that Developer has (i) obtained an enforceable right to occupy the Private Parcels such that all current business occupants thereon will be relocated, or (ii) obtained an enforceable right to occupy the Private Parcels such that all current business occupants thereon will remain on-Site with their business operations incorporated into the Project.

Instruments memorializing Developer’s acquisition of Site Control shall be provided to the City and subject to the reasonable, prior written approval of the City Manager and City Attorney for purposes of ensuring that Developer’s Site Control is legally enforceable, secure, and sufficiently durational for purposes of the Project.

W. (§223) Title.

The term “Title” shall mean the fee interest to the City Parcels conveyed to Developer.

X. (§224) Title Company.

The term “Title Company” shall mean Commonwealth Land Title, with the title officer being Douglas Abernathy may be contacted at (213) 330-3055.

(§300) PARTIES TO THE AGREEMENT.

A. (§301) City.

City is a California charter municipal corporation. The office of City is located at 6330 Pine Ave., Bell, California 90201. City hereby represents the following to Developer for the purpose of inducing Developer to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and shall survive the conveyance of the City Parcels and survive the Closing with respect to the conveyance of Title to Developer:

1. The City has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the City is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

2. All requisite action has been taken by the City and all requisite consents have been obtained in connection with City entering into this Agreement and the instruments and documents referenced herein to which the City is a party, and to the best knowledge of City, comply with all applicable laws, statutes, ordinances, rules and governmental regulations.
3. Reasonable and good faith inquiry has determined that there is no pending or threatened litigation which would prevent the City Parcels from being conveyed in the condition of title required hereunder, or which would prevent the City from performing its duties and obligations hereunder.

B. (§302) Developer.

1. Identification.

Developer is Arroyo Seco Development Group LLC, a California Limited Liability Company or its duly-approved assignee. The principal office of Developer for the purposes of this Agreement is located at 480 S. Orange Grove Blvd. #12, Pasadena California 91105. Developer warrants and represents to City that Developer is duly qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out Developer’s business as now and whenever conducted and to enter into and perform Developer’s obligations under this Agreement.

Except as may be expressly provided herein, all of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of Developer, and the permitted successors, assigns and nominees of Developer. Wherever the term “Developer” is used herein, such term shall include any of its permitted successors and assigns, as herein provided.

2. Qualifications.

Subject to the provisions of Section 303, the qualifications and identity of Developer are of particular concern to the City, and it is because of such qualifications and identity that City has entered into this Agreement with Developer. The City has considered the Site location and characteristics, the public costs of transferring the City Parcels for development of the Site and return on investment, and the kinds of uses necessary to produce a successful commercial project of the type desired by the City. Based upon these considerations, the City has imposed those restrictions on transfer set forth in this Agreement.

C. (§ 303) Restrictions on Transfer.

1. Transfer Defined.

As used in this section, the term “transfer” shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the City Parcels, or the improvements thereon. A transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate taking all transfers into account on a cumulative basis. In the event Developer or its successor is a corporation, limited liability company, or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer, or of membership interests or of beneficial interests of such trust, as applicable; in the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than twenty-five percent (25%) of the limited or general partnership interest; in the event that Developer is a joint venture, such transfer shall refer to the transfer of more than twenty-five
percent (25%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.

This prohibition shall not be deemed to prevent the granting of temporary or permanent easements or Permits to facilitate the development of the Site. In the event of a transfer as a result of or in connection with the judicial or non-judicial foreclosure, consensual sale (such as a deed in lieu of foreclosure) or transfer arising from or relating to a holder of a mortgage loan or deed of trust exercising its remedies under such lien (provided that the same was permitted under this Agreement), the City shall not have any right to approve or disapprove any transfer, sale or conveyance to any other party or parties acquiring the Site from such holder of a mortgage loan or deed of trust; provided, however that any party or parties acquiring the Site from such holder of a mortgage loan or deed of trust shall assume the rights and obligations and be bound under the terms, conditions and covenants of this Agreement as though they were parties hereto.

2. **Restrictions Prior to Completion.**

Prior to issuance of the Release of Construction Covenants and thereafter during the term of the Covenant Agreement, Developer shall not transfer this Agreement or any of Developer’s rights hereunder, or any interest in the City Parcels or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, without the prior written approval of City, which approval will not be unreasonably withheld, conditioned or delayed, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant approval to any assignment by Developer of its interest in the City Parcels before the issuance of the Release of Construction Covenants, which assignment requires City approval, City shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer’s obligations hereunder; (iii) the proposed assignee’s experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed assignee will have the ability to finance, own, operate and maintain a high quality manufacturing and retail facility in the City, similar to the Project in terms of reputation and amount of anticipated sales to be generated from the City Parcels.

No attempted assignment or transfer of any of Developer’s obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Upon execution and approval of an assumption agreement as provided for herein, the assignor/transferor shall be released and have no further obligations or liability under this Agreement with respect to the interest which is transferred, except to the extent assignor/transferor is in default under the terms of this Agreement prior to said transfer.

3. **Exceptions.**

Notwithstanding any other provision set forth in this Agreement to the contrary, the restrictions on transfer set forth in this Section 303 shall not apply and City approval of a transfer shall not be required in connection with any of the following:

(a) Any mortgage, deed of trust, or other form of conveyance for financing
or refinancing Developer’s direct and indirect costs to acquire the City Parcels and develop the Project thereon, as provided in Section 713, provided that Developer shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the City Parcels, and further provided that the amount of indebtedness incurred in restructuring or refinancing shall not exceed 75% of the outstanding balance on the debt incurred to finance the direct and indirect costs to acquire the Agency Parcels and the City Parcels and the costs to develop the Project thereon and any additional sums (including reasonable costs incurred with respect to such restructuring or refinancing) to complete the same.

(b) The conveyance or dedication of any portion of the City Parcels to the City or other appropriate governmental agency, or the granting of easements or Permits to facilitate the development of the City Parcels.

(c) A sale or transfer of 50% or more of ownership or control interest between members of the same family; or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of members of the trustor’s family; or transfers to a corporation or partnership or other legal entity in which the members of the transferor’s family have a controlling majority interest of 51% or more.

(d) A conveyance of the Site to any entity which is wholly owned or controlled by Developer, or any entity owned and controlled by any one of Arroyo Seco Development Group, LLC, Los Altos XVII, LP or their respective members, partners, managers general partners or principals (each a “Developer Affiliate”).

(e) Any transfer as a result of or in connection with the judicial or non-judicial foreclosure, consensual sale (such as a deed in lieu of foreclosure) or transfer arising from or relating to a holder of a mortgage loan or deed of trust exercising its remedies under such lien (provided that the same was permitted under this Agreement), and in the event that such holder of a mortgage loan or deed of trust (or its affiliate) acquires title to the Site, the City shall not have any right to approve or disapprove any transfer, sale or conveyance to any other party or parties acquiring the Site from such holder of a mortgage loan or deed of trust; provided, however that any party or parties acquiring the Site from such holder of a mortgage loan or deed of trust shall assume the rights and obligations and be bound under the terms, conditions and covenants of this Agreement as though they were parties hereto.
(§ 400) ACQUISITION AND DISPOSITION OF THE CITY PARCELS.

A. (§ 401) Acquisition of City Parcels.

In accordance with and subject to all the terms, covenants and conditions of this Agreement, City agrees to convey the City Parcels to Developer subject to the terms of the Grant Deed, and Developer agrees to accept the City Parcel pursuant to the terms herein and develop the Project.

B. (§ 402) Opening of Escrow & Investigation Contingencies.

Escrow shall be opened within the time period specified in the Schedule of Performance, with the following conditions precedent to the opening of Escrow:

1. Developer shall have elected a Project Alternative, approved by the City, as described in Section 702(3); and

2. Opening of Escrow shall not occur later than the date provided in the Schedule of Performance, and if Escrow has not opened by that date, this Agreement shall expire and terminate as though Escrow terminated pursuant to Section 406.

This Agreement shall constitute the joint escrow instructions of City and Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. City and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional escrow instructions shall modify this document without specific written approval of the modification(s) by both Developer and City.

C. (§ 403) Conditions to Close of Escrow.

1. City’s Conditions to Closing.

City’s obligation to convey the City Parcels and to close Escrow hereunder shall be mandatory and irrevocable once all of the following conditions have occurred:

(a) Developer shall have received all required Entitlements for the Project, including those described in Section 702, and shall have received, or be in a position to pull upon payment of the normal City fees (in the case of its building permit), all required Permits for the Project.

(b) The DOF has approved the Agency DDA for disposition of the Agency Parcels as consistent with the PMP pursuant to the RDA Dissolution Laws.

(c) Developer shall have deposited into Escrow the full Purchase Price for all City Parcels.
(d) Developer shall have deposited into the City Parcels’ Escrow its share of the Escrow costs, title and transfer fees as determined by the Escrow Agent.

(e) All conditions precedent to Closing on the Agency Parcels (per the Agency DDA) have been satisfied, such that the City Parcels will Close concurrently with the Agency Parcels.

(f) Developer shall not have made a transfer in violation of Section 303.

(g) Developer shall have fully executed the Covenant Agreement and shall be prepared to have same recorded against the City Parcels.

(h) Developer shall have approved (or waived) in accordance with Section 501 the physical and environmental condition of the City Parcels, and the City Parcels shall be in substantially the same condition at Closing as at the time Developer approved (or waived) such condition, and shall be free of any material adverse change in condition.

(i) As of the Closing, Developer shall not be in default hereunder in any of its obligations to City, nor shall there be any event or occurrence which with the passage of time or giving of notice or both would constitute such a default by Developer under this Agreement.

(j) Developer shall have deposited an estoppel certificate certifying that City has completed all acts, other than as specified, necessary to conveyance, if such be the fact.

Should City fail to convey title to the City Parcels once these conditions have been satisfied, Developer may seek specific performance of this obligation. Any waiver of the foregoing conditions must be express and in writing. In the event that City is not in default and either Developer fails to satisfy City’s foregoing conditions or Developer defaults in the performance of its obligations hereunder, City may terminate the Escrow without any liability to either party.

2. **Developer’s Conditions to Closing on City Parcels.**

Developer’s obligation to accept title to the City Parcels and to Close Escrow hereunder shall, in addition to any other conditions set forth herein in favor of City, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions within the time provided in the Schedule of Performance:

(a) City shall have deposited into Escrow the Grant Deed.

(b) Title shall be conveyed in a good and indefeasible condition
subject only to those exceptions to title approved in writing by
Developer pursuant to Section 405. The Title Company shall be
prepared and committed to issue the Title Policy described in
Section 405.

(c) City shall have deposited into Escrow its share of the Escrow costs,
title and transfer fees as determined by the Escrow Agent. At the
scheduled date for the Closing, City shall not be in default
hereunder, nor shall there be any event or occurrence which with
the passage of time or giving of notice or both would constitute
such a default by City.

(d) Developer shall have received all required Entitlements for the
Project, including those described in Section 702, and shall have
received, or be in a position to pull upon payment of the normal
City fees (in the case of its building permit), all required Permits
for the Project.

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

(f) City shall have fully executed the Covenant Agreement and shall
be prepared to have same recorded against the City Parcels.

(g) Agency & City will have approved tenants to occupy at the
Project.

(h) The DOF has approved the Agency DDA as consistent with the
PMP pursuant to the RDA Dissolution Laws.

(i) All conditions precedent to Closing on the Agency Parcels (per the
Agency DDA) have been satisfied, such that the City Parcels will
Close concurrently with the Agency Parcels.

(j) Developer shall have approved (or waived) the physical and
environmental condition of the City Parcels, and the City Parcels
shall be in substantially the same condition at Closing as at the
time Developer approved (or waived) such condition, and shall be
free of any material adverse change in condition.

