

RESOLUTION NO. 2020-30-CC

CITY OF SOUTH GATE  
LOS ANGELES COUNTY, CALIFORNIA

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, CALIFORNIA, APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH 5821 FIRESTONE BOULEVARD, LLC, ACTING BY AND THROUGH ITS MANAGER, GVD COMMERCIAL PROPERTIES, INC., FOR THE ACQUISITION AND DEVELOPMENT OF CITY-OWNED PROPERTY LOCATED AT 5821 FIRESTONE BOULEVARD AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT IN A FORM ACCEPTABLE TO THE CITY ATTORNEY**

**WHEREAS**, the City of South Gate is authorized and empowered by law to enter into agreements for the acquisition, development and disposition of real property;

**WHEREAS**, the City of South Gate previously acquired that certain real property consisting of approximately 20,037 square feet located at 5821 Firestone Boulevard (the "Site") from the former Community Development Commission of the City of South Gate (successor-in-interest to the Redevelopment Agency of the City of South Gate) ("Former Agency") following the passage of California Assembly Bill x1 26 which added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code (the "H&SC") and caused the dissolution of all redevelopment agencies in the State of California and wind down of the affairs of the former agencies, including as such laws were amended by Assembly Bill 1484 and by other subsequent legislation (together, as amended, the "Dissolution Law");

**WHEREAS**, pursuant to the Dissolution Law, the Successor Agency to the Community Development Commission of the City of South Gate ("Successor Agency") was required to prepare a "long-range property management plan" (the "LRPMP") addressing the future disposition and use of all real properties of the Former Agency no later than six months following the California Department of Finance's issuance to the Successor Agency of a finding of completion under Section 34179.7 of the H&SC;

**WHEREAS**, the Site was included in the State-required LRPMP for the City of South Gate and, in the South Gate 2015 LRPMP, the Site was listed as being transferred to the City of South Gate which was approved by the California Department of Finance;

**WHEREAS**, the Site is located within the El Paseo South Gate Shopping Center, is currently improved as a surface parking lot utilized by patrons of surrounding businesses within the shopping center, including Denny's Restaurant to the west of the Site, but does not generate any income for the City of South Gate;

**WHEREAS**, the Site is within the Regional Commercial Zone with a residential/mixed use overlay, which zone supports retail and service commercial uses as well as residential as part of mixed use projects, and the South Gate General Plan designation for the Site is El Paseo/South Gate Towne Center (Sub Area 1), which call for uses such as retail/service, restaurant, office, entertainment, multi-family residential, and plaza/open space;

**WHEREAS**, City staff has negotiated the terms of a Disposition and Development Agreement (the "DDA") with 5821 Firestone Boulevard, LLC, acting by and through its Manager,



GVD Commercial Properties, Inc., or its duly approved assignee ("Developer"), for the sale, purchase and redevelopment of the Site, a copy of which DDA is attached to this Resolution as Exhibit "A";

**WHEREAS**, the DDA would provide, among other things, for the City of South Gate to sell the Site to Developer in its present "as is" condition for a purchase price of \$400,000, which is the market value of the Site, with the proceeds of sale to be distributed to the taxing entities under Section 34191.5(c)(2)(B) of the H&SC;

**WHEREAS**, Developer desires to purchase and redevelop the Site with a single tenant or multi-tenant building for restaurant and/or retail and services, which will be in compliance with all applicable laws and subject to the City of South Gate's discretionary approval of all plans and specifications in accordance with City ordinances and regulations including zoning regulations (the "Project"), it being the intent of Developer and the City of South Gate that the Project will provide a dining and/or retail development along the Firestone Boulevard corridor which would enhance the quality of life of residents, provide employment opportunities and increase retail sale tax revenue;

**WHEREAS**, the proposed Project is consistent with the applicable South Gate General Plan designation and all applicable South Gate General Plan policies as well as with applicable zoning designation and regulations, would occur within the city limits on a project site of no more than five acres substantially surrounded by urban uses, and has no value as habitat for endangered, rare or threatened species and approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality;

**WHEREAS**, the sale and development of the Site in accordance with the DDA is in the best interests of the City of South Gate and the health, safety and welfare of its residents; and in accordance with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements;

**WHEREAS**, Developer acknowledges that the City of South Gate will not be providing financial assistance to Developer in connection with Developer's acquisition of the Site or development of the Project; provided, however, the City of South Gate, at no cost to the City of South Gate, agrees to reasonably cooperate and assist Developer in its efforts to secure other public sources of funding (including subsidies), if any; and

**WHEREAS**, the City of South Gate published notice of the proposed DDA and held a public hearing on August 11, 2020, in accordance with Section 33431 of the H&SC and, following the public hearing, the City of South Gate considered and by this Resolution desires to approve the DDA.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH GATE DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are true and correct and constitute a substantive part of this Resolution.

**SECTION 2.** The City Council hereby approves the terms and conditions of the DDA for the sale of the Site to Developer in substantially the form attached hereto as Attachment 1, which is fully incorporated by this reference.

**SECTION 3.** The City Council hereby authorizes the Mayor to execute the DDA in a form acceptable to the City Attorney and is further authorized to take such actions as may be necessary or appropriate to implement the DDA, including executing a grant deed and such other instruments, certificates and agreements, and taking such other appropriate actions to perform the obligations and exercise the rights of the City of South Gate under the DDA. A copy of the DDA when fully executed and approved shall be placed on file in the office of the City Clerk.

