DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ANAHEIM

and

39 COMMONS PARTNERS, LLC
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DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this “Agreement”) is dated for identification purposes as of _______________, 2019 (“Date of Agreement”), by and between the CITY OF ANAHEIM, a California municipal corporation and Charter City (the “City”), and 39 COMMONS PARTNERS, LLC, a Delaware limited liability company (the “Developer”).

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is authorized and empowered by its Charter, to enter into agreements for the disposition and development of real property.

B. The City is the owner of that certain real property containing approximately 30.09 acres, including a leasehold interest in the Loan Pham Property, containing approximately .624 acres as shown on the Site Map is attached hereto as Attachment No. 1 and incorporated herein by reference (together, the “Site”).

C. On September 27, 2016, the City Council approved a Disposition and Development Agreement with Zelman Anaheim, LLC (“Zelman”) for the Site (the “2016 DDA”) and authorized the Community and Economic Development Director to execute the same. Due to changed circumstances, Zelman has requested that the 2016 DDA be rescinded. The 2016 DDA is hereby rescinded.

D. The Developer intends to construct on the Site certain improvements as four (4) separate components referred to herein as the Residential Component, the Retail Component, the Mixed Use Commercial Component, and the Grocery Store Component, as each Component is shown on the Site Map (the “Project”).

E. The City and Developer desire by this Agreement to provide for, among other things, the conveyance of the Site to Developer by way of Grant Deed with respect to the Retail Component Property and the Residential Component Property, by way of transfer of the Loan Pham Lease (as herewith defined), and by way of Ground Lease (as hereinafter defined) for the Mixed Use Commercial Component and the Grocery Store Component and for Developer to construct, operate and maintain the Project in accordance with all covenants, conditions, restrictions and declarations set forth herein as to all Components and in the Ground Lease as to the Mixed Use Component and the Grocery Store Component.

F. This Agreement is in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements be significantly among which includes the requirement that Remedial Improvements will be implemented with respect to the Site, a portion of which includes former Landfills used for solid waste disposal.
NOW, THEREFORE, the City and the Developer hereby agree, as follows:

100. DEFINITIONS

“Actual Knowledge” of the City means the facts known by John E. Woodhead IV without a duty of further investigation.

“Agency” means the former Anaheim Redevelopment Agency, which was a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, Health and Safety Code, Section 33000, et seq., which has been succeeded by the Successor Agency.

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

“Amended Memorandum of Ground Lease” means the Amended Memorandum of Ground Lease, in a form acceptable to the parties, recorded at the Second Closing, and which includes the Grocery Store Component Property in the Ground Lease unless Developer elects to enter into a separate Ground Lease and Memorandum of Ground Lease pursuant to Section 201.3.2.

“Anderson Landfill” means that portion of the Site consisting of approximately 3.4 acres in the location generally depicted on the Site Map.

“Applicable Closing” shall mean the Close of Escrow with respect to the First Closing or the Second Closing, as applicable.

“Applicable Component” means the Residential Component, the Retail Component, the Mixed Use Commercial Component, and/or the Grocery Store Component, as applicable.

“Applicable Conditions Precedent” means the Conditions Precedent re First Closing or the Condition Precedents re Second Closing, as applicable.

“Applicable Construction Financing” means the Construction Financing applicable to the Residential Component, the Retail Component, the Mixed Use Commercial Component, and/or the Grocery Store Component, as applicable.

“Applicable Conveyance” means the Conveyance associated with the First Closing or the Second Closing, as applicable.

“Applicable Outside Date” means the Outside Date re First Closing or Outside Date re Second Closing, as applicable.

“Approved RAP” is defined in Section 207.3(c).

“Assignment of Loan Pham Leasehold Interest” means that certain document attached hereto as Attachment No. 9 and incorporated herein by reference assigning the leasehold interest in the Loan Pham Property pursuant to the Loan Pham Lease, to the Developer.

“Basic Concept Drawings” are described in Attachment No. 6, Stage I.
“Brookfield” is defined in Section 301.3.

“Brookfield Reimbursement” is defined in Section 301.3.

“Brookfield Reimbursement Agreement” is defined in Section 301.3.

“Building Improvements” means the buildings and appurtenant improvements that will comprise the Applicable Component.

“Building Improvement Plans” are the drawings to be submitted in connection with the issuance of building permits for the construction of the Building Improvements.

“City” means the City of Anaheim, a California municipal corporation and Charter City.

“City Remediation Component” means the ongoing implementation of the OM&M Plan.

“City’s Conditions Precedent re the First Closing” means the conditions precedent to the First Closing for the benefit of the City, as set forth in Section 205.1 hereof.

“City’s Conditions Precedent re the Second Closing” means the conditions precedent to the Second Closing for the benefit of the City, as set forth in Section 205.3 hereof.

“Closing” or “Close of Escrow” or “Each Closing” means the close of Escrow with respect to the First Closing or the Second Closing, as applicable, as set forth in Section 202 hereof.

“Closing Date” means the date of the First Closing and/or the Second Closing, as applicable, as set forth in Section 202 hereof.

“Completion of Construction” means, with respect to each Component, the date on which the Developer is entitled to a Release of Construction Covenants for such Component.

“Component” means individually or collectively as applicable, the Residential Component, the Retail Component, the Mixed Use Commercial Component, and/or the Grocery Store Component.

“Condition of Title” is defined in Section 203 hereof.

“Conditions Precedent” means the City’s Conditions Precedent and/or the Developer’s Conditions Precedent for the Applicable Conveyance.

“Construction Financing” means, with respect to each Component, the debt and equity necessary to construct such Component, including the documents evidencing same. The Construction Financing may be provided by different entities for each Component.

“Construction Period” means, with respect to each of the Retail Component and the Residential Component, the period commencing upon the Date of Agreement and terminating upon Completion of Construction of such Component.

“Contractor’s Pollution Liability Insurance” means insurance regarding the Environmental Condition of the Site during the course of construction.
“Convey” or “Conveyance” means the conveyance of the Residential Component and the Retail Component by the City to the Retail Developer and the Residential Developer, respectively, by Grant Deed, the Transfer of the leasehold interest in the Loan Pham Property to the Retail Developer, and the conveyance of a leasehold interest in the Mixed Use Commercial Component and the Grocery Store Component pursuant to the Ground Lease to the Developer. Any reference to the Conveyance of the Retail Component includes the transfer of the Loan Pham Lease.

“County Dispute” is defined below in this Section 100.

“CRL” means the Community Redevelopment Law, Health & Safety Code Section 30000 et seq.

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

“Davis Mud Pit” means that portion of the Site consisting of approximately 2.3 acres in the location generally depicted on the Site Map.

“Declaration” means the conditions covenants and conditions executed by Developer providing reciprocal access and other easements as determined by Developer throughout the Site, which Declaration shall be approved by the City and approval, as to form by the Anaheim City Attorney.

“Default” means the failure of a party hereto to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

“Design Development Drawings” are the Design Development Drawings for the Residential Component and the Retail Component, as described in Attachment 6, Stage II.

“Design Review Process” is described in Attachment No. 6 attached hereto and incorporated herein by reference.

“Developer” means 39 Commons Partners, LLC, a Delaware limited liability company, for which Zelman and the Greenlaw Venture are the sole members.

“Developer Remediation Component” means that portion of the Remedial Improvements, which is the responsibility of the Developer with respect to the Site. The Developer Remediation Component shall include the preparation of, submittal to, and approval from Responsible Agencies and implementation of the following; the Schedule of Activities, workplan and other Remediation work necessary in connection with construction of buildings, pile support system, if any, reconstruction and/or repair as required for components of the remedial improvements previously installed including, Construction Quality Assurance Plan and Requirements, design and construction of the underground utility trench, Vegetative Maintenance Plan and Smart Irrigation Plan, Closure Plan, Financial Assurance Plans, and Deed Restrictions, each as defined in the RAP. The Developer Remediation Component also includes the Final Cover/Asphalt Cap, as conditionally approved in Noticed Environmental Doc #86, dated February 10, 2010 and such additional obligations as may be imposed by RWQCB in connection with a revised RAP admission special development proposal.

“Developer’s Conditions Precedent re the First Closing” means the conditions precedent to the First Closing for the benefit of the Developer, as set forth in Section 205.2.
“Developer’s Conditions Precedent re the Second Closing” means the conditions precedent to the Second Closing for the benefit of the Developer, as set forth in Section 205.4.

“Director” means the Director of the Community and Economic Development Department of the City or his designee who shall represent the City in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the Director is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

“Effective Date” means the date set forth above on which City and Developer execute this Agreement.

“Eligible Persons” means any individual, partnership, corporation or association which qualifies as a “displaced person” pursuant to the definition provided in Government Code Section 7260(c) of the California Relocation Assistance Act of 1970, as amended, and any other applicable federal, state, or local regulations or laws.

“Employment Interest List” is defined in Section 404.2 hereof.

“Entitlements” means Beach Boulevard Specific Plan, including the EIR No. 350 (SCH No. 20170411042), and MMRF No. 342.

“Environmental Condition” is defined in Section 207.3 hereof.

“Environmental Liabilities” is defined in Section 208.2.

“Environmental Insurance” is defined in Section 207.10.

“Escrow” is defined in Section 202 hereof.

“Escrow Agent” is defined in Section 202 hereof.

“Exceptions” is defined in Section 203 hereof.

“Final Discretionary Approval for the Residential Component and the Retail Component” means approval of a site plan and conditional use permit for the Residential Component and the Retail Component.

“First Closing” means the Close of Escrow with respect to the Residential Component Property, the Retail Component Property, and the Mixed Use Commercial Component Property, and the Transfer of the Loan Pham Lease.

“First Closing Property” means the Retail Component, the Residential Component and the Mixed Use Commercial Component.

“Good Faith Deposit re First Closing” is defined in Section 201.1.

“Good Faith Deposit re Second Closing” is defined in Section 201.5.

“Governmental Requirements” is defined in Section 401(d)(ii) hereof.
“Grading” means all grading for the Applicable Component.

“Grading Permit” means the grading permit for the Applicable Component.

“Grading Plans” means the plans submitted in connection with the issuance of Grading Permits.

“Grant Deed” means the grant deed to be used for the Conveyance, in the form of Attachment No. 2 attached hereto and incorporated herein by reference.

“Greenlaw” means Greenlaw Partners, LLC, a California limited liability company for which Wilbur H. Smith III is the sole managing member.

“Greenlaw Venture” means Greenlaw 39 Commons LLC, a California limited liability company, of which Greenlaw is the sole manager and Greenlaw Development, LLC, a California limited liability company, is the sole member.

“Grocery Store Component” or “Grocery Store” means the construction and operation of a retail grocer pursuant to a Grocery Store Component Lease of not less than 15,000 sq. ft. gross leasable area acceptable to the Director in his sole and absolute discretion.

“Grocery Store Component Property” means the Grocery Store Component Property, as shown on the Site Map.

“Grocery Store Lease” means the lease with the operator of the Grocery Store for a term of not less than ten (10) years.

“Ground Lease” means the ground lease(s) of the Mixed Use Commercial Component and, subject to Developer’s right to enter into a separate ground lease of the Grocery Store Component in accordance with Section 201.3.2, the Grocery Store Component from the City to the Developer in substantially the form attached hereto as Attachment No. 11 and incorporated herein by reference.

“Hazardous Materials” means any substance, material, or waste which is or becomes, 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 Section 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 and breakdown and derivative products thereof, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Chapter 11 of Title 22, Division 4.5 of the California Code of Regulations, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and

“HUD” means the United States Department of Housing and Urban Development.

“HUD Jobs Creation National Objective” is defined in Section 404 hereof.

“Immunity Letter” means the issuance by the RWQCB which provides (i) that the remedial work has been completed in accordance with the Approved RAP, and (ii) that the immunity available under Health and Safety Code Section 33459.3 applies.

“Indemnity” or “Indemnify” is defined in Section 208.2.

“Indemnitees” means the City and the Successor Agency, as well as the elected officials, officers, employees, lawyers, agents, representatives, and consultants of each.


“Investigation” is defined in Section 207.1.

“Landfills” means collectively the Sparks Landfill, Rains Landfill and the Anderson Landfill.

“Landfill Gas” means gaseous emissions produced as a by-product of organic waste during decomposition which may contain various chemical components in widely fluctuating quantities including without limitation, methane, carbon dioxide, hydrogen sulfide, carbon monoxide, benzene, ethyl-benzene, toluene, vinyl chloride, dichloromethane, trichloroethylene, 1,2, dichloroethylene, tetrachloroethylene and ammonia.

“Landfill Map” means the Landfill Map attached hereto as Attachment No. 1-B and incorporated herein by reference.

“Leases” means retail leases with respect to the Retail Component.

“Legal Description” means the legal description of the Site, including the Loan Pham Property which will be provided by City prior to Closing.

“Liability Immunity” is defined in Section 207.5 hereof.

“License Agreement (OM&M)” means an agreement, in substantially the form attached hereto as Attachment 12 and incorporated herein by reference, granting a license to the City to enter the Site for the purpose of implementing the OM&M Plan.

“Liquidated Damages re First Closing” is defined in Section 201.2.

“Liquidated Damages re Second Closing” is defined in Section 201.6.

“List of Environmental Condition Documents” means the List of Environmental Condition Documents attached hereto as Attachment No. 8 and incorporated herein by reference.
“Lloyd’s” is defined in Section 207.10.

“Loan Pham Lease” means the lease previously provided to Developer pursuant to which the City has acquired a leasehold interest in the Loan Pham Property.

“Loan Pham Property” means property which is the subject matter of the Loan Pham Lease as shown on the Legal Description as the “Loan Pham Property.” The Loan Pham Property is part of the Retail Component.

“Memorandum of Ground Lease” means a memorandum of the Ground Lease, in a form acceptable to the Parties, which shall be recorded with the County Recorder at the First Closing.

“Mixed Use Commercial Component” will consist of various commercial uses consistent with Governmental Requirements.

“Mixed Use Commercial Component Property” is shown on the Site Map.

“Mortgage” is defined in Section 311.2 hereof.

“Named Insured” means the Successor Agency, the City, the County, Zelman, WIG, and such other entities as may be added over time including, without limitation, Developer and the Greenlaw Venture.

“Notice” shall mean a notice in the form prescribed by Section 601 hereof.

“OCHCA” means the Orange County Health Care Agency.

“Operating Period” is defined in Section 401(b).

“Operations, Maintenance and Monitoring Plan” or “OM&M Plan” means the plan, approved by RWQCB on June 12, 2009, which describes, among other things, the obligation to conduct ongoing monitoring of the landfill gas extraction system, the groundwater and the landfill cap. Pursuant to Section 208.1, upon and after the Closing, the City shall implement or cause the implementation of the Operations, Maintenance and Monitoring Plan, at its sole cost and expense.

“Outside Date re First Closing” means July 31, 2020 unless extended pursuant to Section 205.1(o) or 205.2(o).

“Outside Date re Second Closing” means July 29, 2022, unless extended pursuant to 205.1(o) or 205.2(o).

“Parcel Map” means a lot line adjustment, parcel map, a subdivision map in compliance with the California Subdivision Map Act.

“Participating Employers” is defined in Section 404.2 hereof.

“Permanent Financing” means debt and/or equity financing secured by Developer to repay the obligations under the Construction Financing.

“Polanco Redevelopment Act” means the provisions of California Health and Safety Code Sections 33459 – 33459.8, as same may be amended from time to time.

“Potential Qualifying Job Applicants” is defined in Section 404.2 hereof.

“Preliminary Evidence of Financing” means a preliminary commitment letter from a financial institution which has adequate financial resources, in the reasonable determination of the City, and is in the business of providing construction financing for the Residential Component and/or the Retail Component, and which includes: (i) a term sheet or letter of interest, and (ii) the statement by the prospective lender that such lender has reviewed the Developer’s preliminary loan information and has issued a preliminary letter of interest or term sheet to provide Construction Financing for (at a minimum) the Residential Component and/or the Retail Component.

“Project” means the development of the Residential Component, the Retail Component, the Mixed Use Commercial Component, and the Grocery Store Component, including the Site Work and the Developer Remediation Component.

“Project Jobs Description” is defined in Section 404.1 hereof.

“Project Plan” means the basic concept plan for the Project attached hereto on Attachment 1-C and incorporated herein by reference.

“Purchase Price” is defined in Section 201.4 hereof.

“Qualified Professional” means an engineer, geologist or other consultant qualified in accordance with requirements of law to prepare the Operations, Maintenance and Monitoring Plan.

“Qualifying Project Jobs” is defined in Section 404.1 hereof.

“Rains Landfill” means that portion of the Site consisting of approximately 6.72 acres in the location generally depicted on the Site Map.

“Recognition Agreement” means the Recognition Agreement with respect to the Loan Pham Lease attached hereto as Attachment No. 10 and incorporated herein by reference.

“Related Entity” means an entity in which a majority ownership interest is held by the Developer.

“Release of Construction Covenants” means the document which evidences the Retail Developer’s and the Residential Developer’s satisfactory completion of the Residential Component or the Retail Component, respectively, as set forth in Section 310 hereof, in the form of Attachment No. 5 attached hereto and incorporated herein by reference.

“Remedial Action Plan” or “RAP” means that certain plan for the assessment, evaluation, investigation, removal, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gas including methane in, on, under (including in the groundwater), or migrating from the Landfills initially prepared by Shaw Environmental, Inc., dated December 30, 2004, as it may be amended or addended, from time to time, including any new, addended, or amended RAP which addresses Remediation required in connection with specific development proposals.
“Remedial Improvements” means those certain improvements which have been or will be designed and constructed on the Site in implementation of the Remedial Action Plan, including Developer Remediation Component.

“Remediation” or “Remediate” means the removal, remediation, response action, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gas in, on, under (including underground water) or migrating from the Property in accordance with the RAP. “Remediation” or “Remediate” does not include the operations, maintenance, and monitoring to be performed pursuant to the OM&M Plan.

“Report” means the preliminary title report, as described in Section 203 hereof.

“Responsible Agency” or “Responsible Agencies” means individually or collectively, as applicable, the RWQCB, the Orange County Health Care Agency-Environmental Health Division (Local Enforcement Agency or LEA), the California Integrated Waste Management Board, the South Coast Air Quality Management District, and the City.

“Residential Component” is described in the Scope of Development and includes the Developer Remediation Component.

“Residential Developer” shall mean the Developer or Developer’s assignee with respect to the Residential Component pursuant to Section 603.2(h) or as otherwise approved by the Director.

“Residential Component Property” is shown on the Site Map.

“Retail Component” is shown on the Site Map and described in the Scope of Development.

“Retail Component Developer” shall mean the Developer or Developer’s assignee with respect to the Retail Component pursuant to Section 603.2(g) or as otherwise approved by the Director.

“Retail Component Property” is shown on the Site Map and includes the Loan Pham Property.

“Retailers” means the type of retailers comparable to other first rate, commercial retail centers in Orange County. The identity of Retailers during the initial lease-up of the Retail Component occupying more than 5,000 square feet of gross leasable area shall be approved by the Director acting in his/her reasonable discretion, consistent with the immediately preceding sentence.

“Right of Entry Agreement” means that certain right of entry agreement attached hereto as Attachment No. 7 and incorporated herein by reference which describes the terms under which the Developer may enter the Site for purposes of Site preparation and/or grading if Developer wishes to do so prior to the Closing as described in Section 207 hereof.

“RWQCB” means the California Regional Water Quality Control Board, Santa Ana Region or such other entity asserting jurisdiction over the Remediation of the Site.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment No. 3 and incorporated herein by reference, setting out the dates and/or time periods by which the First Closing and the Second Closing occurs and by which certain obligations with respect to the development of the Residential Component and the Retail Component must be accomplished.
The Schedule of Performance is subject to Section 602 and revision from time to time as mutually agreed upon in writing between the Developer and the Director, and the Director is authorized to make such revisions as he or she deems reasonably necessary.

“Scope of Development” means the Scope of Development attached hereto as Attachment No. 4 and incorporated herein by reference, which describes the scope, amount and quality of development of the Residential Component and the Retail Component.

“Second Closing” means the Closing with respect to the Grocery Store Component Property.

“Section 108 Loan for the Project” is defined in Section 404 hereof.

“Settlement Agreement” means that certain Settlement and Release Agreement dated October 15, 2008, by and among the County, City, Agency (now Successor Agency), Zelman Anaheim, LLC and WIG settling a dispute with the County of Orange concerning the Environmental Condition of the Site (the “County Dispute”) and providing, among other things, for mutual release of the parties thereto.

“Site” means that certain real property located at the northeast corner of Lincoln Ave. and Beach Blvd. shown on the Site Map and described in the Legal Description free and clear of all structures, debris and underground improvements discovered in the course of demolition.

“Site Map” is attached hereto as Attachment No. 1-A.

“Site Work” means all grading for the Residential Component.

“Site Work Plans” means grading permits for the Residential Component.

“Sparks Landfill” means that portion of the Site consisting of approximately 10.68 acres.

“Successor Agency” means the Successor Agency to the Anaheim Redevelopment Agency pursuant to Health & Safety Code §34170 et seq. Wherever the Successor Agency has an obligation hereunder the City will use its best efforts to either perform such obligation or cause the Successor Agency to perform such obligation.

“Title 27” means Title 27 of the California Code of Regulations, Division 2.

“Title Company” is defined in Section 203 hereof.

“Title Policy” or “Title Policies” is defined in Section 204 hereof.

“Transfer” is defined in Section 603.1 hereof.

“Transfer of the Loan Pham Lease” means the assignment of the leasehold interest in the Loan Pham Property from the City to the Developer.

“WIG” means the Westgate Investment Group LLC, a California limited liability company.

“Zelman” means Zelman Anaheim, LLC, a Delaware limited liability company, for which Brett Foy and Paul Casey are its sole members or Zelman Development Co., a California Corporation.
200. CONVEYANCE OF THE SITE

201. Assembly and Acquisition.

201.1 Good Faith Deposit re First Closing. Developer has herewith deposited with Escrow Agent the sum of Fifty Thousand Dollars ($50,000) by means of cash, a confirmed wire transfer of funds, or a bank cashier’s check made payable to Escrow Agent. Developer shall deposit an additional One Hundred Thousand Dollars ($100,000) with Escrow Agent when it receives Final Discretionary Approval for the Residential Component and the Retail Component. Escrow Agent is hereby instructed to deposit both such sums, when received, in an interest bearing account which sum can be withdrawn upon demand. The sums described in this Section 201.1, when received, plus interest, if any, are referred to herein as the “Good Faith Deposit re First Closing.”

201.2 Liquidated Damages re First Closing. IN THE EVENT OF TERMINATION OF THIS AGREEMENT BY CITY PRIOR TO THE FIRST CLOSING, PURSUANT TO SECTION 503.1(b) OR 503.2 OF THIS AGREEMENT, THE AMOUNT OF THE GOOD FAITH DEPOSIT RE FIRST CLOSING SHALL BE PAID TO CITY BY ESCROW AGENT PURSUANT TO UNILATERAL INSTRUCTION BY THE CITY (SPECIFICALLY DISREGARDING ANY CONTRARY INSTRUCTION BY DEVELOPER) AND, WHEN SO PAID, SHALL BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES RE FIRST CLOSING AS THE SOLE AND EXCLUSIVE REMEDY OF THE CITY HEREUNDER. IN THE EVENT OF SUCH TERMINATION, THE CITY WOULD SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE DELAY OR FRUSTRATION OF TAX REVENUES THEREFROM TO THE CITY AND THE CITY, THE DELAY OR FAILURE OF THE CITY TO FURTHER THE IMPLEMENTATION OF THE CITY’S ECONOMIC DEVELOPMENT GOALS FOR THE WEST SIDE OF THE CITY, AND LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO THE CITY. IT IS IMPrACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD BE APPROXIMATELY THE AMOUNT OF THE GOOD FAITH DEPOSIT, AND SUCH AMOUNT SHALL BE PAID OVER TO THE CITY AND RETAINED BY THE CITY UPON TERMINATION OF THIS AGREEMENT PURSUANT TO SECTION 503.1(b) OR 503.2 OF THIS AGREEMENT, AS THE TOTAL OF ALL LIQUIDATED DAMAGES WITH RESPECT TO THE FIRST CLOSING FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES RE FIRST CLOSING PROVISION BY THEIR INITIALS BELOW:

Developer                                 City

Except as set forth in the next paragraph, provision of this Section 201.2 shall be City’s sole and exclusive remedy in the event of termination prior to Close of Escrow and, in such event, City hereby waives the right to specifically enforce this Agreement; provided, however, this liquidated damages provisions shall not limit the City’s right to enforce all indemnification provisions contained in this Agreement.
Notwithstanding the foregoing provisions of this Section 201.2, in the event Developer contests the validity or the enforceability of the provisions of this Section 201.2, the City shall be entitled to pursue all available remedies including money damages.

201.3 Disposition of the Site. The parties anticipate that the Conveyances will occur in two closings. The First Closing will include the Fee Simple Conveyance of the Residential Component Property and the Retail Component Property and the Conveyance, by Ground Lease, of the Mixed Use Commercial Component Property. The Second Closing will be the Conveyance of a ground lease interest in the Grocery Store Component Property.

201.3.1 First Closing. The City agrees to convey the First Closing Property and the Developer agrees to acquire the First Closing Property from the City, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, including the Conditions Precedent as set forth in Section 205. The Conveyance of the Residential Component and the Retail Component from the City to the Retail Developer and Residential Developer, respectively, shall be accomplished through the execution, delivery and recordation in the official records of Orange County of the Grant Deeds, except as to the Loan Pham Property which will be conveyed by the Assignment of Loan Pham Leasehold Interest to the Retail Developer, and the conveyance of the Mixed Use Commercial Component which will be accomplished pursuant to the Ground Lease to the Developer.

201.3.2 Second Closing. The Second Closing will be the Conveyance of a ground lease interest in the Grocery Store Component Property which, at the election of the Developer, will be either by virtue of inclusion in the Ground Lease through the recordation of the Amended Memorandum of Ground Lease or by separate ground lease in substantially the form of the Ground Lease and recordation of a separate memorandum with respect thereto. Developer shall enter into the Grocery Store Lease on or before the Outside Date re Second Closing and complete construction of the Grocery Store and cause it to open for business to the general public on or before the second anniversary date of the date of the Grocery Store Lease. In the event that Developer fails to deliver a Grocery Store Lease on or before the Outside Date re Second Closing or, following delivery of the Grocery Store Lease, fails to complete construction of the Grocery Store and the opening for business of the Grocery Store to the general public on or before the second anniversary date of the execution of the Grocery Store Lease, this Agreement shall be terminated with respect to the Second Closing and the City shall retain the Liquidated Damages re Second Closing described in Section 201.6. In the event that the Developer completes its obligation under this Section 201.3.2, the Liquidated Damages re Second Closing shall be returned to the Developer following the opening for business of the Grocery Store to the general public.

201.4 Consideration with respect to Conveyance of the Site. The purchase price for the Residential Component and the Retail Component shall be Five Million Six Hundred Thousand Dollars ($5,600,000) (the “Purchase Price”). The Purchase Price will be paid in full cash at closing. The Good Faith Deposit re the First Closing shall be paid to the City as Liquidated Damages re First Closing pursuant to Section 201.2, or applied to the Purchase Price upon the Close of Escrow.

The consideration for the Conveyance pursuant to the Ground Lease of the Mixed Use Commercial Component Property and the Grocery Store Component Property is set forth in the Ground Lease.

201.5 Good Faith Deposit re Second Closing. Developer shall as a Condition Precedent to the First Closing deposit with the City the sum of One Million Three Hundred Thousand
Dollars ($1,300,000) by means of cash, a confirmed wire transfer of funds, or a bank cashier’s check made payable to the City. The City shall deposit such sum in an interest bearing account which sum can be withdrawn upon demand. The sum of One Million Three Hundred Thousand Dollars ($1,300,000) plus interest, if any, is referred to herein as the “Good Faith Deposit re Second Closing.”

201.6 Liquidated Damages re Second Closing. IN THE EVENT THAT DEVELOPER FAILS TO DELIVER THE GROCERY STORE GROUND LEASE OR FAILS TO COMPLETE CONSTRUCTION OF GROCERY STORE AND OPEN SAME FOR BUSINESS TO THE GENERAL PUBLIC PURSUANT TO SECTION 201.3.2 OF THIS AGREEMENT, THE AMOUNT OF THE GOOD FAITH DEPOSIT RE SECOND CLOSING SHALL BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES RE SECOND CLOSING AS THE SOLE AND EXCLUSIVE REMEDY OF THE CITY HEREUNDER. IN THE EVENT OF SUCH TERMINATION, THE CITY WOULD SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE DELAY OR FRUSTRATION OF TAX REVENUES THEREFROM TO THE CITY, THE DELAY OR FAILURE OF THE CITY TO FURTHER THE IMPLEMENTATION OF THE CITY’S ECONOMIC DEVELOPMENT GOALS FOR THE WEST SIDE OF THE CITY, AND LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO THE CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD BE APPROXIMATELY THE AMOUNT OF THE GOOD FAITH DEPOSIT RE SECOND CLOSING, AND SUCH AMOUNT SHALL BE RETAINED BY THE CITY UPON TERMINATION OF THIS AGREEMENT WITH RESPECT TO THE SECOND CLOSING PURSUANT TO SECTION 201.3.2 OF THIS AGREEMENT, AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS WITH RESPECT TO THE SECOND CLOSING AND NOT AS A PENALTY.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES RE SECOND CLOSING PROVISION BY THEIR INITIALS BELOW:

______________________________  ________________________________
Developer                                          City

The provisions of this Section 201.2 shall be City’s sole and exclusive remedy in the event of termination prior to Close of Escrow and, in such event, City hereby waives the right to specifically enforce this Agreement; provided, however, this liquidated damages provisions shall not limit the City’s right to enforce all indemnification provisions contained in this Agreement.

202. Escrow. The City shall open escrow (“Escrow”) for the First Closing and the Second Closing with First American Title Insurance Company or another escrow holder mutually satisfactory to both parties (the “Escrow Agent”) by depositing one (1) fully executed copy of this Agreement with Escrow Agent.

202.1 Costs of Escrow. City and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 204 hereof, the City shall pay for the documentary transfer taxes, if any, due with respect to the Conveyance, and Developer and City each agree to pay one-half of all other usual fees, charges, and costs which arise from Escrow with respect to the Conveyance.
202.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of the Developer and City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. All funds received in the Escrow shall be deposited in a federally insured interest bearing general escrow account(s) and may be transferred to any other such federally insured interest bearing escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

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 Applicable Closing shall take place when the Applicable Conditions Precedent as set forth in Section 205 have been satisfied or waived. Escrow Agent is instructed to release City’s escrow closing and Developer’s escrow closing statements to the respective parties for their respective prior written approval.

202.3 Authority of Escrow Agent. When the Applicable Conditions Precedent have been fulfilled or waived by the party for whose benefit such conditions are imposed, Escrow Agent is authorized to, and shall, with respect to Each Closing:

(a) Pay and charge Developer and City for their respective shares of the premium of the Title Policy and any endorsements thereto as set forth in Section 204.

