

# **DISPOSITION AND DEVELOPMENT AGREEMENT**

By and Between

**THE CITY OF LANCASTER**

and

**ACCESS SERVICES**

**APNs: 3126-009-974 and 3126-009-975**

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## DISPOSITION AND DEVELOPMENT AGREEMENT

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”) is entered into and effective as of December 13, 2022 (the “Date of Agreement”), by and between the **CITY OF LANCASTER**, a charter city and California municipal corporation (“City”), and **ACCESS SERVICES**, a public entity (“Developer”), with reference to the following facts, intentions and understandings.

### RECITALS

A. City is the fee owner of that certain surplus real property (the “Site”) legally described in the legal description attached as Exhibit D (the “Site Legal Description”) and visually depicted on the site map attached as Exhibit C (the “Site Map”).

B. By Resolution 20-49, adopted September 8, 2020, City declared the Site to be surplus property pursuant to the Surplus Land Act (Cal. Gov’t Code §§ 54220-54234) (“Surplus Land Act”). On September 10, 2020, City sent notices of availability as and to the extent required by the Surplus Land Act (specifically, section 54222(a) of the California Government Code). City received one response expressing interest in the Site, but the responding entity failed to negotiate its acquisition of the Site or respond to City’s communications. Upon expiration of the ninety-day negotiation period required by the Surplus Land Act, no entity receiving a notice of availability was prepared to purchase the Site.

C. Developer offered to purchase the Site from the City at fair market value to construct a facility to be used for fleet maintenance, a call center, and administrative services, subject to the terms, conditions, and requirements of this Agreement. City is providing *no* assistance, subsidies, or public funds to Developer under this Agreement in any manner.

D. As required by the Surplus Land Act, on September 16, 2022, City submitted to the California Department of Housing and Community Development (“HCD”) for review certain information and documentation concerning Developer’s proposed purchase of the Site pursuant to this Agreement. HCD’s submitted a written letter to the City of Lancaster determining that the City met all requirements under the SLA and is permitted to proceed with the sale or lease of the property as long as appropriate affordability covenants, requiring 15 percent affordable housing, to be recorded against the properties.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

### 100. DEFINITIONS

**“Adjusted Purchase Price”** has the meaning set forth therefor in Section 201.

**“Agreement”** means this Disposition and Development Agreement by and between City and Developer.

**“Appraiser”** is defined in Section 201.

***“Approved Developer Broker Commission”*** means Twenty Six Thousand Five Hundred Eighty Dollars and Thirty One Cents (\$26,580.31) payable to Developer’s real estate agent or broker at Closing.

***“Approved Seller Broker Commission”*** means Thirteen Thousand Two Hundred Ninety Dollars and Sixteen Cents (\$13,290.16) payable to Seller’s Broker from the proceeds of the sale of the site.

***“City”*** means the City of Lancaster, a charter city and California municipal corporation.

***“City Manager”*** means the City Manager of the City, or his or her designee.

***“City Code”*** means the Municipal Code of the City of Lancaster, including the Uniform Codes, all as amended from time to time.

***“City’s Conditions Precedent”*** is defined in Section 206.1.

***“Closing”*** is defined in Section 203.4.

***“Closing Date”*** is defined in Section 203.4.

***“Date of Agreement”*** is defined in the first paragraph of this Agreement.

***“Developer’s Conditions Precedent”*** is defined in Section 206.2.

***“Developer Improvements”*** means the improvements described in the Scope of Development described in Exhibit “B” and all improvements incidental thereto.

***“Environmental Consultant”*** is defined in Section 209.2.

***“Escrow”*** is defined in Section 203.

***“Escrow Agent”*** is defined in Section 203.

***“Exceptions”*** is defined in Section 204.

***“Governmental Requirement(s)”*** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Los Angeles, City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer or the Site.

***“Hazardous Materials”*** means any substance, material or waste which is or becomes, prior to the Closing, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) 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), (ii) 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), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety

Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) 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), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 U.S.C. Section 6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 6901, *et seq.*

**“Outside Date”** means the one-year anniversary after all land use approvals (not including building and/or grading permits) have been perfected and the expiration of any applicable CEQA challenge periods.

**“Purchase Price”** means the following: (i) provided that the Site is conveyed to Developer on or before the Outside Date, the sum of Six Hundred Sixty Four Thousand Five Hundred Seven Dollars and Eighty Cents (\$664,507.80) (the “Base Purchase Price”) or, if the Site is conveyed to Developer after the Outside Date, that amount determined as the “Adjusted Purchase Price” as provided in Section 201.

**“Site”** means that certain property which is described in the Site Legal Description attached hereto as Exhibit G.

**“Site Grant Deed”** means a grant deed substantially in the form of Exhibit E to this Agreement.

**“Release of Construction Covenants”** means the Release of Construction Covenants attached hereto as Exhibit F.

**“Report”** is defined in Section 204.

**“Right of Entry Agreement”** is defined in Section 207.

**“Schedule of Performance”** means the Schedule of Performance attached hereto as Exhibit A.

**“Scope of Development”** means the Scope of Development attached hereto as Exhibit B.

**“Site Map”** means the Site Map attached hereto as Exhibit C.

**“Surplus Land Act”** is defined in Recital B.

**“Title Company”** is defined in Section 204.

**“Title Policy”** is defined in Section 205.

**“Uniform Codes”** mean each of the following as in effect from time to time as approved by City: the Uniform Building Code, the Uniform Housing Code, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, and the Uniform Code for Abatement of Dangerous Buildings.

## **101. Representations and Warranties.**

101.1 City Representations. City represents and warrants to Developer as follows:

(a) Authority. City is a municipal corporation and charter city. City has full right, power and lawful authority to convey the Site, including portions thereof, as provided herein and the execution, performance, and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City. The individual who has executed this Agreement on behalf of City is authorized to bind City by his or her signature hereto. Notwithstanding the foregoing, or any other provision of this Agreement, City cannot and does not represent or warrant that HCD has or will approve of this Agreement or any other aspect of Developer's purchase and development of the Site.

(b) Litigation. To the best of City's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(c) No Conflict. To the best of City's knowledge, City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) No City Bankruptcy. City is not the subject of a bankruptcy proceeding.

Until the Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 101.1 not to be true as of the Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by City hereunder but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of property to be conveyed under the Closing. If Developer elects to accept the conveyance of the Site and the possession of the following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of such the Closing, subject to such exception(s). The representations and warranties set forth in this Section 101.1 shall survive the Closing.