**SECTION 4.** The City Council hereby accepts the determination that this Project is within a Class 32 "Infill" Categorical Exemption pursuant to California Environmental Quality Act Guideline Section 15332. A Class 32 Exemption exempts certain in-fill development meeting the conditions described in the section. The Project qualifies for a Class 32 Exemption because of the following conditions: (a) the Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) the Project occurs within city limits on a site of no more than five acres substantially surrounded by urban uses; (c) the Project's site has no value as habitat for endangered, rare or threatened species; (d) approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.


**SECTION 5.** The City Clerk shall certify to the adoption of this Resolution which shall be effective upon its adoption.

**PASSED, APPROVED and ADOPTED** this 25<sup>th</sup> day of August 2020.


**CITY OF SOUTH GATE:**

By:   
\_\_\_\_\_  
Maria Davila, Mayor

**ATTEST:**

By:   
\_\_\_\_\_  
Carmen Avalos, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_  
Raul F. Salinas, City Attorney

**EXHIBIT "A"**  
**DISPOSITION AND DEVELOPMENT AGREEMENT**

[to be attached]



**DISPOSITION AND DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF SOUTH GATE AND 5821 FIRESTONE BOULEVARD, LLC,  
ACTING BY AND THROUGH ITS MANAGER, GVD COMMERCIAL PROPERTIES, INC.**

This Disposition and Development Agreement for the acquisition and development of City-owned property located at 5821 Firestone Boulevard, South Gate, California 90280, identified as APN 6232-004-907, is made and entered into on August 25, 2020, by and between the City of South Gate, a California municipal corporation ("City"), and 5821 Firestone Boulevard, LLC, acting by and through its Manager, GVD Commercial Properties, Inc., a California limited liability company, or assignee ("Developer"). City and Developer are sometimes hereinafter individually referred to as a "Party" and collectively as "Parties." 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 **Exhibit A**, including the following parcel:

1. *City Parcel*. A parcel of real property owned by the City improved as parking lot and commonly known as 5821 Firestone Boulevard, APN 6232-004-907, in the City of South Gate, County of Los Angeles, State of California, consisting of approximately 20,037 square feet of land area and is legally described in **Exhibit A** hereto (the "City Parcel");
2. [Intentionally Omitted.]

B. The City is the owner in fee of the City Parcel, which parcel is the subject of conveyance under this Agreement. The City Parcel is sometimes referred to herein as the "Site."

C. Developer desires to redevelop the Site with a single tenant or multi-tenant building for restaurant and/or retail and services (the "Project"), which Project 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 zoning regulations. In addition to the parking requirements for the Project, if Developer elects to proceed with the Project as provided in this Agreement (subject to City's approval as provided herein), Developer will provide all required landscaping and on-site improvements in accordance with applicable City regulations and standards:

1. "Project Development Concept": If Developer acquires the Site, then the Project shall be similar to the site plan depicted in **Exhibit B** hereto and consisting of up to approximately 3,500 square feet of retail/restaurant space and in compliance with Reciprocal Easement Agreements recorded as Document Nos. 86-1044843, 86-1044845, and 86-1044846, and Resolution No. 94-08; and such other covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under Section 405 below;



D. City and Developer desire to enter into this Agreement to accomplish the sale of the Site to Developer and development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement are in the best interests of the City of South Gate and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

E. The fair market value of the Site is Four Hundred Thousand Dollars (\$400,000) and Developer's "Purchase Price" is Four Hundred Thousand Dollars (\$400,000) for the Site. Developer shall purchase all City's right, title and interests to the Site upon satisfaction of all Developer conditions to Closing and deposit of the Purchase Price into Escrow. City shall provide Developer with appropriate information and assistance for Developer's acquisition of the Site all in keeping with the appropriate escrow instructions and customary practices.

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 in and to the Site upon the terms and conditions hereinafter set forth. This Agreement is intended to effectuate the designated use and development of the Site in accordance with the best interests of the City of South Gate, and the development of the Project thereon (**Exhibit B**). The sale of the Site is (i) in the best interests of the City and the health, safety and welfare of 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) Provide a dining and/or retail development along the Firestone corridor, (ii) Increase retail sales tax revenues and, (iii) Create jobs.

**B. (§102) 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; provided, however, City, at no cost to City, agrees to reasonably cooperate and assist Developer in its efforts to secure other public sources of funding, if any (including subsidies).

Except as may otherwise be provided in this Agreement, Developer, at its sole expense, shall be responsible for all construction and development costs to construct and/or hire 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 the Project Development Concept (**Exhibit B**).



**C. (§103) Deposit.**

After receipt by Developer of all Entitlements and issuance of all necessary Permits, Developer shall submit to City a non-refundable deposit (the "Non-Refundable Deposit") in the amount of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00). The Non-Refundable Deposit shall be in the form of cash or cashier's check payable to City to reimburse City for its Project related costs, including professional services of outside legal counsel and consultants, incurred in connection with or related to the preparation of this Agreement. Any unused amount of the Non-Refundable Deposit shall be kept by City for its own account.

**(§200) DEFINITIONS.**

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

**A. (§201) City Parcel Delivery Date.**

The term "City Parcel Delivery Date" shall mean the date on or before the date on which Escrow for the sale and purchase of the City Parcel shall have closed, which Closing shall be no later than October 31, 2021.

**B. (§202) 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.

**C. (§203) Intentionally Deleted.**

**D. (§204) City.**

The term "City" shall mean the City of South Gate, a California municipal corporation.

**E. (§205) Site.**

The term "Site" shall mean the parcel of real property owned by the City improved as a parking lot and commonly known as 5821 Firestone Boulevard, APN 6232-004-907, in the City of South Gate, County of Los Angeles, State of California, legally described in Exhibit A hereto.

**F. (§206) Closing.**

The term "Closing" shall mean the date of recording of the Grant Deed and 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.