(b) Pay and charge Developer and City for their respective shares of any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.

(c) Disburse funds, deliver and record in the following order of priority with respect to Each Closing: the Operations, Maintenance and Monitoring Plan, the Grant Deeds (First Closing only), Transfer of Loan Pham Lease (First Closing only), and the Ground Lease (First Closing with respect to the Mixed Use Component Property and Second Closing with respect to the Grocery Store Component Property); and all deeds of trust and other security documents required by the lender providing the debt portion of the Construction Financing with instructions for the Recorder of Orange County, California to deliver conforming copies to the parties.

(d) Do such other actions as necessary to fulfill its obligations under this Agreement.

(e) Direct City 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 by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and comparable forms respecting the State of California as may be required by Escrow Agent, on forms to be supplied by Escrow Agent.

(f) 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.

202.4 Closing. The “Closing” or “Close of Escrow” or “Each Closing” shall occur within thirty (30) days after the satisfaction of the Applicable Conditions Precedent, subject to extension under Section 602, or such later date as may be mutually agreed upon by the City and
Developer in writing; provided however in no event shall Each Closing occur later than the Applicable Outside Date. The Closing or Close of Escrow with respect to the First Closing shall mean the time and day the Grant Deeds and, the Transfer of Loan Pham Lease and the Memorandum of Ground Lease and the License Agreement are recorded in the official records of the Orange County Recorder. The Closing or Close of Escrow with respect to the Second Closing shall mean the time and day the Amended Memorandum of Ground Lease or new Memorandum of Ground Lease with respect to the Second Closing is recorded in the official records of the Orange County Recorder. The “Closing Date” shall mean the day on which the Applicable Closing occurs.

202.5 Closing Procedure. Escrow Agent shall close Escrow with respect to the First Closing and the Second Closing as follows:

(a) Record in order the Operations, Maintenance and Monitoring Plan against the Site; the Grant Deeds and Transfer of Loan Pham Lease (First Closing only) and the Memorandum of Ground Lease for the First Closing, and Amended Memorandum of Ground Lease or new Memorandum of Ground Lease for the Second Closing; all deeds of trust and other security documents required by lenders providing the debt portion of the Applicable Construction Financing with instructions for the Recorder of Orange County, California to deliver conforming copies to the parties;

(b) Instruct the Title Company to forthwith deliver the Title Policy to Developer with a copy to the City;

(c) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(d) Deliver the FIRPTA Certificate and other certificate(s) and statement(s) described in Section 202.3(e), if any, to the Developer;

(e) Disburse any funds and documents as may be held in Escrow following the Applicable Closing to the party entitled thereto; and

(f) Deliver to both Developer and City a separate accounting of all funds received and disbursed for each party and conforming copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

202.6 Failure to Close. If, for any reason, the Applicable Escrow fails to Close, Escrow Agent shall return all documents and funds to the party depositing same in accordance with Section 503.

203. Review of Title. Prior to the Date of Agreement, the City has caused First American Title Insurance Company (the “Title Company”), to deliver to Developer a standard preliminary title report (the “Report”) with respect to title to the Site dated no more than ten (10) days prior to the Date of Agreement, together with legible copies of the documents underlying the exceptions (“Exceptions”) set forth in the Report. The Developer shall have the right to approve or disapprove the Exceptions in its sole discretion; provided, however, that the Developer hereby approves the following Exceptions:

(a) The Redevelopment Plan.
(b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).

(c) The provisions of the Grant Deed with respect to the Residential Component and the Retail Component.

(d) The provisions of the Ground Lease with respect to the Mixed Use Commercial Component and the Grocery Store Component.

Developer shall have sixty (60) days from the later to occur of (i) the Effective Date, or (ii) the date of its receipt of the Report and legible copies of all Exceptions to give written notice to City and Escrow Holder of Developer’s approval or disapproval of any of such Exceptions. Developer shall have right to obtain, at its expense, an ALTA survey of the Site and to approve or disapprove the survey and all Exceptions to title shown on the survey. Developer’s failure to give written approval of the Report within such time limit shall be deemed disapproval of the Report. If Developer notifies City of its disapproval of any Exceptions in the Report, the City shall have thirty (30) days from the receipt of written notice of disapproval by the Developer to determine whether or not it will undertake the removal of any disapproved Exceptions. If the City elects to remove such Exceptions, it shall diligently proceed to effect the removal of such Exceptions. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have thirty (30) days after the expiration of such thirty (30) day period to either give the City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the City written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by Developer as provided herein shall hereinafter be referred to as the “Condition of Title.” Developer shall have the right to approve or disapprove any additional and previously unreported Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer), except for any covenant recorded against the Site with respect to the Landfill Gases, which covenant Developer shall have the right to reasonably approve in advance of recordation, City shall not voluntarily create any new exceptions to title following the Date of Agreement.

204. Title Insurance. Concurrently with recordation of a Grant Deed, the Memorandum of Ground Lease, and the Assignment of Loan Pham Leasehold Interest for the First Closing, and the Amended Memorandum of Ground Lease or new Memorandum of Ground Lease with respect to the Second Closing, there shall be issued by Title Company to the Retail Developer, Residential Developer, and the Developer ALTA standard coverage title insurance policies for the Applicable Component, or, at such party’s request, an ALTA extended coverage owner’s policy of title insurance (6-17-06) and an ALTA 13 Leasehold Owner’s Endorsement (4-2-12) with respect to the Ground Lease and Loan Pham Property (together, the “Title Policies”), collectively in the amount of Five Million Two Hundred Thousand Dollars ($5,200,000), together with such endorsements as are requested by the such party, insuring that as of the date and time of recordation of such documents, title to or all right of possession for the Applicable Component, is vested in the Retail Developer, Residential Developer, and the Developer, as applicable, in the condition required by Section 203 of this Agreement. The City agrees to remove on or before the Closing any deeds of trust or other monetary liens against the Site. The City shall pay that portion of the premium for the Title Policy equal to the cost of an ALTA standard coverage title policy in the amount of the Purchase Price with respect to the Residential Component and the Retail Component and Two Million Dollars ($2,000,000) with respect to the Mixed Use Commercial Component and Grocery Store Component the latter two (2) being allocated proportionally based on square footage. Any additional costs, including the cost of
endorsements requested by the Developer which are not necessary to obtain the ALTA standard coverage title policy, or additional premiums to obtain an ALTA extended coverage policy, shall be borne by the Developer.

205. Conditions of Closing. Each Closing is conditioned upon the satisfaction of the Applicable Conditions Precedent as set forth in this Section 205 (collectively “Conditions Precedent”).

205.1 City’s Conditions of the First Closing. City’s obligation to proceed with the First Closing is subject to the fulfillment, or waiver by City, of each and all of the conditions precedent (a) through (q), inclusive, described below (“City’s Conditions Precedent re the First Closing”), which are solely for the benefit of City, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time frame is provided, prior to the Outside Date re the First Closing:

(a) **No Default.** Developer shall not be in Default.

(b) **Execution and Delivery of Documents.** Developer shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(c) **Payment of Funds.** The Developer has deposited all of Developer’s required costs of the First Closing into Escrow in accordance with Section 202.1 hereof.

(d) **Basic Concept Drawings and Design Development Drawings.** The Developer shall have obtained approval by the City of the Basic Concept Drawings and Design Development Drawings for the Residential Component and the Retail Component as set forth in Section 302 hereof.

(e) **Commercial General Liability Insurance.** The Developer shall have provided proof of commercial general liability insurance as required by Section 306 hereof.

(f) **Construction Financing.** The City shall have approved, which approval shall not be unreasonably withheld, the Preliminary Evidence of Financing for the Residential Component. City shall also have approved the documents evidencing the Construction Financing for the Residential Component to confirm that the Construction Financing for the Residential Component contains substantially similar terms as the Preliminary Evidence of Financing. The Construction Financing for the Residential Component shall be on substantially similar terms as the approved Preliminary Evidence of Financing unless otherwise approved by City, which approval shall not be unreasonably withheld, and the debt portion of such Construction Financing shall be ready to record and fund concurrently with the Closing.

(g) **Plans and Permits for the Residential Component.** Developer shall have (i) submitted completed Grading Plans for the Residential Component, (ii) obtained RWQCB, and City approval of the Grading Plans for the Residential Component, and (iii) Grading Permits for the Residential Component shall be ready to be issued and necessary fees and security posted for the Site Work.
(h) General Contractor Contract. The Developer shall have provided or caused to be provided to the Director a copy of a valid and binding contract between the Developer and one or more California-licensed general contractors for the construction of the Site Work.

(i) Identity of Certain Retailers. City shall have approved, acting in its reasonable discretion, the identity of Retailers, if any, occupying more than 5,000 square feet of gross leasable area

(j) Developer Obligations. The Developer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Developer prior to the Closing.

(k) Developer Representations. All representations and warranties made by the Developer in this Agreement shall be true and correct as of the date of this Agreement and the Close of Escrow subject to the Developer’s right to modify its representations as set forth in Section 206 below.

(l) Approval of Operations, Maintenance and Monitoring Plan. City, Developer and the Responsible Agencies have approved the Operations, Maintenance and Monitoring Plan for the Site.

(m) Brookfield Reimbursement. The Developer shall at the Close of Escrow deposit with the Escrow Agent the cash amount of the Brookfield Reimbursement payable to Brookfield Beach Blvd LLC. Escrow Agent shall disburse Brookfield Reimbursement at the direction of the City upon the Close of Escrow.

(n) Parcel Map; Declaration. Developer, at its sole cost, shall have effected the recordation, at the First Closing, of a Parcel Map subdividing the existing Site into the Residential Component Property, the Retail Component Property, the Mixed Use Commercial Component Property, and the Grocery Store Component Property. Each Component shall constitute separate legal parcels in accordance with the provisions of applicable law. It is a condition to Developer’s obligation to consummate the transaction contemplated hereby that the Parcel Map and a Declaration, approved by the City, shall be recorded concurrently with the First Closing contemplated hereby, and that Developer shall have approved, in Developer’s sole discretion, in writing prior to the recordation of the Parcel Map, all conditions imposed on the Site as a result of such Parcel Map. The Declaration shall provide, among other things, for reciprocal access and that the common area of Site shall be maintained in accordance with the Maintenance Standards set forth in Section 401 of this Agreement. The Declaration, approved by the City, shall be recorded concurrently with the First Closing. Developer shall be solely responsible for all engineering, permit and other fees and costs in connection with preparing and obtaining approval of the Parcel Map.

(o) Environmental Condition.

(i) The Responsible Agencies shall have approved the Operations, Maintenance and Monitoring Plan and the parties’ proposal for the implementation of the Approved RAP or conditions approval thereof in a manner consistent in all material respects with the Remedial Action Plan, within the time set forth in the Schedule of Performance in accordance with Section 207.3(d).
(ii) The Responsible Agencies shall have received from the Successor Agency, City and Developer all additional information outlined in the Interim Immunity Letter that such Responsible Agencies deem necessary to commencement of construction of the Site Work and the Residential Component and the Retail Component, and shall have approved, all reports (i.e., geotechnical, groundwater and landfill gas perimeter probe monitoring), design plans (i.e., final cover, drainage system, groundwater monitoring system, landfill gas monitoring and control systems, monitoring well security, irrigation plan and monitoring system), construction plans and workplans necessary for each construction element.

(iii) The Responsible Agencies shall have issued approval of (aa) the closure and post-closure plan for the Landfills, and (bb) that construction of the Residential Component and the Retail Component can commence.

(iv) The Developer, the City, the Successor Agency and the RWQCB shall have agreed upon the form of Environmental Deed Restriction required for the Site, as referenced in the Interim Immunity Letter and such Environmental Deed Restriction shall be incorporated in the Grant Deed and the Ground Lease.

(v) Notwithstanding anything contained herein to the contrary, in the event that the conditions set forth in this paragraph (o) are not satisfied within five (5) business days prior to the Outside Date re the First Closing, then the City shall have the right, acting in its sole and absolute discretion upon written notice to Developer prior to the Outside Date re the First Closing to extend the Outside Date re First Closing for up to one (1) year in order to give the parties additional time to satisfy the conditions set forth in this paragraph (o). If the Outside Date re the First Closing is extended pursuant to this subparagraph (v), then (A) the Outside Date re the Second Closing shall be extended by the number of days that the Outside Date re the First Closing is extended, and (B) the Schedule of Performance attached to this Agreement shall be revised as reasonably agreed upon by the City and Developer. If the conditions set forth in this paragraph (o) are not satisfied on or before the Outside Date re First Closing, as extended, then the City shall have the right to terminate this Agreement upon written notice to Developer, in which event the Good Faith Deposit re First Closing shall be returned to the Developer.

(p) Conveyance by the Successor Agency. The City shall have received an assignment of the Loan Pham Lease.

(q) Legal Description. The Developer shall have provided a Legal Description to Escrow Agent.

Any waiver by the City of any of the preceding conditions must be expressly made in writing and approved, in writing, by the City Attorney.

205.2 Developer’s Conditions of the First Closing. Developer’s obligation to proceed with the First Closing is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (s), inclusive, described below (“Developer’s Conditions Precedent re the First Closing”), which are solely for the benefit of Developer, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time is set forth, by the Outside Date re the First Closing:

(a) No Default. City shall not be in Default.
(b) Execution and Delivery of Documents. City shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the Condition of Title of the Site, as provided in Section 203 hereof.

(d) Conditional Use Permit, Basic Concept Drawings and Design Development Drawing Approvals. The Developer shall have obtained approval by the City of a conditional use permit, the Basic Concept Drawings and Design Development Drawings as set forth in Section 302.2 hereof for the Residential Component and the Retail Component.

(e) Construction Financing. Developer shall have obtained, and the City shall have approved, Construction Financing for the Residential Component as provided in Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the First Closing.

(f) Title Policy. The Title Company shall, upon payment of Title Company’s regularly scheduled premium, have irrevocably agreed to issue to the Developer the Title Policies for the Residential Component Property, the Retail Component Property, and the Mixed Use Commercial Component Property, in accordance with Section 204 hereof.

(g) Plans and Permits. Developer shall have (i) submitted completed Grading Plans for the Residential Component, (ii) obtained RWQCB, and City approval of the Grading Plans for the Residential Component, and (iii) Grading Permits for the Residential Component shall be ready to be issued and necessary fees and security posted for the Site Work.

(h) Approval of Identity of Certain Retailers. City shall have approved, acting in its reasonable discretion, the identity of Retailers, if any, occupying more than 5,000 square feet of gross leasable area.

(i) Adverse Conditions. No lawsuit, moratoria or similar judicial or administrative proceeding or government action shall exist or have been threatened which would materially delay or significantly increase the cost of constructing the Residential Component and/or the Retail Component or expose Developer to additional significant economic liability with respect to the Residential Component or the Retail Component.

(j) City Obligations. The City shall have timely performed all of the obligations required by the terms of this Agreement to be performed by the City including, without limitation, City shall cause the OCHCA to issue a written termination of the “OCHCA Notice and Order” (as herein defined) at least five (5) business days prior to the Close of Escrow in accordance with the terms of Section 206.1(e).

(k) City Representations. All representations and warranties made by the City in this Agreement shall be true and correct as of the date of the Agreement and the First Closing, subject to the City’s right to modify its representations as set forth in Section 206 below.

(l) Acquisition and Settlement Documents. The City has provided to Developer copies of any and all documents pursuant to which the City has acquired title to all portions
of the Site, including the Loan Pham Lease (collectively, “Acquisition Documents”). The City shall have also provided to Developer copies of any and all settlement agreements between the City and any other party, if any, including without limitation, the County of Orange, and the Integrated Waste Management Department with respect to Environmental Condition on the Site (collectively, “Settlement Agreements”). Developer shall have reasonably determined that the terms and conditions of such Acquisition Documents and Settlement Agreements do not materially affect, reduce or limit Developer’s rights, or materially increase Developer’s obligations or liability, with respect to the Site.

(m) Parcel Map; Declaration. Developer, at its sole cost, shall have effected the recordation, at the First Closing, of a Parcel Map subdividing the existing Site into the Residential Component Property, the Retail Component Property, the Mixed Use Commercial Component Property, and the Grocery Store Component Property. Each Component shall constitute separate legal parcels in accordance with the provisions of applicable law. It is a condition to Developer’s obligation to consummate the transaction contemplated hereby that the Parcel Map and a Declaration, approved by the City, shall be recorded concurrently with the First Closing contemplated hereby, and that Developer shall have approved, in Developer’s sole discretion, in writing prior to the recordation of the Parcel Map, all conditions imposed on the Site as a result of such Parcel Map. The Declaration shall provide, among other things, for reciprocal access and that the common area of Site shall be maintained in accordance with the Maintenance Standards set forth in Section 401 of this Agreement. The Declaration, approved by the City, shall be recorded concurrently with the First Closing. Developer shall be solely responsible for all engineering, permit and other fees and costs in connection with preparing and obtaining approval of the Parcel Map.

(n) Approval of Operations, Maintenance and Monitoring Plan. City, Developer, and the Responsible Agencies have approved the Operations, Maintenance and Monitoring Plan, as applicable to the Site.

(o) Environmental Condition.

(i) The Responsible Agencies shall have approved the Operations, Maintenance and Monitoring Plan and the parties’ proposal for the implementation of the Approved RAP or conditions approval thereof in a manner consistent in all material respects with the Remedial Action Plan, within the time set forth in the Schedule of Performance in accordance with Section 207.3(d).

(ii) The Responsible Agencies shall have received from the Successor Agency, City and Developer all additional information outlined in the Interim Immunity Letter that such Responsible Agencies deem necessary to commencement of construction of the Residential Component and the Retail Component, and shall have approved, all reports (i.e., geotechnical, groundwater and landfill gas perimeter probe monitoring), design plans (i.e., final cover, drainage system, groundwater monitoring system, landfill gas monitoring and control systems, monitoring well security, irrigation plan and monitoring system), construction plans and workplans necessary for each construction element.

(iii) The Responsible Agencies shall have issued approval of (aa) the closure and post-closure plan for the Landfills, and (bb) that construction of the Residential Component and the Retail Component can commence.
(iv) The Developer, the City, the Successor Agency and the RWQCB shall have agreed upon the form of the Environmental Deed Restrictions and such Environmental Deed Restrictions shall have been incorporated in the Grant Deed, which will run with the land and be binding on owners during their respective periods of ownership.

(v) The Developer shall have reviewed (a) the results of the Agency’s testing of the Davis Mud Pit, (b) the documents shown in the List of Environmental Condition of the Site, (c) the hydraulic hoist removal, and (d) any “New Reports” (as defined in Section 206.1(f)) and be satisfied, in its reasonable discretion, with the requirements imposed, if any, by the Responsible Agencies in connection therewith.

(vi) Notwithstanding anything contained herein to the contrary, in the event that the conditions set forth in this paragraph (o) are not satisfied within five (5) business days prior to the Outside Date re the First Closing, then Developer shall have the right, acting in its sole and absolute discretion upon written notice to the City prior to the Outside Date re the First Closing to extend the Outside Date re First Closing for up to one (1) year in order to give the parties additional time to satisfy the conditions set forth in this paragraph (o). If the Outside Date re the First Closing is extended pursuant to this subparagraph (v), then (A) the Outside Date re the Second Closing shall be extended by the number of days that the Outside Date re the First Closing is extended, and (B) the Schedule of Performance attached to this Agreement shall be revised as reasonably agreed upon by the City and Developer. If the conditions set forth in this paragraph (o) are not satisfied on or before the Outside Date re First Closing, as extended, then Developer shall have the right to terminate this Agreement upon written notice to the City, in which event the Good Faith Deposit re First Closing shall be returned to the Developer.

(p) Loan Pham Lease Amendment and Recognition Agreement. The City shall cooperate with the Developer to obtain (i) an amendment to the Loan Pham Lease which shall provide, among other things, that the landlord under the Loan Pham Lease shall execute a Recognition Agreement at the request of the tenant under the Loan Pham Lease, and (ii) the landlord under the Loan Pham Lease shall execute a Recognition Agreement with the subtenant of the Loan Pham Property substantially in the form attached hereto as Attachment No. 10.

(q) Transfer of Loan Pham Lease. The City shall have received a transfer from the Successor Agency of the Loan Pham Lease.

(r) Legal Description. The Developer shall have provided the Legal Description to the Escrow Agent.

(s) Good Faith Deposit re Second Closing. Developer has deposited the Good Faith Deposit re Second Closing with the City.

Any waiver by the Developer of any of the preceding conditions must be expressly made in writing. City and Developer agree that if the parties have not obtained all Responsible Agencies’ (including the RWQCB) approvals pursuant to Sections 205.1 and 205.2 (the “Required Approvals”) at least ten (10) days prior to the Outside Date, either party may, at its election, extend the Escrow and the Outside Date for up to ninety (90) days upon delivering to the other party and Escrow Agent written notice of its intention to so extend the Escrow and the Outside Date prior to the Outside Date in order to provide parties with additional time to obtain the Required Approvals. The parties
agree to cooperate with each other and use diligent efforts during the Escrow period, as extended, to obtain the Required Approvals.

205.3 City’s Conditions Precedent to the Second Closing. City’s obligation to proceed with the Second Closing is subject to the fulfillment, or waiver by City, of each and all of the conditions precedent (a) through (j), inclusive, described below (“City’s Conditions Precedent re the Second Closing”), which are solely for the benefit of City, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time frame is provided, prior to the Outside Date re the Second Closing:

(a) **No Default.** Developer shall not be in Default.

(b) **Execution and Delivery of Documents.** Developer shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(c) **Payment of Funds.** The Developer has deposited all of Developer’s required costs of the Second Closing into Escrow in accordance with Section 202.1 hereof.

(d) **Conditional Use Permit and Basic Concept Drawings.** The Developer shall have obtained approval by the City of a conditional use permit, if applicable, and the Basic Concept Drawings for the Grocery Store Component as set forth in Section 302 hereof.

(e) **Commercial General Liability Insurance.** The Developer shall have provided proof of commercial general liability insurance as required by Section 306 hereof.

(f) **Executed Leases.** City shall have approved, acting in its sole and absolute discretion, the identity of the lessee/operator of the Grocery Store Component and Developer shall have provided to the City an executed Grocery Store Lease with such lessee/operator, with all contingencies, except completion of the building, either waived or satisfied.

(g) **Developer Obligations.** The Developer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Developer prior to the Second Closing.

(h) **Developer Representations.** All representations and warranties made by the Developer in this Agreement shall be true and correct as of the date of this Agreement and the Second Closing subject to the Developer’s right to modify its representations as set forth in Section 206 below.

(i) **Legal Description.** The Developer shall have provided a Legal Description to Escrow Agent.

(j) **Retail Component.** Developer shall have commenced vertical construction of the Retail Component pursuant to validly issued building permits.

Any waiver by the City of any of the preceding conditions must be expressly made in writing and approved, in writing, by the City Attorney.
205.4 Developer’s Conditions of the Second Closing. Developer’s obligation to proceed with the Second Closing is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (n), inclusive, described below ("Developer’s Conditions Precedent re the Second Closing"), which are solely for the benefit of Developer, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time is set forth, by the Outside Date re the Second Closing:

(a) No Default. City shall not be in Default.

(b) Execution and Delivery of Documents. City shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the Condition of Title of the Grocery Store Component Property, as provided in Section 203 hereof.

(d) Conditional Use Permit and Basic Concept Drawings. The Developer shall have obtained approval by the City of a conditional use permit, if applicable, and the Basic Concept Drawings as set forth in Section 302.2 hereof for the Grocery Store Component.

(e) Title Policy. The Title Company shall, upon payment of Title Company’s regularly scheduled premium, have irrevocably agreed to issue to the Developer the Title Policies for the Grocery Store Component Property upon the Second Closing, in accordance with Section 204 hereof.

(f) Executed Leases. City shall have approved, acting in its sole and absolute discretion, the identity of the lessee/operator of the Grocery Store Component and Developer shall have provided to the City an executed Grocery Store Lease with such lessee/operator, with all contingencies, except completion of the building, either waived or satisfied.

(g) Adverse Conditions. No lawsuit, moratoria or similar judicial or administrative proceeding or government action shall exist or have been threatened which would materially delay or significantly increase the cost of constructing the Grocery Store Component or expose Developer to additional significant economic liability.

(h) City Obligations. The City shall have timely performed all of the obligations required by the terms of this Agreement to be performed by the City including, without limitation, City shall cause the OCHCA to issue a written termination of the “OCHCA Notice and Order” (as herein defined) at least five (5) business days prior to the Second Closing in accordance with the terms of Section 206.1(e).

(i) City Representations. All representations and warranties made by the City in this Agreement shall be true and correct as of the date of the Agreement and the Second Closing, subject to the City’s right to modify its representations as set forth in Section 206 below.

(j) Legal Description. The Developer shall have provided the Legal Description for the Grocery Store Component Property to the Escrow Agent.
(k) **Refund of Liquidated Damages re Second Closing.** City shall have deposited the Liquidated Damages re Second Closing in Escrow for release to Developer if, and only if, the Second Closing occurs.

Any waiver by the City of any of the preceding conditions must be expressly made in writing and approved by the City Attorney.

**206. Representations and Warranties.**

206.1 **City Representations.** City represents and warrants to Developer as follows:

   (a) **Authority.** City is a California municipal corporation and Charter City.

   (b) **FIRPTA.** City is not a “foreign person” within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute.

   (c) **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.

   (d) **Litigation.** City has no Actual Knowledge of, nor has City received any notice of or know of any basis for, any actual, threatened or pending litigation or proceeding by any organization, person, individual or governmental agency against City with respect to the Site or against the Site or with respect to the City’s authority under or implementation of the Polanco Redevelopment Act. In the event City receives notice of any such actual, threatened or pending litigation or proceeding prior to the Closing, City shall promptly notify Developer thereof.

   (e) **Notices of Violation.** Except as to the items included in the List of Environmental Condition Documents, City has no Actual Knowledge of, nor has City received any notice of any basis for, any violations of laws, statutes, regulations, ordinances, other legal requirements with respect to the Site (or any part thereof), or with respect to the use, occupancy or construction thereof, or any investigations by any governmental or quasi-governmental authority into potential violations thereof. In the event City receives notice of any such violations or investigations affecting the Site prior to the Closing, City promptly shall notify Developer thereof. On August 26, 2010, OCHCA issued a Notice and Order to the City and WIG alleging violations to Site Minimum Standards (the “OCHCA Notice and Order”). The OCHCA terminated the OCHCA Notice and Order on March 14, 2017.

   (f) **Environmental Condition.** City will provide Developer with access to, and Developer will have the opportunity to make copies of, the reports, investigations, studies, lab results, and documents, pertaining to the existing or past Environmental Condition of the Site, as shown in the List of Environmental Conditions Documents and shall provide to Developer any reports, investigations, studies, lab results, and documents, pertaining to the existing or past Environmental Condition of the Site not listed on the List of Environmental Conditions Documents that are generated by the City after the date of this Agreement within ten (10) business days of City’s receipt thereof (“New Reports”). City has installed Landfill Gas collection systems at the Site in accordance with the RAP.
Until Each Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of Each Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation or warranty 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 Developer, in its reasonable discretion, determines such exception would materially adversely affect the value, development, insurability, financing, maintenance, and/or operation of any Component by Developer or the Developer’s exposure to risk or liability with respect to any Component. If Developer elects, acting in its reasonable discretion, to Close the Applicable Escrow following disclosure of such information, City’s representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Developer, acting in its reasonable discretion, elects to not close Escrow, then Developer shall give notice to City of such election within thirty (30) days after disclosure of such information, and this Agreement and the Escrow shall thereafter automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder and the Good Faith Deposit re First Closing or Good Faith Deposit re Second Closing, as applicable shall be returned to Developer. The representations and warranties set forth in this Section 206.1, subject to any such exceptions, shall survive the Each Closing.

206.2 Developer’s Representations. Developer represents and warrants to City as follows:

(a) Authority. Developer is a duly organized limited liability company established within and in good standing under the laws of the State of Delaware, and is authorized to do business in the State of California. The copies of the documents evidencing the organization of the Developer which have been delivered to the City are true and complete copies of the originals, as amended to the Date of this Agreement. The execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer.

(b) Experience. Developer is an experienced developer of residential, commercial retail projects similar in size, scope, and quality to the Project.

(c) 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 the Developer is a party or by which it is bound.

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

(e) Environmental Condition. Developer has provided City with the reports, investigations, studies, results and documents pertaining to the existing or past Environmental Condition of the Site which are within the possession of Developer and/or its tenants or lender, if provided to Developer, and not otherwise provided by City to Developer and Developer has provided the City with that certain Environmental Site Assessment Proposed Westgate Center dated June 23, 2008, prepared by ENVIRON Corporation on behalf of Developer.

Until Each Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of the Applicable 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 City, in its reasonable discretion, determines that such exception would have an effect on the value and/or operation of any Component. If City, acting in its reasonable discretion, elects to close the Applicable Escrow following disclosure of such information, Developer’s representations and warranties contained herein shall be deemed to have been made as of the Applicable Closing, subject to such exception(s). The representations and warranties set forth in this Section 206.2, subject to such exception(s), shall survive Each Closing.

207. Condition of the Site.

207.1 Studies and Reports. At any time after the Date of Agreement, representatives of Developer, on its own behalf and/or on behalf of its prospective tenants and/or lender, or its prospective tenants and/or lender shall have the right of access to all portions of the Site for the purpose of obtaining data and making surveys and tests relating to the condition of the Site, including the environmental condition thereof which includes the mitigation of the Landfill and/or whether or not the refuse contains Hazardous Materials (“Investigation”). Any preliminary work undertaken on the Site by Developer on its own behalf and/or on behalf of its prospective tenants and/or lender prior to the Applicable Closing shall be done at the sole expense of the Developer and/or its prospective tenants and/or lender and only after securing any necessary permits from the appropriate governmental agencies, and the Developer’s execution of the Right of Entry Agreement.

207.2 Soils and Geotechnical Conditions. Developer has heretofore investigated the soils and geotechnical condition of the Site and approved same.

207.3 Environmental Condition and Mitigation/Remediation.

(a) Environmental Disclosure. California Health & Safety Code Section 25359.7 requires owners of nonresidential real property who know, or have reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the real property to provide written notice of same to the buyer of real property. The City hereby discloses that the Site, or portions of the Site were used as Landfills or as the Davis Mud Pit containing municipal solid waste, construction debris, oil well drilling, mud and fluid and other liquid wastes and Landfill Gases which Landfills and the Landfill Gases may contain Hazardous Materials (the “Environmental Condition”). To the extent the City has copies of investigation reports, it will provide copies to Developer upon request; but the Parties acknowledge that the City will not be conducting a public records search of the RWQCB’s (or any other Responsible City) files – although the City urges Developer to do so to satisfy itself regarding the Environmental Condition of the Site. By execution of this Agreement, Developer (i) acknowledges its receipt of the foregoing notice given pursuant to California Health & Safety Code Section 25359.7; (ii) acknowledges that it has conducted its own independent review and investigation of the Site prior to the Close of Escrow; (iii) agrees to rely solely on its own experts in assessing the Environmental Condition of the Site and its sufficiency for its intended use; and (iv) waives any and all rights Developer may have to assert that the City has not complied with the requirements of Health & Safety Code Section 25359.7.