101.2 Developer Representations. Developer represents and warrants to City as follows:

(a) Authority. Developer has full right, power and lawful authority to acquire and accept title to and possession of the Site, including portions thereof, and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

(b) Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or Developer, at law or in equity before any court or governmental agency, domestic or foreign.

(c) No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(d) No Developer Bankruptcy. Neither Developer nor any of its shareholders is the subject of a bankruptcy proceeding.

(e) Developer Experience; Sophisticated Party. Developer is a sophisticated party, with substantial experience in the acquisition, rehabilitation, development, financing, obtaining financing for, marketing, and operation of similar properties, and has obtained advice from advisers of its own choosing in connection with this Agreement.

(f) Due Authorization and Execution. Developer has duly authorized the execution of this Agreement, including without limitation the attachments hereto.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 101.2 not to be true as of such Closing, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder but shall constitute an exception which City shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If City elects to sell the Site following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). The representations and warranties set forth in this Section 101.2 shall survive the Closing.

## **200. DISPOSITION OF SITE**

**201. Disposition of Site to Developer.** Developer agrees to purchase the Site from City and City agrees to sell the Site to Developer, pursuant and subject to the terms, covenants, and conditions of this Agreement, for the Purchase Price. If the Closing occurs on or before the Outside Date, the Purchase Price shall equal the Base Purchase Price. If the Closing occurs after the Outside Date, the Purchase Price shall equal the greater of: (i) the Base Purchase Price; or (ii) the Adjusted Purchase Price. The "Adjusted Purchase Price" shall equal the full fair market value of the Site as determined by an appraisal conducted within thirty days before the Closing by a licensed appraiser (the "Appraiser") mutually selected by City and Developer and shall be determined as of the date on which it is anticipated that the conveyance of the Site to Developer will take place, without taking into account the value of any entitlements that may have been obtained by the Developer on the Site. The Purchase Price shall apply without regard to the square footage determined to constitute the Site.

**Commented [BA1]:** This appears to be impractical.



**202. Payment of the Purchase Price.** Developer shall pay the Purchase Price in cash, to be deposited into the Escrow prior and as a condition to the Closing.

**203. Escrow.** By the time established therefor in the Schedule of Performance, City shall open escrow (the "Opening of Escrow") with First American Title Company of Los Angeles or another escrow company mutually satisfactory to both parties (the "Escrow Agent").

203.1 Costs of Escrow. City and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 205, City shall pay the documentary transfer taxes, if any, due with respect to the conveyance of the Site, Developer shall pay an amount equal to that expended or incurred by City or that amount required to be paid by City to the Appraiser hired pursuant to Section 201 hereof, City shall pay the Approved Developer Broker Commission, if any, and City and Developer each agree to pay one half of all other usual fees, charges, and costs which arise from the Escrow.

203.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of City and Developer, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close the Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and City will cancel its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

If in the opinion of either party it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both City's Conditions Precedent and Developer's Conditions Precedent as set forth in Section 206 have been satisfied. The Escrow Agent is instructed to release City's escrow closing and Developer's escrow closing statements to the respective parties.

203.3 Authority of Escrow Agent. The Escrow Agent is authorized to, and shall:

(a) Pay and charge City for the premium of the Title Policy as set forth in Section 205, any amount necessary to place title to the Site in the condition necessary to satisfy Section 204, and the Approved Developer Broker Commission (as determined by the City Manager).

(b) Pay and charge City and Developer for their respective shares of any escrow fees, charges, and costs payable under Section 203.1.

(c) Pay and charge Developer for the cost of an ALTA policy (if any) and for any endorsements to the Title Policy which are requested by Developer as set forth in Section 205 and which are in excess of the premium for the Title Policy payable by City pursuant to Section 205.

(d) Charge Developer for the cost of any appraisal performed to determine the Adjusted Purchase Price as described in Section 201.

(e) Disburse funds and deliver and record the Site Grant Deed when both City's Conditions Precedent and Developer's Conditions Precedent have been fulfilled or waived by City and Developer.

(f) Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations with respect to the Site under this Agreement.

(g) Within the discretion of the Escrow Agent and, if necessary, direct City and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. City agrees to execute a Certificate of Non-Foreign Status and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by the Escrow Agent, on a form or forms to be supplied by the Escrow Agent.

(h) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

(i) Verify that this Agreement has been properly executed by the parties prior to the Closing.

203.4 Closing. The conveyance of the Site shall close by accomplishment of conveyance of the Site to Developer and receipt by City of the Purchase Price (the "Closing") within thirty (30) days after the satisfaction of all of City's and Developer's Conditions Precedent as set forth in Section 206 and no later than the Outside Date; provided that, notwithstanding the foregoing, the Closing may occur after the Outside Date provided that the City Manager designates in writing to the Escrow Holder the Adjusted Purchase Price (as the Purchase Price) and Developer agrees in writing to such Adjusted Purchase Price shall constitute the Purchase Price. The "Closing" shall mean the time and day the Site Grant Deed is filed for record with the Los Angeles County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

203.5 Termination. If the Escrow is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property, terminate the Escrow, and terminate this Agreement. If either party makes a written demand for return of documents or properties, Escrow shall not terminate until five (5) days after the Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, the Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

203.6 Closing Procedure. The Escrow Agent shall close the Escrow for the Site as follows:

- (a) Verify execution of this Agreement by the parties;
- (b) Record the Site Grant Deed, with instructions for the Recorder of Los Angeles County, California to deliver the Site Grant Deed to Developer;
- (c) Instruct the Title Company to deliver the Title Policy to Developer;
- (d) Disburse the Purchase Price, less City's costs of the Closing, to City;
- (e) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- (f) Deliver the FIRPTA Certificate, if any, to Developer;
- (g) Forward to both City and Developer a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into the Escrow, with such recording and filing date and information endorsed thereon; and
- (h) Record documents requested by Developer subsequent to the recordation of the Site Grant Deed.

**204. Review of Title.** Within thirty (30) days after the Opening of Escrow City shall cause First American Title Company (the "Title Company"), to deliver to Developer an ALTA preliminary title report (the "Report") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Report. Developer shall have the right to reasonably approve or disapprove the Exceptions.

**Commented [BA2]:** This may not be feasible.

Within the time set forth in the Schedule of Performance, Developer shall give written notice to City and the Escrow Agent of Developer's approval or disapproval of any of such Exceptions. Developer's failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report and the Exceptions set forth therein. If Developer notifies City of its disapproval of any Exceptions in the Report, City shall have the right, but not the obligation, to remove any disapproved Exceptions within five (5) days after receiving written notice of Developer's disapproval or provide assurances reasonably satisfactory to Developer that such Exception(s) will be removed on or before the Closing. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, City shall provide written notice of such election to Developer within such five (5) day period. Developer shall then have ten (10) business days after the expiration of such five (5) business day period to either give City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give City written notice that Developer elects to terminate this Agreement. Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after Developer has approved the Report for the Site (which are not

created by Developer). City shall not voluntarily create any new exceptions to title following the Date of Agreement.