**G. (§ 207) Covenants, CC&Rs, or REAs.**

The term "Covenants," "CC&Rs," or "Reciprocal Easement Agreements" shall refer to that certain Regulatory Agreement(s), Declaration of Covenants and Restrictions, or Reciprocal Easement Agreements, pursuant to which Developer agrees to develop and maintain the Project on the Site.

**H. (§208) Days.**

The term "days" shall mean calendar days and the statement of any time period herein shall be calendar days, excluding Saturdays, Sundays and federal and state holidays, unless otherwise specified. If the date ("Performance Date") on which any action is to be taken, any obligation is to be performed, or any notice is to be given under this Agreement falls on a Friday when South Gate City Hall is closed for business, or on a Saturday, Sunday or federal or state holiday, such Performance Date shall be automatically extended to the next calendar day.

**I. (§209) 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.

**J. (§210) 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.

**K. (§211) Escrow.**

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

**L. (§212) 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.

**M. (§213) Escrow Agent.**

The term "Escrow Agent" shall mean First American Title Insurance Company National Commercial Services, at the address of 777 S. Figueroa St, Suite 400, Los Angeles, CA 90017, with the escrow officer being Maria Martinez who may be contacted at phone (213) 271-1780.

**N. (§214) Grant Deed.**

The term "Grant Deed" shall refer to that certain Grant Deed, which shall be substantially



in the form attached hereto as **Exhibit C**, for the conveyance of the Site from City to Developer.

**O. (§215) 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.

**P. (§216) 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 building, 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 **Exhibit B**, which Project is subject to the Project Development Concept:

1. "Project Development Concept": If Developer acquires the Site, then the Project shall be similar to the site plan depicted in **Exhibit B** hereto and consisting of up to approximately 3,500 square feet of retail/restaurant space subject to the Reciprocal Easement Agreements Recorded as Document Nos. 86- 1044843, 86-1044845, and 86-1044846, and Resolution No. 94-08, and such other covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under Section 405 below.

**Q. (§217) Release of Construction Covenants.**

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

**R. (§218) Schedule of Performance.**

The term "Schedule of Performance" shall mean that certain Schedule of Performance attached hereto as **Exhibit D**.

**S. (§219) Title.**

The term "Title" shall mean the fee simple interest to the Site conveyed to Developer.

**T. (§220) Title Company.**

The term "Title Company" shall mean First American Title Insurance Company National Commercial Services, with the title officer being Liz Thymius may be contacted at (213) 271-1744.

**(§ 300) PARTIES TO THE AGREEMENT.**

**A. (§301) City.**



City is a California municipal corporation. The office of City is located at 8650 California Avenue, South Gate, California 90280. 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 as of the date of 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 Parcel from being conveyed in the condition of title required hereunder, or which would prevent the City from performing its duties and obligations hereunder.
4. To the actual knowledge of City's Director of Community Development, without any duty of investigation or inquiry, City has not received any written notice to the effect that the City Parcel is not in compliance with applicable laws or codes or any private restrictions.
5. City has not entered into any executory contracts for the sale of the City Parcel and, except as may be disclosed by the Reciprocal Easement Agreements Recorded as Document Nos. 86-1044843, 86-1044845, and 86-1044846 and Resolution No. 94-08, and such other covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under Section 405 below, there do not exist any rights of first refusal, option rights or other preferential rights to acquire, purchase or ground lease the City Parcel.

**B. (§302) Developer.**

1. **Identification.**

Developer is 5821 Firestone Boulevard, LLC, a California limited liability company, or its assignee. The principal office of Developer for the purposes of this Agreement is located at 1915-A East Katella Avenue, Orange, California 92867. Developer hereby warrants and represents to City for the purpose of inducing City to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and as of the date of the Closing, that Developer (i) is duly qualified to do business in good standing under the laws of the State of California, (ii) has taken all requisite action and obtained all requisite consents in connection with Developer entering into this Agreement, and (iii) 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 City, and it is because of such qualifications and identity that City has entered into this Agreement with Developer. City has considered the Site location and characteristics, the public costs of transferring the City Parcel for development of the Project and return on investment, and the kinds of uses necessary to produce a successful commercial project of the type desired by City. Based upon these considerations, City has imposed those restrictions on transfer set forth in this Agreement.

C. **(§303) Broker.**

Broker is ASÍ Real Estate Investments, LLC, an Arizona limited liability company. The principal office of Broker for the purposes of this Agreement is located 10000 Washington Blvd., Suite 300, Culver City, CA 90232. Broker warrants and represents to City and Developer, that Broker is duly qualified to do business in good standing under the laws of the State of California. For the purpose of this Agreement, Broker will facilitate the communication between City and Developer; and will provide leasing support to Developer for the Project.

D. **(§304) 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 or the Site. A transfer shall also include the transfer to any person or group of persons acting in concert of more than forty-nine percent (49%) 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 forty-nine percent (49%) 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), 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 by written agreement in form and substance reasonably satisfactory to City with respect to the Site or any portion thereof in which the holder has an interest.

**2. Restrictions Prior to Completion.**

Prior to issuance of the Release of Construction Covenants, Developer shall not transfer this Agreement or any of Developer's rights hereunder, or any interest in the Site, 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; provided, however, that City agrees to grant its approval to a special purpose entity owned and/or controlled by Developer (or its principals) provided a financially viable party agrees to guarantee completion of the Project. In considering whether City will grant approval to any assignment by Developer of its interest in the Site 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 retail facility in the City, similar to the Project in terms of reputation and amount of anticipated sales to be generated from the City Parcel.

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 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 304 shall not apply and City approval of a transfer shall not be required in connection with any of the following:

- (a) Developer shall be permitted to finance or refinance Developer's direct and indirect costs to acquire the Site and develop the Project thereon utilizing a deed of trust or other form of conveyance, 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 Site.