(b) Environmental Condition of the Site. Based on the disclosure of the City as described in (a) above, and the Developer’s investigation of the Site, it is acknowledged by the parties that the List of Environmental Condition Documents disclose that: (i) the Anderson Landfill was formerly used for disposal of primarily construction debris and demolition wastes, (ii) the Sparks Landfill was formerly used for the disposal of primarily solid waste, (iii) the Davis Mud Pit was
formerly used for the disposal of oil well drilling fluid and other liquid wastes, and (iv) Landfill Gases, including methane, associated with the Anderson Landfill and the Sparks Landfill are presently being mitigated using Landfill Gas collection systems. Subject to the satisfaction of the conditions set forth in Section 205.2(g), the Developer shall be deemed to have approved the Environmental Condition of the Site.

(c) Implementation of the Approved RAP. The City and Developer are aware that the environmental impacts to the air, soil and groundwater arising from the Landfills and the remediation of Hazardous Materials and Landfill Gases is required. The Agency (now Successor Agency) commenced proceedings pursuant to the Polanco Redevelopment Act and in connection therewith has submitted and RWQCB has conditionally approved the Remedial Action Plan pursuant to the letter from RWQCB dated April 27, 2007 (“Approved RAP”). The parties intend to seek further direction and approvals regarding the implementation of the Approved RAP.

207.4 Mitigation/Remediation of the Site. The Developer will satisfy the conditions of the Entitlements.

207.5 Polanco Redevelopment Act. The Agency (now Successor Agency) has heretofore submitted its application to RWQCB for approval under the Polanco Redevelopment Act with the intention that the Remedial Action Plan be undertaken in accordance with the Polanco Redevelopment Act so as to effectuate reuse of the Landfills in accordance with the Merged Redevelopment Plan and to provide the Agency (now Successor Agency), the Developer, subsequent purchasers of any portion of the Site and the lenders of the Developer and any subsequent purchasers with the immunity from any release or releases of hazardous substances identified in the Remedial Action Plan pursuant to Section 33459.3 of the Polanco Redevelopment Act (“Liability Immunity”). Provided neither party has elected to terminate this Agreement as permitted herein, the parties agree to implement the Remedial Action Plan in compliance with the Approved RAP. The Developer acknowledges that the final construction drawings for the Remedial Improvements and the contents of the Approved RAP are intended to provide the basis for RWQCB to acknowledge in writing that, following completion of the Approved RAP, the Liability Immunity will apply under Section 33459.3(b) of the Polanco Redevelopment Act. The Developer acknowledges that completion of the Approved RAP will be the basis for the issuance of the Immunity Letter at which time the Liability Immunity will attach to the Successor Agency and the Developer. The parties further agree that the Developer will not have a cause of action against the City and/ or Successor Agency if the Liability Immunity under the Polanco Redevelopment Act is limited or denied in any way by any decision or opinion of any court, administrative body or any action of the Responsible Agencies.

207.6 No Warranties As To Site; Release of City and/ or Successor Agency. Except as otherwise expressly provided herein, the physical condition of the Site is and shall be delivered from City to Developer in an “as-is” condition, with no warranty expressed or implied by City and/ or Successor Agency, including without limitation, the presence of Hazardous Materials, Landfill Gases, the existence of refuse, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder. To the extent authorized by contract or law, the City and Successor Agency shall assign to the Developer all warranties, indemnities, guaranties, claims and causes of action with respect to the Environmental Condition of the Site, if any, that the City and/ or Successor Agency has received from or has against prior owners or operators of the Site, except that Developer’s rights to pursue such parties shall be subject to the terms of the Settlement Agreement, if one is entered.
207.7 Developer Release. As of the Applicable Close of Escrow, Developer agrees, with respect to the Site, to release the Successor Agency and City from and against any Environmental Liabilities except as to (i) the County Dispute which has been dealt with in the Settlement Agreement, (ii) the OCHCA Notice and Order, and/or (iii) liabilities arising out of the negligence or willful misconduct of the Successor Agency and/or City occurring after the Applicable Close of Escrow or occurring prior to the Applicable Close of Escrow but discovered after the Applicable Close of Escrow. The Developer shall establish, by the preponderance of the evidence, the date that the Environmental Liability occurred. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement and, without limiting the foregoing, shall survive the Closing.

The Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

As such relates to this Section 207.7, effective as of the Closing, the Developer waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

207.8 Relocation; Obligations. The City has heretofore caused all occupants of the Site to vacate the Site, and, in doing so, has complied with all applicable federal, state and local laws and regulations concerning the displacement and/or relocation of, all Eligible Persons and/or businesses from the Site, if any, including without limitation, the California Relocation Assistance Law, California Government Code Section 7260, et seq., all state and local regulations implementing such laws, and all other applicable federal, state, and local laws and regulations relating to Eligible Persons. The City shall indemnify, defend, and hold Developer and its members, representatives, officers, employees, agents, permitted assigns, tenants and any of their lenders harmless from any and all claims, losses, liabilities or demands related to or arising from the vacation of all occupants of the Site aforementioned. This indemnity shall survive the termination, expiration, invalidation, or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing.

207.9 Contractor’s Pollution Liability Insurance. The Successor Agency has obtained, at its cost and expense, a Contractor’s Pollution Liability Insurance naming the Named Insured and expiring on July 18, 2020. Concurrently with the First Closing, City will request that the Successor Agency cause the Developer and/or its assignee to be added as a named insured. Once the Contractor’s Pollution Liability Insurance expires, the Developer will cause the replacement thereof on terms and conditions at least equal to the current terms and conditions.
207.10 Environmental Insurance. The Successor Agency has obtained, at its cost and expense, a Pollution Legal Liability Insurance issued by Lloyd’s Syndicates (“Lloyd’s”), Policy Number W24F05180101 (“Environmental Insurance”) naming the Named Insured, which expires on October 31, 2028. During the term of the policy, the City shall timely provide to the Successor Agency, County, Developer, and Zelman copies of all notices from Lloyd’s and/or notify the County and Developer of any notices or other communications from Lloyd’s pertaining to the Environmental Insurance. Upon Developer’s written request, City shall cause Developer, the Greenlaw Venture and such other persons or entities with an insurable interest, as reasonably requested by Developer, to be added as Named Insureds under the Environmental Insurance policy. City shall continue to provide ongoing Environmental Insurance naming the Named Insured so long as the Successor Agency is being reimbursed for the costs of such Environmental Insurance through approval by the California Department of Finance of such cost as an enforceable obligation. If and when the reimbursement of the Successor Agency ceases, Developer shall be responsible for providing and paying for such insurance, which insurance shall be on terms and conditions at least equal to the current terms and conditions.

208. Post-Closing Obligations.

208.1 City Obligations After Each Closing. Upon and after Each Closing, the City shall implement and continue the Operations, Maintenance and Monitoring Plan, at its sole cost and expense. In the event that the Successor Agency is prohibited from continuing to pay for the implementation of the Operations, Maintenance and Monitoring Plan, Developer shall be responsible, at its sole cost and expense, for the implementation of the Operations, Maintenance, and Monitoring Plan.

208.2 Developer Obligations After Each Closing. Upon and after Each Closing, the Developer shall exercise all reasonable precautions in an effort to prevent the release into the environment of any Hazardous Materials and/or Landfill Gases in violation of applicable environmental Governmental Requirements. Such precautions shall include compliance with the Environmental Deed Restrictions and the Governmental Requirements. Developer further agrees to comply with all Governmental Requirements in connection with the disclosure, storage, use, removal and disposal of any Hazardous Materials or Landfill Gases.

208.3 Developer and City Indemnities. As of the Applicable Close of Escrow, Developer agrees, with respect to the Site, to indemnify, defend and hold Indemnitees harmless from and against (“Indemnity” or “Indemnify”) any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees) by third parties but expressly excluding the County Dispute, for bodily injury or property damage, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials and Landfill Gases including methane on, under, in, about, or from or the transportation of any such Hazardous Materials and Landfill Gases including methane to or from, the Site, and (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 and Landfill Gases including methane on, under, in or about, to or from the Site; and (iii) damage to person or property arising out of or related to the Investigations of the Site pursuant to this Section 208 (collectively “Environmental Liabilities”) except the Environmental Liabilities arising out of (i) the negligence or willful misconduct of the Successor Agency or the City occurring after the Applicable Close of Escrow or occurring prior to the Applicable Close of Escrow but discovered after the
Applicable Close of Escrow, and (ii) the transportation and/or disposal of any Hazardous Materials from the Site. The Developer shall establish with substantial evidence the date that the Environmental Liability occurred. This Indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity 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 by any third party other than the County Dispute. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such Environmental Liability; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. City agrees to indemnify, defend and hold Developer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees) resulting from, arising out of, or based upon the County Dispute. The foregoing Indemnities shall survive the termination, expiration, invalidation, or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Applicable Closing.

300. DEVELOPMENT OF THE SITE

301. Development of the Site.

301.1 Developer’s Obligation to Construct the Residential Component and the Retail Component. Following the First Closing, the Developer shall develop or cause the development of the Residential Component and the Retail Component in accordance with the Scope of Development, the Entitlements, the City Municipal Code, and the plans, drawings and documents submitted by the Developer and approved by the City and Responsible Agencies as set forth herein. The Developer acknowledges that the requirements for the construction of the Residential Component and the Retail Component set forth in the Scope of Development are material considerations for the participation by the City in this Agreement, and that but for such requirements, the City would not have entered into this Agreement. City acknowledges that part of the Retail Component may be constructed by ground lessees following the leasing of such pads to the restaurants and other eateries located within the Retail Component; provided that Developer shall be responsible for insuring any such construction is in conformity with the Approved RAP. In no event shall the construction of all or any portion of the Project by parties other than Developer relieve Developer of its obligations under this Agreement; provided, however, in the event that a pad tenant fails to construct the improvements as required under its lease, through no fault of Developer, Developer shall not be in Default hereunder provided that Developer uses diligent efforts to enforce the terms of such tenant’s lease and cause such pad tenant to commence construction of the improvements and diligently prosecute the same to completion, or Developer terminates such pad tenant’s lease and uses diligent efforts to procure a replacement pad tenant and the replacement pad tenant has an obligation to commence construction within a reasonable period following execution of such tenant’s lease.

301.2 Remedial Improvements.

(a) Developer Remediation Component. The Developer will construct, at its cost and expense, the Developer Remediation Component.

301.3 Brookfield Reimbursement Obligation. City and Brookfield Beach Boulevard LLC, a California limited liability corporation (“Brookfield”) are parties to that certain
reimbursement agreement dated May 1, 2006 (the “Brookfield Reimbursement Agreement”), pursuant to which Brookfield constructed certain improvements that benefited the Site in return for which City has agreed to cause the “Westgate Developer,” as defined in the Brookfield Reimbursement Agreement (“Developer,” hereunder), to reimburse Brookfield in the sum of Seven Hundred Eighty-Six Thousand, Two Hundred Twenty-Five Dollars and Eighty-Two Cents ($786,225.82) at the Closing (the “Brookfield Reimbursement”). Developer shall pay such amount into Escrow at Closing for the benefit of Brookfield.

302. Design Review.

302.1 Project Plan. Concurrently herewith, the City has approved the Project Plan.

302.2 Conditional Use Permit, Basic Concept Drawings, and Design Development Drawings. Within the time set forth in the Schedule of Performance, the Developer shall submit to the City, the RWQCB, and any other appropriate Responsible Agency, a conditional use permit application, the Basic Concept Drawings and the Design Development Drawings for the Residential Component and the Retail Component. The City shall approve or disapprove the Conditional Use Permit, the Basic Concept Drawings, and the Design Development Drawings in accordance with Attachment 6.

302.3 Grading Plans and Building Improvement Plans. After the City’s Design Development Drawings approval, and within the time set forth therefor in the Schedule of Performance, the Developer shall prepare or cause to be prepared and submit to the City and RWQCB, and any other appropriate Responsible Agency, Grading Plans and Building Improvement Plans for the Applicable Component sufficient for the issuance of appropriate permits for the Grading and Building Improvements which shall have been prepared by a registered civil engineer. The City shall approve or disapprove the Grading Plans and Building Improvement Plans for the Applicable Component within the time set forth therefor in the Schedule of Performance.

302.4 Standards for Disapproval. The Developer acknowledges and agrees that the City is entitled to approve or disapprove the Basic Concept Drawings and Design Review Submittals in order to satisfy the City’s obligation to promote the sound development of land within the City, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and the Project.

302.5 Consultation and Coordination. During the Design Review Process, staff of the City and the Developer shall hold joint progress meetings to coordinate the preparation of, submission to, and review of the Design Review Submittals by the Director and the City. The City shall designate a City employee to serve as the City’s project manager who is responsible for the coordination of the City’s activities under this Agreement and for coordinating the land use approval and permitting process with the Developer’s representatives and consultants.

302.6 Revisions. If the Developer desires to propose any substantial exterior revisions to the approved Basic Concept Drawings or as approved pursuant to the Design Review Process, it shall submit such proposed changes to the City, and shall also proceed in accordance with any and all state and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance for the submittal of the Drawings and Design Review Process. Any change proposed in the Design Development Drawings may be disapproved by the City in its sole
and absolute discretion. Any and all change orders or revisions required by the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Basic Concept Drawings, the Design Review Submittals, Site Work Plans or the Building Improvement Plans and completed during the construction of the Project.

302.7 Defects in Plans. The City shall not be responsible either to the Developer or to third parties in any way for any defects in the Basic Concept Drawings, the Design Review Submittals, Site Work Plans or the Building Improvement Plans nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Design Review Submittals, Site Work Plans or the Building Improvement Plans, nor for any delays reasonably caused by the review and approval processes established by this Section 302. Subject to the other limitations of this Agreement, the Developer shall hold harmless, indemnify and defend the Indemnitees from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Basic Concept Drawings, the Design Review Submittals, Site Work Plans or the Building Improvement Plans, including without limitation the violation of any laws, or arising out of or in any way relating to any defects in any work done according to the approved Basic Concept Drawings, Design Review Submittals, Site Work Plans or Building Improvement Plans.

303. Land Use Approvals Applicable to the Project. Before commencement of construction of any Component or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other permits and approvals which may be required for the Applicable Component by the City or any other governmental agency affected by such construction or work. The Developer shall, without limitation, apply for and secure all permits, and pay all costs, charges and fees associated therewith, required by the City, County of Orange, and other governmental agencies and Responsible Agencies with jurisdiction over the Project. The City staff shall use reasonable efforts to assist the Developer in obtaining all such permits and approvals; provided that the City staff shall not incur any expenses or costs in connection therewith. The City staff shall have no responsibility concerning any conditional use permit(s) required in connection with the activities or uses of the Site, except to provide reasonable efforts to assist the Developer as provided herein. Nothing herein shall be construed to limit the City’s exercise of its police power.

304. Schedule of Performance. The Developer shall submit all Design Development Drawings, Grading Plans, and Building Improvement Plans (and City shall provide written responses to such submittals), and shall commence and complete all construction of the Applicable Component and Developer and City shall satisfy all other respective obligations and conditions of this Agreement, within the times established therefor in the Schedule of Performance, as the same is subject to Section 602. In the event that City fails to provide written responses to such submittals or to satisfy any of its obligations or conditions of this Agreement within the times established therefor in the Schedule of Performance, the deadlines set forth in the Schedule of Performance for Developer’s performance of its obligations under this Agreement shall be extended on a day-for-day basis for each day of delay by the City in providing such responses to Developer’s submittals or performing the City’s obligations under this Agreement.

305. Cost of Construction. Except to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, developing and constructing all of the Project shall be borne solely by the Developer and/or Developer’s retail tenants, as the case may be.
306. **Insurance Requirements.** The Developer shall secure from a company or companies licensed to conduct insurance business in the State of California, pay for, and maintain in full force and effect from and after the Applicable Close of Escrow, and continuing for the duration of this Agreement, a policy of commercial general liability insurance issued by an “A:VI” or better rated insurance carrier as rated by A.M. Best Company as of the date that Developer obtains or renews its insurance policies, on an occurrence basis, in which the Indemnitees are named as additional insureds with the Developer. Developer shall furnish a certificate of insurance to the City prior to the Applicable Close of Escrow, and shall furnish complete copies of such policy or policies upon request by the City. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection offered by the policy shall:

(a) Include an endorsement naming the Indemnitees as additional insureds;

(b) Provide a combined single limit policy for both personal injury and property damage in the amount of $5,000,000, which may be satisfied through a combination of primary, excess, and/or umbrella policies and which will be considered equivalent to the required minimum limits;

(c) Bear an endorsement or shall have attached a rider providing that the City shall be notified not less than thirty (30) days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium; provided, however, if such endorsement or rider is not available from Developer’s insurance carrier, then the certificate of insurance shall provide that should the policy be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The Developer shall also file with the City the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers’ Compensation or to undertake self-insurance before commencing any of the work.

The Developer shall comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, complete Workers’ Compensation Insurance, and shall furnish a Certificate of Insurance to the City before the commencement of construction. The City, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of Developer to comply with this section. Every Workers’ Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, the City shall be notified, giving the Developer a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium; provided, however, if such endorsement or rider is not available from Developer’s insurance carrier, then the certificate of insurance shall provide that should the policy be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
307. Developer’s Indemnities.

307.1 Developer’s Indemnity. The Developer shall defend, indemnify, assume all responsibility for, and hold the Indemnitees, harmless from all claims, demands, damages, defense costs or liability for any damages to property or injuries to persons, including accidental death (including reasonable attorneys’ fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement and/or with respect to the development, ownership and/or operation of the Project by the Developer, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination or expiration of this Agreement. This indemnity shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive Each Closing. The City and Developer acknowledge and agree that the indemnity obligations set forth in this Section 307.1 shall not apply to any Environmental Liabilities and that such Environmental Liabilities shall be governed solely by Section 208.2 hereof.

308. Rights of Access; License Agreement (OM&M). Following Each Close of Escrow, and prior to the issuance of the Release of Construction Covenants for each Component (as specified in Section 310 of this Agreement), for purposes of assuring compliance with this Agreement, and without limitation as to the City and City employees engaged in planning and building functions, representatives of the City, upon at least 24 hours’ notice to Developer or its onsite construction manager, or in case of an emergency, without notice, 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 Project, so long as City representatives comply with all safety rules and do not in any way interfere with the work or attempt to give instructions or directions to any contractors or workers. In addition, as of Each Closing, Developer hereby grants to City a license (OM&M) in the form attached hereto as Attachment No. 12 (the “License Agreement (OM&M)”) and incorporated herein by reference so as to allow the City to perform the OM&M on the Site.

309. Compliance With Laws. The Developer shall carry out the design, construction and operation of the Project in conformity with all applicable laws, including applicable state labor standards (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

309.1 Liens and Stop Notices. Prior to the issuance of Release of Construction Covenants for each Component, the Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice except for liens to secure financing approved pursuant to Section 311 hereof. If a claim of a lien or stop notice is given or recorded affecting the Site or the Project, except as set forth above, the Developer shall within thirty (30) days of such recording or service or within five (5) days of the City’s demand, whichever first occurs:

(a) pay and discharge the same; or

(b) affect the release thereof by recording and delivering to the City a statutory surety bond in sufficient form and amount, or otherwise; or
(c) cause the Title Company to issue an updated title policy, dated as of the date of the Release of Construction Covenants with respect to each Component, which Title Policy does not include such claim as an exception to title to the Site or the Project; or

(d) provide the City with other assurance which the City deems, in its sole and absolute discretion, to be satisfactory for the payment or discharge of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice. Developer shall be entitled to a Release of Construction Covenants for each Component, as described herein below.

310. Release of Construction Covenants. Promptly after completion of each Component in conformity with this Agreement or the Ground Lease, as applicable, the City shall deliver to the Developer of the Applicable Component, a “Release of Construction Covenants,” substantially in the form of Attachment No. 5 hereto which is incorporated herein by reference, with respect to each completed Component, executed and acknowledged by City. The 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 Applicable Component, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants as to the Applicable Component, any party then or thereafter owning, purchasing, leasing or otherwise acquiring any interest in the Site and/or the Applicable Component shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement as to any portion of the Site and/or the Applicable Component to which the Release of Construction Covenants has been issued including, without limitation, the obligations under Section 302 hereof except for those continuing covenants described in Section 406 of this Agreement.

If the City refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within fifteen (15) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City’s opinion of the actions the Developer must take to obtain the Release of Construction Covenants. Even if the City shall have failed to provide such written statement within such fifteen (15) day period, the Developer shall not be deemed entitled to the Release of Construction Covenants unless the Developer, upon expiration of such fifteen (15) day period provides City with a written demand that the City furnish such Release of Construction Covenants as to the Applicable Component, or provide a written statement as to the basis for denial thereof (a “Developer Notice”), which Developer Notice sets forth the terms of this Section 310 in full, and the City fails to either furnish such Release of Construction Covenants or provide a written explanation of the denial thereof, within fifteen (15) days following City’s receipt of the Developer Notice, in which case the Developer shall be entitled to a Release of Construction Covenants which is the subject of the Developer Notice. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Retail Component and/or the Residential Component, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 8182 of the California Civil Code.

311. Financing of the Project.

311.1 Approval of Construction Financing. As required herein and as both a City and Developer Condition Precedent to the Closing, Developer shall submit to City Preliminary
Evidence of Financing that Developer has obtained sufficient equity capital and/or has arranged for debt financing necessary to undertake the development and construction of the Applicable Component in accordance with this Agreement and has recorded the debt portion of the Construction Financing as a condition to Applicable Closing.

The Director shall reasonably approve or disapprove Preliminary Evidence of Financing within fifteen (15) days of receipt thereof. If City shall disapprove any such Preliminary Evidence of Financing, City shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall endeavor to promptly obtain and submit to City new Preliminary Evidence of Financing. Any material and adverse changes to the terms of the Construction Financing from the approved Preliminary Evidence of Financing shall be subject to the City written approval, which shall not be unreasonably withheld. Developer shall close the approved Construction Financing prior to or concurrently with the Closing.

311.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Mortgages, deeds of trust and sales and lease-backs shall be permitted before the completion of the Applicable Component only with the Director’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed in accordance with Section 311.1 above, and only for the purpose of securing loans of funds to be used for financing the acquisition, construction and operation of the Applicable Component (including architecture, engineering, legal, construction period carrying costs such as property taxes, insurance and interest, and related direct costs as well as indirect costs), permanent financing, and refinancing and any other purposes necessary and appropriate in connection with development under this Agreement and operation of the Project. No such approval shall be required for mortgages, deeds of trust, or sales and lease-backs encumbering any portion of the Site for which a Release of Construction Covenants has been issued or for which City has approved the Preliminary Evidence of Financing so long as such mortgages, deeds of trust, or sales and lease-backs do not materially and adversely differ from the approved Preliminary Evidence of Financing. In no event, however, shall the amount or amounts of indebtedness secured by mortgages or deeds of trust on the Site prior to completion of the Applicable Component exceed the projected cost of developing the Applicable Component, as evidenced by a pro forma and a construction contract which have been delivered to the Director prior to the Director’s approval of such financing, setting forth such costs, unless the written approval of the Director is first obtained. The Developer shall notify the Director in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Applicable Component. The words “mortgage” and “trust deed” as used hereinafter shall include sale and lease-back. Notwithstanding the foregoing, Developer shall have the right to record or cause to be recorded a memorandum of lease for any lease approved by the City or otherwise permitted under this Agreement.

311.3 Holder Not Obligated to Construct the Retail Component and/or the Residential Component. 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, complete, or operate the Applicable Component or any portion thereof, or to guarantee such construction, completion or operation; 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 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.

311.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. Whenever the City may deliver any notice or demand to Developer with respect to any breach or default
by the Developer under this Agreement, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement and approved by the City a copy of such notice or demand; provided that the failure to notify any holder of record shall not vitiate or affect the effectiveness of notice to the Developer. Each such holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy such default or to the extent such default cannot be cured or remedied within such thirty (30) day period, 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 or deed of trust. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer’s obligations to the City by written agreement satisfactory to the 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 310 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and thereafter cures or remedies the default.

311.5 Failure of Holder to Complete a Component. In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from City of a Default by the Developer in completion of construction of the Applicable Component under this Agreement, and such holder is not vested with ownership of the applicable portion of the Site and has not exercised the option to construct as set forth in Section 311, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the City may (but shall not be obligated to) purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City of so much of the Site as has vested in such holder upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure including reasonable attorneys’ fees;

(c) The net expense, if any, incurred by the holder as a direct result of the subsequent management of the Applicable Component or part thereof;

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

(e) An amount equivalent to the interest that would have accrued at the rate(s) specified in the holder’s loan documents on the aggregate of such amounts had all such amounts
become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City;

(f) Any prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Developer; and

(g) Any or all other amounts, costs and/or expenses payable to the holder under the holder’s loan documents approved pursuant to Section 311.1 above.

The City’s right to such conveyance shall expire if: (i) City fails to notify the holder in writing within thirty (30) days after City receives written notice from the holder that such holder has obtained ownership of the Applicable Component, or (ii) within sixty (60) days after the City receives written notice from the holder that such holder has obtained ownership of the Applicable Component (or portion thereof), the City nevertheless fails to tender full payment for the Applicable Component. All of the foregoing rights and protections of the holder as set forth in this Section 311.5 shall also apply and be available to any Developer (other than an entity in which any interest is held by the Developer, or a Related Entity) pursuant to foreclosure or deed in lieu of foreclosure of the mortgage or deed of trust.

311.6 Right of the City to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of the Applicable Component or any part thereof, Developer shall immediately deliver to City a copy of any mortgage holder’s notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the City shall have the right but no obligation to cure the default within ten (10) days following the expiration of the Developer’s cure period under this Agreement (or, if the nature of the Developer’s obligation is such that it reasonably requires more than ten (10) days to cure, commence to cure with such ten (10) day period and diligently prosecute such cure to completion). In such event, the City shall be entitled to reimbursement from the Developer of all reasonable and proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust permitted pursuant to this Section 311.

312. Nondiscrimination in Employment. Developer certifies and agrees that 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. Section 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. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 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.

313. Taxes and Assessments. Following the Applicable Closing, the Developer for the Applicable Component shall pay prior to delinquency all ad valorem real estate taxes and assessments
on the applicable portion of the Site which accrue subsequent to the Applicable Closing. The Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time.

400. COVENANTS, RESTRICTIONS AND OTHER OBLIGATIONS

401. Construction, Use, Operating, Maintenance and Restrictive Covenants.

(a) Construction Covenant. Subject to extensions of the time periods for Developer’s performance set forth in Section 602 below, Retail Developer and Residential Developer shall cause the completion of the Residential Component and the Retail Component, respectively, by the dates set forth therefor in the Schedule of Performance.

(b) Operating Covenants. Commencing on the opening for business of the Retail Component and terminating 30 years thereafter (the “Operating Period”), Retail Developer hereby covenants and agrees to construct and maintain for operation the Retail Component; provided, however, nothing contained herein shall require any occupant of the Retail Component to operate its business on the First Closing Property.

(c) Maintenance Covenants. Commencing on the First Closing and terminating 30 years thereafter, the Retail Developer and Residential Developer shall maintain the Retail Component Property and the Residential Component Property, respectively, and all respective improvements thereon, including all landscaping, in full compliance with the terms of all applicable provisions of the City Municipal Code, and in compliance with industry standards for a first class retail shopping center as to the Retail Component and first class residential as to the Residential Component, respectively. Without limiting the forgoing, the Retail Developer shall specifically maintain the Retail Component and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the “Maintenance Standards” hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Retail Component and any and all other improvements on the Retail Component Property. To accomplish the maintenance, Developer shall either staff or contract with and hire qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. In addition, Developer shall comply with the Environmental Deed Restrictions during the term of its ownership.

The following maintenance standards (the “Maintenance Standards”) shall be complied with by Developer and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the Responsible Agencies:

(i) All improvements to the Residential Component Property and the Retail Component Property shall be maintained by the applicable Developer in conformance and in compliance with the reasonable commercial or residential development maintenance standards, as applicable, for similar first quality developments in California, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

(ii) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming
and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(iii) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City or the City, then Developer shall have forty-eight (48) hours to rectify the problem.

(d) Restrictive Covenants.

(i) During the Operating Period, Developer shall not permit any business to relocate within the Retail Component Property exceeding 20,000 square feet in size from any other location within the City and within 5 miles of the Retail Component Property without the prior approval of the City; provided further that no store of greater than 75,000 square feet of buildable area shall be permitted to relocate to the Retail Component Property from a county or city (other than the City of Anaheim) within the same market area as the Site as proscribed by Health & Safety Code Section 33426.7, Government Code Section 53084, and Government Code Section 53084.5.

(ii) Developer shall carry out the design, construction and operation of the Project in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Retail Component is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer, or the Site, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City Zoning and Development Standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Anaheim and its Municipal Code, and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. (“Governmental Requirements”).

402. Nondiscrimination Covenants. The Developer covenants by and for itself and any successors in interest to all or any portion of the Site that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Site. The foregoing covenants shall run with the land.
The Developer shall refrain from restricting the rental, sale or lease of the Site any portion thereof on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. 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 race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any 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, subtenants, sublessees or vendees in the land 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:

“There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry 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 race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee 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, subtenants, sublessees or vendees of the premises.”

**403. Effect of Violation of the Terms and Provisions of this Agreement.** Subject to the limitations provided elsewhere in 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 their 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 the City has been, remains or is owner of any land or interest therein in the Site or in the Project. The 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 and to avail themselves of the rights granted herein to which it may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described herein, including the following:
(a) The releases, indemnities and covenants set forth in Sections 207.6, 208.2, and 307.1 shall remain in effect in perpetuity.

(b) The covenants in Section 309 with respect to compliance with laws shall remain in effect for the Operating Period.

(c) The covenants for the benefit of lenders as set forth in Sections 311.2, 311.3, 311.4, 311.5 and 311.6 shall remain in effect as to any lender so long as such lender holds a mortgage or deed of trust creating a lien or encumbrance on any Component or any portion thereof.

(d) The Covenants which are set forth in Section 401 shall remain in effect in accordance with the terms set forth therein.

(e) The covenants against discrimination, as set forth in Section 402, shall remain in effect in perpetuity.

(f) Provisions of documents recorded pursuant to this Agreement shall remain in effect according to their terms.

(g) Provisions of this Agreement which affirmatively set forth times as to which they are to remain effective shall remain effective according to the terms of those provisions.