**205. Title Insurance.** Concurrently with recordation of the Site Grant Deed conveying title to the Site to Developer, there shall be issued to Developer a CLTA owner's policy of title insurance (the "Title Policy"), together with such endorsements as are reasonably requested by Developer, issued by the Title Company insuring that the title to the Site is vested in Developer in the condition required by Section 204. The Title Company shall provide City with a copy of the Title Policy. The Title Policy shall be in the amount of the Purchase Price. City shall pay that portion of the premium for the Title Policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price. Any additional costs, including the cost of an ALTA policy or any endorsements requested by Developer, shall be borne by Developer.

**206. Conditions of Closing.** The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

206.1 City's Conditions of Closing. City's obligation to proceed with the Closing of the conveyance of the Site is subject to the fulfillment, or waiver by City in writing, of each and all of the conditions precedent (a) through (j), inclusive, described below (the "City's Conditions Precedent"), which are solely for the benefit of City, and which shall be fulfilled or waived in writing by City by the time periods provided for herein, or if no time period is provided, prior to the Closing:

(a) *No Default.* Prior to the Closing, Developer is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) *Execution of Documents.* Developer shall have executed and delivered into Escrow this Agreement, and any other documents required pursuant to the terms of this Agreement.

(c) *Payment of Purchase Price and Closing Costs.* Not later than three (3) business days prior to the Closing, Developer shall have delivered to Escrow its share of costs of the Closing which are Developer's obligation in accordance with Section 203.1, as well as the cost for the Appraiser if applicable under Section 201.

(d) *Title Policy.* The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Site upon the Closing, in accordance with Section 205.

(e) *Condition of Site.* Developer shall have approved of the physical and environmental condition of the Site.

(f) *Land Use Approvals.* Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 303 hereof.

(g) *Plans and Permits.* Developer shall have obtained approval of its final building plans for the Developer Improvements and grading, building and other

required permits, as applicable, shall be ready to be issued (upon payment of requisite fees, posting of security and similar items).

(h) *Financing.* Developer shall have provided proof satisfactory to City that Developer has sufficient internal funds and/or has obtained a loan or other financing for acquisition of the Site and construction and operation of the Developer Improvements pursuant to Section 309 hereof, and such financing shall close and fund and shall be available to Developer upon the Closing.

(i) *Proof of Insurance.* Developer shall have provided, for City's review and approval, proof of insurance reasonably satisfactory to City in accordance with Section 307.

(j) *Approval of Preliminary Title Report.* Developer shall have approved the Report.

206.2 Developer's Conditions of Closing. Developer's obligation to accept conveyance of the Site is subject to the fulfillment or waiver by Developer in writing of each and all of the conditions precedent (a) through (k), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived in writing by Developer by the time periods provided for herein:

(a) *No Default.* City is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of City contained herein shall be true and correct and not misleading in all material respects.

(b) *Execution of Documents.* City shall have executed and delivered into Escrow this Agreement, the Site Grant Deed, and any other documents required pursuant to the terms of this Agreement.

(c) *Payment of Closing Costs.* Prior to the Closing, City has paid or submitted into Escrow all costs of the Closing which are City's obligation in accordance with Section 203.1.

(d) *Title Policy.* The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Site upon the Closing, in accordance with Section 205.

(e) *Condition of Site.* Developer shall have approved of the condition of the Site.

(f) *Land Use Approvals.* Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 303.

(g) *Plans and Permits.* Developer shall have obtained approval of its final building plans for the Developer Improvements and grading, building and other required permits, as applicable, shall be ready to be issued (upon payment of requisite fees, posting of security and similar items).

(h) *Financing.* Developer shall have provided proof satisfactory to City that Developer has sufficient internal funds and/or has obtained a loan or other financing for acquisition of the Site and construction and operation of the Developer Improvements pursuant to Section 306 hereof, and such financing shall close and fund and shall be available to Developer upon the Closing.

(i) *Approval of Preliminary Title Report.* Developer shall have approved the Report.

**207. Studies and Reports.** Prior to the Closing and upon Developer's execution of a right of entry agreement to be provided by City (the "Right of Entry Agreement"), representatives of Developer shall have the right of access to all portions of the Site owned by City for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole expense of Developer and Developer shall defend, indemnify and hold City harmless from any claims resulting from all preliminary work, access or use of the Site undertaken pursuant to this Section 207. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

**208. Taxes and Assessments.** Ad valorem taxes and assessments, if any, on the Site levied, assessed, or imposed for any period prior to the Closing, shall be borne by City. All ad valorem taxes and assessments levied or imposed for any period after the Closing shall be paid by Developer.

**209. Condition of the Site.**

209.1 As-Is Condition. Notwithstanding any provisions of this Agreement to the contrary (except as set forth in Section 624.2(d) of this Agreement), the Site shall be conveyed in an "as is" condition, with no warranty, express or implied by City, as to the condition of improvements on the Site, the soil, its geology, the presence of known or unknown faults or Hazardous Materials or toxic substances, and Developer agrees to and shall indemnify and hold City harmless from and against all liability, loss, damages, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the existence of such faults or substances. Notwithstanding the foregoing, Developer shall not be responsible for matters related to any environmental contamination which existed prior to the Closing. It shall be the sole responsibility of Developer at its expense to investigate and determine the soil and improvement conditions for the development to be constructed. If the soil and environmental condition is not in all respects entirely suitable for the use or uses to which the Site will be put, then within the time set forth in section 209.3, below, Developer shall have the option, at its sole discretion, to terminate this Agreement and Escrow or proceed with this Agreement and the Escrow. If Developer chooses to proceed with the Closing of Escrow, it is the sole responsibility and obligation of Developer to take such action as may be necessary to place the soil and environmental conditions of the Site in a condition entirely suitable for its development.

209.2 Investigation of Site. Developer, upon execution of the Right of Entry Agreement, shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Environmental Consultant") to make such investigations as Developer deems necessary, including any "Phase I" or "Phase II" investigations of the Site. Developer shall provide

City with a copy of any and all studies and reports provided to Developer by the Environmental Consultant, or such other consultant engaged by Developer. The Site is to be sold on a where is, as is basis with no representations as to the Site or its condition being made by City.