- (b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, and/or the granting of easements or Permits to facilitate the development of the Site.
- (c) A sale or transfer of fifty percent (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 fifty-one percent (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 its 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, 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 by written agreement in form and substance reasonably satisfactory to City with respect to the Site or any portion thereof in which the holder has an interest.

**(§ 400) ACQUISITION AND DISPOSITION OF THE CITY PARCEL.**

**A. (§ 401) Acquisition of City Parcel.**

In accordance with and subject to all the terms, covenants and conditions of this Agreement, City agrees to convey the Site to Developer subject to the terms of the Grant Deed, and Developer agrees to accept the Site 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, within one hundred twenty (120) days after opening Escrow, elect a Project Development Concept or two alternative Project Concepts, each to be approved by 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 for any reason Escrow has not opened within thirty (30) days of such date, then either City or Developer shall have the right to terminate this Agreement upon giving not less than five (5) days written notice of termination to the other whereupon 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 Site and to close Escrow hereunder shall be mandatory and irrevocable once all of the following conditions have occurred within the time provided in the Schedule of Performance:

- (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 cause the issuance of, upon payment of the normal City fees (in the case of its building permit), all required Permits for the Project.
- (b) Developer shall have deposited into Escrow the full Purchase Price for the City Parcel.
- (c) Developer shall have deposited into Escrow its share of the Escrow costs, title and transfer fees as determined by the Escrow Agent.
- (d) Developer shall not have made a transfer in violation of Section 304.
- (e) Developer shall have approved (or waived) in accordance with Section 501 the physical and environmental condition of the Site, to ensure that the Site 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.



- (f) 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.

Should City fail to convey title to the Site once each of foregoing conditions set forth in paragraphs (a) through (g), inclusive, 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 Site.**

Developer's obligation to accept title to the Site and to close Escrow hereunder shall be mandatory and irrevocable once each and all of the following conditions have occurred within the time provided in the Schedule of Performance:

- (a) City shall have deposited into Escrow the duly executed and acknowledged Grant Deed.
- (b) Title shall be conveyed 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. 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. City shall indemnify Developer from any disputes or collections arising from any default in payment or reimbursement of the Common Area Maintenance charges as pursuant to Reciprocal Easement Agreement recorded as Document Nos. 86- 1044845.
- (c) 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 cause the issuance of, upon payment of the normal City fees (in the case of its building permit), all required Permits for the Project.
- (d) 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.
- (e) Developer shall have approved (or waived) the physical and



environmental condition of the Site, to ensure that the Site 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 Site.**

**1. Time for Conveyance of Site.**

Escrow shall close after satisfaction (or waiver by the benefited party) of all conditions to the Closing 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 Site shall be delivered to Developer concurrently with the conveyance of Title to the Site.

**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 the Closing of 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 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 Official 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 Title to the Site, subject only to: (i) the South Gate Development Plan (if still shown as an encumbrance on title), this Agreement, and the Grant Deed; (ii) current taxes, a lien not yet payable; (iii) Reciprocal Easement Agreements Recorded as Document Nos. 86-1044843, 86-1044845, and 86-1044846; and Resolution No. 94-08; and (iv) such other 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 Exhibit C hereto.

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

Title shall be conveyed subject to the exclusion(s) therefrom to the extent now or hereafter validly excepted and reserved by the parties named in deeds, leases and other documents of record of all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred feet (500') below the surface, together with the right to drill into, through, and to use and occupy all parts of the Site lying more than five hundred feet (500') below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from the Site but without, however, any right to use either the surface of the Site or any portion thereof within five hundred feet (500') of the surface for any purpose or purposes whatsoever. City hereby warrants to Developer that City shall not exercise its drilling rights as provided in this subsection without express written permission of Developer, which permission shall not be unreasonably withheld, conditioned or refused by Developer.

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

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 Site 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 either terminate



the Escrow but without any liability of City to Developer, or Developer may withdraw its earlier disapproval in which event Developer shall be deemed to have approved such exception. 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 Parcel 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.

**6. 1994 Agreement.**

Dicker Warmington Properties II, a California general partnership ("DWP"), the Community Redevelopment Agency of the City of South Gate, a California municipal entity ("Agency"), Gotham Grill South Gate, Inc., a California corporation ("Gotham Grill"), and Henry S. Attina, individually ("Attina"), entered into that certain Agreement dated August 9, 1994 (the "1994 Agreement") concerning, among other things, (i) the approval of DWP to the expansion of the Gotham Grill restaurant footprint including a patio, (ii) the Agency's agreement to demolish and remove the building, fixtures and equipment formerly located on the Site and to construct additional parking spaces thereon to be available for reciprocal use by tenants and patrons of the Towne Center Shopping Center and subject to any applicable Reciprocal Easement Agreement, and (iii) the Agency's further agreement not to sell, build or otherwise utilize the Site without the prior written consent of DWP. A memorandum summarizing the 1994 Agreement was recorded by GVD Commercial Properties, Inc., a California corporation ("GVD"), as ultimate successor-in-interest of DWP, on May 13, 2019, as Document No. 2019433326, Official Records of Los Angeles County, California. Nothing in this Agreement shall be construed as a waiver of GVD's rights under the 1994 Agreement, all of which are expressly reserved hereby.