404. Jobs Creation. The Parties acknowledge that (i) the City has entered into that certain Funding Approval/Agreement (B-02-MC-06-0501) with the United States Department of Housing and Urban Development (“HUD”) pursuant to which HUD has provided Ten Million Dollars ($10,000,000) to the City to pay for certain costs associated with the Project (the “Section 108 Loan for the Project”), (ii) the City has also entered into that certain Brownfield Economic Development (BEDI) Grant Agreement (“BEDI Grant Agreement”) with HUD pursuant to which HUD granted the City Six Hundred Fifty Thousand Dollars ($650,000) to be used for the purpose of paying interest on the Section 108 Loan, (iii) pursuant to that certain Second Amended and Restated Cooperation Agreement (Lincoln/Beach Section 108 Loan) dated as of July 1, 2004 between the City and Anaheim Redevelopment Agency (the “City/Agency Cooperation Agreement”), the Anaheim Redevelopment Agency utilized the proceeds of the Section 108 Loan for the Project, and (iv) in consideration for making the Section 108 Loan for the Project and entering into the BEDI Grant Agreement, HUD requires, among other things, that the City provide that at least fifty-one percent (51%) of the jobs created by the operation of the Project (the “Project Jobs”) be held by, or be made available to, persons of low and moderate income (the “HUD Jobs Creation National Objective”). Accordingly, the Parties intend to satisfy the HUD Jobs Creation National Objective as set forth in this Section 404. For the purposes of this Section 404, the term “Project” shall include all activities on the Retail Component Property, the Mixed Use Commercial Component Property, and the Grocery Store Component Property that qualify as “Project Jobs.”

404.1 Project Jobs Description. Prior to commencing construction of any Component with respect to any Retailer, Developer shall provide City a description, in a form reasonably acceptable to City, of all of the Project Jobs, indicating which of the Project Jobs are full time equivalent positions (the “Project Jobs Description”); the Project Jobs Description shall denote which of the Project Jobs have job qualifications requiring no more than a high school education and/or one (1) year of training or work experience (“Qualifying Project Jobs”). Developer shall update the
Project Jobs Description promptly upon a substantial change in such jobs and/or job qualifications, but in no event less than annually.

404.2 Project Jobs Available to Low and Moderate Income Persons. Developer shall provide that at least fifty-one percent (51%) of the Project Jobs are made available to low and moderate income persons. Accordingly, Developer shall do the following:

(a) Concurrently with Developer’s delivery of the Project Jobs Description, Developer shall submit to City for City review and approval a list of which employers within the Project shall provide “First Consideration” to “Qualifying Job Applicants” in accordance with (b), below. The list shall include employers of not less than 75% of the jobs available within the Project. (The employers included on the list are hereinafter referred to as the “Participating Employers.”) City shall approve such list provided that the Project Jobs Description demonstrates that the Participating Employers will provide Qualifying Project Jobs greater than or equal to fifty-one percent (51%) of the aggregate Project Jobs.

(b) Developer shall require that Participating Employers enter into a First Source Agreement with the Workforce Development Division of the City of Anaheim (“WDD”) containing the following terms:

(i) WDD will conduct community outreach designed to assemble a pool of potential low to moderate income job applicants for the Qualifying Project Jobs (“Potential Qualifying Job Applicants”).

(ii) WDD will prescreen and verify which of the Potential Qualifying Job Applicants are persons of low to moderate income (“Qualifying Job Applicants”).

(iii) Participating Employers will notify WDD of openings for Qualifying Project Jobs.

(iv) With respect to initial hires, WDD will direct Qualifying Job Applicants to Participating Employers; with respect to subsequent hires, WDD will create and update quarterly a list of Qualifying Job Applicants who are interested in seeking employment with Participating Employers (“Employment Interest List”).

(v) Prior to opening, Participating Employers will meet with the Manager of the WDD to establish protocol specific to the tenant that address the following:

(1) Priority status for qualifying job applicants;

(2) Status of qualified job applicants considered by the participating employer, and;

(3) Appropriate documentation of qualified job applicants vitae for audit purposes for Federal Funding Program(s).

(vi) WDD will provide HUD with the documentation required under the HUD Jobs Creation National Objective.
(vii) The requirements of this Section 404.2 shall not apply to construction or remodeling of improvements on property owned or leased by Participating Employers within the Project.

(viii) Nothing in this Section 404.2 shall prohibit a Participating Employer from transferring an existing employee to a job located within the Project without complying with the requirements of Section 404.2(b)(v).

(ix) Nothing in this Section 404.2 shall require a Participating Employer to hire individuals who are not qualified for the intended position, and Participating Employers shall have the right to determine the most appropriate person to be hired.

404.3 Project Leases. Developer will provide City with executed copies of all leases with tenants occupying gross building area in excess of 5,000 square feet with Participating Employers to insure compliance with this Section.

405. Non-Disturbance Agreements. Upon the written request of any tenant of the Project, the City shall execute a non-disturbance agreement pursuant to which City agrees that in the event it acquires the Site or any portion of the Site pursuant to the terms of this Agreement, City will agree to recognize the validity of any such tenancy pursuant to written leases which are to be attached thereto; provided however, that such tenant shall first deposit funds with the City which are, in the City’s reasonable discretion, adequate to cover the cost of review of any such non-disturbance agreement by consultants and/or attorneys.

406. Post Closing Obligations Re Remedial Improvements. Following the Closing, Developer shall not act or refrain from acting in a manner which will have the effect of interfering with and/or damaging the Remedial Improvements. Developer will hold harmless, defend, and indemnify the Indemnitees with respect to any act of Developer, or failure to act, by Developer which interferes with the operation of or otherwise damages the Remedial Improvements.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to the extensions of time set forth in Section 602 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. The breach or falsity of any representation or warranty by a party as set forth in this Agreement also constitutes a “Default” under this Agreement following notice and failure to cure as described hereafter. The refusal or failure of Developer to close Escrow following satisfaction of the Conditions Precedent to Closing for benefit of Developer set forth in Section 205.2 constitutes a “Default” under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. 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 as to non-monetary Defaults other than transfers not permitted under this Agreement (as to which no right to notice or cure shall apply) if such party within thirty (30) days from receipt of such notice promptly, with due diligence, commences to cure, correct or remedy such failure or delay and thereafter completes such cure, correction or remedy with due diligence. As to monetary Defaults, a cure period of ten (10) days upon written notice shall apply.
502. **Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, and except as to a termination by either Party prior to the Applicable Closing for reasons other than Default by the Developer which termination shall entitle City to retain the Liquidated Damages re First Closing or Liquidated Damages re Second Closing, as applicable, provided for in Section 201.2 and Section 201.6, respectively, 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 purposes of this Agreement. Except as set forth in Section 201.2 as to the Liquidated Damages re First Closing and Section 201.6 as to the Liquidated Damages re Second Closing, specific performance shall be available as a remedy to the greatest extent legally allowable. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the District of the United States District Court in which such county is located. In addition to the legal actions hereinafter described and without limitation as to such remedies that may be available at law or equity, upon a Default by the Developer under this Agreement after the Conveyance, the City may exercise those rights defined and described in Section 504.

503. **Termination.**

503.1 **Termination by Developer Prior to the First Closing.**

(a) In the event that prior to the First Closing, the Developer is not in Default of this Agreement but the City is in Default in the performance of its obligations or in breach of a representation or warranty hereunder, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City. In the event of such termination pursuant to the above, the City shall return the Good Faith Deposit re First Closing, and neither the City nor the Developer shall have any further rights or obligations under this Agreement except under the applicable provisions regarding damages contained in Section 504 and except for those provisions hereof which expressly survive the termination of the Agreement.

(b) In the event that prior to the First Closing, the City is not in Default of this Agreement but (i) the Developer is in Default in the performance of its obligations or in breach of a representation or warranty hereunder, or (ii) one or more of the Conditions Precedent re First Closing have not been satisfied or waived by the Outside Date re First Closing, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City. In the event of such termination pursuant to (i) or (ii) above, the City shall retain the Good Faith Deposit re First Closing as Liquidated Damages pursuant to Section 201.2, and neither the City nor the Developer shall have any further rights or obligations under this Agreement, except for those provisions hereof which expressly survive the termination of the Agreement.

503.2 **Termination by the City Prior to the First Closing.** In the event that prior to the First Closing, the City is not in Default of this Agreement and:

(a) The Developer (or any successor in interest) assigns this Agreement or any rights thereon or in the Residential Component Property and/or the Retail Component Property and/or the Mixed Use Commercial Component Property in violation of this Agreement and such Default is not cured in accordance with Section 501; or
(b) There is a change in the ownership of the Developer contrary to the provisions of Section 603.1 hereof and such Default is not cured in accordance with Section 501; or

(c) The Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor and such Default is not cured in accordance with Section 501; or

(d) One or more of the Conditions Precedent re First Closing is not either satisfied or waived by the Outside Date re First Closing; or

(e) The Developer is otherwise in Default under this Agreement and such Default is not cured in accordance with Section 501;

then this Agreement and any rights of the Developer or any assignee or transferee in the Agreement, shall, at the option of the City, be terminated by the City by written notice thereof to Developer. In the event of termination under this Section, neither party shall have any other rights against the other under this Agreement except that the Escrow Agent shall pay over to the City the Good Faith Deposit as Liquidated Damages re First Closing pursuant to Section 201.2 hereof, for those provisions hereof which expressly survive the termination of the Agreement.

503.3 Termination by Developer Prior to the Second Closing.

(a) In the event that prior to the Second Closing, the Developer is not in Default of this Agreement but the City is in Default hereunder, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City. In the event of such termination pursuant to the above, the City shall return the Good Faith Deposit re Second Closing, and neither the City nor the Developer shall have any further rights or obligations under this Agreement except under the applicable provisions regarding damages contained in Section 504 and except for those provisions hereof which expressly survive the termination of the Agreement.

(b) In the event that prior to the Second Closing, the City is not in Default of this Agreement but Developer has failed to comply with Section 201.3.2, the City shall retain the Good Faith Deposit re Second Closing as Liquidated Damages with respect to a failure of Developer under Section 201.3.2, and neither the City nor the Developer shall have any further rights or obligations under this Agreement, except for those provisions hereof which expressly survive the termination of the Agreement.

503.4 Termination by the City Prior to the Second Closing. In the event that prior to the Second Closing the City is not in Default of this Agreement and:

(a) The Developer (or any successor in interest) assigns this Agreement or any rights thereon or in the Grocery Store Component Property in violation of this Agreement and such Default is not cured in accordance with Section 501; or

(b) There is a change in the ownership of the Developer contrary to the provisions of Section 603.1 hereof and such Default is not cured in accordance with Section 501; or

(c) The Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates

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respectively provided in this Agreement therefor and such Default is not cured in accordance with Section 501; or

(d) One or more of the Conditions Precedent re Second Closing is not either satisfied or waived by the Outside Date re Second Closing; or

(e) The Developer is otherwise in Default under this Agreement and such Default is not cured in accordance with Section 501; or

(f) The Developer has failed to comply with its obligation under Section 201.3.2;

then this Agreement and any rights of the Developer or any assignee or transferee in the Agreement, shall, at the option of the City, be terminated by the City by written notice thereof to Developer. In the event of termination under this Section, neither party shall have any other rights against the other under this Agreement except that the City shall retain the Good Faith Deposit as Liquidated Damages re Second Closing pursuant to Section 201.6 hereof and for those provisions hereof which expressly survive the termination of the Agreement.

504. Specific Performance. The delineation of the parties’ rights to terminate this Agreement prior to the Closing is not intended to limit either party from exercising any other remedy for such default provided under law or equity. Without limiting the generality of the foregoing statement, in the event of a Default by either party, the non-Defaulting party may exercise any right or remedy available in law or equity, including, without limitation, the right to initiate an action for specific performance and to recover all damages proximately caused by such Default (except as limited in the event of City termination pursuant to Section 503.2, in which the event the City shall be limited to the liquidated damages set forth in Section 201.2).

505. Reentry and Revesting of Title in the City After the Closing and Prior to the Completion of Construction. Subject to Section 602, City has the right, at its election, to reenter and take possession of the Retail Component Property or the Residential Component Property, with all improvements thereon, and terminate and revest in the City the estate conveyed to the Retail Developer or the Residential Developer, respectively, if after the First Closing and prior to the issuance of the Release of Construction Covenants with respect to the Residential Component and/or the Retail Component, as applicable, the Retail Developer or Residential Developer, as applicable, shall:

(a) fail to start the construction of the Residential Component or the Retail Component, respectively, as required by this Agreement for a period of sixty (60) days subject to Sections 301.1 and 602, after written notice thereof from the City; provided, however, with respect to the pad and any other buildings not leased by the Retail Developer prior to the First Closing, such sixty (60) day period shall be extended for such time as reasonably necessary for Retail Developer, exercising due diligence, to execute a lease with a tenant for such pad or building location, and for the Retail Developer or such tenant to commence construction of such pad building; or

(b) abandon or substantially suspend construction of the Residential Component or the Retail Component, respectively, required by this Agreement for a period of ninety (90) days, subject to Sections 301.1 and 602, after written notice thereof from the City; or
(c) contrary to the provisions of Section 603 transfer or suffer any involuntary transfer of the Retail Component Property or the Residential Component Property, respectively, in violation 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:

1. Any mortgage or deed of trust permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Grant Deeds shall contain appropriate reference and provision to give effect to the City’s right as set forth in this Section, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Retail Component Property or the Residential Component Property, with all improvements thereon, and to terminate and revest in the City the estate conveyed to the Retail Developer or the Residential Developer, respectively. Upon the revesting in the City of title to the Retail Component Property or the Residential Component Property, as applicable, as provided in this Section, the City shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Retail Component Property or Residential Component Property, as applicable, as soon and in such manner as the City shall find feasible and consistent with the objectives of such law, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Retail Component or the Residential Component, as applicable, or such improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for such Residential Component Property, Retail Component Property, or part thereof by the City under its land use regulatory power. The Developer acknowledges that there may be substantial delays experienced by the City if the City must remarket the Retail Component Property or the Residential Component Property following the revesting of the Retail Component Property or the Residential Component Property in the City. Upon such resale of the Retail Component Property or the Residential Component Property, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Retail Component Property or the Residential Component Property, as applicable, which is permitted by this Agreement, shall be applied:

(i) First, to reimburse the City, on its own behalf, all reasonable costs and expenses incurred by the City, excluding City staff costs, but specifically including, without limitation, any expenditures by the City, in connection with the recapture, management and resale of the Retail Component Property or the Residential Component Property, as applicable, or part thereof (but less any income derived by the City from the Retail Component Property or the Residential Component Property, as applicable, or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Retail Component Property or the Residential Component Property, as applicable, or part thereof which the Developer has not paid, any payments made or necessary to be made to discharge any encumbrances or liens existing on the Retail Component Property or the Residential Component Property, as applicable, or part thereof at the time or revesting of title thereto in the City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Retail Developer or Residential Developer, respectively, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Retail Component or the Residential
Component, as applicable, or any part thereof; and any amounts otherwise owing the City, and in the
event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Retail Developer or the Residential
Developer, as applicable, its successor or transferee, up to the amount equal to the sum of (a) all costs
and expenses incurred for the acquisition of the Retail Component Property or the Residential
Component Property, as applicable (including without limitation architectural fees, engineering fees,
environmental reports, and studies, loan fees, legal fees, and consultant fees), plus (b) Developer Costs,
less (c) any gains or income withdrawn or made by the Retail Developer or the Residential Developer
from the Retail Component Property or the Residential Component Property, as applicable, or the
improvements thereon.

Any balance remaining after such reimbursements shall be retained by the City as its
property. The rights established in this Section 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 the City will have
congveyed the Retail Component Property and the Residential Component Property to the Retail
Developer and Residential Developer, respectively, for development purposes, and not for speculation
in land.

The rights of the City pursuant to this Section shall be subordinate to the rights of the
construction and permanent lender approved by the City.

Notwithstanding the foregoing or anything contained herein to the contrary, (i) the
terms of Section 505 shall apply separately to the Retail Component Property and the Residential
Component Property, (ii) in the event Retail Developer fails to comply with the terms of
Sections 505(a), (b) and (c) with respect to the Retail Component Property, the City shall have no right
to acquire the Residential Component Property so long as the Residential Developer complies with the
terms of Sections 505(a), (b) and (c) with respect to the Residential Component Property, and (iii) in
the event Residential Developer fails to comply with the terms of Sections 505(a), (b) and (c) with
respect to the Residential Component Property, the City shall have no right to acquire the Retail
Component Property so long as the Retail Developer complies with the terms of Sections 505(a), (b)
and (c) with respect to the Retail Component Property.

506. Acceptance of Service of Process. In the event that any legal action is commenced
by the Developer against the City, service of process on the City shall be made by personal service
upon the Director or in such other manner as may be provided by law. In the event that any legal action
is commenced by the City against the Developer, service of process on the Developer shall be made
by personal service upon the Manager of Developer, whether made within or outside the State of
California, 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”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, postage prepaid, return receipt requested, or by overnight express mail or by commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: Director
Copy to: City Attorney

With a copy to: John E. Woodhead IV, Director of Community and Economic Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805

With a copy to: City Attorney
City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

To Developer: 39 Commons Partners, LLC
c/o Zelman Development Co.
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey
Any party may change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days’ notice to the other party in the manner set forth hereinabove. The Developer shall forward to the City, without delay, any notices, letters or other communications delivered to the Site or to the Developer which could reasonably affect the ability of the Developer to perform its obligations to the City under this Agreement.

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: war; insurrection; acts of terrorism; 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; litigation; adverse weather conditions; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City, Responsible Agency or any other public or governmental agency or entity (except that the acts or failures to act or delay of the Successor Agency or City shall not excuse performance by the City). 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 thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Director and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete any Component, shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Transfers of Interest in the Site or Agreement.

603.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the City. Furthermore, the parties acknowledge that the City has negotiated the terms of this Agreement in contemplation of the development and operation of the Project and the property tax
increment and sales and tax revenues to be generated by the Project and the operation of the Project on the Site. Accordingly, for the period commencing upon the date of this Agreement and until the issuance by City of a Release or Releases of Construction Covenants for 100% of the Project, no voluntary or involuntary successor in interest of the Developer (other than the assignee of a Permitted Transfer, as defined in Section 603.2) shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the whole or any part of the Site or the Project thereon, nor shall any uses other than the Project be operated thereon, either in addition to or in replacement of the Project on the Site, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Project being operated upon the Site (collectively referred to herein as a “Transfer”), without the prior written approval of the City, except as expressly set forth herein. As used herein, the term “Transfer” shall not include the sale or leasing of parcels, buildings or portions thereof to retail and/or commercial tenants or occupants as permitted under this Agreement. Notwithstanding the foregoing, in the event of a Transfer by Developer pursuant to Section 603.2(g) and/or (h), then this Section 603.1 shall apply separately to the Retail Developer and Residential Developer, as applicable.

603.2 Permitted Transfers or other Conveyances. Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer or other conveyance shall not be required in connection with any of the following (“Permitted Transfers”):

(a) Any Transfer to an entity or entities in which (i) Developer, (ii) Zelman or Zelman Development Co. a California corporation, (iii) Brett Foy and Paul Casey, and/or (iv) Greenlaw or Greenlaw Partners, LLC, a California limited liability company, directly or indirectly, retains ownership or beneficial interest and retains management and control of the Transferee entity or entities and the Project is operating on a continuous basis on the Site.

(b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Project.

(c) Any requested assignment for financing purposes permitted pursuant to this Agreement for which approval by the City has been obtained, including the grant of a mortgage or deed of trust or sale-leaseback to secure the funds necessary for construction and permanent financing of the Residential Component and/or the Retail Component and, excepting therefrom any Transfer to any entity to which any interest is held by the Developer, a Related Entity, or the principals of Developer, the following in connection with such financing as shall have theretofore been approved by the City: (i) any Transfer to any person or entity pursuant to foreclosure or deed-in-lieu of foreclosure of any such mortgage or deed of trust; (ii) any Transfer of the reversionary interest and estate of the lessor in any sale-leaseback; and (iii) any lease termination by the lessor under the lease in a sale-leaseback due to default of the lessee thereunder.

(d) Transfers (including leases) necessary to fulfill the covenant set forth in Section 402, where such proposed transferees agree in writing to be bound by the Covenants set forth herein and in the Grant Deed as to the Site so Transferred, for the periods of time set forth for the effectiveness of such covenants.
(e) Transfers of the Site or any part thereof to which the City has issued a Release of Construction Covenants for the Residential Component and/or the Retail Component thereon.

(f) The sale or leasing of parcels, buildings or portions thereof to retail and/or commercial tenants or occupants as permitted under this Agreement ("Conveyance").

(g) A transfer of the Retail Property to Zelman or an entity or entities in which (i) Zelman or Zelman Development Co. a California corporation, and/or (ii) Brett Foy and Paul Casey, directly or indirectly, retains an ownership or beneficial interest and retains management and control of the transferee entity or entities. In the event of a transfer pursuant to this subparagraph (g), (i) at the request of Developer, the City shall convey the Retail Component Property directly to the transferee pursuant to this subparagraph (g) upon the Closing, (ii) the transferee shall have all of the rights and obligations of the Developer under the DDA with respect to the Retail Component Property, and shall have no rights or obligations of the Developer under the DDA with respect to the Residential Component Property, and (iii) Developer and Greenlaw shall each be released by the City from all obligations related to the Retail Component Property. The transferee pursuant to this subparagraph (g) is referred to in this Agreement as the “Retail Developer,” any and all references to the “Developer” in this Agreement with respect to the Retail Component Property shall mean the “Retail Developer.”

(h) A transfer of the Residential Component Property to an entity in which Greenlaw or the Greenlaw Venture, retains an ownership or beneficial interest and retains management and control of the transferee entity or entities. In the event of a transfer pursuant to this subparagraph (h), (i) at the request of Developer, the City shall convey the Residential Component Property directly to the transferee pursuant to this subparagraph (h) upon the Closing, (ii) the transferee shall have all of the rights and obligations of the Developer under the DDA with respect to the Residential Component Property, and shall have no rights or obligations of the Developer under the DDA with respect to the Retail Component Property, and (iii) Developer and Zelman shall each be released by the City from all obligations related to the Residential Component Property. The transferee pursuant to this subparagraph (h) is referred to in this Agreement as the “Residential Developer,” any and all references to the “Developer” in this Agreement with respect to the Residential Property shall mean the “Residential Developer.”

In the event of a Transfer by Developer not requiring the City’s prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, Developer agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the Transferee has assumed or upon the effective date of Transfer will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the City all of the obligations of the Developer under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer. Notwithstanding the foregoing or anything contained in this Agreement to the contrary, the prohibitions in this Section 603.2 shall not be deemed to prevent the leasing or pre-leasing of tenant space for occupancy, provided the uses by such tenants comply with the permitted uses under this Agreement.

603.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and its successors and assigns, including those acquiring such interest pursuant to a permitted Transfer. Whenever the term “Developer” is used in this Agreement, such term shall include any other permitted successors and
assigns, including those acquiring such interest pursuant to a permitted Transfer, as herein provided. The Developer shall be liable for the performance of all of its covenants, obligations and undertakings herein set forth which accrue during the period of its ownership of the Site. In the event that Developer Transfers the Site, or any part thereof, in accordance with this Agreement, the transferring Developer shall be released from the obligations of this Agreement arising subsequent to the effective date of such Transfer.

604. **Non-Liability of Officials and Employees of the City to the Developer.** No member, official, director, officer, agent, or employee of the Successor Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

605. **Non-Liability of Members of Employees.** No member, officer, partner, director, agent or employee of Developer shall have any personal liability for the performance of Developer’s obligations hereunder.

606. **Relationship Between City and Developer.** It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operations, maintenance or management of the Project. The Developer agrees to indemnify, hold harmless and defend the City from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Developer with respect to the development, operation, maintenance or management of the Site or the Project, except such claims arising from or caused by a representation by the City that such a relationship exists.

607. **City Approvals and Actions.** The City shall maintain authority of this Agreement and the authority to implement this Agreement through the Director (or his duly authorized representative). The Director shall have the authority to issue interpretations, extend time limits, make minor modifications to the Scope of Development, waive provisions, and/or enter into other amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Site, or add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance and, to the extent allowable and consistent with the goals and objectives of the City pursuant to this Agreement, to reasonably accommodate requests of lenders. Any such action by the Director shall only become effective after the City Attorney approves such action. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

608. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

609. **Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. 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. This Agreement includes Attachment Nos. 1 through 15, each of which are incorporated herein.

610. **Real Estate Brokerage Commission.** The City and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder’s fee in connection with the Developer’s acquisition of the Site, or any part thereof, from the City. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such party.

611. **Attorneys’ Fees.** In any action between the parties to interpret, enforce, reform, modify, or rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys’ fees and expert fees and court costs.

612. **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.

613. **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 both parties.

614. **No Waiver.** A waiver by either 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.

615. **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.

616. **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.

617. **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.

618. **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.

619. **Time of Essence.** Time is expressly made of the essence with respect to the
performance by the City, the Developer of each and every obligation and condition of this Agreement.

620. **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.

621. **Conflicts of Interest.** No member, official or employee of the 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.

622. **Time for Acceptance of Agreement by City.** This Agreement, when executed by the
Developer and delivered to the City, must be authorized, executed and delivered by the City on or
before thirty (30) days after signing and delivery of this Agreement by the Developer or this Agreement
shall be void, except to the extent that the Developer shall consent in writing to a further extension of
time for the authorization, execution and delivery of this Agreement.

623. **Estoppel Certificate.** City agrees that it will issue within thirty (30) days after receipt
of request to Developer, or its prospective mortgagee or successor, an estoppel certificate stating to the
best of the City’s knowledge as of such date:

(a) Whether it knows of any default under this Agreement by the Developer, and
    if there are known defaults, specifying the nature thereof in reasonable detail;

(b) Whether this Agreement has been assigned, modified or amended in any way
    by it and if so, then stating the nature thereof in reasonable detail;

(c) Whether this Agreement is in full force and effect; and

(d) Such other information is reasonably requested by Developer or its prospective
    mortgagee or successor.

Developer shall reimburse City for all actual and direct third party costs incurred by City in
connection with the above.

[Signature block begins on page S-1]
IN WITNESS WHEREOF, the parties hereto have signed this Disposition and Development Agreement as of the respective date set forth below.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: __________________, 20__ By: ____________________________

John E. Woodhead, IV, Director of Community and Economic Development

THERESA BASS, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth Special Counsel
DEVELOPER:

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

By: _________________________________
Name: _______________________________
Its: ________________________________

Dated: _____________________________
ATTACHMENT NO. 1

Site Map

ATTACHMENT 1A
DEVELOPMENT SITE MAP

Legend

Retail Component
Residential Component
Grocery Component
Mixed-Use Commercial Component

Loan Pham Property
Beach Dedication

Anaheim City Boundary

City of Anaheim
Com Dev Technology
June 27, 2019

082161:10272301v35
4845-1255-8970v27/022363-0018

ATTACHMENT NO. 1A-1
ATTACHMENT 1-C

Project Plan
ATTACHMENT NO. 2

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:

____________________________________

__________________, California ________

ATTN: __________________________

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

GRANT DEED

[NEED SEPARATE DEEDS FOR RETAIL COMPONENT AND RESIDENTIAL COMPONENT IF DEVELOPER Assigns PRIOR TO CLOSING]

For valuable consideration, receipt of which is hereby acknowledged,

A. The CITY OF ANAHEIM, a California municipal corporation and Charter City (the “City” or “Grantor”), hereby grants to __________________________, a ____________________ (“Grantee”), the real property hereinafter referred to as the “Property”, described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

B. The Property is conveyed in accordance with and subject to that certain Disposition and Development Agreement entered into between Grantor and _______________ dated ______________, 2019 (the “DDA”), a copy of which is on file with the Grantor at its offices as a public record and which is incorporated herein by reference. All capitalized terms used herein which are not otherwise defined in this Grant Deed shall have the meanings ascribed to them in the DDA.

C. The Grantee covenants and agrees for itself, its successors, assigns, and every successor in interest to the Property or any part thereof, that upon the Closing, the Property shall be devoted to the uses specified in the Entitlements. All uses conducted on the Property shall conform to all applicable provisions of the City Municipal Code.

D. Construction Covenant. Subject to extensions of the time periods for Grantee’s performance set forth in Section 602 of the DDA, Grantee shall cause the completion of the [insert Retail Component or the Residential Component, as applicable] by the dates set forth therefor in the Schedule of Performance.
E. [Insert for Retail Component]. Commencing on the opening for business of the Retail Component to the general public and terminating 30 years thereafter ("Operating Period"), Grantee hereby covenants and agrees to construct and maintain for operation a retail/commercial center on the Property; provided, however, nothing contained herein shall require any occupant of the Retail Component to operate its business on the Property.

F. Commencing on the Close of Escrow and terminating 30 years thereafter, the Grantee shall maintain the Property and all improvements thereon, including landscaping, in full compliance with the terms of all applicable provisions of the City Municipal Code, and in compliance with industry standards for a first class retail shopping center. Without limiting the forgoing, the Grantee shall specifically maintain the Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the “Maintenance Standards” hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property. To accomplish the maintenance, Grantee shall either staff or contract with and hire qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. In addition, Grantee shall comply with the Environmental Deed Restrictions and with the Operations, Maintenance and Monitoring Plan that will be recorded as a covenant against the Property.

The following maintenance standards (the “Maintenance Standards”) shall be complied with by Grantee and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the Responsible Agencies:

1. All improvements to the Property shall be maintained in conformance and in compliance with the reasonable commercial development maintenance standards for similar first quality retail commercial shopping centers in California, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

2. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

3. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

4. Upon notification of any maintenance deficiency, Grantee shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City, then Grantee shall have forty-eight (48) hours to rectify the problem.
G. Restrictive Covenants.

1. Commencing on the Close of Escrow and terminating 18 years thereafter, Grantee shall not permit any business to relocate within the Property exceeding 20,000 square feet in size (except the Major Tenants which are hereby pre-approved as initial tenants) from any other location within the City and within 5 miles of the Property without the prior approval of the City.

2. Grantee shall carry out the design, construction and operation of [insert: the Retail Component or the Residential Component] in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Grantee, or the Property, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City Zoning and Development Standards (as they apply to the Property and [insert: the Retail Component or the Residential Component]), building, plumbing, mechanical and electrical codes, as they apply to the Property and [insert: the Retail Component or the Residential Component], and all other provisions of the City of Anaheim and its Municipal Code, (as they apply to the Property and [insert: the Retail Component or the Residential Component]), and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. (“Governmental Requirements”).

3. Prior to the issuance of the Release of Construction Covenants for the Retail Component and the Residential Component on the Property as described and defined in the DDA, the Grantee shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease, other than as permitted under the DDA, of the whole or any part of the Property or [insert: the Retail Component or the Residential Component] thereon, nor shall any uses other than [insert: the Retail Component or the Residential Component] be operated thereon, either in addition to or in replacement of [insert: the Retail Component or the Residential Component] on the Property, nor shall the Grantee make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of [insert: the Retail Component or the Residential Component] being operated upon the Property (collectively referred to herein as a “Transfer”), without the prior written approval of the City except as expressly set forth in the DDA.