Any waiver of the foregoing conditions must be express and in writing. In the event that
Developer is not in default and either Developer fails to satisfy Developer's foregoing conditions
or City defaults in the performance of its obligations hereunder, Developer may terminate the
Escrow pursuant to Section 406 without any liability to either party.
D. (§ 404) Conveyance of the City Parcels.

1. **Time for Conveyance of City Parcels.**

   Escrow shall Close after satisfaction (or waiver by the benefited party) of all conditions to the Close of Escrow, but not later than the date specified in the Schedule of Performance, unless extended by the mutual agreement of the parties or any Enforced Delay. Possession of the City Parcels shall be delivered to Developer concurrently with the conveyance of fee title free of all tenancies and occupants other than any title matters approved in accordance with Section 405.

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

   On or before the date set in the Schedule of Performance, the Escrow Agent shall advise City and Developer in writing of the fees, charges, and costs necessary to clear title and Close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

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

   On or before, but not later than 1:00 p.m. of the business day prior to the date set for Closing in the Schedule of Performance, City shall execute and deliver to the Escrow Agent a certificate ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the City Parcel, date of closing, gross price, if any, and taxpayer identification number for Developer and City. Prior to Closing, Developer and City shall cause to be delivered to the Escrow Agent such other items, instruments, and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing.

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

   Upon the completion by City and Developer of the deliveries and actions specified in these escrow instructions that are necessary for the Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of Los Angeles County, California, the Grant Deed, and any other appropriate instruments delivered through this Escrow, if necessary or proper to, and provided that the Title can, vest in Developer in accordance with the terms and provisions herein. Promptly after Closing, the Escrow Agent shall cause the Title Company to deliver the Title Policy to Developer insuring title and conforming to the requirements of Section 405, and the Escrow Agent shall cause the Title Company to deliver copies of all recorded instruments to Developer and City. In addition, after deducting any sums specified in this Agreement, the Escrow Agent shall disburse funds to the party entitled thereto.
E. (§ 405) Title Matters.

1. **Condition of Title.**

   At the Closing, City shall convey to Developer fee simple merchantable Title to the City Parcels, subject only to: (i) the former Redevelopment Plan (if still shown as an encumbrance on title), this Agreement, and the Grant Deed; (ii) current taxes, a lien not yet payable; and (iii) covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under this Section 405. City shall convey title pursuant to the Grant Deed in the form set forth in Attachment D hereto.

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

   Title shall be conveyed subject to the exclusion therefrom to the extent now or hereafter validly excepted and reserved by the parties named in deeds, leases and other documents of record of all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred feet (500’) below the surface, together with the right to drill into, through, and to use and occupy all parts of the City Parcels lying more than five hundred feet (500’) below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from the City Parcels but without, however, any right to use either the surface of the City Parcels or any portion thereof within five hundred feet (500’) of the surface for any purpose or purposes whatsoever. City shall indemnify Developer from any injury or property damage caused by City’s exercise of its drilling rights as provided in this subsection.

3. **City Not to Encumber City Parcels.**

   City hereby warrants to Developer that it has not and will not, from the time of Developer’s review of the preliminary title report until the Closing, transfer, sell, hypothecate, pledge, or otherwise encumber the City Parcels without express written permission of Developer, which permission shall not be unreasonably withheld, conditioned or refused by Developer.

4. **Approval of Title Exceptions.**

   Prior to the date specified in the Schedule of Performance, Developer shall obtain a preliminary title report, dated no earlier than the date of this Agreement, including copies of all documents referenced therein. Prior to the date specified in the Schedule of Performance, Developer shall deliver to City written notice specifying in detail any exception disapproved and the reason therefor. All monetary liens or encumbrances, whether or not specifically objected to, shall constitute disapproved exceptions. Prior to the date in the Schedule of Performance, City shall deliver written notice to Developer as to whether City will or will not cure the disapproved exceptions. If City elects not to cure the disapproved exceptions, Developer may terminate the Escrow but without any liability of City to Developer, or Developer may withdraw its earlier disapproval. If City so elects to cure the disapproved exceptions, City shall notify Developer of its election within the time specified in the Schedule of Performance and in such event the cure shall be completed on or before the Closing.
5. **Title Policy.**

At the Closing, the Title Company shall furnish Developer with an ALTA Owner’s Policy of Title Insurance (the “Title Policy”) covering the Developer’s fee interest, wherein the Title Company shall insure that Title to the City Parcels is vested in Developer, with no exception to such Title which has not been approved or waived by Developer in accordance with this Section. The Title Policy shall also include any available additional or extended coverage or endorsements that Developer has reasonably requested. City shall pay only for that portion of the title insurance premium attributable to the premium required for standard coverage for a CLTA policy in the amount of the Purchase Price and for any endorsements necessary to cure any disapproved title exceptions, and Developer shall pay for the premium for said additional or extended coverage, including but not limited to an ALTA policy or special endorsements or survey.

F. (§ 406) Procedure in Event of Failure of Conditions(s) to Closing; Termination.

In the event one or more of the Developer’s or City’s conditions to Closing per Section 403 above is not timely satisfied or waived by the benefited party, that party shall have the right to terminate the Escrow and this Agreement. In such event, the terminating party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party, which notice shall state the condition that has not been satisfied. No demand shall be recognized by the Escrow Agent until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the non-terminating party, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the ten (10) day period the Escrow Agent shall comply with the terminating party’s request. In the event the non-terminating party timely objects, an additional thirty (30) day opportunity to cure or otherwise satisfy the unperformed conditions shall be provided and only if the unperformed condition remains unsatisfied at the end of said 30-day period shall the termination occur. Upon termination of this Agreement, the Escrow shall terminate, and Escrow Agent shall immediately return all documents, instruments and monies to the party that deposited same (without any additional instructions from City or Developer). Also upon termination, except as otherwise specifically provided herein, each party shall bear its own costs incurred, including one-half of any Escrow cancellation charges, and neither City nor Developer shall have any further rights or obligations hereunder (except for any indemnity obligations of either party pursuant to the other provisions herein and obligations herein that specifically provide that they survive termination of this Agreement).

G. (§ 407) Costs of Escrow.

1. **Allocation of Costs.**

The Escrow Agent is authorized to allocate costs as follows: City shall pay the cost of the Title Policy as provided above while Developer shall pay premiums for any additional insurance, extended coverage or special endorsements. City shall pay the documentary transfer tax as well as all recording fees (if any). Developer and City shall each pay one-half of all Escrow and similar fees, provided that if one party defaults under this Agreement or cancels the
escrow through no fault of the other, the defaulting or canceling party shall pay all Escrow fees and charges. Each party shall pay its own attorneys' fees.

2. **Prorations and Adjustments.**

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

3. **Extraordinary Services of Escrow Agent.**

   It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. **Escrow Agent’s Right to Retain Documents.**

   Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid.

H. **(§ 408) Responsibility of Escrow Agent.**

1. **Deposit of Funds.**

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

2. **Notices.**

   All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 1001 of this Agreement for notices, demands and communications between City and Developer.

3. **Sufficiency of Documents.**

   The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer’s and City’s instructions for their use.
4. **Exculpation of Escrow Agent.**

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

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

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

(§ 500) **PHYSICAL AND ENVIRONMENTAL CONDITION OF CITY PARCELS.**

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

Prior to, and after, the Effective Date of this Agreement, Developer and its employees, agents and contractors shall have had the right to enter onto the City Parcels to conduct soils, engineering, or other tests and studies, to perform preliminary work and for any other purposes to carry out the terms of this Agreement. Developer agrees to indemnify, defend and hold City harmless from and against any claims, injuries or damages arising out of any such entry or activity as provided in Section 706; provided that such indemnity shall not apply to Developer’s discovery of Hazardous Materials. Any such activity shall be undertaken only after securing any necessary permits from appropriate governmental agencies.

Within 15 days after the Effective Date, City shall deliver to Developer copies of all documents in the City’s or Agency’s possession concerning the physical and/or environmental condition of the City Parcels (the “City Parcel Documents”). City represents and warrants that the persons who participated in making this Agreement on City’s behalf have no actual knowledge, without any duty of investigation or inquiry, regarding physical defects or violations of Environmental Laws or threatened or pending claims affecting the City Parcels, except as may be set forth in the City Parcel Documents. Within the time set forth in the Schedule of Performance, Developer shall notify City whether Developer, in its sole discretion, approves or disapproves the physical and/or environmental condition of the City Parcels.

If Developer approves of the physical and/or environmental condition of the City Parcels, Developer shall be responsible for remediation of any Hazardous Materials discovered at the City Parcels during its due diligence; provided, however, Developer shall not be responsible to remediate Hazardous Materials that were directly brought onto the City Parcels by Agency or City or their respective contractors, agents, or employees. Developer will have no liability or
obligation to Agency or City concerning any Hazardous Materials that are discovered at the City Parcels during Developer's due diligence if Developer does not approve the physical and/or environmental condition of the City Parcels or does not acquire the City Parcels.

B. (§ 502) Disclaimer of Warranties for City Parcel.

Upon the Closing, Developer shall acquire the City Parcels in their "AS-IS" condition and, except as otherwise set forth in this Agreement, shall be responsible for any defects in the City Parcels and the Site, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, or other structures located on, under or about the City Parcels or any other portion of the Site, and City makes no other representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site, the suitability of the Site for the Project, or the present use of the Site, and City specifically disclaims all representations or warranties of any nature concerning any portion of the Site made by it, the City and their respective employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Site is suited, or drainage. City makes no representation or warranty concerning the compaction of soil upon the Site, nor of the suitability of the soil for construction.


Developer understands and agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Site, but in no event shall Developer look to Agency or City for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks, except concerning Hazardous Materials that were directly brought onto the Agency Parcels by Agency or City or their respective contractors, agents, or employees. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Agency, City, their directors, officers, shareholders, employees, and agents, and their heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Materials thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that if the Closing occurs any and all responsibilities and obligations of Agency and City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against the Agency or City, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however,
that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Developer and each of the entities constituting Developer, shall, from and after the Closing, defend, indemnify and hold harmless Agency, City and their officers, directors, employees, agents and representatives (collectively, the “Indemnified Parties”) from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Site after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Site occurring at any time after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys’ fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Site or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, Developer shall use its diligent efforts to obtain for Agency and City the same releases, indemnities and other comparable provisions.

Notwithstanding anything to the contrary in this Section, Developer’s limited release and indemnification of Agency and City and the Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Site by Agency or City or their respective contractors, agents, or employees after the Close of Escrow. For purposes of this Section 503, the following terms shall have the following meanings:

“Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

“Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with
respect to the Site or its operation as a result of actions or measures necessary to implement or
effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

“Environmental Compliance Cost” means any cost or expense of any nature
whatsoever necessary to enable the Site to comply with all applicable Environmental Laws in
effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that
the Site is capable of such compliance.

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

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

Notwithstanding any other provision of this Agreement, Developer’s release and indemnification as set forth in the provisions of this Section, as well as all provisions of this Section shall survive the termination of this Agreement and shall continue in perpetuity.

Notwithstanding anything to the contrary in this Section, Developer’s limited release and indemnification of Agency and City and the Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Site by Agency or City or their respective contractors, agents, or employees.

(§600) DEVELOPER FINANCIAL CAPABILITY.

Developer represents that its net worth exceeds $15,000,000.00, and has the financial capability to construct the Project. Developer hereby certifies to City that adequate funds are available to Developer for the construction of the Project, and will be allocated to Developer to fund the construction of the Project. In the event Developer intends to finance such costs it shall provide a loan commitment letter from a lender evidencing the lender’s willingness to provide the financing. By the time specified in the Schedule of Performance, Developer, if it intends to finance the costs of its performance under this Agreement, agrees to deliver to City and obtain the written approval of City of irrevocable written commitments from financial institutions licensed to do business in California sufficient to allow Developer to perform its obligations hereunder.