**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 or Section 405 above, as applicable, 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 only for that portion of the title insurance premium for the Title Policy attributable to the premium required for standard coverage for a CLTA policy as provided in Section 405(5) above while Developer shall pay premiums for the balance of the title insurance premium for the Title Policy and any additional insurance, extended coverage or special endorsements requested by Developer. 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 Site 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 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 Site prior to settlement of the controversy by a final decision by an arbitrator, by a court of competent jurisdiction, or by written agreement of the parties to the controversy, as the case may be. The Escrow Agent shall be responsible for timely notifying Developer and City of 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 SITE.****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 Site 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, upon giving City not less than five (5) days' prior written notice accompanied by a detailed scope of work for any such tests and studies or preliminary work. City reserves the right to have any representative(s) or agent(s) present at the Site at all times while Developer or any of its employees, agents or contractor have entered the Site. Developer agrees to indemnify, defend and hold City harmless (with counsel reasonably acceptable to City) from and against any claims, injuries or damages arising out of any such entry, any on-site soils testing or sampling or any other activity as provided in Section 706; provided that such indemnity shall not apply to Developer's mere discovery of or encounter with Hazardous Materials or other pre-existing conditions at the Site. Any such activity shall be undertaken only after securing any necessary permits from appropriate governmental agencies.

Prior to the Effective Date, City represents and warrants that, to the actual knowledge of City's Director of Community Development, without any duty of investigation or inquiry, City has delivered to Developer copies of all documents in City's possession concerning the physical and/or environmental condition of the Site (the "City Parcel Documents"). City represents and warrants that City's Director of Community Development has 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 Site, except as may be set forth in the City Parcel Documents. Developer has reviewed the City Parcel Documents and the Site and, upon Closing, will be deemed to have waived all Developer conditions to Closing in this regard.

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

Upon the Closing, Developer shall acquire the Site in its "AS-IS" condition and, except as otherwise expressly set forth in this Agreement, shall be responsible for any defects in 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 Site 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 City and its employees, agents, contractors 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.



**C. (§ 503) Hazardous Materials.**

Developer understands and agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined), whether attributable to events occurring prior to or following the Closing, then Developer may look to prior owners of the Site but in no event shall Developer look to City for any liability or indemnification regarding Hazardous Material. Developer, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges City, its directors, officers, shareholders, employees, and agents, and its 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 City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors or assigns, against 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 EXPRESSLY AGREES TO WAIVE ANY AND ALL RIGHTS WHICH SAID PARTY HAD, HAS OR MAY HAVE WITH RESPECT TO SUCH RELEASED CLAIMS. IN FURTHERANCE OF THIS WAIVER, DEVELOPER FURTHER EXPRESSLY AGREES TO WAIVE ANY AND ALL RIGHTS UNDER SECTION 1542 OF THE CALIFORNIA CIVIL CODE WHICH PROVIDES AS FOLLOWS:**

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

Developers Initials: \_\_\_\_\_

Developer shall, from and after the Closing, defend, indemnify and hold harmless City (with counsel reasonably acceptable to City) and its officers, directors, employees, agents and representatives (collectively, the “City 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 City 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. Notwithstanding anything to the contrary in this Section, Developer's limited release and indemnification of City and the City Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Site by City or City Indemnified Parties or their respective contractors, agents or employees after the Closing 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 substances 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), 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



derivate 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 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, or 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 limited release and the indemnification provisions of this Section, as well as all other provisions of this Section, shall survive the Closing and termination of this Agreement and shall continue in perpetuity.

**(§600) Intentionally Deleted**

**(§ 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 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.



**B. (§ 702) Development Plans, Final Building Plans, Environmental Review.**

**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 City, nor does City make any representation or warranty that City acting in its regulatory capacity 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 reasonably cooperate and assist Developer in obtaining and expediting its Entitlements and Permits including executing such documents as may be reasonably required for Developer to process and secure said Entitlements and Permits.

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

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

- (a) Submissions. For the Project Development Concept elected by Developer, Developer shall submit the following materials to City staff promptly following the Effective Date:
  - a. *Updated Proforma*. A detailed proforma tailored to the Project as contemplated in the Project Development Concept subject to the reasonable, prior written approval of the City Manager.
  - b. *Updated Site Plan with Architectural Design and Parking Proposals*. A reasonably detailed Site Plan and development details for the elected Project Development Concept. A plan 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.). This shall also include a proposal for the architectural design theme to be implemented in the



Project.

- c. *Updated Schedule of Performance.* Any final revisions to the proposed Project Schedule of Performance, including any Project Schedule details not currently presented in **Exhibit D** hereto.
- (b) Materials for City 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 City 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.* City Council approval shall include (a) the proposed architectural design scheme; and (b) Developer's parking proposal.
  - ii. *Updated Schedule of Performance.* Any proposed revisions to the proposed Project Schedule of Performance, including any Project Schedule details not currently presented in **Exhibit D** hereto.

The City Council shall decide whether to approve, disapprove, or approve with further conditions, the Project Development Concept elected by Developer.

If the City Council disapproves Developer's election of a Project Development Concept, 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 the Project Development Concept, then Developer may accept such conditions and proceed with the Project Development Concept 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 the Project Development Concept, 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 Development Concept, and all in accordance with the City's requirements and normal planning process. The term final drawings shall be deemed to include a site plan, building shell plan, and elevations, grading plan (if applicable), landscaping plan, parking plan, signage, a description of structural, mechanical, and electrical systems, and, excluding all interior finishes and tenant improvement plans, 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 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 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 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. The failure of Developer to obtain 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.**

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. 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.**

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 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 City disapproves the resubmittal, then the cycle shall repeat, until City's approval has been obtained, all within the time line of the Schedule of Performance. In the event City, through no fault of Developer, is delayed in issuing approval or disapproval of any submittals made by Developer beyond the time



frame set forth in the Schedule of Performance, Developer shall be entitled to extend the time for its performance under the Schedule of Performance on a day-by-day basis equal to the number of days City is delayed.