In the event of a “Permitted Transfer” (as defined in the DDA) by Grantee not requiring the City’s prior approval, Grantee nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City of such Transfer. In the case of a Permitted Transfer, Grantee agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed or upon the effective date of Transfer will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the City’s all of the obligations of the Grantee under the DDA which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

The Grantee shall be liable for the performance of all of its covenants, obligations and undertakings herein set forth which accrue during the period of its ownership of the Property. In the event that Grantee Transfers the Property the transferring Grantee shall be released from the obligations of this Deed arising subsequent to the effective date of such Transfer.
H Jobs Creation. The Parties acknowledge that (i) the City has entered into that certain Funding Approval/Agreement (B-02-MC-06-0501) with the United States Department of Housing and Urban Development (“HUD”) pursuant to which HUD has provided Ten Million Dollars ($10,000,000) to the City to pay for certain costs associated with the Project (the “Section 108 Loan for the Project”), (ii) pursuant to that certain Second Amended and Restated Cooperation Agreement (Lincoln/Beach Section 108 Loan) dated as of July 1, 2004 between the City and the Anaheim Redevelopment Agency (the “City/Agency Cooperation Agreement”), the City has agreed to transfer the proceeds of the Section 108 Loan for the Project to the City promptly upon the City’s receipt of such proceeds, and (iii) in consideration for making the Section 108 Loan for the Project, HUD requires, among other things, that the City (on behalf of the City) provide that at least fifty-one percent (51%) of the jobs created by the operation of the Project (the “Project Jobs”) be held by, or be made available to, persons of low and moderate income (the “HUD Jobs Creation National Objective”). Accordingly, the Parties intend to satisfy the HUD Jobs Creation National Objective as set forth in this Section.

1. Project Jobs Description. Prior to commencing construction of the improvements with respect to each of the Retailers, Grantee shall provide City a description, in a form reasonably acceptable to City, of all of the Project Jobs, indicating which of the Project Jobs are full time equivalent positions (the “Project Jobs Description”); the Project Jobs Description shall denote which of the Project Jobs have job qualifications requiring no more than a high school education and/or one (1) year of training or work experience ("Qualifying Project Jobs"). Grantee shall update the Project Jobs Description promptly upon a substantial change in such jobs and/or job qualifications, but in no event less than annually.

2. Project Jobs Available to Low and Moderate Income Persons. Grantee shall provide that at least fifty-one percent (51%) of the Project Jobs are made available to low and moderate income persons. Accordingly, Grantee shall do the following:

(a) Concurrently with Grantee’s delivery of the Project Jobs Description, Grantee shall submit to City for City review and approval a list of which employers within the Project shall provide “First Consideration” to “Qualifying Job Applicants” in accordance with (b), below. The list shall include employers of not less than 75% of the jobs available within the Project. (The employers included on the list are hereinafter referred to as the Participating Employers.) City shall approve such list provided that the Project Jobs Description demonstrates that the Participating Employers will provide Qualifying Project Jobs greater than or equal to fifty-one percent (51%) of the aggregate Project Jobs.

(b) Grantee shall require that Participating Employers enter into a First Source Agreement with the Workforce Development Division of the City of Anaheim (“WDD”) containing the following terms:

(i) WDD will conduct community outreach designed to assemble a pool of potential low to moderate income job applicants for the Qualifying Project Jobs (“Potential Qualifying Job Applicants”).

(ii) WDD will prescreen and verify which of the Potential Qualifying Job Applicants are persons of low to moderate income (“Qualifying Job Applicants”).
(iii) Participating Employers will notify WDD of openings for Qualifying Project Jobs.

(iv) With respect to initial hires, WDD will direct Qualifying Job Applicants to Participating Employers; with respect to subsequent hires, WDD will create and update quarterly a list of Qualifying Job Applicants who are interested in seeking employment with Participating Employers (“Employment Interest List”).

Prior to opening, Participating Employers will meet with the Manager of the WDD to establish protocol specific to the tenant that address the following:

(1) Priority status for qualifying job applicants;

(2) Status of qualified job applicants considered by the participating employer, and;

(3) Appropriate documentation of qualified job applicants vitae for audit purposes for Federal Funding Program(s).

(vi) WDD will provide HUD with the documentation required under the HUD Jobs Creation National Objective.

(vii) The requirements of this Section shall not apply to construction or remodeling of improvements on property owned or leased by Participating Employers within the Project.

(viii) Nothing in this Section shall prohibit a Participating Employer from transferring an existing employee to a job located within the Project without complying with the requirements of (b)(v) above.

(ix) Nothing in this Section shall require a Participating Employer to hire individuals who are not qualified for the intended position, and Participating Employers shall have the right to determine the most appropriate person to be hired.

3. Project Leases. Grantee will provide Successor Agency with executed copies of all Leases (with gross building area in excess of 5,000 square feet) with Participating Employers to insure compliance with this Section.

I. Right of Reentry and Revesting. [to be revised to reference Retail Component or Residential Component only, as applicable]

1. Grantor has the right, at its election, to reenter and take possession of the [insert Retail Property or the Residential Property], with all improvements thereon, and terminate and revest in Grantor the estate conveyed to the Grantee, if after the Closing and prior to the issuance of the Release of Construction Covenants as to one hundred percent (100%) of the [Retail Component or the Residential Component], the Grantee shall:

(a) fail to start the construction of the [Retail Component or the Residential Component] as required by this Agreement for a period of sixty (60) days subject to Sections 301.1 and 602, after written notice thereof from Grantor; provided, however, with respect to the pad and any
other buildings not leased by the Grantee prior to the Closing, such sixty (60) day period shall be extended for such time as reasonably necessary for Grantee, exercising due diligence, to execute a lease with a tenant for such pad or building location, and for the Grantee or such tenant to commence construction of such pad building; or

(b) abandon or substantially suspend construction of the [Retail Component or the Residential Component] required by this Agreement for a period of ninety (90) days, subject to Sections 301.1 and 602, after written notice thereof from Grantor; or

(c) contrary to the provisions of Section 603 transfer or suffer any involuntary transfer of [the Retail Property or the Residential Property] in violation of this Agreement.

2. Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

Grantor shall have the right as set forth in this Section, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of [the Retail Property or the Residential Property], with all improvements thereon, and to terminate and revest in Grantor the estate conveyed to the Grantee. Upon the revesting in Grantor of title to [the Retail Property or the Residential Property], as provided in this Section, Grantor shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell [the Retail Property or Residential Property] as soon and in such manner as Grantor shall find feasible and consistent with the objectives of such law, as it exists or may be amended, to a qualified and responsible party or parties (as determined by Grantor) who will assume the obligation of making or completing the [Retail Component or the Residential Component] or such improvements in their stead as shall be satisfactory to Grantor. Grantee acknowledges that there may be substantial delays experienced by Grantor if Grantor must remarket [the Retail Property or the Residential Property] following the revesting of [the Retail Property or the Residential Property] in Grantor. Upon such resale of [the Retail Property or the Residential Property], the net proceeds thereof after repayment of any mortgage or deed of trust encumbering [the Retail Property or the Residential Property], which is permitted by this Agreement, shall be applied:

(i) First, to reimburse Grantor, on its own behalf, all reasonable costs and expenses incurred by Grantor, excluding City staff costs, but specifically including, without limitation, any expenditures by Grantor, in connection with the recapture, management and resale of [the Retail Property or the Residential Property] or part thereof (but less any income derived by Grantor from [the Retail Property or the Residential Property] or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to [the Retail Property or the Residential Property] or part thereof which the Grantee has not paid, any payments made or necessary to be made to discharge any encumbrances or liens existing on [the Retail Property or the Residential Property] or part thereof at the time or 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 the Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making
or completion of the [Retail Component or the Residential Component], or any 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) all costs and expenses incurred for the acquisition of [the Retail Property or the Residential Property], as applicable (including without limitation architectural fees, engineering fees, environmental reports, and studies, loan fees, legal fees, and consultant fees), plus (b) Developer Costs, less (c) any gains or income withdrawn or made by the Grantee from [the Retail Property or the Residential Property], as applicable, or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Grantor as its property. The rights established in this Section 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 Retail Property and the Residential Property] to [the Retail Developer and Residential Developer] for development purposes, and not for speculation in land.

The rights of Grantor pursuant to this Section shall be subordinate to the rights of the construction and permanent lender approved by Grantor.

Notwithstanding the foregoing or anything contained herein to the contrary, (i) the terms of Section 505 shall apply separately to [the Retail Property and the Residential Property], (ii) in the event Retail Developer fails to comply with the terms of Sections 505(a), (b) and (c) with respect to the Retail Property, Grantor shall have no right to acquire the Residential Property so long as the Residential Developer complies with the terms of Sections 505(a), (b) and (c) with respect to the Residential Property, and (iii) in the event Residential Developer fails to comply with the terms of Sections 505(a), (b) and (c) with respect to the Residential Property, Grantor shall have no right to acquire the Retail Property so long as the Retail Developer complies with the terms of Sections 505(a), (b) and (c) with respect to the Retail Property.

J. The Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee 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, subtenants, sublessees or vendees in the land herein conveyed.

The Grantee shall refrain from restricting the rental, sale or lease of the applicable portion of the Property or the Project on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. 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 race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease,
transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee 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, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

2. 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:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin 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.”

3. In contracts: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee 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, subtenants, sublessees or vendees of the premises.”

The foregoing covenants regarding discrimination shall run with the land and shall remain in effect in perpetuity.

K. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by this Grant Deed or the DDA; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise.

L. All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Grantee and its successors and assigns. Whenever the term “Grantee” is used in this Grant Deed, such term shall include any other successors and assigns as herein provided.

M. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and their respective successors and assigns. Such covenants shall be covenants running with the land in favor of the Grantor, and their respective successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.
IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this _______ day of ___________________________, 20____.

CITY OF ANAHEIM, a California municipal corporation and charter city

By:________________________________________

Its:________________________________________

“GRANTOR”

ATTEST:

THERESA BASS, CITY CLERK

____________________________
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

____________________________

APPROVED AS TO FORM:

____________________________

Stradling Yocca Carlson & Rauth
Special Counsel

4845-1255-8970v27/022363-0018
The undersigned Grantee accepts title subject to the covenants hereinafore set forth.

__________________________________________
By:
Name: _____________________________________
Its: ____________________________________________________________________________

“GRANTEE”
## ATTACHMENT NO. 3

### SCHEDULE OF PERFORMANCE

## I. DEVELOPMENT OF PROJECT – RESIDENTIAL COMPONENT

<p>| | | |</p>
<table>
<thead>
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<tbody>
<tr>
<td>1.</td>
<td><strong>Submission and approval of the Project Plan.</strong></td>
<td>July 30, 2019</td>
</tr>
</tbody>
</table>
| 2. | **Submission of Basic Concept Drawings and Land Use Approvals.**  
Developer submits Basic Concept Drawings, Design Review, and complete Land Use application to City, the RWQCB, and any other appropriate Responsible Agency, including:  
- Project plan  
- Design Review Documents  
- Elevations of all building structures  
- Preliminary landscape plans  
- A traffic and circulation plan  
- Lot Line Adjustment  
- Tentative Tract Map | No later than Aug 15, 2019 | Section 302.2 |
| 3. | **Developer to Obtain City Approval of Land Use Application** | No later than December 31, 2019 | Section 302.4 |

## II. GRADING PLANS AND BUILDING IMPROVEMENT PLANS

<p>| | | |</p>
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| 4. | **Submission of Grading Plans.**  
Developer shall submit to the Building/Engineering Department complete Construction Drawings and Grading Plans. | No later than November 18, 2019 | Section 302.3 |
| 5. | **Developer to Obtain Approval of Grading Plans.** | No later than Feb 17, 2020 | Section 302.3 |
| 6. | **Submission of Complete Building Improvement Plans.** | No later than January 6, 2020 | Section 302.3 |
| 7. | **Developer to Obtain Approval of Complete Building Improvement Plans.**  
The Building Department shall approve the final Building Improvement Plans, and Developer shall be ready to obtain building permits, provided that the revisions necessary to accommodate the Building Department’s comments | No later than May 6, 2020 | Section 302.3 |
have been made.

### III. FINANCING

| 8. **Evidence of Financing Commitments** | Developer shall submit Evidence of Financing Commitments for all of the Developer Improvements to City. | No later than 30 days prior to issuance of grading permit. | Definitions & Section 311 |

### IV. CONVEYANCE

| 9. **Opening of Escrow.** The City shall open an Escrow with an Escrow Agent. | Within 10 Days of DDA approval | Section 202 |
| 10. **Conditions Precedent.** Developer and City satisfy all of their respective pre-closing conditions. | Prior to close of escrow. | Section 202.4 |
| 11. **Close of Escrow for the First Closing Conveyances.** City conveys the Residential and Retail Component Site and enters into a Ground Lease for the Mixed-Use Retail Component. | Within 7 business days after grading permit issuance but no later than outside closing date. | Section 201.3 |

### V. CONSTRUCTION

| 12. **Commencement of Site Grading.** Developer shall commence grading of the Site. | Within 5 business days of grading permit issuance | Section 302.3 |
| 13. **Completion of Site Grading.** | Within 60 days from commencement of grading | Section 302.3 |
| 14. **Developer to Obtain Issuance of Building Permits for all of the Residential Component Developer Improvements.** Developer shall obtain building permits from the Building Department for all of the Developer Improvements. | Within 4 months from submission of building improvement plans | Section 302.3 |
| 15. **Commencement of Building Improvements.** Developer shall commence building improvements on the Site. | Within 7 business days from permit issuance | Section 302.3 |
| 16. **Completion of Construction.** Developer shall complete construction of all of the Residential Component Improvements. | Within 24 months from grading permit issuance | Definitions |
| 17. **Release of Construction Covenants of the Residential Component.** City | Within 30 Days of Developer Request. | Section 310 |
shall issue Release to Developer.

### I. DEVELOPMENT OF PROJECT – RETAIL COMPONENT

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Submission and approval of the Project Plan.</td>
<td>July 30, 2019</td>
<td>Section 302.1</td>
</tr>
</tbody>
</table>
| 2. | Submission of Basic Concept Drawings and Land Use Application including a Conditional Use Permit Application. Developer submits Basic Concept Drawings, Design Review, and complete Land Use application to City, the RWQCB, and any other appropriate Responsible Agency, including:  
   - Project plan
   - Elevations of all building structures
   - Preliminary landscape plans
   - Traffic and circulation plan | No later than October 1, 2019 | Section 302.2 |
| 3. | Developer to Obtain City Approval of Basic Concept Drawings and Land Use Application. | No later than November 30, 2019 | Section 302.4 |
| 4. | Developer to Obtain Review of Land Use Application, and Approval or Disapproval Thereof. The Planning Commission shall consider and approve or disapprove the Land Use Application. | No later than January 30, 2019 | Section 303 |
| 5. | Submission of Design Development Drawings. The Developer shall prepare and submit to the City, complete Design Development Drawings. | No later than March 31, 2020 | Section 302.2 |
| 6. | Review of Design Development Drawings and Approval or Disapproval Thereof. The Community Development Department shall consider and approve or disapprove the Design Development Drawings. | No later than May 31, 2020 | Section 302.4 |

### II. GRADING PLANS AND BUILDING IMPROVEMENT PLANS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Submission of Grading Plans.</td>
<td>No later than March 31, 2020</td>
<td>Section 302.3</td>
</tr>
<tr>
<td>8.</td>
<td>Developer to Obtain Approval of Grading Plans.</td>
<td>No later than May 31, 2020</td>
<td>Section 302.3</td>
</tr>
<tr>
<td></td>
<td>Submission of Complete Building Improvement Plans.</td>
<td>No later than August 31, 2020</td>
<td>Section 302.3</td>
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</tr>
<tr>
<td>10.</td>
<td>Developer to Obtain Approval of Complete Construction Drawings. The Building Department shall approve the final Building Improvement Plans, and Developer shall be ready to obtain building permits, provided that the revisions necessary to accommodate the Building Department’s comments have been made.</td>
<td>No later than November 30, 2020</td>
<td>Section 302.3</td>
</tr>
</tbody>
</table>

### III. FINANCING

|   | Evidence of Financing Developer shall submit Evidence of Financing for all of the Developer Improvements to City. | No later than 30 days prior to issuance of grading permit. | Definitions & Section 311 |

### IV. FIRST CLOSING

<table>
<thead>
<tr>
<th></th>
<th>Opening of Escrow re First Closing. The City shall open an Escrow re First Closing with an Escrow Agent.</th>
<th>30 Days after DDA approval</th>
<th>Section 202</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>Conditions Precedent re First Closing. Developer and City satisfy all of their respective pre-closing conditions re First Closing.</td>
<td>Prior to Close of Escrow re First Closing.</td>
<td>Section 202.4</td>
</tr>
<tr>
<td>14.</td>
<td>Close of Escrow re First Closing.</td>
<td>On or before July 31, 2020 (Outside Date)</td>
<td>Section 201.3</td>
</tr>
</tbody>
</table>

### V. CONSTRUCTION

<table>
<thead>
<tr>
<th></th>
<th>Commencement of Site Grading. Developer shall commence grading of the Site.</th>
<th>No later than August 31, 2020</th>
<th>Section 302.3</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>Completion of Site Grading.</td>
<td>No later than November 30, 2020</td>
<td>Section 302.3</td>
</tr>
<tr>
<td>17.</td>
<td>Developer to Obtain Issuance of Building Permits for the Retail Component.</td>
<td>No later than February 1, 2020</td>
<td>Section 302.3</td>
</tr>
<tr>
<td>18.</td>
<td>Commencement of Building Improvements for the Retail Component. Developer shall commence construction.</td>
<td>No later than February 21, 2021</td>
<td>Section 302.3</td>
</tr>
<tr>
<td>19.</td>
<td>Completion of Construction. Developer shall complete construction of all of the Site Work and Buildings.</td>
<td>No later than April 30, 2022</td>
<td>Definitions</td>
</tr>
<tr>
<td>20. <strong>Release of Construction Covenants for the Retail Component.</strong> City shall issue Release to Developer.</td>
<td>Within 30 Days of Developer Request.</td>
<td>Section 310</td>
<td></td>
</tr>
</tbody>
</table>

**VI. SECOND CLOSING – GROCERY COMPONENT**

| 21. **Second Closing** | On or before July 29, 2022 (Outside Date) | Section 201.3 |
| 22. **Opening of business to the public** | On or before second anniversary date of grocery store lease | Section 201.3 |
I. INTRODUCTION

This Scope of Development sets forth the general criteria for the design and development of the proposed mixed-use commercial retail and residential project. The Scope of Development applies to the Developer’s construction of certain Remedial Improvements (the “Developer Remedial Improvements”) and the Developer’s construction of the Project as set forth in Section 300 and other applicable provisions of the Disposition and Development Agreement (“DDA”). Time frames for carrying out the Scope of Development are set forth in the Schedule of Performance.

As provided for in the DDA, the Project is subject to the environmental condition of the Site, design and land use approvals, and approval of plans and permits by the City. The Project shall conform to the Scope of Development, Beach Boulevard Specific Plan, certified Final Environmental Impact Report for the Beach Boulevard Specific Plan No.2017-00350 (EIR No. 350), and approval of Remedial Action Plan (RAP) including the Title 27 post-closure maintenance requirements by the RWQCB.

II. DEVELOPER RESPONSIBILITIES

a. Project

The Project will be developed in four components as follows, with the Retail and Residential Components to close at first closing, the Grocery Store Component to close at second closing, and the Mixed-Use Commercial Component to become effective through a Ground Lease.

i. Residential Component – 3.14 Acres
ii. Retail Component – 9.2 Acres
iii. Grocery Store Component – 5.8 Acres
iv. Mixed-Use Commercial Component – 11.95 Acres

b. Site Description

The Retail Component and the Residential Component consists of approximately 12.34 acres of real property located at the northeast corner of Beach Boulevard and Lincoln Avenue, with approximately 9.2 acres for the Retail Element and approximately 3.14 acres for the Residential Element.

c. Retail Component

Developer is to develop a high quality commercial retail center totaling approximately 38,100 square feet of retail, consisting of retail and commercial space occupied by nationally or regionally recognized retail tenants, including
restaurants/eateries and other retail shops consistent with the development standards of the Beach Boulevard Specific Plan and any applicable Conditional Use Permits (CUP/CUPs). The initial identity of Retailers that occupy more than 5,000 square feet of gross leasable area shall be approved by the Director of Community and Economic Development of the City of Anaheim (“Director”), acting in his/her reasonable discretion, consistent with the immediately preceding sentence and the definition of “Retailers” set forth in Section 100 of the DDA.

Residential and retail shall be integrated to encourage mixed uses, outdoor dining and community spaces/outdoor plazas. The retail uses shall be oriented in such a way as to create a pedestrian oriented environment with restaurants/eateries, walkways, shared outdoor dining/seating, decorative lighting, plazas, parking, and community gathering spaces. The Retail Component will exhibit a high degree of design details and decorative elements.

Notwithstanding anything to the contrary in this Agreement, Developer shall not be responsible for constructing any improvements on the Project which are the responsibility of the ground or pad tenants under the Leases, subject to the Director’s right to approve the initial identity of Retailers that occupy more than 5,000 square feet of gross leasable area in accordance with the second preceding paragraph and the definition of “Retailers” set forth in Section 100 of the DDA (“Tenant Improvements”).

The site design, building architecture, pedestrian amenities and landscape and lighting treatment of the entire 39 Commons project will be comparable to other first rate, commercial retail centers in Southern California.

d. Residential Component

The development will incorporate a residential element of approximately 3.14 acres (the Residential Component property). Developer is to construct a high quality, for-sale residential project with up to 65 for-sale townhome units and which is consistent with development standards set forth by the Entitlements.

III. GENERAL

Developer shall ensure that the project is designed by a licensed Architect and Landscape Architect. The project scope and design, including finishes, shall be approved by the Director. The Director shall conduct a peer review of the Developer’s proposed Scope of Development.

Developer will submit a precise landscaping plan, signage and lighting plan for the proposed development/project for approval by the Director.

Developer shall construct or cause to be constructed the Developer Remediation Component as referenced in Section 301.2. Developer shall ensure that the construction of the Developer Remediation Component shall be in accordance with the City and Responsible Agencies requirements, Approved RAP, and the Environmental Deed Restrictions.
ATTACHMENT NO. 5

Release of Construction Covenants

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

39 COMMONS PARTNERS, LLC
__________________________
__________________________
_______, California ________
ATTN: ____________________

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the “Release”) is made by the CITY OF ANAHEIM, a California municipal corporation and Charter City (the “City”), in favor of 39 COMMONS PARTNERS, LLC, a ____________________ (the “Developer”), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Disposition and Development Agreement (the “DDA”) dated _________________, 2019 concerning the development of certain real property situated in the City of Anaheim, California as more fully described in Exhibit “A” attached hereto and made a part hereof.

B. As referenced in Section 310 of the DDA, the City is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in Section 100 of the DDA) upon completion of construction of the [Insert Applicable Component] (as defined in Section 100 of the DDA), which Release is required to be in such form as to permit it to be recorded in the Recorder’s office of Orange County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA of the [Insert Applicable Component].

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

NOW, THEREFORE, the City hereby certifies as follows:

1. The [Insert Applicable Component], to be constructed by the Developer have been fully and satisfactorily completed in conformance with the DDA. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the DDA and other documents executed and recorded pursuant to 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, the City has executed this Release this ___ day of ____________________, 201_.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

By: ___________________________

John E. Woodhead, IV, Director of Community and Economic Development

THERESA BASS, CITY CLERK

____________________________
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

____________________________
City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel
DEVELOPER:

__________________________________________
By: __________________________
Name: __________________________
Its: __________________________
ATTACHMENT NO. 6

Design Review

Design review for the Project will be performed by the City, assisted by professional consultants. Review of individual projects occurs at several stages in the design process, with City decisions resulting from the interaction of project development entities, design professionals, and City staff. Design review submissions are to be made to the Community and Economic Development Department first and then to the City’s Planning and Building Department following approval by the Community and Economic Development Department.

Design review focuses attention upon architectural, planning, and urban design issues. In order to facilitate an efficient process which can ensure excellent design quality, both of individual projects and of the total urban environment, this Design Review Process has been established to continuously assess design issues from project inception to completion.

The review process consists of five stages of review with a milestone approval at the end of each stage. The stages correspond to phases of architectural and artistic design practice, from first concepts to final construction. Comparing the stages to architectural design practice, the first milestone is at the end of Basic Concept Design, which can be considered midway through the Schematic Design phase and the point there is an initial schematic site design and architectural elevations. The second milestone is at the completion of the Design Development Drawings phase, the point at which all major design and cost decisions should have been made for the Project. The milestone for the third stage is the end of Final Design, followed by the fourth stage of Construction Documents, prior to the City’s issuance of a Building Permit. The fifth milestone is at the end of construction, prior to the City’s issuance of the Final Certificate of Completion or Certificate of Occupancy.

The scale of drawings for design review submissions are listed for each stage. The drawings may be either 100% or 50% of the listed scale, with the limitation that 9” x 12” be the smallest building image presented in a perspective drawing. Photographic reproductions of drawings may be submitted in addition to the required drawings.

STAGE I: BASIC CONCEPT DRAWINGS REVIEW

The review of the first design submission to the City is the Basic Concept Drawings Review. For architectural design the Basic Concept Drawings Review should correspond approximately to 50% completion of the Project’s Schematic Design phase. The City Community Development Director may waive certain submission requirements upon request by the Developer (not including Planning and Building requirements). The submission requirements, with scales specified for architectural drawings, include the following:

1. Site plan at not smaller than 1:1200 scale (1”=100’).
2. At least two preliminary elevations at not smaller than 1:600 scale (1”=50’).
3. Elevations of major exterior public spaces.
4. Dimensions of site, parking areas, building and setbacks.
The Basic Concept Drawings Review shall be subject to the Resubmission Process.

**STAGE II: DESIGN DEVELOPMENT DRAWINGS REVIEW**

The Design Development Drawings Review submission for architectural design is a set of completed Schematic Design materials, including the required items listed below. The Director may waive certain submission requirements upon request by the Developer (not including Planning and Building requirements). The submission requirements, with scales specified for architectural materials, include:

1. Site plan at not smaller than 1:600 (1”=50’).
2. At least two exterior elevations at not smaller than 1:200 scale.
3. Elevations of major exterior public spaces and tabulation of parking by size and type of space.
4. Dimensions of site, parking areas, buildings, setbacks, and exterior spaces.
5. Material and color selections for exterior walls.
6. A narrative description of the project which includes proposed uses, design concepts, public spaces, urban design materials and landscaping.

The Design Development Drawings Review shall be subject to the Resubmission Process.

**STAGE III: FINAL REVIEW**

Final Review occurs at the end of the Design Development Drawings phase of architectural design, at which time all the major design and cost decisions for a project should have been made. The Director may waive certain submission requirements upon request by the Developer. The design submission for Final Review includes a completed set of the architect’s Design Development materials, which update and supplement the Design Development Drawings requirements:

1. Update Stage II: Design Development Drawings Review site plan requirements.
2. Update Stage II: Design Development Drawings Review elevation requirement.
3. Update Stage II: Design Development Drawings Review requirements for elevations of major exterior public spaces and tabulation of parking spaces.
4. Update Stage II: Design Development Drawings Review dimensions requirement.
6. Project Sign Program.
STAGE IV: DESIGN CHECK

The Design Check is to be performed with the City Public Works Department and Building Division’s Plan Check, and to be used as the basis for issuing a Grading Permit, Right of Way Construction Permit and Building Permit. Improvement Plans and Building Improvement Plans (collectively, “Construction Documents”) for a Project are completed by the Project’s civil engineer and Architect, respectively, and checked by the City for conformance with the Design Development Drawings Review. The Construction Documents shall include other design elements required as part of the conditions of approval of any applicable Conditional Use Permit (“CUP”). Changes from Design Development Drawings Review made during the Construction Documents phase are reviewed and, after the documents are approved, are given to the Building Division for Plan Check approval and issuance of a Building Permit and to the Public Works Department for Plan Check approval and issuance of applicable permits. For a development with multiple, phased construction contracts, several Building Permits might be issued, necessitating a Design Check for each permit.

STAGE V: CONSTRUCTION CHECK

Issuance by the City of the Final Certificate of Completion for the Project is contingent upon a Construction Check and approval by the City. Change orders will be reviewed and site visits made by the design reviewers to facilitate the Construction Check approval of the Project.

Submission requirements for the Construction Check include construction Change Orders which affect the appearance or use of the exterior and interior portions of the Project, in addition to as-built documents. Clarification drawings and text will also be supplied to the City, if requested, to help explain design changes made since the Design Development Drawings Review.
ATTACHMENT NO. 7

Right of Entry Agreement

This RIGHT OF ENTRY AGREEMENT ("Right of Entry") is entered into ________________, 20__, by and between 39 COMMONS PARTNERS, LLC, a ____________________________________ ("GRANTEE"), and the CITY OF ANAHEIM, a California municipal corporation and Charter City ("GRANTOR").

RECITALS

A. GRANTOR, as “City,” and GRANTEE, as “Developer,” entered into that certain Disposition and Development Agreement dated __________, 2019 (the “Agreement”), pursuant to which the GRANTOR agreed, subject to the fulfillment of the conditions precedent to convey the Site to the GRANTEE and GRANTOR agreed, subject to conditions precedent to accept conveyance of the Site and construct the Project thereon. All capitalized terms not defined herein shall have the meaning set forth in the Agreement, unless the context dictates otherwise.

RIGHT OF ENTRY AGREEMENT

1. Grant of Right of Entry. The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, subcontractors, agents and designees, permission to enter upon the Site for the purpose of performing or causing to be performed environmental, soils, and/or topographical tests and surveys ("Investigation"); it being acknowledged and agreed that GRANTEE’s entry upon the Site pursuant to Section 301.2 of the Agreement shall not be subject to the terms and conditions of this Right of Entry.

2. Assumption of Risk. GRANTEE enters the Site and performs or causes to be performed the Investigation, at its own risk and subject to whatever hazards or conditions may exist on the Site.

3. Termination. This Right of Entry shall commence on the date hereof and shall expire on ________________, unless sooner terminated as hereinafter provided. GRANTEE and GRANTOR each shall have the right to terminate this Agreement for either’s sole convenience at any time during the term hereof by giving seven (7) days’ written notice to the other.

4. Duty to Repair, Restore, or Replace. Prior to termination of this Agreement and unless GRANTOR has conveyed the Site to GRANTEE, GRANTEE shall restore the Site to its original condition. Restoration shall include the repair or replacement of any landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by Developer’s employees, contractors, subcontractors, agents and designees.

5. Indemnification and hold harmless. GRANTEE shall, indemnify, defend and hold harmless the GRANTOR, its officers, directors, employees, contractors, subcontractors, agents, and affiliates and volunteers from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the GRANTEE or any person directly or
indirectly employed by or acting as agent for GRANTEE in the performance of this Agreement, except that such indemnity shall not apply to the extent such matters are caused by the gross negligence or willful misconduct of the GRANTOR, its officers, agents, employees or volunteers.