(§ 700) DEVELOPMENT OF THE SITE.

A. (§ 701) Scope of Development.

Subject to the Conditions to Closing and other terms of this Agreement, the Site shall be developed by Developer as provided in the Scope of Development and the plans and Entitlements and Permits approved by Agency and City pursuant to Section 702. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including the Scope of Development) and the approved plans and Entitlements and Permits, the approved plans, Entitlements and Permits shall govern.


1. Proposed Development’s Consistency With Plans and Codes.

City warrants and represents that the City’s General Plan and Zoning Ordinance permit the Project, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Scope of Development, subject only those Entitlements and Permits yet to be obtained, described below in this Section 702; provided that it is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any governmental entity other than Agency and City, nor does City make any representation or warranty that City will exercise its discretionary police power authority
over the Project as to any development approvals described below in any particular manner. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. **Entitlements and Permits During Escrow.**

City hereby authorizes Developer to commence processing and securing those Entitlements and Permits for the Project before the Closing. To this end, and at no cost to City, City shall cooperate and execute such documents as may be reasonably required for Developer to process and secure said Entitlements and Permits; provided that Developer shall not be authorized to change the zoning of the City Parcels until after the Closing.

3. **Evolution of Development Plan; Election of Project Alternatives.**

Concurrently with the approval of this Agreement, the Agency/City has approved the Developer’s basic concept drawings, a copy of which are included as part of the Scope of Development at **Attachment B** herein. Developer’s election of a Project Alternative is subject to multiple submissions to City staff, and Council review and approval as follows:

(a) **Submissions.** For any Project Alternative elected by Developer, Developer shall submit the following materials to City staff within 90 days following the Effective Date:

a. **Information re Private Parcel and Business Interest Negotiations:** Instruments demonstrating (i) Developer’s Site Control over all or a portion of the Private Parcels, if any, (ii) such license/construction or other agreement with the Private Parcel owners and Business Interests whereby Developer will undertake improvements to the Private Parcels in order to update, improve and renovate existing improvements on the Private Parcels to harmoniously incorporate the design and aesthetics of said Private Parcels into the Project, (such agreement to include Developer’s renovation plans for Private Parcel improvements, including without limitation design, façade elements, landscaping, signage and lighting), and (iii) an explanation of Developer’s efforts to obtain Site Control or otherwise incorporate Private Parcels into Project. These instruments shall be subject to the reasonable, prior written approval of the City Manager and City Attorney before presentation to the Council.

b. **Updated Proforma.** A detailed proforma tailored to the Project as contemplated in the elected Project Alternative subject to the reasonable, prior written approval of the City Manager.

c. **Updated Site Plan with Architectural Design and Parking Proposals.** A reasonably detailed Site Plan and development details for the elected Project Alternative. A plan and Entitlement proposal for ensuring compliance with City parking standards shall be included
and such assurances as needed to ensure that parking standards for the proposed uses are adequate (e.g., parking analysis based on range of proposed uses, feasibility of parking structure, etc.). Developer’s submissions must ensure continued access and parking for the Private Parcel occupants. This shall also include a proposal for the architectural design theme to be implemented in the Project.

d. **Updated Tenant List.** Any final revisions to the proposed Project tenants, if different from those specified in Section 802 hereof.

e. **Updated Schedule of Performance.** Any final revisions to the proposed Project Schedule of Performance, including any Project Schedule details not currently presented in Attachment F hereto.

(b) **Materials for Council Approval.** Upon submission of the above items to City Planning, the following materials will be presented to the City Council for review at a regularly-scheduled Council meeting within 30 days, reasonably subject to then-existing agenda loads and the requirements of the Ralph M. Brown Act, Government Code §§ 54950 et seq.:

i. **The Updated Site Plan.** Council approval shall include (a) the proposed Project configuration as related to the Private Parcels, their manner of incorporation into the Project, and configuration of buildings and uses; (b) the proposed architectural design scheme; and (c) Developer’s parking proposal.

ii. **The Updated Tenant List.** Any proposed revisions to the proposed Project tenants, if different from those specified in Section 802 hereof.

iii. **Updated Schedule of Performance.** Any proposed revisions to the proposed Project Schedule of Performance, including any Project Schedule details not currently presented in Attachment F hereto.

The Council shall decide whether to approve, disapprove, or approve with further conditions, the Developer’s ability to proceed with the Project Alternative elected.

If the City Council disapproves Developer’s election of a Project Alternative, either Developer or City may terminate this Agreement upon written notice to the other party, with no further rights or obligations between the parties. If the City Council conditionally approves Developer’s election of a Project Alternative, then Developer may accept such conditions and proceed with the Project Alternative as conditionally approved, or terminate this Agreement upon written notice to the City Manager with no further rights or obligations between the parties.

Once Developer is authorized by the City Council to proceed with an elected Project Alternative, then by the dates set forth in the Schedule of Performance, Developer shall submit to the City final drawings and specifications for development of the Site in accordance with the
elected and approved Project Alternative, and all in accordance with the City's requirements and normal planning process. The term final drawings shall be deemed to include site plans, building plans and elevations, grading plans (if applicable), landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development (either Large, Small or Reduced Site Alternative, as elected) and the various development approvals referenced hereinabove, except as such items may be amended by City (if applicable) and by mutual consent of City and Developer. Plans (concept, final and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Developer shall submit to City plans in sufficient detail to obtain all discretionary land use approvals, including for site plan approval, conditional use permit, and other actions requiring Planning Commission approval.

4. **Developer Efforts to Obtain Approvals.**

Developer shall exercise commercially reasonable diligence to timely submit all documents and information necessary to obtain all Entitlements and Permits from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

5. **City Assistance.**

Subject to Developer's compliance with (i) the applicable City and Agency development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, City agrees to provide reasonable assistance to Developer in the expeditious processing of Developer's submittals required under this Section in order that Developer can obtain a final City action on such matters within the times set forth in the Schedule of Performance. City or Agency's failure to provide necessary approvals or Entitlements and Permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay under Section 1003.

6. **CEQA.**

The City shall be responsible for obtaining the approval of this Agreement and the Project as required by the California Environmental Quality Act ("CEQA"), California Public Resources Code, Sections 21000-21178, and Title 14 CCR, Section 753, and Chapter 3, Sections 15000-15387, including the application of any CEQA exemptions. The Developer agrees to supply information and otherwise assist City, upon City's request, to determine the environmental impact of the proposed development and to allow City to prepare and process such environmental documents, if any, as may need to be completed for the development pursuant to the requirements of CEQA.
7. **Disapproval.**

The City shall approve or disapprove any submittal made by Developer pursuant to this Section as called for in the Schedule of Performance attached. All submittals made by Developer will note the time limits in the Schedule of Performance, and specifically reference this Agreement and the Schedule of Performance. Any disapproval shall state in writing the reason for the disapproval and the changes which the Agency/City requests be made. Developer shall make the required changes and revisions and resubmit for approval as required in the Schedule of Performance. Thereafter, City shall review the resubmittal in the time line allowed in the Schedule of Performance, but if the City disapproves the resubmittal, then the cycle shall repeat, until the City’s approval has been obtained, all within the time line of the Schedule of Performance.

C. **(§ 703) Cost of Construction.**

Developer shall be responsible to construct the Project on the Site at its own cost. If Developer elects to proceed with the Reduced Site Alternative for Project development, all costs of renovation, remediation (if any) and construction upon the Private Parcels as authorized by Section 702(3)(ii) shall be Developer’s sole responsibility and expense. Developer shall defend, indemnify and hold Agency and City harmless from and against any all claims, liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of any Developer’s entry or construction activities upon the Private Parcels, consistent with Developer’s indemnity obligations under Section 706 below.

D. **(§ 704) Financial Assistance.**

City is not providing any direct or indirect financial assistance to Developer that would make any part of the Project a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720, such that it would cause Developer to be required to pay prevailing wages for any aspect of the development. Notwithstanding the foregoing, to the extent that (contrary to the parties' intent) Developer is determined to be responsible to pay prevailing wages for the Project, Developer shall indemnify and hold Agency and City harmless from and against any all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of any action or determination that the Project is subject to payment of prevailing wages. Agency and City shall cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the Agency or City retain the right to settle or abandon the matter without the Developer’s consent as to the Agency’s or City’s liabilities or rights only, but should it do so, the Agency or City shall waive the indemnification herein, except, the Agency’s or City’s decision to settle or abandon the matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.

E. **(§ 705) Schedule of Performance; Progress Reports.**

The parties shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance
or such reasonable extensions of said dates as may be mutually approved in writing by the parties. The City Manager shall have the authority on behalf of City to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site; extensions over a cumulative total of one hundred eighty (180) days will require City Council approval.

Once construction is commenced, Developer shall pursue to completion the entire Project, as described in Attachment B, and shall not abandon any construction for more than sixty (60) consecutive days, except when due to an Enforced Delay. Developer shall keep the City informed of the progress of construction and submit to the City written reports of the progress of the construction when and in the form reasonably requested by the City.

F. (§ 706) Indemnification During Demolition and Construction.

During the periods of construction on the Site and until such time as the City has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, the Developer agrees to and shall indemnify and hold the Agency and the City and their officers, employees and agents harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer or its agents, servants, employees, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) any negligent acts, errors, or omissions of the Agency or the City, or their respective agents, servants, employees, or contractors. The Agency and City shall not be responsible for any acts, errors, or omissions of any person or entity except the Agency and the City and their respective agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination or expiration of this Agreement.

G. (§ 707) Bodily Injury, Site Damage and Workers’ Compensation Insurance.

1. Types of Insurance.

Prior to the entry of Developer on the Site and the commencement of any Project construction by or on behalf of Developer, Developer shall procure and maintain, at its sole cost and expense, in a form and content reasonably satisfactory to City, during the entire term of such entry or construction, the following policies of insurance:

(a) Commercial General Liability Insurance. Developer shall keep or cause to be kept in force for the mutual benefit of Agency, City, and Developer comprehensive broad form commercial general liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing protection of at least One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate.
(b) **Builder's Risk Insurance.** Developer shall procure and shall maintain in force "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits and at least One Million Dollars ($1,000,000.00) per occurrence.

(c) **Worker's Compensation.** Developer shall also furnish evidence that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law. Employer's liability limits usually should be One Million Dollars ($1,000,000) to be equal to general and auto liability limits.

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

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

All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, the Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IX or better. All such policies shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of Agency, City, or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against Agency/City and against Agency's/City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by Agency/City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to Agency/City or Agency's/City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Agency and City shall be named as additional insureds on all policies of insurance required to be procured by the terms of this Agreement.

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

Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

For insurance required above, prior to entry of Developer on the Site and the commencement of any construction by or on behalf of Developer.
For any renewal or replacement of a policy already in existence, at least ten (10) days before expiration or termination of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, such failure or referral shall be a default hereunder, subject to the applicable cure period.

II. (§ 708) City and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site, which are Developer’s responsibility under the Scope of Development, Developer shall at its own expense secure or cause to be secured any and all Permits which may be required by City or any other governmental agency affected by such construction, development or work. The Developer shall not be obligated to Close the Escrow or commence construction if any such Permit is not issued despite good faith effort by Developer. If there is delay beyond the usual time for obtaining any such Permits due to no fault of Developer, the Schedule of Performance shall be extended for a reasonable amount of time to allow Developer to obtain such Permit or Permits. Developer shall pay all applicable City development and building fees as set forth in Section 702 of this Agreement and other legal, normal and customary fees and charges applicable to such Permits and any fees or charges hereafter imposed by City which are standard for and uniformly applied to similar projects in the City, provided that nothing in this Agreement is intended as a waiver by Developer of its right to object to or challenge new or increased City fees imposed after the Effective Date.