**C. (§ 703) Cost of Construction.**

Developer, at its sole expense, shall be responsible to construct the Project on the Site. If Developer elects to proceed with the Project Development Concept, all costs of renovation, remediation (if any) and construction upon the Site as authorized by Section 702(3)(ii) shall be Developer's sole responsibility and expense. Developer shall defend, indemnify and hold City harmless (with counsel reasonably acceptable to City) 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 Parcel, consistent with Developer's indemnity obligations under Section 706 below.

**D. (§ 704) Financial Assistance.**

City is not and will not be providing any direct or indirect financial assistance to Developer pursuant to this Agreement for the Project. To the actual knowledge of City's Director of Community Development, with no duty of investigation or inquiry, City is unaware of any fact or circumstance which 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, if Developer obtains such subsidies or public funds (with City's support and assistance) which trigger the requirement that Developer comply with prevailing wage requirements, or to the extent that (contrary to the parties' intent) Developer determines Developer is prepared to pay prevailing wages for the Project, Developer shall indemnify and hold City harmless (with counsel reasonably acceptable to City) 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. City, at no cost to City, shall reasonably 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, City retains the right to settle or abandon the matter without Developer's consent as to City's liabilities or rights only, but should City do so, City shall waive the indemnification herein, except 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. In the event Developer determines, in good faith, based upon opinion of counsel, that the Project will be subject to prevailing wage requirements under California law, Developer may, in its sole discretion, terminate this Agreement upon not less than ten (10) days' written notice to City.

**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 diligently pursue to completion the entire Project, as described in Exhibit B, and shall not abandon or substantially suspend 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 City has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold City and its officers, employees and agents harmless (with counsel reasonably acceptable to City) 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 Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any negligent acts, errors, or omissions of City or its respective agents, servants, employees, or contractors or the mere discovery of or encounter with Hazardous Materials or other pre-existing conditions at the Site. City shall not be responsible for any acts, errors, or omissions of any person or entity except City and 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, 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 City, or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or 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. 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.

**H. (§ 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. 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 reasonable 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 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; provided, however, such representatives shall avoid unreasonably interfering or impeding any construction work then in progress. 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.

**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/familial status, sexual orientation, ancestry, national origin, age, disability or other handicap.

**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 Site. Developer shall pay, when due, all real estate taxes and assessments assessed or levied subsequent to conveyance of the Site that relate to periods after the conveyance of the Site, if any. Prior to conveyance of the Site, Developer shall not place or allow to be placed thereon any mortgage, 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 or construction 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 Site, 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. Developer (or any entity permitted to acquire title under this Section) shall notify City in advance of any mortgage, if Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of City as provided in this Section 713, which such approval shall not be unreasonably withheld. Any lender approved by 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, Developer shall promptly notify 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 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 endeavor at the same time to 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 shall have the right, at its option, within ninety (90) days after the receipt of City's notice of Developer's breach or default, 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 in form and substance reasonably 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 Site 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 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 by written agreement in form and substance reasonably 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 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 City, for all payments made by City to discharge any other encumbrances or liens on the Site 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 Site 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 Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as 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 Site 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 City allows occupancy of the completed building on the Site to occur, City shall furnish Developer with a Release of Construction Covenants within thirty (30) days following receipt of 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.

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, City shall not have any rights or remedies under this Agreement, except as otherwise set forth in the Grant Deed.

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 City before the Release of Construction Covenants is issued.

**O. (§ 715) Estoppels.**

Not later than twenty (20) days following receipt of a 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, execute and deliver to Developer or such holder a written statement of City that, to the best of



knowledge of the Director of Community Development, without duty of inquiry or investigation, 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 reasonable 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 commercial/retail/restaurant uses or any other plans as may be approved by the City. It is acknowledged and understood that the Site is situated in one of the City's main corridors and it is Developer's full intent to obtain a quality national, regional, or local commercial tenant known by reputation, operational experience, and sufficient financial resources subject to the City's approval to not be reasonably withheld. Such Tenants may include:

- Raising Cane's Chicken Fingers
- The Coffee Bean & Tea Leaf
- Moe's Southwest Grill
- Farmer Boys
- Dunkin Donuts
- Jimmy Johns
- Noah's Bagels
- Dog Haus

**B. (§802) Intentionally Deleted**

**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/familial status, sexual orientation, national origin, ancestry, age or disability or other handicap 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 Non-segregation 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, national origin, age or disability or other handicap 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, ancestry, age or disability or other handicap 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/familial status, sexual orientation, national origin, ancestry, age or disability or other handicap 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 non-segregation 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 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 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. 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 Grant 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 Site. 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 City (and except as may be provided in the Reciprocal Easement Agreements recorded as Document Nos. 86-1044843, 86-1044845, 86-1044846, and Resolution No. 94-08 and such other covenants, conditions and restrictions and other encumbrances and title exceptions approved by Developer under Section 405 above), 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 the 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 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.

**B. (§ 902) Legal Actions.**

**2. 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.

**3. Applicable Law and Forum.**

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

**4. 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.**

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, (subject to any applicable notice and cure period), 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) Intentionally Deleted.**

**F. (§ 906) Attorneys' 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 City and its elected boards, commissions, officers, agents and employees (collectively, including City, the "City Indemnified Parties") and will hold and save them and each of them harmless (with counsel reasonably acceptable to City) 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 City Indemnified Parties pertaining to the Project, (ii) seeking damages against City 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 City 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 solely to the negligence, gross negligence, willful misconduct, or violation of law by any of the City Indemnified Parties, including violations of the Ralph M. Brown Act. Each City 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 City's legal counsel or use legal counsel of its choosing in such action, but shall reimburse 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 a City Indemnified Party concerning any Claims or Litigation, the City Indemnified Party may



defend the action and Developer shall pay the cost thereof to the extent those costs concern Claims or Litigation, but if a City Indemnified Party chooses not to defend the action, it shall have no liability to Developer. If Developer elects to defend a City Indemnified Party, which City Indemnified Party, at no cost to the City 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, City retains 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 City may still settle the litigation, but shall then be responsible for their own litigation expenses and shall bear no other liability to Developer. Subject to City's reasonable approval, Developer reserves the right to settle any Claims or Litigation by terminating this Agreement and not proceeding with the Project without any liability hereunder.