It is understood that the duty of GRANTEE to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve GRANTEE from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

6. Insurance. During the term of this Agreement, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker’s compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability GRANTEE and its agents may have for worker’s compensation.

GRANTEE and its subcontractors and agents shall each obtain at its sole cost and keep in full force and effect during the term of this Agreement general commercial liability insurance issued by an “A:VI” or better rated insurance carrier as rated by A.M. Best Company as of the date that GRANTEE obtains or renews its insurance policies, on an occurrence basis, in which the GRANTOR and its officers, employees, agents and representatives are named as additional insureds with the GRANTEE. GRANTEE shall furnish a certificate of insurance to the GRANTOR prior to the execution of the Right of Entry hereunder, and shall furnish complete copies of such policy or policies upon request by the GRANTOR. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection offered by the policy shall:

(a) Include an endorsement naming the GRANTOR and the City, their officers, employees, agents, representatives and attorneys as additional insureds;

(b) Provide a combined single limit policy for both personal injury and property damage in the amount of $2,000,000, which will be considered equivalent to the required minimum limits;

(c) Bear an endorsement or shall have attached a rider providing that the GRANTOR shall be notified not less than thirty (30) days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium.

The GRANTEE shall also file with the GRANTOR the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers’ Compensation or to undertake self-insurance before commencing any of the work.

The GRANTEE shall comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the execution of the Right of Entry, and continuing
for the duration of this Right of Entry, complete Workers’ Compensation Insurance, and shall furnish a Certificate of Insurance to the GRANTOR before the commencement of construction. The GRANTOR, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of GRANTEE to comply with this section. Every Workers’ Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, the GRANTOR shall be notified, giving the GRANTEE a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium.

7. **Recording** Neither GRANTOR nor GRANTEE shall record this Agreement.

8. **Attorney’s Fees.** If any legal action or proceeding arising out of or relating to this Right of Entry is brought by either party to this Right of Entry, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys’ fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

9. **Notices.** All notices required or permitted under the terms of this Agreement shall be in writing and sent to:

GRANTEE
39 Commons Partners, LLC
c/o Zelman Development Co.
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey

Zelman Anaheim, LLC
515 S. Figueroa St. #1230
Los Angeles, CA. 90071
Attention: Brett M. Foy, Co-President

Greenlaw Partners, LLC
18301 Von Karman Avenue, Suite 250
Irvine, California 92612
Attention: Scott Murray and Rob Mitchell

With copies to:
Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

Cochran Law Group
18301 Von Karman Avenue, Suite 270
Irvine, California 92612
Attention: Thia Cochran, Esq.
10. **Time is of the Essence; Entire Agreement.** Time is of the essence of the terms and provisions of this Right of Entry. This Right of Entry constitutes the entire agreement between GRANTEE and GRANTOR with respect to the matters contained herein, and no alteration, amendment or any part thereof shall be affective unless in writing signed by parties sought to be charged or bound thereby.
APPROVED BY: “GRANTEE”

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

Dated: ______________, 2019

By: ________________________________
Name: ________________________________
Its: ________________________________
“GRANTOR”

CITY OF ANAHEIM,
a California municipal corporation and Charter City

Dated: ______________, 2019

By: ________________________________

Its: ________________________________

THERESA BASS, CITY CLERK

___________________________________
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

___________________________________
City Attorney

APPROVED AS TO FORM:

___________________________________
Stradling Yocca Carlson & Rauth
Special Counsel
## ATTACHMENT NO. 8

### List of Environmental Condition Documents

**Westpac / 39 Commons**

**Environmental Document Inventory**

<table>
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<td>CRWOCB Correspondence, &quot;Proposed Sampling and Analysis Plan for Import of...</td>
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<td>2</td>
<td>CRWOCB Correspondence, &quot;Proposed Sampling and Analysis Plan, Import...</td>
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<td>3</td>
<td>CRWOCB Correspondence, &quot;Approval of Soil Characterization Report...</td>
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<td>Leighton and Associates, Report of Environmental Testing of Imported Soils...</td>
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<td>5</td>
<td>Anaheim Fire Department, UST Removal/Closure Located at 2591 West Lincoln Ave...</td>
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<td>6</td>
<td>Correspondence from the County of Orange Health Care Agency dated August 20, 2008, &quot;Long-Term Monitoring and Operational Plan...&quot;</td>
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<td>Correspondence from the California Regional Water Quality Control Board dated July 20, 2008, &quot;Approval of Sampling and Analysis Plan&quot;</td>
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<td>Pacific Edge Engineering, Inc. &quot;Proposed Sampling and Analysis Plan for...&quot;</td>
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<td>Pacific Edge Engineering, Inc. &quot;Proposed Sampling and Analysis Plan for...&quot;</td>
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<td>13</td>
<td>Pacific Edge Engineering, Inc. &quot;Proposed Sampling and Analysis Plan for...&quot;</td>
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<td>14</td>
<td>Procedure 5 Asbestos Abatement Report, National Econ Corporation, dated June 23, 2008</td>
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<td>Environ International Corporation, Phase I Environmental Site Assessment of Proposed Westgate Center, NE Corner of Beach Blvd and Lincoln Ave, Anaheim, CA. Dated June 23, 2008</td>
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<td>17</td>
<td>CRWOCB letter &quot;Approval of Earthwise Sanitary Site Plan for Rainwater Landfill, Change County&quot;</td>
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<td>Anaheim Redevelopment Agency, Request to approve Earthwise Sanitary Site Plan, Rainwater Landfill, Dated March 25, 2008</td>
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<td>CRWOCB letter &quot;Follow Up to January 9, 2008 Meeting Regarding Davis Mud Pit.&quot;</td>
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<td>Pacific Edge Engineering, Inc. Hazmat Remediation, 220 North Beach Blvd, Anaheim, CA. Dated October 9, 2007</td>
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<td>Shaw Encon/CWT, Inc. Soil Analysis Reports for Sand/Clay and Rebar Underpinning. City Center Excavation, April 14, 2005</td>
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<td>Gilley Enterprises, Inc. Phase I Environmental Assessment, Boas Family Partnership Site 220 and 225 1/2 North Beach Blvd. Eastside of Beach Blvd, North of Lincoln Avenue, Anaheim, California 92804 dated July 10, 2001.</td>
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<td>TRC, Third Quarter 2003 Field Level Monitoring and Groundwater Sampling Report, 78 Station 4614 at 100 N. Beach Blvd, Anaheim, CA. August 26, 2003.</td>
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<td>Anaheim Redevelopment Agency, Letter to Orange County Health Care Agency regarding Westgate Center, Dated September 13, 2002.</td>
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<td>#</td>
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<td>Anaheim Commercial Corridors Redevelopment Project, Lincoln Landfill, dated</td>
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<td>Progress of Earthline Sanitary Test, Westgate Center, dated September 17,</td>
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<td>CRWOCB letter to David Goldthwaite, Anaheim Redevelopment Agency re Requirement</td>
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<td>55</td>
<td>CRWOCB letter to City of Anaheim re Notice of Violation, dated February 15,</td>
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<td>California Integrated Waste Management Board, Closed Disposal Site Inspection</td>
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<td>IT Corporation, Phase I EIS re Anderson Pit Sparks/Rains Landfill, dated June</td>
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<td>the Westgate Retail Center, Anaheim, CA, dated November 14, 2003.</td>
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<td>Center, City of Anaheim, California, dated December 15, 2003.</td>
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<td>LGC, Preliminary Analysis of the Pit Foundation System, Proposed Westgate</td>
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<td>Retail Center, City of Anaheim, California, April 28, 2004.</td>
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<td>67</td>
<td>Disposition and Development Agreement by and between the Anaheim Redevelopment</td>
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E = Electronic Copy on CD  
H = Hard Copy available for review at City Offices
ATTACHMENT NO. 9

Assignment of Loan Pham Leasehold Interest

This ASSIGNMENT OF LOAN PHAM LEASEHOLD INTEREST (the “Assignment”) is hereby made as of ______________, 20__, by and between the City of Anaheim, a California municipal corporation and Charter City (“Assignor”), [_________________________, a ________________] (“Assignee”).

RECORDS

A. Assignor and the 39 COMMONS PARTNERS, LLC, a Delaware limited liability company (“Developer”) have entered into a Disposition and Development Agreement dated _____, 2019 (the “DDA”). [Developer has assigned all of its rights under the DDA with respect to that certain real property referred to in the DDA as the “Retail Property” to Assignee.]

B. Assignor’s predecessor-in-interest ____________, and Loan Pham, an individual (“Landlord”) have entered into a Ground Lease dated as of February 1, 2003 (the “Lease”), pursuant to which Landlord has leased to Assignor a portion of the Retail Property (the “Premises”). A true copy of the Lease has been provided to Assignee.

C. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of its rights under the Lease.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns to Assignee all of its right, title and interest in and to the Lease, and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the Lease, from and after the date hereof. Assignor is hereby relieved of all further liability with respect to the Lease arising on or after the date hereof.

2. Indemnity. Assignee agrees to indemnify and hold Assignor harmless from and against any and all claims, losses, liability and expenses, including attorneys’ fees, arising out of a breach by Assignee of any of its obligations under the Lease on or after the date hereof. Assignor agrees to indemnify and hold Assignee harmless from and against any and all claims, losses, liability and expenses, including attorneys’ fees, arising out of a breach by Assignor of any of its obligations under the Lease prior to the date hereof.

3. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. Governing Law. This Assignment has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California.

5. Further Assurances. Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

ATTACHMENT NO. 9-1

4845-1255-8970v27/022363-0018
NOW, THEREFORE, the parties hereto have executed this Assignment as of the date set forth above.

ASSIGNOR:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: __________________, 20__

By: ____________________________

John E. Woodhead, IV, Director of Community and Economic Development

THERESA BASS, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel
ASSIGNEE:

______________________________,
a ______________________________

By
Its: ____________________________
ATTACHMENT NO. 10

Form of Recognition Agreement

This RECOGNITION AGREEMENT, made as of the _____ day of __________, 201_, by and between LOAN PHAM, an individual, having an address at 4043 Humboldt Dr., Huntington Beach, California 92649 ("Landlord"); [______________], a [________________________], 515 South Figueroa Street, Suite 1230, Los Angeles, California 90071, Attention: and Brett Foy and Paul Casey ("Tenant"); and [______________________________________________], a [________________________], having an address at [______________________________________] ("Subtenant").

R E C I T A L S:

A. Landlord and Anaheim Redevelopment Agency, a public body, corporate and politic (the “Original Tenant”) have entered into a certain Lease Agreement (the “Original Lease”) dated as of February 1, 2003, a short form of which has been recorded in _________________, which demises certain premises (the “Premises”) located in the City of Anaheim, County of Orange, State of California, California, more particularly described on Exhibit A annexed hereto and made a part hereof. The Original Lease was amended by that certain First Amendment to Lease dated _________, 2010 (the “First Amendment”) by and between Landlord and Original Tenant. The Original Lease, as amended by the First Amendment, is hereinafter referred to as the “Lease.” As a result of the dissolution of the Agency and the resulting distribution of its assets, the City is now the successor in interest to the Original Tenant.

B. City and Tenant have entered into that certain Disposition and Development Agreement dated ________, 2019 (as amended, the “DDA”). Pursuant to the DDA, Original Tenant has agreed to assign its leasehold interest in the Premises to Tenant.

C. Section ___ of the First Amendment provides that in the event Tenant subleases all or a portion of the Premises for a term of at least five (5) years, Landlord shall, upon Tenant’s request, execute and deliver a Recognition Agreement among Landlord, Tenant and each such subtenant in the form attached to the Lease, in recordable form.

D. Pursuant to a Sublease dated as of ______________ (the “Sublease”), Tenant has subleased the Premises to Subtenant (the “Subleased Premises”).

E. The parties hereto desire to effectuate the provisions of Section ___ of the First Amendment with respect to the Sublease and the Subleased Premises.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Landlord warrants and represents as follows:

(a) that it is the fee owner of the Premises,
(b) that the Lease is unmodified (except as may be otherwise set forth in Exhibit B annexed hereto, if any) and is in full force and effect,

(c) that the term of the Lease expires on _____________, but is subject to [___] renewal periods of [____] years each and

(d) that, to Landlord’s knowledge, Tenant is not in default under the Lease nor has any event occurred which would after notice to Tenant and the passage of time become a default of Tenant under the Lease.

2. Landlord hereby acknowledges receipt of a copy of, and consents to and approves, the Sublease and all of the terms, covenants and provisions thereof, and agrees that the exercise by Subtenant of any of its rights, remedies and options contained therein shall not constitute a default under the Lease.

3. Landlord shall not, in the exercise of any of the rights arising or which may arise out of the Lease or of any instrument modifying or amending the same or entered into in substitution or replacement thereof (whether as a result of Tenant’s default or otherwise), disturb or deprive Subtenant in or of its possession or its rights to possession of the Subleased Premises or of any right or privilege granted to or inuring to the benefit of Subtenant under the Sublease, provided that Subtenant is not in default under the Sublease beyond the expiration of any applicable notice and cure period.

4. In the event of the termination of the Lease by reentry, notice, conditional limitation, surrender, summary proceeding or other action or proceeding, or otherwise, or, if the Lease shall terminate or expire for any reason before any of the dates provided in the Sublease for the termination of the initial or renewal terms of the Sublease (to the extent such dates are not beyond the corresponding dates in the Lease) and if immediately prior to such surrender, termination or expiration the Sublease shall be in full force and effect, Subtenant shall not be made a party in any removal or eviction action or proceeding nor shall Subtenant be evicted or removed of its possession or its right of possession of the Subleased Premises be disturbed or in any way interfered with, and the Sublease shall continue in full force and effect as a direct lease between Landlord and Subtenant.

5. Landlord hereby waives and relinquishes any and all rights or remedies against Subtenant, pursuant to any lien, statutory or otherwise, that it may have against the property, goods or chattels of Subtenant in or on the Subleased Premises.

6. Any notices, consents, approvals, submissions, demands or other communications (hereinafter collectively referred to as “Notice”) given under this Agreement shall be in writing. Unless otherwise required by law or governmental regulation, Notices shall be deemed given if sent by registered or certified mail, return receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip, postage prepaid (a) to Landlord, at the address of Landlord as hereinabove set forth or such other address or persons as Landlord may designate by Notice to the other parties hereto, (b) to Tenant, at the address of Tenant as hereinabove set forth, or such other address or persons as Tenant may designate by Notice to the other parties hereto, and (c) to Subtenant, at the address of Subtenant as hereinabove set forth or such other address or persons as Subtenant may designate by Notice to the other parties hereto. During the period of any postal strike or other interference with the mails, personal delivery shall be substitute for registered or certified mail. All Notices shall become effective only on the receipt or rejection of same by the proper parties.
7. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

8. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and sublessees.
IN WITNESS WHEREOF, the parties have caused this Recognition Agreement to be executed under seal the date first above written.

**LANDLORD:**


By: ____________________________
Name: __________________________
Title: __________________________

**TENANT:**


By: ____________________________
Name: __________________________
Title: __________________________

**SUBTENANT:**


By: ____________________________
Name: __________________________
Title: __________________________
ATTACHMENT NO. 11

GROUND LEASE

by and between

CITY OF ANAHEIM,
a California municipal corporation and charter city,

“Landlord”

and

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

“Tenant”

Dated as of [date of lease: to come]
ARTICLE 1. LEASE OF THE PROPERTY

1.1 Implementation of the DDA; Memorandum of Ground Lease; Amended Memorandum of Ground Lease

1.2 Lease of the Property; Ownership of Improvements

1.3 Purpose of this Lease

1.4 Recorded Encumbrances

1.5 Memorandum of Ground Lease

ARTICLE 2. DEFINITIONS

ARTICLE 3. TERM

3.1 Term

3.2 Certain Time Extensions

3.3 Early Termination of Lease

ARTICLE 4. RENT

4.1 Rent

4.2 Payment of Rent

4.3 Audit

4.4 Utility Services

4.5 Taxes and Assessments

4.6 Overdue Interest

ARTICLE 5. POSSESSION OF PROPERTY

5.1 Acceptance of Property

5.2 Construction of Improvements

5.3 Ownership of Improvements

5.4 Surrender of Property

5.5 Abandonment

ARTICLE 6. REPRESENTATIONS AND WARRANTIES; MATERIAL ADVERSE CHANGE

6.1 Landlord’s Representations

6.2 Tenant’s Representations

6.3 Tenant Obligation to Notify re Material Adverse Change

ARTICLE 7. CONSTRUCTION OF THE IMPROVEMENTS

7.1 Construction of Improvements

7.2 Alterations

7.3 Construction Cost

7.4 Diligent Prosecution to Completion

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EXHIBIT A-2: LANDFILL MAP
EXHIBIT B-1: LEGAL DESCRIPTION
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EXHIBIT F: LICENSE (OM&M)
GROUND LEASE

This GROUND LEASE ("Lease") dated as of __________, 2019 ("Effective Date") is entered into by and between CITY OF ANAHEIM, a California municipal corporation and charter city ("Landlord"), and 39 COMMONS PARTNERS, LLC, a Delaware limited liability company ("Tenant").

RECORDS

A. Landlord owns certain real property consisting of approximately 11.95 acres situated at the northeast corner of Beach Boulevard and Lincoln Avenue in the City of Anaheim, County of Orange, State of California, as shown on the Site Map attached hereto as Exhibit A (the "Property"). The legal description of the Property will be provided prior to the Commencement Date.

B. Landlord desires to lease the Property to Tenant, and Tenant desires to lease the Property from Landlord, pursuant to the terms and conditions of this Lease.

C. The Property is unimproved and includes a portion of the Landfills.

D. Under this Lease, Tenant shall develop various improvements consistent with this Lease and Governmental Requirements.

E. This Lease is in the vital and best interests of Anaheim, and in accordance with applicable state and local laws and requirements.

F. The foregoing Recitals constitute a substantive part of this Lease.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, Landlord and Tenant agree as follows:

ARTICLE 1. LEASE OF THE PROPERTY.

1.1 Implementation of the DDA; Memorandum of Ground Lease; Amended Memorandum of Ground Lease.

1.1.1 Implementation of DDA. The parties hereto entered into a Disposition and Development Agreement of even date herewith (the "DDA") pursuant to which among other things, there were to be two closings. The “First Closing” involved the fee simple conveyance of certain land immediately adjacent to the Property, referred to in the DDA as the “Residential Component Property” and the “Retail Component Property” and the leasehold conveyance, pursuant to this Lease, of the Property referred to therein as the “Mixed Use Commercial Component Property.” The “Second Closing” contemplates the leasehold conveyance of certain land immediately adjacent to the Property referred to herein and in the DDA as the “Grocery Store Component Property.”

1.1.2 Implementation of the First Closing. A Memorandum of Ground Lease referring to this Lease shall be executed by Landlord and Tenant and recorded in the Official Records concurrently with the First Closing pursuant to the DDA.
1.1.3 Implementation of Second Closing. At such time as the Second Closing occurs under the DDA, the Amended Memorandum of Ground Lease, executed by Landlord and Tenant, shall be recorded in the Official Records at which time the Grocery Store Component Property, shall be included in the definition of the Property for the purposes of this Lease unless Tenant elects to enter into a separate Ground Lease of the Grocery Store Component Property pursuant to Section 201.3.2 of the DDA, in which event a separate memorandum thereof shall be recorded in the Official Records upon the Second Closing.

1.2 Lease of the Property; Ownership of Improvements. Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, on the terms and conditions set forth in this Lease. Subject to the provisions of Section 5.3 hereof, Tenant shall concurrent with the Effective Date of this Lease and thereafter during the Term hereof, be the owner of all Improvements, and shall continue to own such Improvements during such Term. Landlord hereby covenants that Tenant may take possession of the Property under this Lease at any time after the Commencement Date.

1.3 Purpose of this Lease. The purpose of this Lease is to provide for the development, maintenance, management, and operation of the Project (defined below). Tenant shall not occupy or use the Property, nor permit the Property to be occupied or used, nor do or permit anything to be done in or on the Property, in whole or in part, for any other purpose other than the Project during the Term of this Lease pursuant to the terms and provisions of this Lease.

1.4 Recorded Encumbrances. This Lease, the interests of Landlord and Tenant hereunder, and the Property, are in all respects subject to and bound by all of the covenants, conditions, restrictions, reservations, rights, rights-of-way and easements of record.

1.5 Memorandum of Ground Lease. A short form Memorandum of Ground Lease referring to this Lease, substantially in the form attached hereto as Exhibit B and incorporated herein by reference, shall be executed by Landlord and Tenant concurrently herewith and recorded in the Official Records concurrently with the First Closing pursuant to the DDA.

ARTICLE 2. DEFINITIONS.

Capitalized terms used herein are defined where first used in this Lease and/or as set forth in this Article 2. Capitalized terms not defined herein shall have the definition set forth in the DDA.

“Additional Rent” means the additional rent which may be required to be paid by Tenant to Landlord pursuant to Section 4.1.3.

“Affiliate” means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Tenant, which shall include each of the managing members of Tenant’s limited liability company. The term “control,” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.
“Agency” means the former Anaheim Redevelopment Agency, which was a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, Health and Safety Code, Section 33000, et seq., which has been succeeded by the Successor Agency.

“Amended Memorandum of Ground Lease” refers to (i) an Amended Memorandum of Ground Lease with respect to the Grocery Store Component Property to be recorded in the Official Records, as described in the DDA as the Second Closing, in the form attached hereto on Exhibit C-2 and incorporated herein by reference, unless Tenant elects to enter into a separate Ground Lease of the Grocery Store Component Property pursuant to Section 201.3.2 of the DDA in which event a separate memorandum thereof shall be recorded in the Official Records upon the Second Closing, and/or (ii) an Amended Memorandum of Ground Lease that modifies the description of the Property to exclude the Public Use Component Property if the Landlord exercises its Recapture Option pursuant to Article 27 to be recorded in the Official Records, in the form attached hereto on Exhibit C-2 and incorporated herein by reference.

“Anaheim” means the City of Anaheim acting in its governmental capacity.

“Anderson Landfill” means that portion of the Property consisting of approximately 3.4 acres in the location generally depicted on the Landfill Map.

“Approved RAP” is defined in Section 16.1.3.

“Award” means any compensation or payment made or paid for the Total, Partial or Temporary Taking of all or any part of or interest in the Property and/or the Improvements, whether pursuant to judgment, agreement or otherwise.

“Base Rent” is defined in Section 4.1.1, and was paid concurrently herewith.

“Breach” is defined in Article 21.

“Building Permits” means the building permits issued for each Improvement.

“City” means City of Anaheim, acting in its governmental capacity.

“Close of Escrow” is defined in the DDA.

“Commencement” as it related to the construction of Improvements shall be deemed to occur when physical construction commences on the particular Development Parcel pursuant to validly issued building permits.

“Commencement Deadline” shall mean the applicable deadline for Commencement set forth in the Schedule.

“Commencement and Completion Schedule” or “Schedule” is shown in Exhibit E hereto and incorporated herein by reference.

“Commencement Date” means the date upon which the Memorandum of Ground Lease is recorded in the Official Records, which shall occur concurrently with the Close of Escrow for the First Closing under the DDA.
“Complete,” “Completes,” “Completion” or “Completed,” with reference to each Improvement, means the date on which Tenant is eligible to receive a Release of Construction Covenants.

“Completion Deadline” shall mean the applicable deadline for Completion set forth in the Schedule.

“Construction Period” means the period with respect to each Development Parcel from the Commencement Date or the date on which Tenant would be entitled to a Release of Construction Covenants.

“Contractor’s Pollution Liability Insurance” means insurance regarding the Environmental Condition of the Property during the course of construction.

“CPI” means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Subgroup “All Items,” for the Los Angeles-Riverside-Orange County area, 1982 – 84 = 100, or successor or equivalent index in case such index is no longer published. CPI adjustments under this Lease shall commence in the year following the Commencement Date.

“County” means the County of Orange, California.

“Davis Mud Pit” means that portion of the Property consisting of approximately 2.3 acres in the location generally depicted on the Landfill Map.

“DDA” means the disposition and development agreement between the parties hereto to which this Lease is attached approved by the City Council on July 20, 2019, pursuant to Resolution No. ____.

“Default” has the meaning set forth in Article 21.

“Development Parcel” means each parcel leased to by Tenant on which an Improvement is proposed to be constructed, and separately leased to a subtenant.

“Director” means the Director of the Community and Economic Development Department of the City of Anaheim or his designee who shall represent the Landlord in all matters pertaining to this Lease. Whenever a reference is made herein to an action or approval to be undertaken by the Landlord, the Director is authorized to act unless this Lease specifically provides otherwise or the context should otherwise require.

“Effective Gross Income” means the total gross income received by Tenant from the Project, including, without limitation, from the rental of the Improvements, parking income, and other fees such as security deposit forfeits to the extent applied to rents, late fees and application fees determined on a cash basis. At the time Tenant pays the Percentage Rent, Tenant shall deliver to Landlord an income statement itemizing the Effective Gross Income in reasonable detail for the previous Fiscal Quarter, which shall be certified as being true and correct by Tenant. Without expanding the foregoing definition of “Effective Gross Income”, Effective Gross Income shall not include amounts paid to Tenant as (i) reimbursements for a non-sufficient fund charges by banks on subtenants’ checks, (ii) security and/or other deposits paid by subtenants until applied in payment of rents, (iii) water and other utility reimbursements to the extent of utility charges actually paid by Landlord or paid by subtenants.
to utility providers; (iv) operating expense, taxes, insurance expense, and capital expenditure reimbursements collected from tenants to the extent of operating expenses, taxes, insurance expense, and capital expenditures actually paid or incurred by Tenant, (v) condemnation proceeds, (vi) financing proceeds, (vii) proceeds from (A) the sale (but not rental) of personal property, including without limitation, furniture and/or appliances, (B) any assignment of the leasehold estate under this Lease, or (C) any sale of the Property, (viii) any “bonus” or “advance” payments made by any service contract vendor, (ix) settlements or payments in satisfaction of claims for damage to property (but rental loss insurance proceeds actually received by Tenant shall be included in Effective Gross Income), injury or death to persons, faulty construction or maintenance and, in the case of security, cleaning and/or similar deposits, the retention of same to pay for expenses incurred due to a subtenant’s failure to surrender its premises in the condition required by its sublease, (x) real and/or personal property tax refunds and other vendor rebates or adjustments, (xi) any payment to, or reimbursement of, Tenant for any attorneys’ fees and/or collection costs, (xii) any insurance proceeds or settlements (but rental loss insurance proceeds actually received by Tenant shall be included in Effective Gross Income), or (xiii) reimbursements or payments from subtenants in connection with Tenant’s self-insurance (or similar) plan.

“Entitlements” means Beach Boulevard Specific Plan, including the EIR No. 350 (SCH No. 20170411042), and MMRF No. 342.

“Environmental Condition” is defined in Section 16.1.1 hereof.

“Environmental Insurance” is defined in Section 16.7.


“Environmental Liabilities” is defined in Section 16.10.

“Equipment Lease” is defined in Section 11.1.3.

“Exercise Notice” is defined in Article 24.

“Extended Deadline” is defined in Section 3.2(b).

“Extension Payment(s)” has the meaning set forth therefor in Section 3.2(b).
“First Closing” is defined in the DDA.

“Fiscal Quarter” means each three (3) calendar month period ending March 31, June 30, September 30 or December 31.

“Focal Public Art Piece” means the Sun Icon contributed to Anaheim by Disney to be installed by the Tenant and included as part of the Improvements.

“GLA” mean gross leasable area.

“Governmental Requirements” means all applicable laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the State of California, the County, Anaheim, or any other political subdivision in which the Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Landlord, the Tenant or the Property, as may be amended from time to time, including all applicable state and federal labor standards, all applicable Local Codes, all applicable Environmental Laws, all applicable Uniform Codes including, building, plumbing, mechanical and electrical codes, and all other applicable disabled and handicapped access requirements, and further including without limitation, all applicable governmental requirements, including without limitation, to the extent applicable, the payment of prevailing wages in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto, the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Sections 51, et seq.

“Greenlaw” means Greenlaw Partners LLC, a California limited liability company for which Wilbur H. Smith III is the sole managing member.

“Greenlaw Ventures” is Greenlaw 39 Commons, LLC, a California limited liability company, for which Greenlaw is the sole manager and Greenlaw Developer LLC, a California limited liability company, is the sole member.

“Grocery Store Component Property” means the property shown on the Site Map and a Legal Description for which legal description will be provided prior to the First Closing by Developer.

“Grocery Store Component Property Legal Description” means the legal description of the Grocery Store Component Property attached hereto as Exhibit B-2 and incorporated herein by reference.

“Grocery Store” means the Improvement to be constructed on the Grocery Store Component Property, the operator/lessee for which is to be approved by the City, acting in its sole and absolute discretion, as set forth in the DDA.

“Grocery Store Lease” means the lease with the operator lessee of the Grocery Store.

“Hazardous Material” or “Hazardous Materials” means and includes any substance, material, or waste which is or becomes regulated by any local governmental authority, including the County, the Regional Water Quality Control Board, 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,” “acutely hazardous waste,” “restricted hazardous waste,” or “extremely 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) asbestos and/or asbestos containing materials; (vii) lead based paint or any lead based or lead products; (viii) polychlorinated biphenyls; (ix) designated as a “hazardous substance” 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. Section 6901, et seq. (42 U.S.C. Section 6903); (xi) methyl tert-butyl ether; (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601); (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment; and/or (xiv) lead based paint pursuant to and defined in the Lead Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. § 4800, et seq., specifically §§ 4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities below attainment levels identified in one or more of the enactments identified above as Governmental Requirements, including those products and amounts as are customarily used in the construction, maintenance, rehabilitation, management, operation and occupancy of commercial buildings and grounds, or typically used in commercial activities in a manner typical of other comparable commercial developments (e.g., common cleaning solvents, liquid paper), or substances commonly ingested by a significant population living within the Improvements, including without limitation alcohol, aspirin, tobacco and saccharine.

“HUD” means the United States Department of Housing and Urban Renewal.

“HUD Job Creation National Objective” is defined in Section 14.3 hereof.

“Immunity Letter” means the issuance by the RWQCB which provides (i) that the remedial work has been completed in accordance with the Approved RAP, and (ii) that the immunity available under Health and Safety Code Section 33459.3 applies.

“Improvements” means each building constructed on the Property, including, if applicable, the Grocery Store and including all onsite and offsite improvements associated with the improvements, as described in the Building Permits.

“Indemnitees” means the Landlord, Anaheim, and the Successor Agency, as well as the elected officials, officers, employees, lawyers, agents, representatives, and consultants of each.

“Indemnity” or “Indemnify” is defined in Section 16.10.
“Insurance Requirements” means all terms of any insurance policy covering or applicable to the Property or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or the Improvements, or any part thereof, or any use or condition of the Property or the Improvements, or any part thereof.