209.3 Approval of Condition of Site. Developer shall have the right to approve the condition of the Site prior to Developer's obligation to acquire the Site. Developer shall approve or disapprove of the condition of the Site within ninety (90) days after the execution of this Agreement, or within one hundred and eighty (180) days after the execution of this Agreement if it is necessary to obtain a Phase II report. Developer's approval of the condition of the Site shall be Developer's Condition Precedent to Closing, as set forth in Section 206.2 hereof.

209.4 Developer's Precautions after Closing. Upon the Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials in, on or under the Site.

209.5 Required Disclosures After Closing. After the Closing, Developer shall notify City, and provide to City a copy or copies, of all notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Developer shall report to City, as soon as possible after each incident, any known Hazardous Materials release or known circumstances which would potentially lead to such a release.

209.6 Developer Indemnity - Hazardous Materials. Upon the Closing, Developer agrees to indemnify, defend and hold City, and its respective officers, employees, agents, representatives and volunteers, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the following which did not occur prior to the Closing (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment.

### **300. DEVELOPMENT OF PROJECT SITE**

**301. Scope of Development.** Developer shall within the time set forth in the Schedule of Performance develop or cause the development of the Developer Improvements in accordance with the Scope of Development, City Code, all entitlements and approvals for the Site, and the plans, drawings and documents

submitted by Developer and approved by City as set forth herein. Developer shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by City, County, and other governmental agencies with jurisdiction over the Developer Improvements.

**302. Construction Drawings and Related Documents.** Prior to commencement of construction, Developer shall prepare and submit to City, construction drawings, landscape plans, and related documents required for the development of the Site and the construction of the Developer Improvements (the "Construction Drawings"). City shall have the right of review of all Construction Drawings, including any proposed changes therein. City shall not be responsible either to Developer or to third parties in any way for any defects in the Construction Drawings, nor for any structural or other defects in any work done according to the approved Construction Drawings, nor for any delays reasonably caused by the review and approval processes conducted by City. Any and all change orders or revisions required by City and its inspectors under the City Code, including without limitation, all applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by Developer in its Construction Drawings and other required submittals and shall be completed during the construction of the Developer Improvements. City shall not unreasonably delay the approval of any such permits necessary for construction of the Developer Improvements. City shall not unreasonably delay the approval of any such permits necessary for construction of the Developer Improvements. The period of time of any such delays shall be added to the Developer's allowable time to complete the Developer Improvements.

**303. Land Use Approvals.** Prior to commencement of construction of the Developer Improvements or other works of improvement upon the Site by Developer, Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, and approvals, including environmental approvals, which may be required by City and/or any other governmental agency affected by such construction or work for the Developer Improvements. Developer shall, without limitation, apply for and secure all permits required by City, the County and other governmental agencies with jurisdiction over the Developer Improvements. The period of time of any unreasonable delays in obtaining permitting approvals, not caused by Developer, shall be added to the Developer's allowable time to complete the Developer Improvements.

**304.**

**305. Schedule of Performance.** Developer shall submit the Construction Drawings, commence and complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance. During the course of construction and prior to issuance of the Release of Construction Covenants, Developer shall provide timely reports of the progress of construction when requested by City. Developer shall complete construction of all the Developer Improvements within the respective times established therefor in the Schedule of Performance. The Schedule of Performance is subject to revision from time-to-time



as mutually agreed upon in writing by Developer and City and City is authorized to make such revisions as it deems reasonably necessary.

**306. Cost of Construction.** The cost of planning, designing, developing and constructing the Developer Improvements shall be borne solely by Developer.

**307. Financing of the Developer Improvements.**

307.1 **Approval of Financing.** As required herein and as one of City's Conditions Precedent, Developer shall submit evidence that Developer has or has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing necessary to undertake the acquisition and development of the Site and the construction and operation of the Developer Improvements in accordance with this Agreement, to City for review and approval. Such review and approval or disapproval of financing commitments shall be made within fifteen (15) days of receipt of a complete submission. City shall not unreasonably withhold, delay or condition such approval. If City shall disapprove any such evidence of financing, it shall do so by notice to Developer stating the reasons for such disapproval, in which event Developer shall use commercially reasonable efforts to promptly obtain and submit new evidence of financing. City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 307.1 for the approval or disapproval of the evidence of financing as initially submitted. Developer shall close any approved construction financing prior to or concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of an enforceable loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for construction financing for the Developer Improvements, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) evidence reasonably acceptable to City that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to City as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the acquisition of the Site and construction and completion of the Developer Improvements, less financing authorized by those loans set forth in subparagraph (a) above, and (c) evidence of sufficient capital to operate the Developer Improvements in accordance with the Scope of Development.

307.2 **Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Developer Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. Notwithstanding the foregoing, City shall reasonably cooperate with Developer's construction and permanent lenders in connection with the permitted use or uses to which such lender may devote the Site following a foreclosure or deed in lieu of foreclosure.

307.3 **Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever City may deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Developer Improvements, City shall at the same time deliver to each

holder of record of any mortgage or deed of trust a copy of such notice or demand. Each such holder shall (insofar as the rights granted by City are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement reasonably satisfactory to City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 312, to a Release of Construction Covenants.

**308. Insurance Requirements.** Developer shall take out and maintain or shall cause its contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 312, a comprehensive general liability policy in the amount of Two Million Dollars (\$2,000,000.00) combined single limit policy, and a comprehensive automobile liability policy in the amount of Five Hundred Thousand Dollars (\$500,000.00), combined single limit, or such other policy limits as City may approve at its discretion, including contractual liability, as shall protect Developer and City from claims for such damages. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Developer shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. The required certificate shall be furnished by Developer prior to the commencement of construction of the Developer Improvements.

**309. Indemnity.** Developer shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City and its officers, contractors, agents and employees (collectively, the "Indemnitees") from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from or relating to: (i) this Agreement (including all provisions hereof); (ii) compliance with applicable laws;

(iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; (v) those matters set forth in Section 101.2 hereof; or (vi) the ownership, occupancy or use of the Site and any portions thereof. Notwithstanding the foregoing, Developer shall not be obligated to indemnify City with respect to the consequences of any act of negligence not contributed to by Developer or willful misconduct of City. Developer's obligations under this Section 308 shall survive the issuance of the Release of Construction Covenants and termination of this Agreement; the requirements under this Section 308 are in addition to and do not limit the obligations of Developer under the Site Grant Deed.

Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the indemnity provisions of this Section 309 and all related matters including the following: (a) City's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to this Agreement or the Site Grant Deed, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under this Agreement or the Site Grant Deed. Such reimbursement obligations shall bear interest at the rate of seven percent (7%) simple per annum (or, if lower, the highest non-usurious interest rate that may be charged) based upon the amounts and times of disbursement by City, provided that City gives written demand to Developer. Such reimbursement obligations shall survive the issuance of the Release of Construction Covenants and termination of this Agreement and are in addition to and do not limit the obligations of Developer under the Site Grant Deed or other instruments associated with the conveyance of any portion of the Site.

Upon the Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Notwithstanding anything contained herein to the contrary, Developer shall not indemnify City for any claims arising from City's negligence or City's willful misconduct so long as the loss alleged is not caused or contributed to by Developer and the foregoing indemnification shall not apply to the presence, use, release, escape, seepage, leakage, spillage, emission, or discharge of any Hazardous Materials in, on, under, or about the Site where such Hazardous Material existed on the property prior to the Closing.

**309.1 City's Indemnity.** City shall defend, indemnify, assume all responsibility for, and hold harmless Developer, and its representatives, volunteers, officers, employees and agents, from and against all claims, demands, damages, defense costs, attorney's fees, expert witness costs, consultant's fees or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are legally caused by any acts or omissions of City under this Agreement, whether such activities or performance thereof be by City or by anyone directly or indirectly employed or contracted with by City and whether such damage shall accrue or be discovered before or after termination of this Agreement.

**310. Rights of Access.** Representatives of City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Developer Improvements so long as City representatives comply with all generally applicable safety rules.

**311. Compliance with Laws.** Developer shall carry out the design and construction of the Developer Improvements in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Sections 12101, et seq., California Government Code Sections 4450, et seq., California Government Code Sections 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Sections 51, et seq.

311.1 Nondiscrimination in Employment. Developer certifies and agrees that, to the extent applicable to it, all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, et seq., the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et seq., and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of City access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by City.

311.2 Public Works Requirements. Developer shall carry out the construction of the Developer Improvements and the development of the Site in conformity with all applicable federal and state labor laws (including, without limitation, if applicable, the requirement under California law to pay prevailing wages and to hire apprentices). Although the parties believe that the Developer Improvements are not considered to be a “public work” under California law because the Site is being sold for a price not less than the appraised fair market value of the Site, Developer shall be solely responsible for determining and effectuating compliance with such laws, and City makes no representation as to the applicability or non-applicability of any of such laws to the Developer Improvements or any part thereof. Developer hereby expressly acknowledges and agrees that City has not previously affirmatively represented to Developer or its contractor(s) for the construction or development of the Developer Improvements, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Agreement is not a “public work,” as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. Developer shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable

to City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in this Section 310.2, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Developer Improvements by Developer.

**312. Taxes and Assessments.** Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site incurred after the Closing. Developer shall remove or have removed any levy or attachment for any taxes and assessments incurred after the Closing, made on the Site, or any part thereof, or assure the satisfaction thereof within a reasonable time.

**313. Release of Construction Covenants.** Promptly after completion of the Developer Improvements in conformity with this Agreement, City shall furnish Developer with the Release of Construction Covenants. City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Developer Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those matters which constitute continuing obligations of Developer under the Site Grant Deed or otherwise under this Agreement. If City refuses or fails to furnish the Release of Construction Covenants for the Site after written request from Developer, City shall, within thirty (30) working days of such written request, provide Developer with a written statement setting forth the reasons City has refused or failed to furnish the Release of Construction Covenants for the Site. The statement shall also contain a list of the actions Developer must take to obtain a Release of Construction Covenants.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any 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 a notice of completion as referred to in the California Civil Code, Section 8182 and/or Section 9202.

#### **400. COVENANTS AND RESTRICTIONS**

**401. Affordable Housing Covenant.** If ten (10) or more residential units are developed on the Site, not less than fifteen percent (15%) of the total number of residential units developed on the Site shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of fifty-five (55) years for rental housing and forty-five (45) years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code. The provisions of this Section 401 shall be expressly included in the Site Grant Deed.

**402. Maintenance Covenants.** Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain the Site and all improvements thereon in compliance with all applicable provisions of the City Code.

**403. Nondiscrimination Covenants.** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 Site. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above in this Section 403. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. "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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section

12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases. “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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, 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.”

(c) In contracts. “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

#### **404. Effect of Violation of the Terms and Provisions of this Agreement.**

City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, 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 the Agreement or covenants 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 or any other beneficiaries of this Agreement and covenants may be entitled.

### **500. DEFAULTS, REMEDIES, AND TERMINATION**

**501. Default Remedies.** Subject to the extensions of time set forth in Section 702 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a “Default”

under this Agreement. A party claiming a Default (the "Claimant") shall give written notice to the other party specifying the alleged grounds for the Default (the "Default Notice"). Except as otherwise expressly provided in this Agreement, the Claimant shall not institute any proceeding against any other party and the other party shall not be in Default if such party within forty-five (45) days from receipt of the notice required by this Section 501 immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or 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. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California.

**503. Termination by Developer.** In the event that as of the time designated therefor in this Agreement (and if no time is described below, the time established in this Agreement for the satisfaction of the City's Conditions Precedent):

503.1 Termination Prior to the Closing. In the event that prior to the Closing:

(a) Developer is not in default under this Agreement, Developer has not notified City that the condition of the Site is acceptable; or

(b) Developer is not in default under this Agreement and City does not execute the Site Grant Deed and attempt to effect the conveyance of the Site to Developer in the manner and condition and by the date provided in this Agreement; or

(c) in the event of any default of City prior to the conveyance of the Site which is not cured within the time set forth in Section 501 hereof; and any such failure is not cured within the applicable time period after written demand by Developer, then this Agreement may, at the option of Developer, be terminated by Notice thereof to City. From the date of the Notice of termination of this Agreement by Developer to City and thereafter, and this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

**504. Termination by City.**

504.1 Termination Prior to the Closing. In the event that as of the time established therefor in this Agreement, but not later than the time established for the satisfaction of the City's Conditions Precedent:

(a) Developer (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of this Agreement; or



(b) City has not received notification from Developer that the condition of the Site is satisfactory; or

(c) One of more of the City's Conditions Precedent is not satisfied; or

(d) Developer fails to execute the Site Grant Deed; or

(e) Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof; then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site (including without limitation all attachments to this Agreement), shall, at the option of City, be terminated by City by Notice thereof to Developer. From the date of the Notice of termination of this Agreement by City to Developer and thereafter this Agreement (including without limitations all attachments hereto) shall be deemed terminated excepting that Developer shall have conveyed or caused to be conveyed to City (or a nominee designated by City for such purpose) the Site, unless Developer is otherwise instructed by City in a writing that mentions this Section 504 and there shall be no further rights or obligations among the parties, except that City may pursue any remedies it has hereunder.