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:	5821 Firestone Boulevard, LLC c/o GVD Commercial Properties, Inc. 1915-A East Katella Avenue Orange, California 92867 Attn: Gerald V. Dicker
A copy to:	David H. Dicker, Esq. Dicker & Dicker, LLP 4580 E. Thousand Oaks Blvd., Suite 350 Westlake Village, California 91362



If to City: City of South Gate  
8650 California Avenue  
South Gate, California 90280  
Attn: Joe Perez, Director of Community Development

Copies to: City of South Gate  
8650 California Avenue  
South Gate, California 90280  
Attn: Carmen Avalos, City Clerk

and

City of South Gate  
8650 California Avenue  
South Gate, California 90280  
Attn: Raul F. Salinas, City Attorney

**B. (§ 1002) Nonliability of City Officials and Employees; Conflicts of Interest; Commissions.**

**1. Personal Liability.**

No member, official, employee, agent or contractor of City 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, contractor or agent of City 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 and, promptly following receipt of a request from City at any time or from time to time, Developer shall disclose to City the names and affiliations (to the extent known) of all individuals with whom Developer has retained or otherwise consulted on this Project.

**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 (with counsel reasonably acceptable to City) 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.



**C. (§ 1003) Enforced Delay: Extension of Times of Performance.**

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; pandemic; virus or viral outbreaks; 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); 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 (a) promptly give written notice to the other party of the Enforced Delay in sufficient detail for the other party to confirm the existence of the Enforced Day and (b) 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 and shall expire when the cause of the delay is resolved to the reasonable satisfaction of the parties.

Developer's failure to obtain financing for the Project shall not be considered an Enforced Delay nor 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.**

Prior to the Release of Construction Covenants, 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 reports of environmental site assessment, investigation, inspection and analysis, including all supporting documentation, performed by Developer, its employees, agents and subcontractors regarding the City Parcel as provided in this Agreement 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 compensation as a result of this Section 1004(3) 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 Exhibits attached hereto, which are by this reference incorporated in this Agreement in their entirety.

#### **G. (§ 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 mutually accepted proposal between City and GVD dated on or about May 13, 2020. 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.



**H. (§ 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.

**I. (§ 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.

**J. (§ 1011) Execution.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in either Tagged Image Format Files ("TIFF") or Portable Document Format ("PDF") shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. Any party delivering an executed counterpart of this Agreement by facsimile, TIFF or PDF also shall deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually-executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

**K. (§ 1012) Miscellaneous Representations and Warranties.**

1. City represents and warrants that: (i) it is a California general law city duly organized and existing under the laws of the State of California; (ii) by proper action of City Council, 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 a limited liability company 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 representative; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[signatures of the parties on following pages]



IN WITNESS WHEREOF, City, acting by and through its Mayor and attested to by its City Clerk, has executed this Agreement as of the set forth opposite its signature to be effective as of the date of such execution.

CITY OF SOUTH GATE,  
a California municipal corporation

By: \_\_\_\_\_  
Maria Davila, Mayor

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

**ATTEST:**

By: \_\_\_\_\_  
Carmen Avalos, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Raul F. Salinas, City Attorney

[signature of Developer on following page]



IN WITNESS WHEREOF, Developer, acting by and through its authorized representative, has executed this Agreement as of the set forth opposite its signature.

**5821 FIRESTONE BOULEVARD, LLC,**  
a California limited liability company

By: GVD Commercial Properties, Inc.,  
a California corporation, its Manager

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

By: \_\_\_\_\_  
Name: Dave Case  
Its: Chief Financial Officer



EXHIBIT A

DESCRIPTION OF CITY PARCEL

THAT PORTION OF LOT A OF TRACT NO. 486, IN THE CITY OF SOUTH GATE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 15, PAGE(S) 30 AND 31 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THE SOUTHERLY 62.00 FEET OF LOT A, DISTANT THEREON NORTH 82° 36' 05" WEST 687.39 FEET FROM THE SOUTHEASTERLY LINE OF THE LAND DESCRIBED AS PARCEL NO. 450.1 AND 452.1 IN DEED FROM LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED JANUARY 22, 1982 AS INSTRUMENT NO. 82-78253, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 82° 36' 05" WEST 115.00 FEET; THENCE NORTH 7° 23' 55" EAST 175.00 FEET; THENCE SOUTH 82° 36' 05" EAST 115.00 FEET; THENCE SOUTH 7° 23' 55" WEST 175.00 FEET TO THE POINT OF BEGINNING.