I. (§ 709) Rights of Access.

Representatives of the City shall have the reasonable right of access to the Site without charges or fees, at any time during normal construction hours during the period of construction, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of City shall be those who are so identified in writing by the City Manager. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of City’s exercise of this right of access as provided in Section 706.

J. (§ 710) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.
K. (§ 711) Anti-discrimination During Construction.

Developer, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin.

L. (§ 712) Taxes, Assessments, Encumbrances and Liens.

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

M. (§ 713) Rights of Holders of Approved Security Interests in City Parcels.

1. Definitions.

As used in this Section, the term any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term “holder” shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. No Encumbrances Except Mortgages to Finance the Project.

Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing Developer’s acquisition of the City Parcels and development of the Project are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for financing Developer’s direct and indirect costs for acquisition of the City Parcels, for the construction of improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the sum of the then-outstanding balance of the existing financing plus any applicable loan fees or refinancing costs plus any additional amounts that may be reasonably necessary to complete development of the Project. The Developer (or any entity permitted to acquire title under this Section) shall notify the City in advance of any mortgage, if the Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. The Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of the City as provided in this Section 713. Any lender approved by the
City pursuant to this Section 713 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify the City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of the Developer or otherwise.

3. **Developer’s Breach Shall Not Defeat Mortgage Lien.**

Developer’s breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the City Parcels, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the City Parcels whose interest is acquired by foreclosure, trustee’s sale or otherwise.

4. **Holder Not Obligated to Construct or Complete Improvements.**

The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

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

Whenever City shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. **Right to Cure.**

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

(a) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

(b) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.
In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer’s obligations to City by written agreement satisfactory to City with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates. Any holder properly completing such improvements shall be entitled, upon written request made to City, to a Release of Construction Covenants.

7. **City’s Rights upon Failure of Holder to Complete Improvements.**

In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the City Parcels or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, City may, after ninety (90) days’ notice to such holder and if such holder has not exercised such option to construct within said additional ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(b) All expenses, incurred by the holder with respect to foreclosure, if any

(c) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the City Parcels, such as insurance premiums or real estate taxes, if any;

(d) The costs of any improvements made by such holder, if any; and

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the City.

In the event that the holder does not exercise its option to construct afforded in this Section, and City elects not to purchase the mortgage of holder, upon written request by the holder to City, City agrees to use reasonable efforts to assist the holder selling the holder’s
interest to a qualified and responsible party or parties (as reasonably determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by Developer, or such other improvements in their stead as shall be satisfactory to City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (a) through (e) hereinabove, and any balance remaining thereafter shall be applied as follows:

a) First, to reimburse City, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by City with respect to such sale, including but not limited to payroll expenses, management expenses, legal expenses, and others.

b) Second, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City to discharge any other encumbrances or liens on the City Parcels or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Developer, its successors or transferees.

c) Third, any balance remaining thereafter shall be paid to Developer.

8. Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default.

In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by City of a Release of Construction Covenants for the City Parcels or portions thereof covered by said mortgage, and the holder of any such mortgage has not timely exercised its option to complete the development, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by City in curing the default, including legal costs and attorneys’ fees, which right of reimbursement shall be secured by a lien upon the City Parcels to the extent of such costs and disbursements. Any such lien shall be subject to:

(a) Any mortgage for financing permitted by this Agreement; and

(b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. Right of the City to Satisfy Other Liens on the City Parcels After Conveyance of Title.

After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the City Parcels or any portion
thereof, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof; and so long as such delay in payment shall not subject the City Parcels or any portion thereof to forfeiture or sale.

10. **Minor Amendments**

The City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Developer’s lender in relation to the protection of such lender’s security interest in the City Parcels, without formal approval of the City Council.

N. **(§ 714) Release of Construction Covenants.**

Upon the completion of all construction required to be completed by Developer on the Site and in no event later than the date on which the City allows occupancy of the completed building(s) on the Site to occur, City shall furnish Developer with a Release of Construction Covenants in the form attached hereto as Attachment E upon written request therefor by Developer. The Release of Construction Covenants shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Los Angeles County. The recordation of the CC&Rs described in Section 802 shall be a condition precedent to the Release of Construction Covenants.

A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect to development of the Project. A partial Release of Construction Covenants applicable to less than the entire Project and Site shall not be permitted. After issuance of a Release of Construction Covenants, the City shall not have any rights or remedies under this Agreement, except as otherwise set forth in the Grant Deed and Covenant Agreement.

City shall not unreasonably withhold the Release of Construction Covenants. If City refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer, City shall provide a written statement of the reasons City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain City’s opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called “punch list” items, City will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to City.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code.
Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a certificate of occupancy from the City before the Release of Construction Covenants is issued.

O. (§ 715) Estoppels.

At the request of Developer or any holder of a mortgage or deed of trust, City shall, from time to time and upon the request of such holder, timely execute and deliver to Developer or such holder a written statement of City that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the fact, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which Developer or such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to City and subject to the approval of City.

(§ 800) USES OF THE SITE.

A. (§ 801) Uses of the Site.

Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that Developer and such successors and such assigns shall devote the Site to mixed retail/restaurant uses or any other plans as may be approved by the City. Developer further agrees to use, devote, and maintain the Site and each part thereof only for 50-70% food/restaurant uses and 30-50% retail uses. In order to maintain these Site uses, Covenants, Conditions & Restrictions (“CC&Rs”) attached hereto as Attachment “G” shall be recorded upon the Property by City and Developer prior to Closing. The CC&R’s, in addition to Developer’s normal shopping center restrictions, shall include provisions making City and Agency parties with enforcement rights, which provisions shall include for maintenance of the Site, non-discrimination, the City’s rights of tenant approval pursuant to Section 802, transfer restrictions and other provisions consistent with the Project approvals and this Agreement. The CC&Rs shall be subject to the approval of the City, which will not unreasonably withhold its consent. Developer acknowledges that the Site shall become subject to the CC&Rs upon City’s execution and recordation of the CC&Rs and Developer will comply with all of the terms and conditions contained in the CC&Rs. The CC&Rs will be in a form substantially similar to that at Attachment C.

The CC&Rs shall generally remain in effect for a period of forty (40) years from the date recorded; provided that, however, that covenants of indemnity shall remain in effect in perpetuity, all as further specified in the CC&Rs. The following provisions of the CC&Rs, however, are subject to a shorter term from the recordation of these CC&Rs:

a. Ten (10) years for the City/Agency rights of tenant approval.

b. Fifteen (15) years following Release of Construction Covenants on the general “use of Site” provisions for restaurant/retail use.
B. (S802) City’s Rights of Tenant Approval.

1. Pre-Qualified Tenants.

Of particular concern to City’s conveyance of the City Parcels is the identity and quality of the commercial tenants to occupy the Site. The Site is situated in the City’s central, downtown and civic area, and the tenants on the Site shall be of a high quality commensurate with one of the most centralized commercial locations in the City. To this end, the initial and subsequent tenants for occupation of the Site (excepting the Private Parcels) shall be subject to the City’s prior written approval which will not be unreasonably withheld, conditioned or delayed (to be obtained from City prior to any occupancy by a tenant on a City Parcel). For purposes of such tenant approval the following tenants are hereby approved as “Pre-Qualified Tenants” and are examples of the tenants sought for the City and Agency Parcels:

- **Restaurant Tenants:**

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<th>FAST CASUAL</th>
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<tr>
<td>Loaded Kitchen Cafe</td>
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<td>Da Vinci Ice Cream</td>
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<td>Lazy Dog Café</td>
<td>Ono Hawaiian BBQ</td>
<td>Dunkin Donuts</td>
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<td>Black Bear Dinner</td>
<td>Pita Pit</td>
<td>Red Mango</td>
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<td>Kickin’ Crab</td>
<td>Dickey’s BBQ</td>
<td>Rita’s Shaved Ice</td>
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<td>Stinking Crawfish</td>
<td>Blaze Pizza</td>
<td>85c Bakery</td>
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<td>Alondra Hot Wings</td>
<td>MOD Pizza</td>
<td>Jimmy John’s</td>
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<td>Steak &amp; Shake</td>
<td>Pieology</td>
<td>Jersey Mike’s</td>
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<td>Pizza Rev</td>
<td>Capriotti’s</td>
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<td>Pizza Studio</td>
<td>Firehouse Subs</td>
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<td>Moe’s Southwestern Grill</td>
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<td>Noodle’s &amp; Company</td>
<td>Quizno’s</td>
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<td>Flame Broiler</td>
<td>Togo’s</td>
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<td>Five Guys Burgers &amp; Fries</td>
<td>Pollo Campero</td>
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<td>The Habit Burger Grill</td>
<td>El Pollo Inka</td>
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<td>BurgerIm</td>
<td>La Monarca Bakery</td>
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<td>Fatburger</td>
<td>La Michoacana Ice Cream</td>
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<td>Freebirds</td>
<td>Cold Stone Creamery</td>
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<td>Chipotle</td>
<td>It’s Boba Time</td>
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<td>Baja Fresh</td>
<td>Tierra Mia</td>
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<td>Boston Market</td>
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<td>Gus’s Fried Chicken</td>
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<td>Dog Haus</td>
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<td>Brat Works</td>
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</table>

- **Retail Tenants:** AT&T Electronics or Wireless, Sprint Store.

In the event Developer desires to lease the Site, or a portion thereof, to a tenant that is not on the aforementioned pre-approved list, Developer shall first obtain the approval of the City, in accordance with the guidelines for processing requests for tenant approval set forth below.
2. **Processing Requests for Approval of Tenants Not Named as Pre-Qualified.**

Any request by Developer for approval of a tenant that is not specifically noted on the Pre-Qualified list shall be in writing and shall include such supporting information as may be reasonably required in order to enable the City to determine whether such tenant meets the requirements noted in this Section 802.

The City Manager shall schedule the matter as an open public hearing item before the next possible regularly-scheduled legislative body meeting, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Developer will be given an opportunity to present the tenant in person to the City Council or Agency Board, as appropriate.

It is generally intended that tenants will be approved for the Site who (i) operate a chain of stores on a regional or nationwide basis, (ii) are comparable, or reasonably equivalent, to the pre-approved, exemplar tenants listed above, and (iii) do or will do marketing within the general market area. In its reasonable discretion, Agency or City may also approve other tenants, including tenants who operate a local chain of business. Factors that the Council/Board may use in his/her determination as to whether a proposed tenant is reasonably equivalent also include if the proposed tenant is a drive-thru versus non-drive-thru, grocery versus restaurant, and if the proposed tenant would materially change the target ratio of retail to restaurant uses.

Based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove the proposed tenant. The legislative body shall state its factual and policy bases for such holding in its reasonable discretion. Nothing in this Section shall be deemed to permit Developer to substitute a retail or restaurant tenant with a non-retail (e.g., services) tenant.

3. **Expiration of City Tenant Approval Rights.**

City’s right to approve tenants for the Site shall expire after a total of ten (10) consecutive years following the Release of Construction Covenants. After such period subsequent tenancies or occupancies of such space shall be exempt from such approval. The period of local agency tenant approval shall continue to run notwithstanding occasional vacancies in leased spaces.

C. **(§ 803) Obligation to Refrain from Discrimination.**

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the City Parcels, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the City Parcels or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.
D. (§ 804) Form of Nondiscrimination and Nonsegregation Clauses.