**505. Reentry and Revesting of Title in City after the Closing and Prior to Completion of Construction.** City has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in City the estate conveyed to Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, Developer (or its successors in interest) shall:

(a) fail to start the construction of the Developer Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from City, subject to Force Majeure; or

(b) abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from City;

(c) fail to complete the Developer Improvements required by this Agreement within the time frame set forth in the Schedule of Performance; or

(d) transfer or suffer any involuntary transfer of the Site or any part thereof in violation of Section 625 of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust permitted by this Agreement; or (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Site Grant Deed shall contain appropriate reference and provision to give effect to City's right as set forth in this Section 505, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in City the estate conveyed to Developer. Upon the revesting in City of

title to the Site as provided in this Section 505, City shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as City shall find feasible, to a qualified and responsible party or parties (as determined by City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to City. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site, which is permitted by this Agreement, shall be applied:

(i) First, to reimburse City, on its own behalf or on behalf of City, all costs and expenses incurred by City, excluding City staff costs, but specifically, including, but not limited to, any expenditures by City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event that the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of reversion of title thereto in City, 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; any expenditures made or obligations incurred with respect to the making or completion of the Developer Improvements or any part thereof; and any amounts otherwise owing City, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by City as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that City will have conveyed the Site to Developer for economic development purposes, and not for speculation in undeveloped land.

**506. 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 as provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer or in such other manner as may be provided by law.

**507. 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 such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**508. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as

a waiver of any Default or of any such rights or remedies or deprive either 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.

**509. Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

## **600. GENERAL PROVISIONS**

**601. Notices, Demands and Communications between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy, facsimile, email or overnight delivery service to:

To City: City of Lancaster  
44933 North Fern Avenue  
Lancaster, California 93534  
Attention: City Manager

To Developer: Access Services  
PO Box 5728  
El Monte, CA 91734  
Attention: Director of Administration

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 601.

**602. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; delays of any contractor, sub-contractor or supplier; or withdrawal of financing not caused by any act or omission of Developer; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause. Times of performance under this Agreement

may also be extended in writing by the mutual agreement of City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Developer Improvements shall not constitute valid grounds of enforced delay pursuant to this Section 602.

**603. Non-Liability of Officials and Employees of City/Non-Liability of Developer.** No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due under the terms of this Agreement.

**604. Relationship between Parties.** It is hereby acknowledged that the relationship between the parties is not that of a partnership or joint venture and that no party shall be deemed or construed for any purpose to be the agent of any other party. Accordingly, except as expressly provided herein or in the Exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site. Developer agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the development, operation, maintenance or management of the Site.

**605. City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

**606. Commencement of City Review Period.** The time periods set forth herein for City's approval of agreements, plans, drawings, or other information submitted to City by Developer and for any other City consideration and approval hereunder which is contingent upon documentation required to be submitted by Developer shall only apply and commence upon Developer's complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of City's obligations of review and/or approval hereunder; provided, however, that City shall notify Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for City's action on the particular item in question.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**609. [Intentionally Omitted.]**

**610. Real Estate Brokerage Commission.** Except only for the Approved Developer Broker Commission as described in Section 203 of this Agreement, Developer agrees to indemnify, defend, and hold harmless City and its officials, employees, agents and representatives from and against any real estate broker or finder's commissions or fees or claims thereto alleged to be owed in connection with the Site, which may be the responsibility of Developer. The City shall pay the Approved Buyer Broker Commission to Dustin Alamo of Griffin Structures in the amount of 4% of the purchase price. The City shall pay the Approved Seller Broker Commission to Dennis Greer of Coldwell Banker Commercial A Hartwig Company in the amount of 2% of the purchase price in accordance with the Professional Services Agreement for Real Estate Broker Services executed on January 19, 2022.

**611. Administration.** This Agreement shall be administered and executed by City Manager, or his or her designated representative, following approval of this Agreement by City. City shall maintain authority of this Agreement through the City Manager (or his or her authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to City as specified herein as agreed to by the City Council, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the City Council.

**612. Amendments of Agreement.** The parties agree to mutually consider reasonable requests for amendments to this Agreement. Developer shall be responsible for the costs incurred by City, including without limitation attorneys' fees (the "Developer Costs"), in connection with any amendments to this Agreement which are requested by Developer (the "Developer Request"). Developer shall be responsible for payment of Developer Costs as provided in this Section 612 regardless of the outcome of Developer Request.

**613. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**614. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by the parties.

**615. No Waiver.** A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**616. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**617. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**618. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**619. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**620. Time of Essence.** Time is expressly made of the essence with respect to the performance of each and every obligation and condition of this Agreement.

**621. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**622. Conflicts of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**623. 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 within forty-five (45) days or this Agreement shall be void, except to the extent that the parties shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

## **624. Representations and Warranties.**

624.1 Developer's Representations and Warranties. Developer hereby makes the representations and warranties contained below in this Section 624.1. All of the representations and warranties set forth in this Section 624.1 are effective as of the Date of Agreement. All of the representations and warranties set forth in this Section 624.1 are made with the acknowledgment that they are material, and with the intention that City shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 624.1 shall each survive the execution of this Agreement without limitation as to time.

(a) *Authority.* Developer is a public entity. Developer has full right, power and lawful authority to undertake all obligations as provided herein.

(b) *No Conflict.* Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) *No Bankruptcy.* Developer is not the subject of a bankruptcy proceeding.

(d) *Deliveries.* All documents, instruments and other information delivered by Developer to City pursuant to this Agreement are true, correct and complete.

Each of the foregoing items (a) to (d), inclusive shall be deemed to be an ongoing representation and warranty. Developer shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (d), inclusive.

624.2 City's Representations and Warranties. City hereby makes the representations and warranties contained below in this Section 624.2. All of the representations and warranties set forth in this Section 624.2 are effective as of the Date of Agreement. All of the representations and warranties set forth in this Section 624.2 are made with the acknowledgment that they are material, and with the intention that Developer shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 624.2 shall each survive the execution of this Agreement without limitation as to time.

(a) *Authority.* City has full right, power and lawful authority to undertake all obligations as provided herein.

(b) *No Conflict.* City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(c) *Deliveries.* All documents, instruments and other information delivered by City to Developer pursuant to this Agreement are true, correct and complete.