“Landfill Gas” means gaseous emissions produced as a by-product of organic waste during decomposition which may contain various chemical components in widely fluctuating quantities including without limitation, methane, carbon dioxide, hydrogen sulfide, carbon monoxide, benzene, ethyl-benzene, toluene, vinyl chloride, dichloromethane, trichloroethylene, 1,2, dichloroethylene, tetrachloroethylene and ammonia.

“Landfill Map” means the Landfill Map attached hereto as Exhibit A-2 and incorporated herein by reference.

“Landfills” means collectively the Sparks Landfill, Rains Landfill and the Anderson Landfill, as shown on the Landfill Map.

“Landlord Delay” shall mean any delay in Commencement or Completion of the Improvements due to (i) Landlord’s failure to comply with any provision of this Lease; (ii) Landlord’s failure to comply with the deadlines set forth in this Lease including without limitation the Schedule; (iii) Landlord’s request for materials, finishes or installations in the Improvements which require a longer delivery time or construction period than the construction schedule allows; (iv) Landlord’s changes and requested changes to the Tenant’s construction plans; or (v) any other delays by the Landlord or any other governmental agency including, without limitation, delays in processing Tenant’s permit applications, and reviewing Tenant’s construction plan.

“Landlord Remediation Component” means the ongoing implementation of the OM&M Plan.

“Landlord’s Actual Knowledge” means the actual knowledge of John E. Woodhead IV, with no duty of investigation or inquiry of any kind or nature whatsoever and there shall be no personal liability arising out of the representation or warranties made herein.

“Landlord’s Exercise Notice” is defined in Article 27.

“Lease” means this Ground Lease.

“Leasehold Mortgage Default” is defined in Section 5.4.1.

“Legal Description” means the description of each Component to be provided by the Developer prior to and as a condition to the First Closing attached hereto as Exhibit B-1 and incorporated herein.

“Liability Immunity” is defined in Section 16.3 hereof.
“License Agreement (OM&M)” means an agreement, in substantially the form attached hereto as Exhibit F and incorporated herein by reference, granting a license to the Landlord to enter the Property for the purpose of implementing the OM&M Plan.

“List of Environmental Condition Documents” means the List of Environmental Condition Documents attached as Attachment No. 8 to the DDA.

“Lloyd’s” is defined in Section 16.7.

“Maintenance Standards” are defined in Section 10.1.

“Material Adverse Change” means any event the occurrence of which is reasonably likely to have a material adverse effect on Tenant’s ability to fulfill its obligations under this Lease, including without limitation:

(a) a voluntary or involuntary bankruptcy of Tenant (which is not dismissed within ninety (90) days of institution);

(b) a court order placing Tenant under receivership;

(c) a sale of all or substantially all of the assets held by Tenant other than an assignment of Tenant’s leasehold interest under this Lease;

(d) receipt by Tenant of written notice of any failure by Tenant to comply with Governmental Requirements of whatever kind or nature related to the Project, which violation is likely to have a material adverse effect on the ability of Tenant to perform its duties and obligations under this Lease; and/or

(e) Tenant receives actual notice that Tenant has incurred one or more liabilities, contingent or otherwise, or pending or threatened litigation or any asserted or unasserted claim exists against Tenant with respect to the Project, which would have a material adverse effect on its ability to perform its duties and obligations under this Lease.

“Memorandum of Ground Lease” refers to the Memorandum of Ground Lease to be recorded against the Property in the Official Records, as described in Section 1.1.3, in the form attached hereto as Exhibit C-1 and incorporated herein by reference.

“Mortgage” means a mortgage or deed of trust encumbering this Lease or a New Lease.

“Mortgagee” has the meaning set forth in Section 18.1 of this Lease.

“New Lease” is defined in Section 18.4.

“Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and which said person would interpret as expressing an existing intention of Taking as distinguished from a mere preliminary inquiry or proposal. It includes, without limitation, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking which reasonably defines the extent of the taking.

ATTACHMENT NO. 11-9
“OCHCA” means the Orange County Health Care Agency.

“Official Records” means the Official Records of Orange County, California.

“Operations, Maintenance and Monitoring Plan” or “OM&M Plan” means the plan, approved by OCHCA on June 12, 2009 (Noticed Doc #75), which describes, among other things, the obligation to conduct ongoing monitoring of the landfill gas extraction system, the groundwater and the landfill cap.

“Option” is defined in Article 24.

“Partial Taking” means any taking of the fee title of the Property and/or the Improvements that is not either a Total, Substantial or Temporary Taking.

“Participating Employers” is defined in Section 14.5(a) hereof.

“Percentage Rent Rate” five percent (5%).

“Permitted Transfer(s)” is defined in Section 17.1.1.

“Personalty” means Tenant’s or its subtenants’ trade fixtures, furniture, equipment, appliances, machinery, movable partitions, signs, inventory and other personal property located in or on the Property.


“Polanco Redevelopment Act” means the provisions of California Health and Safety Code Sections 33459 – 33459.8, as same may be amended from time to time.

“Potential Default” means any Breach, condition, or event which, with the lapse of time or the giving of notice, or both, would constitute a Default.

“Project” means the development, maintenance, management and operation of the Improvements, as such improvements may be modified from time to time in accordance with this Lease.

“Property” means that certain real property located in the City of Anaheim, County of Orange, as more particularly described in the Legal Description and depicted on the Site Map. Property shall include the Grocery Store Component Property upon recordation of the Amended Memorandum of Ground Lease unless Tenant elects to enter into a separate Ground Lease of the Grocery Store Component Property pursuant to Section 201.3.2 of the DDA.

“Proposed Transfer Audit Notice” is defined in Section 4.3.1.

“Proposed Transferee” is defined in Section 17.1.3.

“Public Use Component Property” is defined in Article 27.

“Purchase Price” is defined in Article 24 hereof.
“Qualified Professional” means an engineer, geologist or other consultant qualified in accordance with requirements of law to prepare the Operations, Maintenance and Monitoring Plan.

“Rains Landfill” means that portion of the Property consisting of approximately 6.72 acres in the location generally depicted on the Landfill Map.

“Real Property Taxes” is defined in Section 4.5.4.

“Recapture Date” is defined in Article 27.

“Recapture Option” is defined in Article 27.

“Refinance” or “Refinancing” means the refinance or refinancing of any Mortgage that encumbers Tenant’s leasehold interest.

“Release of Construction Covenants” means the document which evidences Tenant’s satisfactory completion of Improvements on each Development Parcel, substantially in the form of Exhibit D and incorporated herein by reference.

“Remedial Action Plan” or “RAP” means that certain plan for the assessment, evaluation, investigation, removal, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gas including methane in, on, under (including in the groundwater), or migrating from the Landfills initially prepared by Shaw Environmental, Inc., dated December 30, 2004, as it may be amended or addended, from time to time, including any new, addended, or amended RAP which addresses Remediation required in connection with specific development proposals.

“Remedial Improvements” means those certain improvements which have been or will be designed and constructed on the Property in implementation of the Remedial Action Plan, including Tenant Remediation Component.

“Remediation” or “Remediate” means the removal, remediation, response action, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gas in, on, under (including underground water) or migrating from the Property in accordance with the RAP. “Remediation” or “Remediate” does not include the operations, maintenance, and monitoring to be performed pursuant to the OM&M Plan.

“Rent” means the Base Rent payable pursuant to Section 4.1.1, the Percentage Rent payable pursuant to Section 4.1.2, and Additional Rent provided for in Section 4.1.

“Responsible Agency” or “Responsible Agencies” means individually or collectively, as applicable, the RWQCB, the Orange County Health Care Agency-Environmental Health Division (Local Enforcement Agency or LEA), the California Integrated Waste Management Board, the South Coast Air Quality Management District, and Anaheim.

“Retailers” is defined in Section 8.3.

“RWQCB” means the California Regional Water Quality Control Board, Santa Ana Region or such other entity asserting jurisdiction over the Remediation of the Property.
“Sale” means a Transfer (other than a Permitted Transfer) of the Property or any portion thereof.

“Sale Proceeds” means the net proceeds, after payment of closing costs, in excess of the Purchase Price as established by Article 24.

“Second Closing” is defined in the DDA.

“Site Map” means the site map of the Property and the Grocery Store Component Property, attached as Exhibit A-1 to this Lease, and incorporated herein by reference.

“Sparks Landfill” means that portion of the Property consisting of approximately 10.68 acres in the location generally depicted on the Landfill Map.

“Substantial Damage” is defined in Section 13.2.

“Substantial Taking” means the taking of so much of the Property and/or the Improvements that the portion of the Property and/or the Improvements not taken cannot be repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, so as to constitute a complete, rentable structure, capable of producing a proportionately fair and reasonable net annual income after payment of all operating expenses, and all other charges payable under this Lease, and after performance of all covenants and conditions required by Tenant by law and under this Lease.

“Successor Agency” means the Successor Agency to the Anaheim Redevelopment Agency pursuant to Health & Safety Code §34170 et seq. Wherever the Successor Agency has an obligation hereunder the Landlord will use its best efforts to either perform such obligation or cause the Successor Agency to perform such obligation.

“Sun Icon Easement” is defined in Section 12.2.

“Taking” means a taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The taking may occur as a result of a transfer pursuant to the recording of a final order in condemnation, a voluntary transfer or conveyance to the taking authority under threat of condemnation, or a transfer while condemnation proceedings are pending. Unless otherwise provided, the taking shall be deemed to occur as of the earlier of (a) the date actual physical possession is taken by the condemnor, or (b) the date on which the right to compensation and damages accrues under the law applicable to the Property and/or the Improvements. “Taking,” as used in this Lease does not include the voluntary dedication by Tenant of any portion of the Property necessary to obtain building permits or to comply with any other applicable governmental rule, regulation or statute.

“Temporary Taking” means a taking of all or any part of the Property and/or the Improvements for a term certain which term is specified at the time of taking. Temporary Taking does not include a taking which is to last for an indefinite period or a taking which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking substantially when such event will occur. If a taking for an indefinite term should take place, it shall be treated as a Total, Substantial or Partial Taking in accordance with the definitions set forth herein.
“Tenant” means 39 Commons Partners, LLC, a Delaware limited liability company, of which Zelman and Greenlaw Ventures are its sole members, and its permitted successors and assigns, as Tenant under this Lease.

“Tenant Remediation Component” means that portion of the Remedial Improvements, which is the responsibility of the Tenant with respect to the Improvements. The Tenant Remediation Component shall include the preparation of, submittal to, and approval from Responsible Agencies and implementation of the following: the Schedule of Activities, workplan and other Remediation work necessary in connection with construction of buildings, pile support system, if any, reconstruction and/or repair as required for components of the remedial improvements previously installed including, Construction Quality Assurance Plan and Requirements, design and construction of the underground utility trench, Vegetative Maintenance Plan and Smart Irrigation Plan, Closure Plan, Financial Assurance Plans, and Deed Restrictions, each as defined in the RAP. The Tenant Remediation Component also includes the Final Cover/Asphalt Cap, as conditionally approved in Noticed Environmental Doc #86, dated February 10, 2010 and such additional obligations as may be imposed by RWQCB in connection with a revised RAP admission special development proposal.

“Tenant’s Actual Knowledge” means the actual knowledge of Brett Foy and Rob Mitchell, with no duty of investigation or inquiry of any kind or nature whatsoever, and there shall be no personal liability on the part of Brett Foy or Rob Mitchell arising out of any representations or warranties made herein.

“Term”, unless the context otherwise requires, has the meaning set forth in Article 3 of this Lease.

“Title 27” means Title 27 of the California Code of Regulations, Division 2.

“Total Taking” means the taking of the fee title to all of the Property.

“Transfer” is defined in Section 17.1.

“Transferee Criteria and Qualifications” is defined in Section 17.1.3.

“Zelman” means Zelman Anaheim, LLC, a Delaware limited liability company for which Brett Foy and Paul Casey are its sole members.

ARTICLE 3. TERM.

3.1 Term. The term of this Lease (“Term”) shall fifty-five (55) years and shall commence on the Commencement Date and shall end at 11:59 p.m. on the day immediately preceding the fifty-fifth (55th) anniversary of the Commencement Date, unless earlier terminated pursuant to this Lease.

3.2 Certain Time Extensions. Tenant may, at its option, extend the Commencement Deadline and the related Completion Deadline for up to one additional one-year period, as follows:

(a) Tenant shall notify Landlord in writing not fewer than sixty (60) days prior to the Commencement Deadline that Tenant elects to extend the Commencement Deadline and related Completion Deadline. Within twenty (20) days after receipt of such notification from Tenant, Landlord shall notify Tenant as to whether Tenant is in Breach or Default of this Lease and whether or not the Director is satisfied, in his/her sole and absolute discretion, that significant progress is being
made toward leasing and construction. No extensions shall be allowed in the event Tenant is in Breach or Default of this Lease or the Director is not satisfied with the progress of the Tenant toward leasing and construction; provided, however, if Tenant cures such Breach or Default within the applicable cure period under Article 21, then the extension shall be allowed.

(b) If Landlord notifies Tenant that Tenant is not in Breach or Default under this Lease, or if Landlord fails to notify Tenant by the time set forth above, or if Tenant cures such Breach or Default, then Tenant may extend the Commencement Deadline and related Completion Deadline for a period of one (1) year (the “Extended Deadline”) by remittance to Landlord, not less than thirty (30) days prior to the Commencement Deadline of Two Hundred Thousand Dollars ($200,000.00) (the “Extension Payment”) for the one-year extension.

(c) If Tenant makes the Extension Payment to Landlord in accordance Section 3.2(b), such Extension Payment(s) shall constitute Rent hereunder. If Tenant fails to timely complete the Improvements within the Extended Deadline, the Extension Payment shall be retained by the Landlord without offering a deduction provided, however, in the event that Tenant timely Completes the Improvements within the Extended Deadline, the Extension Payment shall be returned to Tenant without interest.

3.3 Early Termination of Lease. In the event Tenant has not Commenced the Improvements by the times set forth in the Commencement and Completion Schedule, (as it may be extended pursuant to Section 3.2) and Landlord has delivered written notice of its election to terminate the Lease pursuant to this Section 3.3 prior to the date that Tenant actually Commences Construction of such Improvements, then Tenant shall not be in Breach or Default of this Lease, but Landlord shall, as Landlord’s sole and exclusive remedy at law or in equity, have the unconditional right to terminate this Lease, free and clear of all liens and encumbrances placed on the Property by Tenant or as a result of Tenant’s activities at the Property as to the Development Parcel with respect to which Construction of Improvements has not Commenced. The Commencement Deadlines and Completion Deadlines may be extended only pursuant to Section 3.2(b) above, or as a result of Landlord Delays and shall not be subject to extensions as a result of force majeure pursuant to Section 23.1; provided, however, the Completion Deadlines shall be extended so long as Tenant has Commenced and is diligently prosecuting construction to Completion. Further, any cure by a Mortgagee of a failure to Complete the Improvements in accordance with the Schedule shall be subject to the additional cure period afforded to Mortgagees pursuant to Section 18.2.1. In the event Landlord terminates this Lease pursuant to this Section 3.3, then (i) Landlord shall keep any and all Extension Payments received by Landlord pursuant to this Lease (ii) Tenant shall be responsible, at Tenant’s sole cost and expense, for delivering the Property to Landlord with title in the condition required by Section 5.4.1, and (iii) the parties shall have no further obligations to each other.

ARTICLE 4. RENT.

4.1 Rent.

4.1.1 Base Rent. Prior to or concurrently with the Commencement Date, Tenant has paid to Landlord an amount equal to Sixty Six Thousand Dollars ($66,000), and shall pay Sixty Six Thousand Dollars ($66,000) on each anniversary date of the Commencement Date for the first five (5) years, then One Hundred Thirty-Two Thousand Dollars ($132,000) per year for the next five years, thereafter rent will increase at the rate of 12.5% for any five year period during the Term (“Base Rent”). Notwithstanding the foregoing, if Tenant elects to enter into a separate Ground Lease of the Grocery
Store Component Property pursuant to Section 201.3.2 of the DDA, then the Base Rent payable under this Lease shall be reduced by the Base Rent payable for the Grocery Store Component Property. The Base Rent payable for the Grocery Store Component Property shall equal the Base Rent payable pursuant to the first sentence of this Section 4.1.1 multiplied by a fraction, the numerator of which is the number of square feet of land that comprises the Grocery Store Component Property, and the denominator of which is the aggregate number of square feet of land that comprises the Property and the Grocery Store Component Property. In addition, the Base Rent shall be adjusted in accordance with Article 27 if Landlord exercises its Recapture Option with respect to the Community Center Component Property.

4.1.2 Percentage Rent. In addition to Base Rent, Tenant shall pay to Landlord, as “Percentage Rent”, an amount equal to the Percentage Rent Rate multiplied by the Effective Gross Income during each calendar year of the Lease Term. Tenant shall pay Percentage Rent within ninety (90) days following the end of each calendar year. Within ninety (90) days after the close of each calendar year, Tenant shall furnish Landlord with a written statement, certified by an officer of Tenant to be correct, of Effective Gross Income during said calendar year and shall accompany each annual statement with a payment of the Percentage Rent due for such calendar year.

4.1.3 Additional Rent. In addition to the Base Rent and Percentage Rent required by Section 4.1.1 and 4.1.2 above, respectively, Tenant shall also pay to Landlord as “Additional Rent” under this Lease any amounts required to be paid by Tenant to Landlord pursuant to Section 20.2 and Extension Payments paid under Section 3.2(b).

It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property or the Improvements thereon which may arise or become due during the Term, and which, except for execution hereof, would or could have been payable by Landlord. The Base Rent, Percentage Rent, the Additional Rent, and, except as set forth in Section 3.2 the Extension Payment(s) (if any), shall be retained by Landlord as its property without regard to whether this Lease remains in effect for the full Term.

4.2 Payment of Rent. All Base Rent, Percentage Rent, Additional Rent and Extension Payments (referred to collectively as “Rent”) that become due and payable pursuant to this Lease shall be paid to Landlord at the address listed in Section 26.1.1 or such other place as Landlord may from time to time designate by written notice to Tenant without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as provided in Article 16 with respect to the implementation of the OM&M, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Property, except as expressly set forth in this Lease.

4.3 Audit.

4.3.1 Right to Audit. Tenant shall keep full and accurate books of account, records and other pertinent data with respect to Tenant’s calculation of Effective Gross Income and/or Sales Proceeds. Such books of account, records, and other pertinent data shall be kept for a period of three (3) years after the end of each calendar year, and shall be made available for review or audit by the Landlord or its designees upon providing ten (10) day’ written notification to Tenant. Landlord shall
be entitled within three (3) years after the end of each Tenant fiscal year to inspect and examine all of Tenant’s books of account, records, and other pertinent data with respect to Tenant’s calculation of Effective Gross Income. Tenant shall cooperate fully with Landlord in making the inspection. Landlord shall also be entitled, also within three (3) years after the end of each calendar year, at Landlord’s cost and expense, to an independent audit of Tenant’s books of account, records, and other pertinent data with respect to Tenant’s calculation of Effective Gross Income. In the event a Transfer is proposed by Tenant, Tenant may request in writing that Landlord conduct an audit pursuant to this Section, provided that Tenant shall pay Landlord’s reasonable costs and expenses, including staff time, incurred in conducting such audit. Landlord shall determine whether to conduct such audit in its sole and absolute discretion and shall notify Tenant of Landlord’s decision within thirty (30) days following receipt of Tenant’s written request (“Proposed Transfer Audit Notice”). If Landlord elects to conduct an audit under this Section, Landlord shall have ninety (90) days to complete the audit; provided that such time period shall not commence until Tenant provides Landlord with all materials and information necessary to properly conduct the audit. Following the earlier to occur of (a) Landlord’s failure to notify Tenant in writing of Landlord’s election to conduct such audit within thirty (30) days of Landlord’s receipt of the Proposed Transfer Audit Notice, (b) the expiration of ninety (90) days following Landlord’s receipt of the Proposed Transfer Audit Notice, as such period shall be extended until Tenant provides Landlord with all materials and information necessary to properly conduct the audit, or (c) Landlord’s notification to Tenant within thirty (30) days of Landlord’s receipt of the Proposed Transfer Audit Notice that Landlord waives its right to conduct the audit, Landlord shall not have the right to request books of account, records and other pertinent data under this Section for periods (i) prior to the date of the audit, if conducted by Landlord, and if no audit is performed, then (ii) prior to the effective date of the approved Transfer. Following the date of the audit or the effective date of the approved Transfer, as applicable, Landlord shall have full audit rights under this Section with respect to the then-current Tenant entity’s books of account, records and other pertinent data with respect to Tenant’s calculation of Effective Gross Income.

4.3.1.1 After Foreclosure. After the foreclosure of a Mortgage, acceptance by a Mortgagee of an assignment or deed in lieu of foreclosure, or appointment of a receiver at the request or demand of a Mortgagee, the Mortgagee shall have no obligation to produce Tenant’s books and records for the periods prior to the foreclosure or appointment of the receiver.

4.4 Utility Services. Tenant shall pay or cause to be paid all charges for all public utility services rendered to or in connection with the Property or the Improvements, or any part thereof, and shall comply with all contracts executed by Tenant relating to any such utility services, and will do all other things required for the maintenance and continuance of all such services throughout the Term of this Lease.

4.5 Taxes and Assessments.

4.5.1 Covenant to Pay Taxes and Assessments. Tenant shall pay prior to delinquency all Real Property Taxes (as defined in Section 4.5.4) levied against Tenant’s ground lease interest in the Property during the Term of this Lease, subject to Tenant’s right to contest same in good faith and/or seek any property tax exemptions, except as provided in Section 4.5.3. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid or that an exemption from such taxes has been obtained. If Tenant shall fail to pay any such taxes, Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord within ten (10) days after demand from Landlord together with interest at the rate set forth in Section 4.6, as Additional Rent.

ATTACHMENT NO. 11-16
4.5.2 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Property. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord hereby notifies Tenant that by entering into this Lease, a possessory interest subject to assessment and collection of real property taxes may be created. Tenant or other party in whom the possessory interest is vested may be subject to the payment of real property taxes levied on such interest. If possessory interest taxes are assessed, Tenant agrees it is responsible for payment thereof and Landlord has no obligation or liability of any kind or nature relating to payment of property taxes. Tenant acknowledges that Landlord is a tax-exempt public entity and no property taxes will be or are legally assessable against its interest in the Property.

4.5.3 No Exemption from Possessory Interest Tax. Tenant shall not seek exemption from, or contest the payment of, assessments and the collection of property taxes pursuant to Revenue and Taxation Code Section 214, or any successor statute.

4.5.4 Definition of Real Property Tax(es). As used herein, the term “Real Property Tax(es)” shall include any form of real estate tax or assessment (including, without limitation, on possessory interests), general, special, ordinary or extraordinary, and any license fee (except Landlord’s business license fee), commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Property or any interest (including, without limitation, possessory interests) therein by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, as against any legal or equitable interest of Landlord or Tenant in the Property or in the real property of which the Property is a part, as against Landlord’s right to rent or other income therefrom, and as against Landlord’s business of leasing the Property. The term “Real Property Tax(es)” shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinafore included within the definition of “Real Property Tax(es),” or (ii) the nature of which was hereinbefore included within the definition of “Real Property Tax(es),” or (iii) which is imposed as a result of a transfer, either partial or total, of Landlord’s interest in the Property or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer, or (iv) which is imposed by reason of this lease transaction, any modifications or changes hereto, or any transfers hereof. Notwithstanding the foregoing, if the Landlord sells or otherwise transfers the Property to a person or entity that is not a tax-exempt public entity, then Real Property Tax(es) shall not include Landlord’s income taxes, profit taxes, business taxes, gross receipts taxes, business licenses fees and taxes, capital levy taxes, inheritance taxes, estate taxes, succession taxes, transfer taxes, recordation taxes, gift taxes, franchise taxes, corporation taxes, documentary stamp taxes, mortgage lien taxes, transfer gains taxes, or recording fees.

4.5.5 Personal Property. Tenant shall pay prior to delinquency all taxes assessed against and levied upon all Personality of Tenant contained in the Property. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

4.5.6 Apportionment. If any of Tenant’s said personal property shall be assessed with Landlord’s real property (other than the Property), first Tenant shall advise the County of Orange Tax Assessor and Tax Collector of the same in writing, and Tenant shall pay Landlord the taxes attributable to Tenant not later than the later of (a) ten (10) days after receipt of a written statement setting forth the taxes applicable to Tenant’s property or (b) fifteen (15) days prior to the date said taxes are due and payable.
4.6 **Overdue Interest.** Any amount due to Landlord, if not paid when due and on or before expiration of the period for cure as set forth herein, after Landlord’s delivery of notice thereof to Tenant, shall bear interest from the date due until paid at the lower of: (a) the reference or prime rate of Bank of America, N.A., in effect from time to time plus three percent (3%); or (b) the highest rate of interest allowed under applicable usury law.

**ARTICLE 5. POSSESSION OF PROPERTY.**

5.1 **Acceptance of Property.** Tenant hereby accepts the Property in its “as-is” condition. Tenant acknowledges and agrees that Tenant has had sufficient opportunity to inspect the Property and has inspected the Property prior to the Commencement Date.

5.2 **Construction of Improvements.** Tenant shall Commence and Complete construction of the Improvements as provided in Article 7.

5.3 **Ownership of Improvements.** Unless otherwise provided herein, during the Term of this Lease title to all Improvements, now existing, to be constructed, or later made, on the Property are and shall be vested in Tenant as set forth in Article 11 hereof.

5.4 **Surrender of Property.**

5.4.1 **Expiration or Termination.** Tenant agrees that on the expiration or earlier termination of the Term, whether by reason of Default or otherwise, the leasehold estate hereby granted to Tenant shall be terminated and forfeited and shall revert to Landlord, its successors and assigns, and all Improvements on the Property shall become the property of Landlord, its successors and assigns, free and clear from any liens or claims whatsoever (other than non-monetary liens previously approved or otherwise accepted in writing by Landlord), in their “AS IS” condition, without further compensation therefor from Landlord to Tenant or any other person. Following any such expiration or termination, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed, or other document required by a reputable title company, conveying all Tenant’s right, title, and interest in and to the Property and Improvements to Landlord. In the event Tenant receives a written default notice relating to or arising from any mortgage, deed of trust or security instrument secured by the leasehold interest granted hereunder or Tenant’s interest in the Improvements (a “Leasehold Mortgage Default”), then Tenant shall provide written notice of such alleged default to the Landlord within five (5) days of receipt thereof. In the event of a Leasehold Mortgage Default and during the continuance thereof, and upon the earlier expiration or termination of the Term, Tenant hereby irrevocably appoints Landlord as Tenant’s agent and attorney-in-fact (such agency being coupled with an interest), and as such agent and attorney-in-fact Landlord may, without the obligation to do so, in Tenant’s name, or in the name of Landlord, prepare, execute and file or record such statements, applications and other documents necessary to create, perfect or preserve any of Landlord’s interests and rights in or to the Property and any of the Improvements, and, upon the earlier expiration or termination of the Term (including termination due to an Event of Default hereunder after expiration of the applicable cure periods as set forth in Article 21 hereof) take any other action required by Tenant hereunder.

5.4.2 **Condition.** On expiration or earlier termination of the Term and in furtherance of the provisions relating to surrender of the Property set forth in Section 5.4.1 above, Tenant shall peaceably and quietly leave and surrender the Property and the Improvements to Landlord in their “AS IS” condition and repair. Tenant shall leave in place and in their “AS IS” condition and repair, all fixtures and machinery; except Tenant shall have the right to remove any Personalty and other
Personalty that Tenant shall have installed in accordance with Section 11.1.2, in which case Tenant shall repair any damage to the Property or Improvements caused by such removal.

5.4.3 Delivery of Documents. Contemporaneously with the expiration or earlier termination of the Term and subject to the provisions of Sections 5.4.1 and 5.4.2 hereof, Tenant shall immediately deliver to Landlord the following:

(a) Such documents, instruments and conveyances as Landlord may reasonably request to enable Landlord’s ownership of the Property and the Improvements to be reflected of record, including, without limitation, a quitclaim deed in recordable form to the Property and the Improvements.

(b) Tenant shall certify in writing to Landlord that no liens or other encumbrances affect title to the Property which have been created by Tenant’s acts or omissions, created by any third party claiming under or through Tenant, or created by the performance of any labor or the furnishing of any materials, supplies, or equipment by or for Tenant, except as may have been (i) in existence as of the Commencement Date or (ii) caused or expressly permitted in writing by Landlord or (iii) governmental liens not caused or expressly permitted by Tenant.

(c) All construction plans, as-builts, surveys, permits, existing contracts for services, maintenance, operation, and any other documents relating to use, operation, management, and maintenance of the Improvements as may be in effect and in the possession of Tenant at the time and from time to time thereafter.

(d) All documents and instruments required to be delivered by Tenant to Landlord pursuant to this Section shall be complete, legible, originals or true copies, and shall otherwise be in a form reasonably satisfactory to Landlord.

5.5 Abandonment. Tenant shall not abandon or vacate the Property or the Improvements at any time during the Term. If Tenant shall abandon, vacate or otherwise surrender the Property or the Improvements, or be dispossessed (other than dispossession as the result of a Substantial Taking or a Taking) thereof by process of law or otherwise, in addition to any other remedy available on the part of Landlord, any of Tenant’s property left in, upon or about the Property or the Improvements (except for underground storage tanks, if any) shall, at Landlord’s option, be deemed to be abandoned and shall become the property of Landlord. The appointment of a receiver pursuant to a Mortgagor’s exercise of its rights under a Mortgage, or the foreclosure of a Mortgage, shall not be a Breach under this Section.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES; MATERIAL ADVERSE CHANGE.

6.1 Landlord’s Representations. Landlord represents and warrants to Tenant, as of the Commencement Date, as follows:

6.1.1 Quiet Enjoyment. Tenant shall at all times during the Term of this Lease have the right to peacefully and quietly have, hold, occupy and enjoy the Property, subject only to the terms of this Lease, without hindrance or molestation from Landlord or any other person claiming by, through or under Landlord or any predecessor in title. Except as disclosed to Tenant, there are no agreements,
restrictions, covenants, encumbrances or easements affecting the Property which will diminish any of Tenant’s rights or increase any of Tenant’s obligations under this Lease.

6.1.2 Conflict with Other Obligations. To Landlord’s Actual Knowledge, neither the execution of this Lease nor the performance of the obligations herein will conflict with, or breach any of the provisions of any law, bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which Landlord or the Property may be bound.

6.1.3 Authority. This Lease has been duly approved by the governing board of the Landlord and the individuals executing this Lease on behalf of the Landlord have been duly authorized to do so.

6.1.4 Bankruptcy. Landlord is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for Landlord to be able to transfer an interest in the Property.

6.1.5 Litigation. Except as described in Article 16, to Landlord’s Actual Knowledge there is no litigation, arbitration or other legal or administrative suit, action, proceeding or investigation of any kind pending or threatened in writing against or involving Landlord relating to the Property or any part thereof, including, but not limited to, any condemnation action relating to the Property or any part thereof.