Developer shall refrain from restricting the rental, sale, or lease of any portion of the City Parcels on the basis of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

1. **Deeds.**

   In Deeds the following language shall appear: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

2. **Leases.**

   In Leases the following language shall appear: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices, of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

3. **Contracts.**

   Any contracts which Developer or, Developer’s heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the City Parcels shall contain a nondiscrimination and nonsegregation clause substantially as set forth in Section 803 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

E. (§ 805) Maintenance of Improvements.

As further provided in the Covenant or Grant Deed, Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the City Parcels or any part thereof, that, after City’s issuance of its Release of Construction Covenants the Developer shall be responsible for maintenance of all improvements that may exist on the Site from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in first-class
condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Developer shall also maintain all landscaping required pursuant to Developer’s approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof. Developer’s further obligations to maintain the Site, and City’s remedies in the event of Developer’s default in performing such obligations, are set forth in the Covenant Agreement or Deed.

F. (§ 806) Effect of Covenants.

City is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in its own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of City shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the City Parcels. City shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of the City, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the CC&Rs or Grant Deed.

(§ 900) DEFAULTS, REMEDIES AND TERMINATION.

A. (§ 901) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion; provided that if the default is an immediate danger to the health, safety and general welfare, then the injured party may specify a shorter period and require immediate action, as may be reasonable under the circumstances.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice, except if a shorter time applies as specified above in this Section 901. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

1. No Waiver.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of
the time for performing any act shall not constitute a waiver of time for performing any other act
or an identical act required to be performed at a later time. The delay or forbearance by either
party in exercising any remedy or right as to any default shall not operate as a waiver of any
default or of any rights or remedies or to deprive such party of its right to institute and maintain
any actions or proceedings which it may deem necessary to protect, assert, or enforce any such
rights or remedies.

2. Cross-Default.

Any default by Developer under the City Agreement or the CC&Rs is a default under this
Agreement.

B. (§ 902) Legal Actions.

3. Institution of Legal Actions.

In addition to any other rights or remedies, and subject to the requirements of Section
901, 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 consistent with the purpose of this
Agreement. Legal actions must be instituted and maintained in the Superior Court of the County
of Los Angeles, State of California, in any other appropriate court in that county.


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

5. Acceptance of Service of Process.

In the event that any legal action is commenced by Developer against City, service of
process on City shall be made by personal service upon the City Manager or City Clerk, or in
such other manner as may be provided by law. In the event that any legal action is commenced
by City against Developer, service of process on Developer shall be made in such manner as may
be provided by law and shall be valid whether made within or without the State of California.

C. (§ 903) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the
parties are cumulative, and the exercise by either party of one or more of its rights or remedies
shall not preclude the exercise by it, at the same or different times, of any other rights or
remedies for the same default or any other default by the other party.

D. (§ 904) Specific Performance.

Before the Closing, Developer may seek specific performance or other equitable relief to
compel Agency to Close the Escrow. In addition to any other remedies permitted by this
Agreement, if subsequent to the Closing either party defaults hereunder by failing to perform any
of its obligations herein, the other party shall be entitled to seek the judicial remedy of specific
performance. In this regard, Developer specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the redevelopment of the Site and not for the purpose of enabling Developer to speculate with land. Notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall City have a right prior to the Closing to seek specific performance or other equitable relief to compel Developer to Close the Escrow or proceed with development of the Project.

E. (§ 905) Right of Reverter.

Subject to Developer’s right to an extension of time to perform in the event of an Enforced Delay, City shall have the right, at its option, to reenter and take possession of the City Parcels with all improvements thereon and to terminate and, for the Purchase Price (as reduced by any mortgage, deed of trust, or other security interests permitted by this Agreement; and any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests), vest in the City the estate conveyed to the Developer, if after Closing and prior to the recordation of the Release of Construction Covenants, the Developer (or his successors in interest) shall commit a material default by:

1. Failing to commence construction of the Project as required by this Agreement for a period of ninety (90) days after written notice to proceed from the City; or

2. Abandoning or substantially suspending construction of the Project for a period of ninety (90) days after written notice of such abandonment or suspension from the City; or

3. Assigning this Agreement, or any rights herein, or transferring, or suffering any involuntary transfer of, the City Parcels, this Agreement, or any part thereof, in violation of this Agreement, if such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by the City to the Developer.

The foregoing right to re-enter, repossess, terminate, and vest shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit:

- Any mortgage, deed of trust, or other security interests permitted by this Agreement.

- Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests.

Upon the vesting in City of possession to the City Parcels, or any part thereof, as provided in this Section 905, City shall, pursuant to its responsibilities under state law, use its best efforts to reconvoy the City Parcels, or any part thereof, as soon and in such manner as City shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as reasonably determined by City), who will assume the obligation of making or completing the Project, or such other improvements in their stead, as shall be satisfactory to City and in accordance with the uses specified for the City Parcels, or any part thereof. The rights

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established in this Section are to be interpreted in light of the fact that City will sell the City Parcels to Developer for development and not for speculation in undeveloped land.

F. (§ 906) Attorney’s Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties’ agreement to, or performance of this Agreement, or is made a party to any action or proceeding by the Escrow Agent or other third party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney’s fees from the other. As used herein, the “prevailing party” shall be the party determined as such by a court of law pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorney’s fees shall include attorney’s fees on any appeal, and in addition a party entitled to attorney’s fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

G. (§907) Participation in Litigation; Indemnity.

Developer agrees to indemnify the Agency, City, and their elected boards, commissions, officers, agents and employees (collectively, including Agency and City, the “Indemnified Parties”) and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, judgments, settlements, obligations and expenses (including but not limited to attorneys’ fees and costs) concerning any Claims or Litigation (defined below). The term “Claims or Litigation” shall mean any challenge by adjacent owners or any other third parties: (i) to the legality, validity or adequacy of the General Plan, development approvals, this Agreement, or other actions of Indemnified Parties pertaining to the Project, (ii) seeking damages against Indemnified Parties as a consequence of the foregoing actions or for the taking or diminution in value of their property, or in any other manner, or (iii) for any tort claim or action against the Indemnified Parties arising in connection with Developer's construction of the Project; excepting that “Claims or Litigation” subject to the indemnity and defense obligations in this Section shall not include those arising out of or relating to the sole negligence, gross negligence, willful misconduct, or violation of law by any of the Indemnified Parties, including violations of the Ralph M. Brown Act. Each Indemnified Party seeking defense or indemnity from Developer concerning Claims or Litigation shall provide Developer with prompt notice of the pendency of any action for which it believes it is entitled to indemnity under this Section and request that Developer defend it regarding such action (but any delay or failure to notify Developer will only reduce Developer’s obligations to defend or indemnify an Indemnified Party to the extent of any actual prejudice suffered by Developer due to the delay or failure). Developer may utilize the Agency’s or the City’s legal counsel or use legal counsel of its choosing in such action, but shall reimburse the Agency and the City for any necessary legal cost incurred by either or both of them to the extent those costs relate to Claims or Litigation. If Developer refuses or fails to defend an Indemnified Party concerning any Claims or Litigation, the Indemnified Party may defend the action and Developer shall pay the cost thereof to the extent those costs concern Claims or Litigation, but if an Indemnified Party chooses not to defend the action, it shall have no liability to Developer. If Developer elects to
defend an Indemnified Party, that Indemnified Party shall reasonably cooperate with Developer concerning the defense. Developer's obligation to pay the defense costs concerning Claims or Litigation shall extend until judgment. In the event of an appeal or a settlement offer, the parties will confer in good faith as to how to proceed. Notwithstanding Developer's indemnity for Claims and Litigation, the City and the Agency retain the right to settle any particular claims or causes of action brought against either of them in their sole and absolute discretion as the approving governmental entities and Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) Developer opposes the settlement. In such case the City and the Agency may still settle the litigation, but shall then be responsible for their own litigation expenses and shall bear no other liability to Developer.

All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than City’s Default.

(§ 1000) GENERAL PROVISIONS.

A. (§ 1001) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by an “overnight courier” such as Federal Express, at the time of delivery shown upon such receipt; in either case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

If to Developer:          Arroyo Seco Development Group
                         480 S. Orange Grove Blvd. #12
                         Pasadena California 91105
                         Attn: Steve Boss

     A copy to:          Northgate Real Estate
                         1201 N Magnolia Ave
                         Anaheim, CA 92801
                         Attn: Carl Middleton

     If to City:          City of Bell
                         6330 Pine Ave.
                         Bell, California 90201
                         Attention: Executive Director

     A copy to:          Aleshire & Wynder, LLP
                         18881 Von Karman Avenue, Suite 1700
                         Irvine, California 92612
                         Attn: David J. Aleshire
B. (§ 1002) Nonliability of City and Agency Officials and Employees: Conflicts of Interest; Commissions.

1. **Personal Liability.**

   No member, official, employee, agent or contractor of City or Agency shall be personally liable to Developer in the event of any default or breach by City or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 1002 is intended to limit City’s liability. No member, official, employee, agent or contractor of Developer shall be personally liable to City in the event of any default or breach by Developer or for any amount which may become due to City or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 1002 is intended to limit Developer’s liability.

2. **Financial Interest.**

   No member, official, employee or agent of City or Agency shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **Commissions.**

   City has not retained any broker or finder or paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. City shall not be liable for any real estate commissions, brokerage fees or finders’ fees which may arise from this Agreement, and Developer agrees to hold City harmless from any claim by any broker, agent, or finder retained by Developer. City agrees to hold Developer harmless from any claim by any broker, agent, or finder retained by City.


   Time is of the essence in the performance of this Agreement.

   Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the “public enemy”; epidemics; quarantine restrictions; freight embargoes; governmental restrictions; unusually severe weather; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Agency shall not excuse performance by City); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein “Enforced Delay”), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the enforced delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.
Developer's failure to obtain financing for the Project shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform. City's financial condition shall similarly not be considered as events or causes beyond the control of City, and shall not entitle City to an extension of time to perform.

Times of performance under this Agreement may also be extended by mutual written agreement by City and Developer. The City Manager shall have the authority on behalf of City to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

D. (§ 1004) Books and Records.

1. Developer to Keep Records.

Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer’s compliance with the terms of this Agreement or reasonably required by the City.

2. Right to Inspect.

Either party shall have the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. Ownership of Documents.

Copies of all drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not confidential or attorney client or attorney work product privileged documents shall be delivered to City upon request in the event of a termination of this Agreement if such termination occurs due to a cause that is not a default by City, and in such event Developer shall have no claim for additional compensation as a result of the exercise by City of its rights hereunder. Insofar as Developer is concerned, City shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same, subject to the ownership or proprietary rights of third parties (as to which Developer makes no warranty, representation, or assurance). Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by City, and Developer shall have no liability therefor. Notwithstanding the foregoing, the City shall not have any right to sell, license, convey or transfer the documents and materials to any third party, or to use the documents and materials for any other site.

E. (§ 1005) Assurances to Act in Good Faith; Approvals Not to Be Unreasonably Withheld.

City and Developer agree to execute all documents and instruments and to take all action, including deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use their best efforts to accomplish the closing and subsequent
development of the Site in accordance with the provisions hereof. City and Developer shall each
diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to
their approval. In the event the approval of a party is required hereunder, such approval shall not
be unreasonably withheld, delayed, or conditioned except as may be otherwise expressly set
forth herein.

F. (§ 1006) Interpretation.

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

H. (§ 1007) Entire Agreement, Waivers and Amendments.

This Agreement integrates all of the terms and conditions mentioned herein, or incidental
hereto, and this Agreement supersedes all negotiations and previous agreements between the
parties with respect to all or any part of the subject matter hereof, including without limitation
the Exclusive Negotiating Agreement between City and Developer, dated December 7, 2004, as
amended and extended. All waivers of the provisions of this Agreement, unless specified
otherwise herein, must be in writing and signed by the appropriate authorities of City or
Developer, as applicable, and all amendments hereto must be in writing and signed by the
appropriate authorities of City and Developer.