(d) *Knowledge.* City is not aware of any existing state or condition of the property, including, but not limited to the presence of Hazardous Materials or toxic

substances, that may preclude Developer from carrying out the Developer Improvements as contemplated in this Agreement.

Each of the foregoing items (a) to (d), inclusive shall be deemed to be an ongoing representation and warranty. City shall advise Developer in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (d), inclusive.

#### **625. Transfers of Interest in Site or Agreement.**

625.1 Prohibition. The qualifications and identity of Developer are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with Developer. For the period commencing upon the Date of Agreement and until the issuance of the Release of Construction Covenants, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, grant, transfer, conveyance, assignment, subdivision or lease of the whole or any part of the Site or the Developer Improvements without prior written approval of City, except as expressly set forth herein.

625.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Site or the Developer Improvements, or any part thereof, shall not be required in connection with any of the following:

(a) The conveyance or dedication of any portion of the Site to City or other appropriate governmental agency, or the granting of easements or permits necessary in order to facilitate construction of the Developer Improvements.

(b) Any transfer to an entity or entities in which Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities. Transfers shall be permitted, subject to Developer and its Manager retaining management and control of the project.

625.3 City Consideration of Requested Transfer. City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 625, provided Developer delivers written notice to City requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 625 and as reasonably determined by City. City shall evaluate each proposed transferee or assignee on the basis of its development and/or operational qualifications and experience and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 625 applies, which City determines does not possess equal or better qualifications than Developer. An assignment and assumption agreement in a form satisfactory to City's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of Developer's written notice requesting City approval of an assignment or transfer pursuant to this Section 625, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon



receipt of such a response, Developer shall promptly furnish to City such further information as may be reasonably requested.

625.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted and/or approved successors and assigns. Whenever the term “Developer” is used in this Agreement, such term shall include any other permitted and/or approved successors and assigns as herein provided.

625.5 Assignment by City. City may assign or transfer any of its rights or obligations under this Agreement at its sole discretion.

*[Signatures begin on next page.]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first written above.

**CITY:**

**CITY OF LANCASTER**, a charter city and California municipal corporation

---

By: Jason Caudle  
Its: City Manager

ATTEST:

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City Clerk

APPROVED AS TO FORM:

---

City Attorney

**DEVELOPER:**

**ACCESS SERVICES, a public entity**

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By: Andre Colaiaice  
Its: Executive Director

APPROVED AS TO FORM:

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Vincent Ewing  
Access Services General Counsel  
Alvarez-Glasman & Colvin

## EXHIBIT A

For the purposes of this Schedule of Performance, the "Date of Agreement" is December 13, 2022. The City Manager may extend by not more than three hundred sixty (360) days, as all such extensions are aggregated, the time under this Schedule of Performance by which any obligation of Developer shall be performed.

1. Submittal for Land Use Approvals. Within one (1) year of Date of Agreement.  
Developer submits to City for all land use approvals required for the Developer Improvements, including, if applicable, any conditional use permits.
2. Opening of Escrow. Escrow opened as to the Site. Within ten (10) days after Developer submits to City for all land use approvals required for the Developer Improvements.
3. Developer Approval as to Title, Condition of Site. Developer confirms in writing to the City Manager that the condition of the Site and the condition of title are acceptable. On or before one hundred eighty (180) days following the Date of Agreement and in any event, before the Closing.
4. Construction Drawings. Developer shall submit construction drawings to City for all building permits required for the Developer Improvements. Within twenty (20) months following the Date of Agreement.
5. Conditions Precedent are Satisfied. The City's Conditions precedent and the Developer's Conditions precedent are satisfied. On or before two (2) years following the Date of Agreement, and in any event, before the Closing.
6. The Site Grant Deed is Recorded. The Site Grant Deed is recorded. Within thirty (30) days after the City's Conditions Precedent are satisfied and not later than the first anniversary of the Date of Agreement.
7. Commencement of Construction. The Developer shall have commenced construction of the Developer Improvements. Within ninety (90) days after the Closing.
8. Completion of Construction. Developer shall complete construction of the Developer Improvements. On or before the second anniversary of the Closing.

**EXHIBIT B**  
**SCOPE OF DEVELOPMENT**

**I. GENERAL DESCRIPTION**

The Site is specifically delineated on the Site Map and the Site Legal Description.

**II. DEVELOPMENT**

The Developer shall construct a paratransit operations and maintenance facility.

All such approvals, including without limitation, the payment of fees to governmental agencies required in connection therewith, shall constitute the “Developer Improvements.”

The Developer shall be responsible for any demolition, grubbing, and grading as necessary to accomplish the construction of the Developer Improvements.

The Developer shall commence and complete the Developer Improvements by the respective times established therefor in the Schedule of Performance.

**III. DEVELOPMENT STANDARDS**

The Improvements shall conform to all applicable state laws and regulations and to local zoning, applicable provisions of the City Code and the following development standards:

**A. General Requirements:**

**1. Vehicular Access.** The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow as approved by City. In the interest of minimizing traffic congestion, City will control the number and location of curb breaks for access to the Site for off-street parking and truck loading. All access driveways shall require written approval of City staff.

**2. Building Signs.** Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. Signs identifying the building use will be permitted, but their height, size, location, color, lighting and design will be subject to City staff approval, and signs must conform to the City Code.

**3. Screening.** All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by City staff.

**4. Landscaping.** The Developer shall provide and maintain landscaping within the Site, including the public rights-of-way and within setback area along all street frontages and conforming with the plans as hereafter approved by City. Landscaping shall consist of drought-tolerant landscaping and trees in keeping with the City’s architecture and design guidelines, as well as installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to City staff approval prior to planting.

5. **Utilities.** All utilities on the Site shall be underground at Developer's expense.

6. **Building Design.** Buildings shall be constructed such that the Developer Improvements shall be of high architectural quality, and shall be effectively and aesthetically designed and in conformance with City approvals.

7. **Mitigation Measures.** Mitigation measures approved in connection with the development of the Site under the California Environmental Quality Act (CEQA).

**B. Design Features:**

The following design features are considered essential components to the Improvements:

Security - The details of security will be reviewed upon submission of the detailed plans.

Overall Design Quality, Materials, Colors, Design Features - Quality of design is important, materials and colors are to be approved by City.

**IV. DEMOLITION AND SOILS**

The Developer assumes all responsibility for surface and subsurface conditions at the Site, and the suitability of the Site for the Improvements. The Developer has undertaken all investigation of the Site as it shall deem necessary and has not received or relied upon any representations of City, or its respective officers, agents and employees.

EXHIBIT C  
SITE MAP



**EXHIBIT D**  
**SITE LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Los Angeles, described as follows:

APN: 3126-009-974

Parcel 1 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.