Exhibit A

Disposition and Development Agreement  
5821 Firestone Boulevard, South Gate, CA



**EXHIBIT B**

**PROJECT DEVELOPMENT CONCEPT**

[1.11.19 – 5821 Firestone Blvd – Concept Site Plan and Elevations]



**EXHIBIT C**  
**GRANT DEED**

**FREE RECORDING REQUESTED BY:**

City Clerk  
City of South Gate  
8650 California Avenue  
City of South Gate, California 90280

**AND WHEN RECORDED MAIL TO:**

City of South Gate  
8650 California Avenue  
City of South Gate, California 90280  
Attention: City Clerk

---

(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fee per Gov. Code §6103)

**GRANT DEED**

**FOR A VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, the **CITY OF SOUTH GATE**, a California municipal corporation ("**Grantor**") hereby grants to [NAME OF GRANTEE ENTITY], a California \_\_\_\_\_ ("**Grantee**"), that certain real property in the City of South Gate, 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 easements, covenants, conditions, restrictions, rights and encumbrances of record.
  - b) That certain Disposition and Development Agreement dated as of August 11, 2020 ("**DDA**") by and between Grantor and Grantee which is a public record on file with the City Clerk of the Grantor located at 8650 California Avenue, South Gate, California 90280, 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 South Gate, which was recorded concurrently with this Grant 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, sexual orientation, marital/familial status, age, ancestry, national origin, disability or other handicap in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site,

Exhibit C

Disposition and Development Agreement  
5821 Firestone Boulevard, South Gate, CA

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 thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

**3. Form 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, sexual orientation, marital/familial status, age, ancestry, national origin, disability or other handicap 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, sexual orientation, marital/familial status, age, ancestry, national origin, disability or other handicap 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, sexual orientation, marital/familial status, age, ancestry, national origin, disability or other handicap 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, sexual orientation, marital/ familial status, age, ancestry, national origin, disability or other handicap 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 Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by 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 Grant 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:**

**CITY OF SOUTH GATE,**  
a California municipal corporation

By: \_\_\_\_\_  
Maria Davila, Mayor

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

**ATTEST:**

By: \_\_\_\_\_  
Carmen Avalos, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Raul F. Salinas, City Attorney

Exhibit C

**ACCEPTANCE BY GRANTEE**

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

- 1. Grantee expressly understands and agrees that the terms of this Grant 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 Grant Deed).
- 2. The provisions of this Grant Deed are hereby approved and accepted.

**GRANTEE:**

[\_\_\_\_NAME OF GRANTEE ENTITY\_\_\_\_],  
a California \_\_\_\_\_

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

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



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

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (seal)

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (seal)



Exhibit A  
Legal Description

All that land situated in the City of South Gate, County of Los Angeles, State of California, and being more particularly described as follows:

THAT PORTION OF LOT A OF TRACT NO. 486, IN THE CITY OF SOUTH GATE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 15, PAGE(S) 30 AND 31 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF THE SOUTHERLY 62.00 FEET OF LOT A, DISTANT THEREON NORTH 82° 36' 05" WEST 687.39 FEET FROM THE SOUTHEASTERLY LINE OF THE LAND DESCRIBED AS PARCEL NO. 450.1 AND 452.1 IN DEED FROM LOS ANGELES COUNTY FLOOD CONTROL DISTRICT RECORDED JANUARY 22, 1982 AS INSTRUMENT NO. 82-78253, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 82° 36' 05" WEST 115.00 FEET; THENCE NORTH 7° 23' 55" EAST 175.00 FEET; THENCE SOUTH 82° 36' 05" EAST 115.00 FEET; THENCE SOUTH 7° 23' 55" WEST 175.00 FEET TO THE POINT OF BEGINNING.

Exhibit C

Disposition and Development Agreement  
5821 Firestone Boulevard, South Gate, CA

**EXHIBIT D****SCHEDULE OF PERFORMANCE**

It is understood that the foregoing Schedule is subject to all of the terms and conditions of the text of the Agreement. The summary of the items of performance in this Schedule 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 and the text of the Agreement, the text shall govern. The City Manager shall have the authority on behalf of City to extend the time for performance as permitted in Section 705.

	<b><u>Item of Performance</u></b>	<b><u>Time for Performance</u></b>
1.	Effective Date.	Upon execution of the Agreement by City.
2.	Escrow Opening Date.	Five (5) business days from the Effective Date.
3.	Developer submits proof of insurance. (Section G.707.1)	General Liability – Complete All other insurance – No later than seven (7) days before commencement of construction.
4.	Developer submits Final Construction Drawings for City review in compliance with Agreement.	No later than thirty (30) days before the commencement of construction.
5.	Developer submits draft loan and other financing documents if applicable.	No later than sixty (60) days before the commencement of construction.
6.	“Closing Date”; recordation of Grant Deed.	Provided that Developer has met the requirements set forth in this Agreement, thirty (30) days from City’s receipt of Developer’s notice of Closing but in no event later than October 31, 2021.
7.	Developer commences or cause to commence grading and site work for construction of the Project.	No later than ninety (90) days after the Closing Date.
8.	Project Completion.	No later than one (1) year after the Closing Date.

Exhibit D

Disposition and Development Agreement  
5821 Firestone Boulevard, South Gate, CA



**RESOLUTION CERTIFICATION PAGE**

**STATE OF CALIFORNIA            )**

**COUNTY OF LOS ANGELES    )     SS**

**CITY OF SOUTH GATE         )**

I, Carmen Avalos, City Clerk of the City of South Gate, California, hereby certify that the whole number of Members of the City Council of said City is five; that Resolution No. 2020-30-CC was adopted by the City Council at their Regular Meeting held on August 25, 2020, by the following vote:

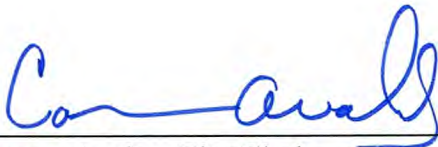
Ayes:            Council Members:    Davila, Rios, Avalos, Diaz and Hurtado

Noes:            Council Members:    None

Absent:          Council Members:    None

Abstain:         Council Members:    None

Witness my hand and the seal of said City on August 27, 2020.



Carmen Avalos, City Clerk  
City of South Gate, California