I. (§ 1008) Severability.

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

J. (§ 1010) Time for Acceptance of Agreement by City.

This Agreement, when executed by Developer and delivered to City, must be authorized,
executed and delivered by City, not later than the time set forth in the Schedule of Performance
or this instrument shall be void, except to the extent that Developer shall consent in writing to
further extensions of time for the authorization, execution, and delivery of this Agreement.

K. (§ 1011) Execution.

This Agreement may be executed in counterparts, each of which shall be deemed to be an
original, and such counterparts shall constitute one and the same instrument.
L. (§ 1012) Miscellaneous Representations and Warranties.

1. City represents and warrants that: (i) it is a California charter city duly organized and existing under the laws of the State of California; (ii) by proper action of City, City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by City does not violate any provision of any other agreement to which City is a party.

2. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized managers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

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

“CITY”:

CITY OF BELL

By: [Signature]

Chair Mayor

ATTEST:

By: [Signature]

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: [Signature]

David J. Aleshire, City Attorney

“DEVELOPER”

ARROYO SECO DEVELOPMENT GROUP

By: [Signature]

Name: [Name]

Title: Manager

Date: 4-10-2017
By: Evelyn S. Boss

Name: Evelyn S. Boss
Title: Secretary

Date: _____
ATTACHMENT A

DESCRIPTION OF REAL PROPERTY PARCELS

See Attachments A-1 through A-3.
ATTACHMENT A-1

CITY PARCELS

Parcel (i):

LOTS 21 AND 22 OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Parcel (ii):

LOTS 27, 28 AND 29 OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor’s Parcel Number: 6325-020-900, 903
ATTACHMENT A-2

AGENCY PARCELS

Parcel (i):
LOTS 23, 24, 25, 33, 34, 35 AND 36 OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Parcel (ii):
LOT 26 OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Parcel (iii):
LOT 32, OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor’s Parcel Number: 6325-020-904, 901, 902
PRIVATE PARCELS

Parcel (i):

LOTS 30 AND 31 OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Parcel (ii):

LOTS 30 AND 31 OF TRACT NO. 7787, IN THE CITY OF BELL, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor’s Parcel Number: 6325-020-405, 406
ATTACHMENT B

CONCEPTUAL SITE PLANS

See Attachments B-1 through B-3.
ATTACHMENT B-1

LARGE SITE ALTERNATIVE
ATTACHMENT B-2

REDUCED SITE ALTERNATIVE
ATTACHMENT B-3

SMALL SITE ALTERNATIVE
ATTACHMENT C

DECLARATION OF COVENANTS AND RESTRICTIONS

FREE RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

City of Bell
6330 Pine Ave.
Bell, California 90201
Attention: City Manager

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(OPERATING COVENANT)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&Rs")
is made and entered into this _____ day of _____, 2017, by ARROYO SECO
DEVELOPMENT GROUP, a California Limited Liability Company or its duly-approved
assignee ("Owner" or "Developer"). These CC&Rs are declared for the benefit of the CITY OF
BELL, AS SUCCESSOR TO THE BELL REDEVELOPMENT AGENCY, a public body,
corporate and politic ("Agency") and the CITY OF BELL, a California Charter municipality
("City"). Owner, Agency and City are occasionally referred to herein each as a "party" and
collectively as the "parties".

RECITALS:

A. Developer is the owner of that certain real property located in the City of Bell,
County of Los Angeles, State of California, more particularly described in Exhibit "A" attached
hereto and incorporated herein by this reference (the "Site").

B. Developer, the Agency and the City, are all parties to certain Disposition and
Development Agreements entered into on _____, 2017, (collectively, the "DDA") regarding
the development of the Site as a commercial retail, outlet shopping center (the Project").
Pursuant to the DDA, Owner shall submit these Declaration of Covenants, Conditions and
Restrictions to be recorded against the Site to ensure compliance with the Project construction,
maintenance, and operation requirements set forth in the DDA.

D. Agency and City hold fee or easement interests in various streets, sidewalks and
other property within the City and is responsible for the planning and development of land within
the City in such a manner so as to provide for the health, safety and welfare of the residents of
the City. That portion of the Agency/City’s interest in real property most directly affected by
these CC&Rs are public rights of way and government buildings surrounding the Site.
E. Agency, City and Owner now desire to place restrictions upon the use and operation of the Site in order to ensure that the Site shall be developed and operated in accordance with the requirements set forth in the DDA. Capitalized terms used herein shall bear the same meaning as used in the DDA unless otherwise specified.

F. It is the intent of Agency, City and Owner that these CC&Rs shall be recorded on title to the Site in the Office of the County Recorder for the County of Los Angeles, and that the terms hereof shall be binding on the Owner and its successors in interest in the Site for so long as the DDA shall remain in effect.

AGREEMENT:

NOW, THEREFORE, Owner declares, covenants and agrees, by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of Agency and City, the residents of the City of Bell, and every person buying an interest in the Site.

1. MAINTENANCE & USES OF THE SITE.

1.1 General Maintenance Obligations. From and after the date of the Release of Construction Covenants pursuant to the DDA, Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in good condition commensurate with comparable properties in the City of Bell area and maintain the Site free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner’s sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition.

Commencing from the date of recordation of these CC&Rs, and subject to the Notice and Opportunity to Cure provisions set forth in the DDA’s provisions for default, Owner shall at all times be required to maintain the Site or cause the Site to be maintained in such a manner as to avoid the reasonable determination of a duly authorized and qualified official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare.

1.2 Condition During Construction. Prior to the date of the Release of Construction Covenants pursuant to the DDA during any period of construction, Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain the Site (or such
applicable portion of the Site) in a safe condition and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner’s sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) regular trash removal; (ii) ground watering or other similar measures for the reasonable suppression of construction-related dust and air particulates; and (iii) safety and acoustical fencing as may be necessary for the reasonable suppression of construction-related noise and public exposure to construction activities.

1.3 Parking and Driveways. No obstructions to vehicular or pedestrian traffic shall project off the Site, or block access to the Site, in such a manner as to unreasonably block vehicular or pedestrian traffic or create a safety hazard.

1.4 Tenant Compliance. All commercial lease agreements shall be in writing and shall contain a provision which acknowledges the tenant’s lease is subject to these CC&Rs.

1.5 Right of Entry. From and after the date(s) that Owner’s obligations to maintain the Site commence under Sections 1.1 and 1.2, and in the event Owner, or its successors or assigns, fail to maintain the common area of the Site as set forth in Sections 1.1 and 1.2 above, and reasonable progress in correcting the condition has not commenced within sixty (60) days from the date of written notice from City or Agency, and such corrective action is not diligently pursued to completion, then City/Agency may, at its option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, subject to the rights of tenants to perform the landscaping or maintenance pursuant to such tenant’s lease, City/Agency, its employees, contractors or agents, may cure Owner’s default by entering upon the common area of the Site and performing the necessary landscaping and/or maintenance. The City or Agency shall give Owner reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out these CC&Rs. The Owner, or its successors and assigns owning the affected portion of the Site, shall pay such costs as are reasonably incurred by City or Agency for such maintenance for the affected common area of the Site, including attorneys’ fees and costs within thirty (30) days after receipt of a written invoice from City/Agency with supporting documentation for such costs.

Nothing in this Section 1.5 shall be construed to waive, limit or prevent the City or Agency from seeking all legal and equitable remedies for the abatement or prosecution of public nuisances found on the Site in the reasonable determination of a duly authorized official of the City/Agency.

1.6 Lien. If such costs incurred by City/Agency pursuant to Section 1.5 above are not reimbursed within thirty (30) days after Owner’s, or such successors or assigns, receipt of written notice thereof with supporting documentation as set forth in Section 1.5 above, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate equal to the lesser of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney’s fees, shall be an obligation of the Owner or such successor or assign as well as a lien and charge, with power of sale, upon the property interests of Owner or such successor, and the rents, issues and profits of such property. City or Agency may bring an action at law against Owner or such successor
obligated to pay any such sums or foreclose the lien against Owner’s or such successor’s property interests. Any such lien shall be created by recordation of a Notice of Claim of Lien against the affected portion of the Site and may be enforced by sale by the City or Agency following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership or leasehold interest in and to the Site or the applicable portion thereof, and any purchaser at any foreclosure or trustee’s sale (as well as the transferee under any deed or assignment in lieu of foreclosure or trustee’s sale) under any such mortgage or deed of trust shall take title free from any monetary lien created by these CC&Rs, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure and are assessed hereunder to the purchaser at the foreclosure sale, as Owner of the subject Site after the date of such foreclosure sale, shall become a lien upon the affected portion of the Site upon recordation of a Notice of Claim of Lien as hereinabove provided.

1.7. Mortgagee Protection. Breach of any of the covenants or restrictions contained in these CC&Rs shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated hereto; but, unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of these CC&Rs shall be binding and effective against the holder of any such mortgage or deed of trust and any owner of the Site or any part thereof whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an interest in and to the Site and any purchaser at any foreclosure or trustee, sale (as well as any by deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, shall become a lien upon the Site upon recordation of a notice of claim of lien as herein provided.

2. USES OF THE SITE; COMPLIANCE WITH LAWS.

2.1 Uses of the Site. For a period of fifteen (15) years following issuance of Release of Construction Covenants, Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that Developer and such successors and such assigns shall devote the Site to mixed retail/restaurant uses or any other plans as approved by the City and Owner. Developer agrees to use, devote, and maintain the Site and each part thereof only for 50-70% food/restaurant uses and 30-50% retail uses [REFINE RATIO PER FINAL APPROVED PROJECT]. [INSERT FURTHER PROJECT

01135.0005/328725.7
Tenant Controls. The initial and subsequent tenants for occupation of the Site (excluding the Private Parcels) shall be subject to the City/Agency’s prior written approval which will not be unreasonably withheld, conditioned or delayed (to be obtained prior to any occupancy by a tenant on the Site). For purposes of such tenant approval the following tenants are hereby approved as “Pre-Qualified Tenants” and are examples of the tenants sought for the Site:

- **Restaurant Tenants**: Pieology, Jimmy John’s, Freebirds, Blaze Pizza, Jersey Mike’s, Chipotle, MOD Pizza, Capriotti’s, Baja Fresh, Pizza Rev, Firehouse Subs, Moe’s Southwestern Grill, Pizza Studio, Which Wich, Noodle’s & Company, Five Guys Burgers & Fries, Togo’s, Flame Broiler, The Habit Burger Grill, Quizno’s, Pollo Campero, Burger Im, Dickey’s BBQ, Boston Market, Fatburger, Dog Haus, Gus’s Fried Chicken, Steak & Shake, Brat Works, El Pollo Inka, Loaded Kitchen Café, L & L Hawaiian BBQ, Da Vinci Ice Cream, Lazy Dog Café, Ono Hawaiian BBQ, Dunkin Donuts, Black Bear Dinner, Pita Pit, Red Mango, Kickin’ Crab, Tierra Mia, Rita’s Shaved Ice, Stinking Crawfish, La Monarca Bakery, Cold Stone Creamery, 85c Bakery, It’s Boba Time, La Michoacana Ice Cream, Alondra Hot Wings.

- **Retail Tenants**: AT&T Electronics or Wireless, Sprint Store.