APN: 3126-009-975

Parcel 2 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.

**EXHIBIT E**  
**SITE GRANT DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

[Space above for recorder.]

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged, the **CITY OF LANCASTER**, a charter city and California municipal corporation (the "Grantor"), hereby grants to **ACCESS SERVICES**, a public entity (the "Grantee"), the real property hereinafter referred to as the "Site," described in Attachment No. 1 attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. Grantor excepts and reserves from the conveyance herein described all interest of Grantor in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet 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 (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Site or other lands, but without, however, any right to use either the surface of the Site or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Site in such a manner as to create a disturbance to the use or enjoyment of the Site.

2. The Site is conveyed in accordance with and subject to the Disposition and Development Agreement entered into between Grantor and Grantee dated December 13, 2022 (the "DDA"), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference. All terms used herein shall have the same meaning as those used in the DDA

3. Grantor has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in Grantor the estate conveyed to Grantee if after the Closing but prior to the issuance and recordation of the Release of Construction Covenants, Grantee (or its successors in interest) shall:

- a. Fail to start the construction of the Developer Improvements as required by the DDA for a period of thirty (30) days after written notice thereof from City; or
- b. Abandon or substantially suspend construction of the Developer Improvements required by the DDA for a period of thirty (30) days after written notice thereof from City; or



- c. Fail to complete construction of the Developer Improvements required by the DDA within the time frame set forth in the Schedule of Performance contained therein; or
- d. Transfer or suffer any involuntary transfer of the Site or any part thereof in violation of Section 625 of the DDA.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust permitted by the DDA; or (ii) any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

Upon the revesting in Grantor of title to the Site as provided in this Section 3, Grantor shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site for fair market value as soon and in such manner as Grantor shall find feasible to a qualified and responsible party or parties (as determined by Grantor) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to Grantor. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

- i. First, to reimburse Grantor all costs and expenses reasonably incurred by Grantor, excluding City staff costs, but specifically, including, but not limited to, any expenditures by Grantor in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by Grantor from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Grantee has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Grantor, an amount, if paid, equal to such taxes, assessments or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in Grantor, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Grantor, and in the event additional proceeds are thereafter available, then
- ii. Second, to reimburse Grantee, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Grantee from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Grantor as its property. The rights established in this Section 3 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter

existing at law or in equity. These rights are to be interpreted in light of the fact that Grantor will have conveyed the Site to Grantee for economic development purposes, and not for speculation in undeveloped land.

4. Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 Site. The foregoing covenants shall run with the land.

Grantee shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above in this Section 4. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. “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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases. “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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, 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.”

(c) In contracts. “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in

the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 premises herein conveyed. The foregoing covenants shall run with the land.”

**GRANTOR:**

**CITY OF LANCASTER**, a charter city and  
California municipal corporation

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

**GRANTEE:**

**ACCESS SERVICES**, a public entity

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

**ATTACHMENT NO. 1**  
**SITE LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Los Angeles, described as follows:

APN: 3126-009-974

Parcel 1 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.

APN: 3126-009-975

Parcel 2 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.

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 )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

##### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)  
☐ Partner(s) ☐ Limited ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

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

##### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT F**

**RELEASE OF CONSTRUCTION COVENANTS**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

[Space above for recorder.]

**RELEASE OF CONSTRUCTION COVENANTS**

**THIS RELEASE OF CONSTRUCTION COVENANTS** (the “Release”) is made by the **CITY OF LANCASTER**, a charter city and California municipal corporation (“City”), in favor of **ACCESS SERVICES**, a public entity (“Developer”), as of the date set forth below.

**RECITALS**

A. City and Developer have entered into that certain Disposition and Development Agreement (the “DDA”) dated December 13, 2022, concerning the redevelopment of certain real property situated in the City of Lancaster, California as more fully described in Attachment No. 1 attached hereto and made a part hereof. All capitalized terms utilized herein and not otherwise defined shall have the same meaning as set forth in the DDA.

B. As referenced in Section 412 of the DDA, City is required to furnish Developer or its successors with a Release of Construction Covenants upon completion of construction of the Developer Improvements which Release is required to be in such form as to permit it to be recorded in the Recorder’s Office of Los Angeles County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. City has conclusively determined that such construction and development has been satisfactorily completed.

**NOW, THEREFORE**, City hereby certifies as follows:

1. The Developer Improvements to be constructed by Developer have been fully and satisfactorily completed in conformance with the DDA. All covenants relating to operating requirements, and use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA.

IN WITNESS WHEREOF, City has executed this Release this day of \_\_\_\_\_, 202\_\_.

**CITY:**

**CITY OF LANCASTER**, a charter city and  
California municipal corporation

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
City Attorney

**ATTACHMENT NO. 1**

**SITE LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Los Angeles, described as follows:

APN: 3126-009-974

Parcel 1 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.

APN: 3126-009-975

Parcel 2 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.



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 )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

##### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)  
☐ Partner(s)    ☐ Limited    ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

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

##### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT G  
AFFORDABLE HOUSING RESTRICTION REGARDING  
FUTURE RESIDENTIAL DEVELOPMENT**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

[Space above for recorder.]

**AFFORDABLE HOUSING RESTRICTION REGARDING  
FUTURE RESIDENTIAL DEVELOPMENT  
(CALIFORNIA GOVERNMENT CODE SECTION 54233)**

If ten (10) or more residential units are developed on the real property described on Exhibit "A" attached hereto, then not less than 15 percent of the total number of residential units developed on the property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code.

These requirements shall be restrictions running with the land and shall be enforceable against any owner who violates such restrictions and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

CITY                      OF                      LANCASTER,  
a California Municipal Corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT NO. 1**

**SITE LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Los Angeles, described as follows:

APN: 3126-009-974

Parcel 1 of Parcel Map 72015, in the City of Lancaster, County of Los Angeles, State of California, as per map recorded in Book 373, Pages 45-50 of Parcel Maps, in the office of the County Recorder of said County.

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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )  
On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of 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 of Notary Public

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**DESCRIPTION OF ATTACHED DOCUMENT**

- | Title(s)                 |                      |
|--------------------------|----------------------|
| <input type="checkbox"/> | Partner(s)           |
| <input type="checkbox"/> | Attorney-In-Fact     |
| <input type="checkbox"/> | Trustee(s)           |
| <input type="checkbox"/> | Guardian/Conservator |
| <input type="checkbox"/> | Other:               |

Title Or Type Of Document

- ☐ Partner(s)      ☐ Limited      ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above