In the event Developer desires to lease the Site, or a portion thereof, to a tenant that is not on the aforementioned pre-approved list, Developer shall first obtain the approval of the City or Agency, in accordance with the guidelines for processing requests for tenant approval set forth below. It is generally intended that tenants will be approved for the Site who (i) operate a chain of stores on a regional or nationwide basis, (ii) are comparable, or reasonably equivalent, to the pre-approved, exemplar tenants listed above, and (iii) do or will do marketing within the general market area. In its reasonable discretion, Agency or City may also approve other tenants, including tenants who operate a local chain of business.

b. **Processing Requests for Approval of Tenants Not Named as Pre-Qualified.** Any request by Developer for approval of a tenant that is not specifically noted on the Pre-Qualified list shall be in writing and shall include such supporting information as may be reasonably required in order to enable the Agency/City, as appropriate, to determine whether such tenant meets the requirements noted in this Section 2.1. The City Manager shall indicate within ten (10) business days after receipt of the request for approval whether he/she reasonably believes that the proposed tenant is reasonably equivalent to a Pre-Qualified Tenant and the reasons therefore. Factors that the City Manager might use in his/her determination as to whether a proposed tenant is reasonably equivalent include if the proposed tenant is a drive-thru versus non-drive-thru, grocery versus restaurant, and if the proposed tenant would materially change the target ratio of retail to restaurant uses.
If the City Manager deems the proposed tenant not reasonably equivalent, the Developer, or any member of the City Council, may appeal the decision to the City Council. Upon such appeal, Developer will be given an opportunity to present the tenant in person to the City Council. The City Manager shall schedule the matter as an open public hearing item before the next possible regularly-scheduled legislative body meeting, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove the proposed tenant. The legislative body shall state its factual and policy bases for such holding in its reasonable discretion. Nothing in this Section shall be deemed to permit Developer to substitute a retail or restaurant tenant with a non-retail (e.g., professional services) tenant.

2.2 State and Local Laws. Owner or its successors and assigns shall comply with all ordinances and regulations of the State or City applicable to the Site. Owner or its successors and assigns shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

2.3 Environmental Conditions; Compliance with State and Local Soils Conditions Requirements. Owner and its successors take the Site AS-IS with respect to all environmental conditions thereon, and shall be responsible for, and indemnify and defend the City and Agency from, any defects in the Site, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, hazardous materials, underground storage tanks, vaults, debris, pipelines or other structures located on, under or about the Site, excepting that nothing herein shall be construed to require Owner or its successors to hold the City or Agency harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City/Agency’s officers, employees, agents, contractors of subcontractors.

2.4 Term. The covenants, conditions and restrictions contained in these CC&R's shall remain in effect for a period of forty (40) years from the date these CC&R's were recorded; provided that, however, the covenants contained in Section 6 shall remain in effect in perpetuity. At the expiration of said forty (40) year period, the term of these CC&R's shall be automatically renewed for successive five (5) year periods, unless one party to these CC&R's provides the other party written notice of its intent not to extend the term within one hundred twenty (120) days prior to the expiration of the initial term or any extended term. The following provisions of these CC&R's, however, are subject to a shorter term from the recordation of these CC&R's:

a. Ten (10) years for the tenant approval provisions set forth in Sections 2.1(a) through (c) hereof (no rolling extension).
b. Fifteen (15) years following Release of Construction Covenants on the general “use of Site” provisions in Section 2.1 for restaurant/retail use (no rolling extension).

c. Notwithstanding any provision of these CC&Rs, all provisions herein or in the DDA pertaining to rights and/or obligations of indemnity and defense shall continue in perpetuity.

3. **INSURANCE.**

3.1 **Duty to Procure Insurance During Construction.** Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site, that during construction of the improvements on the Site, Owner or such successors and assigns shall procure and keep in force and effect or cause to be procured and kept in force and effect for the mutual benefit of Owner and Agency/City, and shall provide evidence reasonably acceptable to Executive Director and the City’s Risk Manager of the existence of, insurance policies meeting all requirements for insurance set forth in the DDA.

3.2 **General Requirements Pertaining to Insurance.** All the policies of insurance required by these CC&Rs and the DDA shall be subject to the general insurance requirements contained in Section 707 of the DDA.

4. **OBLIGATION TO REPAIR.**

4.1 **Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** If a portion of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner, or its successor with respect to the affected portion of the Project, shall either (i) promptly proceed to obtain any available insurance proceeds and take all steps necessary to begin reconstruction and, upon receipt of insurance proceeds and any applicable permits and approvals, to promptly and diligently commence and to thereafter pursue the repair or replacement of the affected portion of the Project to substantially the same condition as existed prior to such damage or destruction, or (ii) if Owner, or such successor with respect to the affected portion of the Site, elects not to restore or replace such improvements, such Owner or successor shall promptly remove all debris from the affected portion of the Site and place the affected portion of the Site in a clear and secure condition. City/Agency shall cooperate with Owner, at no expense to City/Agency, in obtaining any governmental permits required for the repair, replacement, or restoration of any improvements. Following any such event of damage or destruction, Owner, or its successor with respect to the affected portion of the Site, may also reconstruct such other improvements on the Site as are consistent with applicable land use regulations provided it shall obtain all legally required approvals from the City and other governmental agency or agencies with jurisdiction with respect to those improvements.

5. **ENFORCEMENT.**

In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to these CC&Rs, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City or Agency, or, in the event said default cannot reasonably be cured within said time period, Owner
has failed to commence to cure such default within said thirty (30) days and thereafter fails to
diligently prosecute said cure to completion, then City/Agency may declare an “Event of
Default” to have occurred hereunder, and, at its option, may take one or more of the following
steps:

5.1 By mandamus or other suit, action or proceeding at law or in equity,
require Owner to perform its obligations and covenants hereunder or enjoin any acts or things
which may be unlawful or in violation of these CC&Rs; or

5.2 Take such other action at law or in equity as may appear necessary or
desirable to enforce the obligations, covenants and agreements of Owner hereunder; or

5.3 Enter the affected portion of the Site and cure the Event of Default.

Except as otherwise expressly stated in these CC&Rs, the rights and remedies of the
parties are cumulative, and the exercise by any party of one or more of its rights or remedies
shall not preclude the exercise by it; at the same or different times, of any other rights or
remedies for the same default or any other default by another party. Any default by Owner under
one or both DDAs or other Project-related CC&Rs shall serve as a default under this Agreement.

6. NONDISCRIMINATION.

There shall be no discrimination against or segregation of any person, or group of
persons, on account of race, color, creed, religion, sex, gender, sexual orientation, marital status,
national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or
enjoyment of the Site, or any part thereof, nor shall Owner, 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 tenants, lessees,
subtenants, sublessees or vendees of the Site, or any part thereof.

7. COVENANTS TO RUN WITH THE LAND.

Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in
these CC&Rs. City/Agency and Owner hereby declare their express intent that all such
covenants, reservations, and restrictions shall be deemed covenants running with the land and
shall pass to and be binding upon the Owner’s successors in title to the Site; provided, however,
that on the termination of the DDA, these CC&Rs and the covenants, reservations and
restrictions contained therein shall expire. All covenants, without regard to technical
classification or designation, shall be binding for the benefit of the City and Agency, and such
covenants shall run in favor of the City and Agency for the entire term of these CC&Rs, without
regard to whether the City/Agency is or remains an owner of any land or interest therein to
which such covenants relate. Each and every contract, deed or other instrument hereafter
executed covering or conveying the Site, or any portion thereof, shall conclusively be held to
have been executed, delivered and accepted subject to the CC&Rs, regardless of whether such
covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City/Agency and Owner hereby declare their understanding and intent that the burden of
the covenants set forth herein touch and concern the land. City/Agency and Owner hereby
further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Site by the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes of protecting the public health, safety and welfare. Further, these CC&R:s run for the mutual and reciprocal burden and benefit of the Agency Parcels and City Parcels (as defined in the DDA(s)).

Owner hereby agrees to hold, sell, and convey the Site subject to the terms of these CC&R:s. Both City and Agency are granted, either directly and/or as a third party beneficiary(ies), the right and power to enforce the terms of these CC&R:s against the Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

All covenants, if any, set forth herein concerning construction and development of any improvements on the Site, the insurance requirements set forth in Section 3, and any rights to satisfy liens shall cease and terminate upon issuance of a certificate of occupancy for the Project. The covenants against discrimination set forth herein shall remain in effect in perpetuity. All other covenants shall cease and terminate concurrent with the termination or expiration of the DDA. The terms “Owner” or “Developer” as used herein shall initially mean and refer to ARROYO SECO DEVELOPMENT GROUP and shall thereafter mean and refer to the then owner of fee title to the affected portion of the Site from time to time. Upon transfer of fee title to a portion of the Site to a successor Owner, the prior Owner shall be released from any further liability under these CC&R:s first arising with respect to the transferred portion of the Site after the date of such transfer.

8.  RESERVED.

9.  INDEMNIFICATION.

Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of any property taxes and assessments applicable to its interest in the Site. All terms set forth in the DDA, including but not limited to all obligations of indemnity set forth in the DDA, are incorporated into the terms of these CC&R:s by this reference and deemed terms hereof.

10.  ATTORNEY’S FEES.

In the event that a party to these CC&R:s brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in these CC&R:s, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney’s fees and costs. Attorney’s fees shall include attorney’s fees on any appeal, and in addition a party entitled to attorney’s fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

11.  AMENDMENTS.

These CC&R:s shall only be amended by a written instrument executed by both the Owner and City or Agency (as appropriate), or their successors in title, and duly recorded in the
12. **NOTICES.**

Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

**To City:**
City of Bell  
6330 Pine Ave.  
Bell, California 90201  
Attention: City Manager

**With copy to:**
Aleshire & Wynder  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
Attn: David Aleshire

**To Owner:**
Arroyo Seco Development Group  
480 S. Orange Grove Blvd. #12  
Pasadena California 91105  
Attn: Steve Boss

**With copy to:**
Northgate Real Estate  
1201 N Magnolia Ave  
Anaheim, CA 92801  
Attn: Carl Middleton

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

13. **SEVERABILITY / WAIVER / LENDER PROTECTION.**

13.1 **Severability.** If any provision of these CC&R's shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

13.2 **Waiver.** A waiver by either party of the performance of any covenant or condition herein shall not invalidate these CC&R's nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

13.3 **Owner's Breach Does Not Defeat Mortgage Lien.** Owner's breach of any of the covenants or restrictions contained in these CC&R's shall not defeat or render void or invalid the lien of any mortgage, deed of trust or other security interest encumbering the Site made in good faith and for value but, unless otherwise provided herein, the terms, covenants,
conditions, restrictions, easements and reservations of these CC&Rs shall be binding and effective against the holder of such encumbrance whose interest is acquired by foreclosure, trustee’s sale, deed or assignment in lieu thereof, or otherwise.

15. GOVERNING LAW.

These CC&Rs shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Owner has executed these CC&Rs by its duly authorized representative on the date first written hereinabove.

“OWNER”

ARROYO SECO DEVELOPMENT GROUP,
a California Limited Liability Company

By: ________________________________
Name: ______________________________
Title: ______________________________

By: ________________________________
Name: ______________________________
Title: ______________________________
APPROVED BY CITY OF BELL, AS SUCCESSOR TO THE BELL REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency") and the CITY OF BELL, a California Charter municipality ("City"):

City: CITY OF BELL, a charter municipal corporation

By: ____________________________
    Mayor

City: BELL SUCCESSOR AGENCY, a public body, corporate and politic

By: ____________________________
    Chair

ATTEST:

By ________________________________
    City Clerk/Agency Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By ________________________________
    David J. Aleshire, City Attorney and Agency Counsel
ATTACHMENT D

GRANT DEED

FREE RECORDING REQUESTED BY
City of Bell
6330 Pine Ave.
Bell, California 90201
Attention: Executive Director

AND WHEN RECORDED RETURN TO AND MAIL TAX STATEMENTS TO:
Arroyo Seco Development Group
480 S. Orange Grove Blvd. #12
Pasadena California 91105
Attn: Steve Boss

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF BELL, a California charter municipality ("Grantor") hereby grants to ARROYO SECO DEVELOPMENT GROUP, a California Limited Liability Company ("Grantee"), that certain real property in the City of Bell, County of Los Angeles, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Site").

1. Governing Restrictions. The Site is conveyed subject to the following:

   a) All easement, covenants, conditions, restrictions, rights and encumbrances of record.

   b) That certain Disposition and Development Agreement dated ________, 2017 by and between Grantor and Grantee ("DDA") which is a public record on file with the Secretary of the Grantor located at 6330 Pine Ave., Bell, California 90201, California, and is hereby incorporated by reference.

   c) That certain Declaration of Covenants, Conditions and Restrictions of even date herewith made by Grantee as "Declarant" in favor of Grantor and the City of Bell, which was recorded concurrently with this Deed.

2. Non-Discrimination. Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion
of Nondiscrimination Clauses in Agreements. Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) **Deeds:** In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons 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 tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, 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, sex, marital status, age, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land 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 tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) **Contracts:** In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

4. **Mortgage Protection.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by and approved by Grantor pursuant to the DDA; provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions,
restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. **Covenants to Run With the Land.** The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Site, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

6. **Counterparts.** This Grant Deed may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of the date first above written.

**GRANTOR:**

THE CITY OF BELL

By: __________________________
__________________________, Mayor

ATTEST:

By: __________________________
   City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: __________________________
   Dave Aleshire, City Attorney
ACCEPTANCE BY GRANTEE

By its acceptance of this Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of this Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns (except as specifically set forth in the Deed).

2. The provisions of this Deed are hereby approved and accepted.

Dated: __________, 2017

ARROYO SECO DEVELOPMENT GROUP, a California Limited Liability Company

By: ________________________________
Print Name: ________________________________
Its: ________________________________
ATTACHMENT E

RELEASE OF CONSTRUCTION COVENANTS

FREE RECORDING REQUESTED
BY AND WHEN RECORDED
MAIL TO:
City of Bell
6330 Pine Ave.
Bell, California 90201
Attention: City Manager

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, by that certain Disposition and Development Agreement ("Agreement"), dated ______, 2017, by and between the CITY OF BELL, a California charter municipality ("City"), and ARROYO SECO DEVELOPMENT GROUP, a California Limited Liability Company or its duly-approved assignee ("Developer"). Developer has agreed to develop a restaurant/retail complex ("Project") on the Site (as such "Site" is described on Exhibit 'A' hereto); and

WHEREAS, as referenced in the Agreement, City shall furnish Developer with a Release of Construction Covenants upon completion of construction and development, which release shall be in such form as to permit it to be recorded in the Official Records of the County Recorder of the County of Los Angeles, California; and

WHEREAS, this Release of Construction Covenants shall constitute a conclusive determination by City of the satisfactory completion by Developer of the Project construction and development required by the Agreement, but not of the attendant Grant Deed ("Deed") or Declaration of Covenants, Conditions or Approvals ("Declaration"), the provisions of which shall continue to run with the land pursuant to their terms; and

WHEREAS, City has conclusively determined that the construction and development on the Site required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE,

1. The improvements required to be constructed have been satisfactorily completed in accordance with the provisions of said Agreement.
2. This Release of Construction Covenants shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of the Developer, and its successors and assigns, to construct the Project improvements and the dates for the beginning and completion thereof.

3. This Release of Construction Covenants shall not constitute evidence of Developer's compliance with the Deed or the Declaration, the provisions of which shall continue to run with the land.

4. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.

5. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, the City has executed this Release of Construction Covenants this ___ day of ______, 2017.

CITY OF BELL

By ______________________
Mayor

ATTEST:

_____________________
City Clerk

APPROVED AS TO FORM:
ALESHIRE, & WYNDER, LLP

_____________________
City Attorney
CONSENT TO RECORDATION

Arroyo Seco Development Group, LLC, "Developer" defined herein and the owner of the fee title to the real property legally described herein, hereby consents to the recordation of this Release of Construction Covenants against the real property legally described herein.

"DEVELOPER"

ARROYO SECO DEVELOPMENT GROUP, a California Limited Liability Company

By: ________________________________

Its: ________________________________

Date: ________________________________
<table>
<thead>
<tr>
<th>Item To Be Performed</th>
<th>Time For Performance</th>
<th>Agreement Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. City holds public hearing on DDA, approves or disapproves DDA and, if approves, executes DDA</td>
<td>January 4, 2017</td>
<td>N/A</td>
</tr>
<tr>
<td>2. Expected date of DOF approval of DDA disposition pursuant to the RDA Dissolution Bills (Agency Parcels).</td>
<td>Approximately April 1, 2017</td>
<td>N/A</td>
</tr>
<tr>
<td>a) Oversight Board action on Agency Parcels disposition.</td>
<td>Expected January 22, 2017</td>
<td></td>
</tr>
<tr>
<td>3. Effective Date of DDA</td>
<td>The date upon which the Agency Parcels disposition has received final approval from the DOF pursuant to the RDA Dissolution Bills.</td>
<td>210</td>
</tr>
<tr>
<td>4. DDA rendered void unless fully executed by both parties and effective via DOF approval.</td>
<td>June 30, 2017, except to the extent that Developer shall consent in writing to further extensions of time for the authorization, execution, and delivery of DDA.</td>
<td>1010</td>
</tr>
<tr>
<td>5. Developer provides City with financial commitments to finance Project development</td>
<td>At least 10 days prior to Event 14 (approximately).</td>
<td>600</td>
</tr>
<tr>
<td>6. Developer to have access to site for due diligence inspection and review of site condition.</td>
<td>Prior to Effective Date and ongoing until Opening of Escrow.</td>
<td>501; 709</td>
</tr>
<tr>
<td>7. Developer delivers to City certificates evidencing insurance</td>
<td>Concurrent with Event 6.</td>
<td>N/A</td>
</tr>
<tr>
<td>8. City shall deliver to Developer copies of all documents in the Agency’s or City’s possession concerning the physical and/or environmental condition of the City Parcels.</td>
<td>Within 15 days after the Effective Date.</td>
<td>501</td>
</tr>
<tr>
<td>Item To Be Performed</td>
<td>Time For Performance</td>
<td>Agreement Reference</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------</td>
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<td>---------------------</td>
</tr>
<tr>
<td>10. Developer shall notify City in writing whether Developer, in its sole discretion, approves or disapproves the physical and/or environmental condition of the site.</td>
<td>Within 30 days after the Effective Date of the DDA, or 90 days thereafter if Developer determines to perform Phase II testing</td>
<td>501</td>
</tr>
<tr>
<td>11. Developer delivers to City Preliminary Title Report and survey.</td>
<td>Within 45 days after Effective Date of DDA.</td>
<td>405(4)</td>
</tr>
<tr>
<td>12. Developer delivers to City written notice specifying in detail any exception to Title Report and/or survey disapproved by Developer and the reason therefor.</td>
<td>Within 5 business days of Event 11.</td>
<td>405(4)</td>
</tr>
<tr>
<td>13. City shall deliver written notice to Developer as to whether City will or will not cure the disapproved exceptions.</td>
<td>Within 15 business days of Event 12.</td>
<td>405(4)</td>
</tr>
<tr>
<td>14. Developer shall have determined to proceed with the Large, Reduced, or Small Site Alternative, and provide the City with written notice of such determination, along with all required submittals supporting such election.</td>
<td>No later than 5:00 PM PST on the day that is 90 days after the Effective Date of DDA.</td>
<td>218</td>
</tr>
<tr>
<td>15. City Council to have reviewed, approved, disapproved or conditionally approved Developer’s Project election per Event 14.</td>
<td>Approximately within 45 days of Event 14, depending upon then-existing agenda loads and the requirements of the Brown Act.</td>
<td>702(3)</td>
</tr>
<tr>
<td>16. If Project Alternative election is disapproved by Council, or conditioned in a manner not acceptable to Developer, then either party may terminate DDA with no further obligation by written notice to the other.</td>
<td>Within 5 days of Event 15.</td>
<td>702(3)</td>
</tr>
<tr>
<td>17. 2 If Project Alternative election is approved by Council and accepted by Developer, then Developer to commence submissions for final plan Entitlements.</td>
<td>Within 15 days of Event 15.</td>
<td>702(3)</td>
</tr>
<tr>
<td>18. The City shall approve or disapprove any submittal made by Developer pursuant to Event 16.</td>
<td>Within 30 days of Event 17.</td>
<td>702(7)</td>
</tr>
<tr>
<td>Item To Be Performed</td>
<td>Time For Performance</td>
<td>Agreement Reference</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>19. If submittals are disapproved, Developer may make resubmittals, and City shall review the resubmittal.</td>
<td>Within 30 days of resubmittal; submittal/resubmittal cycle may repeat.</td>
<td>702(7)</td>
</tr>
<tr>
<td>20. Open Escrow</td>
<td>Within 30 days of Developer having an elected Project Alternative approved by the City, as described in DDA Section 702(3); and No later than January 1, 2018; if Escrow has not opened by that date, DDA shall expire and terminate as though Escrow terminated pursuant to Section 406.</td>
<td>402</td>
</tr>
<tr>
<td>21. Final approval of all Entitlements and Permits for all such approvals needed for Project development. Permits required for, and specific to, individual tenants may be obtained at a later date based upon anticipated tenant occupancy.</td>
<td>Within 90 days after submittal of completed application (which shall include all revisions required by City staff). Entitlement and building permit process may continue during Escrow, but must be complete before Closing.</td>
<td>404(3)</td>
</tr>
<tr>
<td>22. Escrow Agent gives notice of fees, charges, and costs to close escrow</td>
<td>One (1) week prior to Closing</td>
<td>404(2)</td>
</tr>
<tr>
<td>23. Deposits into Escrow by City:</td>
<td>On or before 1:00 p.m. on the business day preceding the Closing Date</td>
<td>404(3)</td>
</tr>
<tr>
<td>a) Executed Deed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Payment of Agency’s Share of Escrow Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Taxpayer ID Certificate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) FIRPTA Certificate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item To Be Performed</td>
<td>Time For Performance</td>
<td>Agreement Reference</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>---------------------------------------------------------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>24. Deposits into escrow by Developer:</td>
<td>On or before 1:00 p.m. on the business day preceding the Closing Date</td>
<td>404(3)</td>
</tr>
<tr>
<td>a)  The Purchase Price</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b)  Lender’s Deed of Trust or Security, if applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c)  Payment of Developer’s Share of Escrow Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d)  Taxpayer ID Certificate</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 25. Deadline for Close of Escrow; recordation and delivery of documents; and time for conveyance of site | Within 5 days of all deposits of conditions precedent to Escrow, [Events 23 and 24 hereof].  
*But in no event later than March 1, 2019.* | 207; 404(1)         |
| 26. City or Developer, as case may be, may cure any condition to Closing disapproved or waived; or may cure any default | Within 30 days after date established therefore, or date of breach, as the case may be | N/A                |
| 27. Developer shall perform the Demolition  | Within 60 days after the Closing                                                       | N/A                |
| 28. Developer pulls necessary grading permits and commences construction of Project | Within 60 days after the demolition                                                     | N/A                |
| 29. Developer completes construction of Project | Within 12 months after commencement of improvements [Event 28].                     | N/A                |
| 30. City issues Release of Construction Covenants | Within 10 days of written request by Developer, and Developer’s satisfactory completion of all improvements of the Project as evidenced by the issuance of a certificate of occupancy or its equivalent from the City. | 714                |
It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and Agency. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days or as provided in Section 1003.