6.1.6 Governmental Compliance. Except as described in Article 16, Landlord has not received any notice from any governmental agency or authority alleging that any portion of the Property is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation and to Landlord’s Actual Knowledge, the Property is currently in compliance with all Governmental Requirements applicable to the use and operation of the Property. Landlord has not received written notice from any applicable governmental authority of any, and to Landlord’s Actual Knowledge there is no, pending or threatened condemnation action with respect to the Property.

6.1.7 Right to Possession. No person, firm, partnership or corporation has or will have the right to possess the interest of Tenant in the Property, or any portion of it, as of the Commencement Date.

6.1.8 No Commitments. Except as described in Article 16, Landlord has not made any commitments to any governmental authority, utility company, school board, church or other religious body, or any homeowners’ association or any other organization, group or individual, relating to the Property that would impose an obligation upon Tenant to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off of the Property which, as of the Commencement Date, will not have been satisfied in full or terminated.

6.1.9 Outstanding Agreements. To Landlord’s actual knowledge, there are no outstanding agreements (written or oral) pursuant to which Landlord has agreed to sell or has granted an option or right of first refusal or first or last offer to lease the Property or any interest therein.

6.1.10 Survival of Certain Representations. The representations and warranties set forth in this Section 6.1 shall survive the Commencement Date. During the entire Term of the Lease,
within ten (10) business days following a written request from Tenant, Landlord shall either re-affirm in writing the material truth and accuracy of the representations and warranties set forth in this Section 6.1 or identify any material inaccuracies of such representations and warranties. The fact that a representation or warranty contained in this Section 6.1 has become inaccurate or misleading shall not, in and of itself, constitute a Breach under this Lease by Landlord, however, (a) failure to notify Tenant of material inaccuracies in these representations and warranties within ten (10) business days of Tenant’s request for such information, subject to delivery of notice and expiration of the cure period provided hereunder, and (b) any overt material misrepresentation by Landlord relating to such representations and warranties (without notice or opportunity to cure having been provided by Tenant) shall each constitute a Landlord Default hereunder.

6.2 Tenant’s Representations. Tenant represents and warrants to Landlord, as of the Commencement Date, as follows:

6.2.1 Tenant is a limited liability company duly organized, validly existing, and formed under the laws of Delaware, and in good standing under the laws of the State of California that has the power and authority to own property and carry on business as is now being conducted.

6.2.2 Tenant has full power and authority to execute and deliver this Lease, the Memorandum of Ground Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

6.2.3 This Lease and any other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Tenant enforceable against it in accordance with their respective terms, subject to application of laws relating to bankruptcy, insolvency, or other laws affecting the enforcement generally of creditors’ rights and remedies.

6.2.4 To Tenant’s Actual Knowledge, Tenant is not in default under any law or regulation or under any order of any federal, state, or local court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against or affecting Tenant or the Property, at law or in equity, before or by any federal, state, or local court, board, commission or agency whatsoever which might, if determined adversely to Tenant, materially affect Tenant’s ability to perform its obligations hereunder.

6.2.5 Tenant has examined the Property and acknowledges that it hereby accepts possession of the Property in its “AS IS” condition, with all faults and defects, including, without limitation, any physical condition or environmental condition of the Property.

6.2.6 All documents, materials and information provided by Tenant to Landlord relating to Tenant’s qualifications, financial strength, and ability to perform its obligations hereunder are true, correct and complete in all material respects as of their respective dates and no Material Adverse Change has occurred or, to Tenant’s Actual Knowledge, is reasonably likely to occur that would make any such documents, materials or information incorrect, incomplete, or misleading in any material respect.
6.2.7 Survival of Certain Representations. The representations and warranties set forth in this Section 6.2 shall survive the Commencement Date. During the entire Term of the Lease, within ten (10) business days following a written request from Landlord, Tenant shall either re-affirm in writing the material truth and accuracy of the representations and warranties set forth in this Section 6.2 or identify any material inaccuracies of such representations and warranties. The fact that a representation or warranty contained in this Section 6.2 has become inaccurate or misleading shall not, in and of itself, constitute a Breach under this Lease; however, (a) failure to notify Landlord of material inaccuracies in these representations and warranties within ten (10) business days of Landlord’s request for such information, subject to delivery of notice and expiration of the cure period provided hereunder, and (b) any overt material misrepresentation by Tenant relating to such representations and warranties (without notice or opportunity to cure having been provided by Landlord) shall each constitute a Default hereunder. The provisions of this paragraph shall be of no further force or effect upon transfer of title pursuant to a foreclosure, assignment in lieu of foreclosure, or execution of a New Lease.

6.3 Tenant Obligation to Notify re Material Adverse Change. During the entire Term hereof, Tenant shall have the ongoing obligation to promptly (but in no event later than ten (10) business days following Tenant’s Actual Knowledge of a Material Adverse Change) inform Landlord (in writing) of the occurrence of any Material Adverse Change. The provisions of this Section 6.3 shall be of no further force or effect upon a foreclosure, deed in lieu of foreclosure, or execution of a New Lease.

ARTICLE 7. CONSTRUCTION OF THE IMPROVEMENTS.

7.1 Construction of Improvements. Tenant shall Commence and Complete construction of the Improvements in accordance with the Commencement and Completion Schedule and in accordance with all Governmental Requirements, the Entitlements and the Building Permits.

Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable Governmental Requirements, including all applicable state labor standards and federal prevailing wage laws (including without limitation, if applicable, provisions for payment of prevailing wages in connection with all construction of the Improvements, the Local Code and any other zoning and development standards, building, plumbing, mechanical and electrical codes that are applicable, and all other provisions of the Local Code, and the Fair Housing Act, 42 U.S.C. Section 3601 et seq. (and 24 C.F.R. Part 100), the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq. Tenant, including but not limited to its contractors and subcontractors, shall, if applicable, comply with Labor Code Section 1720, et seq., and its implementing regulations, regarding the payment of prevailing wages (the “State Prevailing Wage Law”) and, if applicable, federal prevailing wage law (“Federal Prevailing Wage Law” and, together with State Prevailing Wage Law, “Prevailing Wage Laws”) with regard to the construction of the Improvements, if and to the extent such sections are applicable to the development of the Improvements. Tenant shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Laws. Tenant hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold Landlord and its officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Tenant’s acts or omissions pertaining to the compliance with the Prevailing Wage Laws for the Improvements.
Without limitation as to Section 9.2 of this Lease, Tenant shall indemnify, protect, defend and hold harmless Landlord and its officers, employees, contractors and agents, with counsel reasonably acceptable to Landlord, 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, and/or operation of the 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 Tenant 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/or federal prevailing wages); (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 Tenant 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 of the Improvements, including, without limitation, any and all public works (as defined by applicable law), Tenant shall bear all risks of payment or non-payment of prevailing wages 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 7.1, 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 Lease and shall continue after completion of the construction and development of the Improvements by Tenant.

7.2 Alterations. Subject to approval by Anaheim, if required by applicable law, Tenant may from time to time, at its sole expense, demolish, replace, rebuild and make any improvements, additions and other alterations to the Property (collectively, “Alterations”) which Tenant determines to be necessary, desirable or beneficial in Tenant’s sole discretion, including without limitation, constructing any buildings or other improvements on the Premises, and razing or destroying any building and any other improvements presently or in the future located on the Premises. Tenant shall timely pay any obligation incurred by Tenant with respect to any such Alterations that could become a lien against the Property and shall defend, indemnify and hold Landlord harmless in connection therewith.

7.3 Construction Cost. Tenant shall bear the entire and sole cost of constructing the Alterations, including all fees and mitigation measures.

7.4 Diligent Prosecution to Completion. Once the work is begun, Tenant shall, with reasonable diligence, prosecute the Alterations to completion. All Alterations shall be constructed and completed in a good and workmanlike manner, shall conform to the general design standards of the Ground Lease and shall comply with all applicable Governmental Requirements.

7.5 Right of Access. During normal construction hours and subject to the rights of subtenants of the Property, upon at least three (3) business days’ prior written notice to Tenant, representatives of Landlord shall have the reasonable right of access to the Property without charges or fees for the purpose of inspecting the work of the Alterations; provided, however, that such representatives shall present and identify themselves at Tenant’s construction office, be accompanied by a representative of Tenant while on the Property and obey Tenant’s, or its contractor’s, safety rules and regulations. Landlord shall deliver written notice of the identity of its representatives to Tenant before such representatives enter the Property. Landlord hereby indemnifies and holds Tenant, and its contractors, subcontractors, agents, representatives and employees, and the Property, harmless from and against any loss, cost, damage or liability, including, without limitation, attorneys’ fees, which
results from the exercise by Landlord, or any party acting under Landlord’s authority, of the rights granted by this Section 7.5.

7.6 **Governmental Approvals.** If requested by Landlord in writing, Tenant covenants and agrees to deliver to Landlord conformed copies (and certified copies of all recorded instruments) of all governmental approvals and permits obtained by Tenant for the construction, alteration or reconstruction of any Alterations upon the Property, including required permits and approvals issued by the planning, building and permitting divisions of Anaheim. In no event shall Tenant commence construction of any Alterations pursuant to the provisions of this Article 7 until such time as Tenant shall have obtained all necessary governmental approvals and permits to so construct such Alterations, including required permits and approvals issued by the planning, building and permitting divisions of Anaheim.

7.7 **Landlord’s Right to Discharge Lien.** If Tenant does not cause to be recorded the bond described in California Civil Code Section 8424 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been entered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic’s, materialmen’s, contractor’s, or subcontractor’s lien claim, and if Tenant fails to stay the execution of the judgment by lawful means or to pay the judgment, Landlord shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Tenant shall reimburse Landlord for all sums paid by Landlord under this Section, together with all Landlord’s reasonable attorneys’ fees and costs, plus interest on those sums, fees, and costs from the date of payment until the date of reimbursement at the rate set forth in Section 4.6.

7.8 **Notice of Non-Responsibility.** Tenant shall provide Landlord with prior written notice of not less than fifteen (15) days before commencing construction of any structural alteration of the Alterations, or any non-structural alteration which will cost more than Fifty Thousand Dollars ($50,000.00), and shall permit Landlord to record and post appropriate notices of non-responsibility on the Property. The foregoing dollar amount limitation shall be increased each calendar year by the corresponding percentage increase in CPI.

7.9 **Release of Construction Covenants.** Promptly after Completion of Improvements with respect to each Development Parcel in conformity with this Lease, the Landlord shall deliver to the Tenant a Release of Construction Covenants, executed and acknowledged by Landlord. The Landlord shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements with respect to each Development Parcel, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants as to the Improvements with respect to each Development Parcel, any party then or thereafter owning, purchasing, leasing or otherwise acquiring any interest in the applicable Development Parcel shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Lease as to the applicable Development Parcel to which the Release of Construction Covenants has been issued except for those continuing covenants described this Lease.

If the Landlord refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Tenant, the Landlord shall, within fifteen (15) days after receipt of such written request therefor, provide the Tenant with a written statement of the reasons the Landlord refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Landlord’s opinion of the actions the Tenant must
take to obtain the Release of Construction Covenants. Even if the Landlord shall have failed to provide such written statement within such fifteen (15) day period, the Tenant shall not be deemed entitled to the Release of Construction Covenants unless the Tenant, upon expiration of such fifteen (15) day period provides Landlord with a written demand that the Landlord furnish such Release of Construction Covenants as to Improvements with respect to each Development Parcel, or provide a written statement as to the basis for denial thereof (a “Tenant Notice”), which Tenant Notice sets forth the terms of this Section 7.9 in full, and the Landlord fails to either furnish such Release of Construction Covenants or provide a written explanation of the denial thereof, within fifteen (15) days following Landlord’s receipt of the Tenant Notice, in which case the Tenant shall be entitled to a Release of Construction Covenants which is the subject of the Tenant Notice. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Tenant to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements with respect to each Development Parcel. The Release of Construction Covenants is not a notice of completion as referred to in California Civil Code Section 8182.

ARTICLE 8. USE OF THE PROPERTY.

8.1 Covenants Regarding Use. Tenant covenants and agrees for itself, its successors, assigns, and every successor in interest to Tenant’s interest in the Property or any part thereof, that Tenant shall devote the Property to the uses specified in this Lease until the expiration or earlier termination of the Term hereof. All uses conducted on the Property, including, without limitation, all activities undertaken by Tenant pursuant to this Lease, shall conform to all Governmental Requirements. The foregoing covenants shall run with the land.

8.2 Covenant Regarding Specific Uses. Tenant covenants and agrees for itself, its successors, assigns, and every successor in interest to Tenant’s interest in the Property or any part thereof, that Tenant shall use the Property to operate the Project until the expiration of the Term.

8.3 Approval of Subtenants. If Tenant subleases all or any portion of the Property to one or more retailers (“Retailers”), then such Retailers shall be the type of retailers comparable to other first rate, commercial retail centers in Orange County. The identity of Retailers during the initial lease-up occupying more than 5,000 square feet of gross leasable area shall be approved by the Director acting in his/her reasonable discretion, consistent with the immediately preceding sentence. If Tenant subleases all or any portion of the Property for any other commercial use, then the subtenants of such portion of the Property shall be comparable to other similar first rate, commercial projects. The identity of such subtenants during the initial lease-up occupying more than 5,000 square feet of gross leasable area shall be approved by the Director acting in his/her reasonable discretion, consistent with the immediately preceding sentence. Subject to the above, Tenant shall have the right at any time, without Landlord’s consent to sublet all or any part of the Property, and the subtenant may use the Property for any lawful purpose.

8.4 Management of the Project.

8.4.1 Property Manager. Tenant shall manage or cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with good property management standards for other comparable high quality, well-managed projects in the County. Tenant may contract with a property management company or property manager, to operate and maintain the Project.
ARTICLE 9. INSURANCE AND INDEMNIFICATION.

9.1 Landlord Not Liable. Except as the result of any grossly negligent or willful/intentional acts or omissions by Landlord or its representatives, employees or agents, or as otherwise expressly set forth herein, Landlord, in its capacity as landlord under this Lease only, shall not be liable for injury to Tenant’s business or any loss of income therefrom or for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant, or to Tenant’s sublessees of each and all of the Improvements, or to Tenant’s agents, employees, servants, contractors, subtenants, licensees, concessionaires, customers or business invitees or any other person which occurs on the Property during the Term.

9.2 Indemnification. Tenant shall defend, indemnify, pay for, assume all responsibility for, and hold the Indemnitees, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to performance by Tenant or Tenant’s employees, agents, contractors, and/or consultants under this Lease, including without limitation compliance with all applicable Governmental Requirements, and any damages to property or injuries to persons, including accidental death (including attorneys’ fees and costs), which may be caused by any acts or omissions of Tenant under this Lease, whether such activities or performance thereof be by Tenant or by anyone directly or indirectly employed or contracted with by Tenant and whether such damage shall accrue or be discovered before or after termination of this Lease and arising prior to the expiration or earlier termination of the Term of this Lease. However, notwithstanding the foregoing, Tenant shall not be liable for property damage or bodily injury to the extent occasioned by the gross negligence or willful misconduct of the Indemnitees, or their agents or employees. Tenant shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Tenant determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Tenant shall compromise or settle such action in a way that fully protects Indemnitees from any liability or obligation. In this regard, Tenant’s obligation and right to defend shall include the right to hire (subject to written reasonable approval by Landlord) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Indemnitees. If Tenant defends any such action, as set forth above, (i) Tenant shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Landlord shall be entitled to settle any such claim only with the written consent of Tenant and any settlement without Tenant’s consent shall release Tenant’s obligations under this Section 9.2 with respect to such settled claim. This Section notwithstanding, indemnification with respect to Prevailing Wage Laws shall be governed by Section 7.1 and indemnification with respect to Hazardous Materials shall be governed by Section 16.3 hereof.

9.3 Insurance.

9.3.1 Tenant’s Insurance. Commencing as of the Effective Date and continuing for so long as this Lease remains in effect, Tenant shall maintain at Tenant’s sole expense, or cause to be maintained, the following policies of insurance in form and substance reasonably satisfactory to Landlord:

(a) workers’ compensation as required by law and employer’s liability insurance with a limit of not less than $1,000,000 per accident;
prior to commencement of construction of the Improvements and at all times prior to completion of the Improvements, builder’s risk-all risk insurance covering 100% of the replacement cost of all Improvements (including all materials, whether stored on or offsite) during the course of construction in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by “all risk” coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood);

(c) following completion of the Improvements, fire and hazard “all risk” (currently called “special form – causes of losses) insurance covering 100% of the replacement cost of the Improvements (excluding foundations, footings, excavations and other uninsurable improvements) in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by “all risk” coverage policies in the area where the Property is located (including loss by flood if the Property is in an area designated as subject to the danger of flood). Tenant shall have the right, but not the obligation, to maintain or caused to be maintained earthquake insurance; and

(d) a Commercial General Liability (“CGL”) policy combined single limit policy for both personal injury and property damage in the amount of $5,000,000, rising to $10,000,000 July 1, 2030, $15,000,000 July 1, 2040, $20,000,000 July 1, 2050, $25,000,000 July 1, 2060, and $30,000,000 July 1, 2070. These limits may be satisfied through a combination of primary, excess, and/or umbrella policies and which will be considered equivalent to the required minimum limits.

9.3.2 Insurance Requirements. All insurance required under Section 9.3.1 may be satisfied by blanket insurance policies. Certificates of insurance for the above policies (and/or original policies, if required by Landlord) shall be delivered to Landlord from time to time within 10 days after demand therefor. All policies insuring against damage to the Improvements shall contain an agreed value clause sufficient to eliminate any risk of co-insurance. No less than thirty (30) days prior to the expiration of each policy, Tenant shall deliver to Landlord evidence of renewal or replacement of such policy reasonably satisfactory to the City Attorney. Coverage provided hereunder by Tenant shall be primary insurance and not be contributing with any insurance maintained by Landlord, and the policy shall contain such an endorsement. The above-described policies shall have a commercially reasonable deductible or self-insured retention amount. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder’s rating of A:VI or better in the most recent edition of “Best’s Key Rating Guide -- Property and Casualty.” The required certificate shall be furnished by Tenant at the time set forth herein.

9.3.3 Minimum Coverage/Endorsements. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection afforded by these policies shall be written on an occurrence basis in which Landlord and its respective elected and appointed officials, officers, employees, agents and representatives (together, “Additional Insureds”) are named as additional insureds on all coverage, except for (i) Workers’ Compensation coverage, but including Employers Liability coverage, and (ii) the policies required under Section 9.3(b) and (c), and shall:

(a) Name the Additional Insureds (from above) as additional insureds on the CGL policy;

(b) Include an endorsement to the CGL policy naming the Additional Insureds as additional insureds, and said endorsement shall be delivered to the Landlord prior to and as a Condition Precedent to the Closing (and maintained as required herein); provided, however, that
an individual endorsement specifically naming the Additional Insureds shall not be required if Tenant provides documentation which demonstrates that the Additional Insureds are otherwise automatically covered under some sort of blanket policy language that clearly establishes the Additional Insureds’ status as additional insureds under the policy, without the need for a separate endorsement in favor of the Additional Insureds;

(c) Tenant shall also file with Landlord the following signed certification:

“I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers’ Compensation or to undertake self-insurance before commencing any of the work.”

(d) All Additional Insureds shall not be responsible for any claims in law or equity occasioned by the failure of Tenant to comply with this Section 9.3.3. Landlord shall have the right, but not the obligation, to pay a premium on behalf of Tenant and be reimbursed by Tenant as Additional Rent.

(e) For all insurance required under this Section 9.3, Landlord shall have the right, at every five (5) year period of this Lease, to review the types and limits of insurance coverage required herein and to make reasonable adjustments, provided that (i) such types and limits shall not exceed that typically carried by the owner and operator of comparable projects, of approximately the same size, in Orange County, California, based on reasonable research and investigation by Landlord, and (ii) the limits of the CGL policy shall not exceed the limits set forth in Section 9.3.1(d).

(f) Notwithstanding any other provision of this Lease, any policy of property insurance procured pursuant to this Section 9.3 of this Lease may contain a mortgage loss payable clauses and any proceeds of a claim thereunder shall be paid over to Mortgagee (and if there is more than one Mortgagee, in the order of priority of their liens), to be applied against the indebtedness which Mortgagee’s security instruments on the interest of Tenant in the Property secures. Furthermore, Mortgagee shall have the right to participate in the adjustment of any losses with respect to insurance proceeds, subject to the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage.

9.3.4 Reduction in Requirements. Landlord’s Risk Manager is hereby authorized to reduce the requirements set forth herein, on a temporary or permanent basis, in the event he determines, in his sole discretion, that such reduction is in Landlord’s best interest.

9.4 Contractors. All contractors employed by Tenant with contracts of Fifty Thousand Dollars ($50,000.00) or more shall be required to furnish evidence of Commercial General Liability insurance subject to all the requirements stated herein with limits of not less than Two Million Dollars ($2,000,000.00) combined single limit each occurrence. The foregoing dollar amount limitation shall be increased each calendar year by the corresponding percentage increase in CPI. The Indemnitees shall have the right to receive evidence of compliance with the foregoing by contractors at any time upon written request therefor.

9.5 Waiver of Subrogation. Each policy of property insurance procured pursuant to Article 9 shall contain, if obtainable upon commercially reasonable terms, either (i) a waiver by the insurer of the right of subrogation against either party hereto for negligence of such party, or (ii) a
statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy. Each of the parties hereto waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of such other party, for loss or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under the form of insurance policies required to be carried pursuant to Article 9 of this Lease or under any other policy of insurance carried by such waiving party.

ARTICLE 10. MAINTENANCE OF THE PROPERTY.

10.1 General Maintenance by Tenant. With the exception of the implementation of the OM&M Plan for which Landlord is responsible pursuant to Article 16, Tenant shall maintain or cause to be maintained, in accordance with the Maintenance Standards set forth below, the Property and all Improvements thereon in good condition, free of debris, waste and graffiti, and in compliance with all applicable land use requirements and Governmental Requirements. Such Maintenance Standards shall apply to all Improvements at the Property with the exception of the implementation of the OM&M Plan by Landlord pursuant to Article 16. To accomplish the maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Lease; provided, however, Tenant shall have the right to permit any subtenant of the Property to maintain or cause to be maintained any and all Improvements constructed by such subtenant or located on such subtenants’ premises. If required by Tenant’s lender, Tenant shall maintain reasonable reserves for capital improvements and/or replacements as required by Tenant’s lender.

Tenant and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, “Maintenance Standards”):

(a) The Property and Improvements shall be maintained in conformance and in compliance with reasonable maintenance standards which comply with the industry standard for comparable first quality, projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

(b) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all debris is properly disposed of by maintenance workers.

Landlord agrees to notify Tenant in writing if the condition of the Property does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Tenant to cure the deficiencies. Upon notification of any maintenance deficiency, Tenant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Tenant shall have forty-eight (48) hours to rectify the problem. In the event Tenant does not maintain the Property in the manner set forth herein and in accordance with the Maintenance Standards, Landlord shall have, in addition to any other rights and remedies hereunder, the right to contract for the correction of such deficiencies, after
written notice to Tenant and the applicable cure periods set forth herein, and Tenant shall be responsible for the payment of all such costs incurred by Landlord within thirty (30) days after Tenant’s receipt of copies of contractor’s invoices or other written evidence of the costs incurred by Landlord).

10.2 Inspections of the Property. Landlord shall have the right (but not the obligation) to conduct annual inspections of the Property to confirm Tenant’s compliance with Section 10.2. Landlord shall provide at least forty-eight hours’ written notice prior to entering onto the Property to conduct such inspection and/or evaluation, subject to the rights of the subtenants of the Property.

ARTICLE 11. OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS.

11.1 Ownership During Term.

11.1.1 Improvements. Subject to the provisions of Sections 5.4.1 and 5.4.2 hereof, all Improvements on the Property as permitted or required by this Lease shall, during the Term, be and remain the property of Tenant, and Landlord shall not have title thereto.

11.1.2 Personal Property. All Personalty, which are not so affixed to the Property or the buildings thereon as to require substantial damage to the buildings upon removal thereof (unless Tenant repairs such damage) shall constitute Personalty including, but not limited to: (a) functional items related to the everyday operations of the Property; (b) personal property furnishings, fixtures and equipment of the nature or type deemed by law as permanently resting upon or attached to the buildings or land by any means, including, without limitation, cement, plaster, nails, bolts or screws, or essential to the ordinary and convenient use of the Property and the Improvements. Any time during the Term and at termination thereof, Tenant shall have the right to remove any and all personal property, furnishings, fixtures and equipment that was originally delivered to or installed at the Property by Tenant after the Commencement Date; provided that Tenant shall repair any damage to the Property or the Improvements caused by such removal. In the event that Tenant has not removed its Personalty by the expiration of the Term, Landlord may, at its option, after thirty (30) days written notice to Tenant, remove, store, retain or dispose of the same in any manner that Landlord may see fit.

11.1.3 Lien Waivers. Landlord acknowledges and agrees that Tenant’s and its subtenants’ Personalty may be leased from an equipment lessor or encumbered by Tenant’s or its subtenants’ lender(s) (“Equipment Lessor”) and that Tenant or its subtenant(s) may execute and enter into an equipment lease or security agreement with respect to such Personalty (“Equipment Lease”). If and to the extent required by any Equipment Lease or Equipment Lessor, Landlord shall execute and deliver to the Equipment Lessor a written consent or acknowledgment, in recordable form and in scope and substance reasonably satisfactory to both Landlord and such Equipment Lessor in which Landlord (a) acknowledges and agrees that the Personalty which is the subject of the Equipment Lease constitutes the personal property of Tenant, and shall not be considered to be part of the Property, regardless of whether or by what means they become attached thereto, (b) agrees that it shall not claim any interest in such Personalty, and (c) agrees that Equipment Lessor may enter the Property during the Term and during a period of thirty (30) days thereafter for the purpose of exercising any right it may have under the provisions of the Equipment Lease, including the right to remove such Personalty, provided that such Equipment Lessor agrees to repair any damage resulting from such removal. Such consent or acknowledgment documents shall also contain such other provisions as may be common in the equipment leasing or lending industry.
11.1.4 Basic Building Systems. For purposes of this Lease, the personal property, furnishings, fixtures and equipment described in this Section 11.1 shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, plumbing, sanitary fixtures, heating and central air-cooling system.

11.2 Ownership at Expiration or Termination.

11.2.1 Property of Landlord. In accordance with provisions of Sections 5.3.1 and 5.3.2 hereof, and except as provided in Section 11.2.2, all Improvements which constitute or are a part of the Property shall become (without the payment of any compensation whatsoever to Tenant or to others) the property of Landlord free and clear of all liens, claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant, except for such title exceptions permitted or required during the Term with Landlord’s prior written consent.

11.2.2 Removal by Tenant. Subject to the provisions of Section 5.3.2 hereof, within thirty (30) days following the expiration or earlier termination of the Term, Tenant may remove all personal property, furniture, equipment, and other Personalty.

11.2.3 Unremoved Property. Any personal property, furnishings or equipment which is owned by Tenant and not removed by Tenant pursuant to Section 11.2.2 hereof, shall, without compensation to Tenant, become Landlord’s property, free and clear of all claims to or against them by Tenant or any third person, firm or entity arising by, through or under Tenant.

11.3 Waste. Subject to the alteration rights of Tenant and damage and destruction or condemnation of the Property or any part thereof, Tenant shall not commit or suffer to be committed any waste of the Property or the Improvements, or any part thereof.

11.4 Compliance with Laws. Tenant shall carry out the construction, operation, and management of the Project in conformity with all applicable federal, state and local laws, including, without limitation, all applicable state labor standards, zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of any governmental agencies having jurisdiction over development of the Property, and all applicable Governmental Requirements.

ARTICLE 12. SIGNS AND MARKETING.

12.1 Project Signage. Subject to applicable Governmental Requirements, Tenant shall have the right to place or caused to be placed on the Property or upon the roof or any exterior door or wall or on the exterior or interior of any window of the Improvements, any sign, awning, canopy, marquee, advertising matter, decoration, lettering or other thing of any kind.

12.2 Focal Public Art Piece. The Landlord owns the Focal Public Art Piece formerly located in Sunshine Plaza in the Disney California Adventure Theme Park known as “Sun Icon.” The parties may, upon mutual written agreement, locate the Sun Icon within the Sun Icon Easement, as hereinafter defined. Landlord hereby reserves an easement within the Property in its favor for the placement and maintenance of the Sun Icon (“Sun Icon Easement”), provided that the Landlord shall not remove the Sun Icon without Tenant’s prior written consent. In the event the parties agree to locate the Sun Icon within the Sun Icon Easement, the Landlord shall pay for the costs to transport the Sun Icon to the Property and to reassemble the Sun Icon, and the Tenant shall, at its cost and expense, construct the proper foundation for and cause the installation of the Sun Icon within the Sun Icon...
Easement and maintain same in a manner reasonably satisfactory to the Landlord, as long as such portion of the Project is operational, all in accordance with the Maintenance Standards. If the Tenant consents to the Landlord’s removal of the Sun Icon from the Sun Icon Easement, then the Landlord shall reimburse the Tenant for the cost to remove the Sun Icon from the Sun Icon Easement within thirty (30) days after receipt of copies of contractor’s invoices or other written evidence of the costs incurred by Tenant.

ARTICLE 13. CASUALTY.

13.1 Damage or Destruction Due to Cause Required to be Covered by Insurance Covered by Insurance. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no obligation to restore any Improvements after a fire or other casualty. If Tenant elects not to restore all or any portion of the Improvements, then Tenant shall promptly raze such damaged Improvements and maintain such portion of the Premises in a safe manner reasonably free of weeds and rubbish. Subject to Section 13.2 below, if the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Tenant, and if Tenant elects to repair or reconstruct the Improvements, Tenant shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Project to substantially the same condition as the Project is required to be constructed pursuant to this Lease, if and to the extent the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Tenant shall complete the same as soon as possible thereafter so that the Project can be occupied in accordance with this Lease. Following the completion of any such repair, replacement, or restoration (subject to the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage), any additional or excess insurance proceeds received by Tenant shall be the property of Tenant. Landlord shall cooperate with Tenant, at no expense to Landlord, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then existing laws of any other governmental agencies with jurisdiction over the Property do not permit the repair, replacement, or restoration, Tenant may elect not to repair, replace, or restore the Project by giving notice to Landlord (in which event Tenant will be entitled to all insurance proceeds but Tenant shall be required to remove all debris from the applicable portion of the Property and this Lease shall automatically terminate) or Tenant may reconstruct such other improvements on the Property as are consistent with applicable Governmental Requirements and approved by Landlord. In the event the Improvements are destroyed within the last five (5) years of the Term, Tenant shall have the option to terminate this Lease upon written notice to Landlord. In such event, Tenant shall immediately tender possession of the Property to Landlord. Tenant shall have no obligation to pay any insurance proceeds to the Landlord.

13.2 Damage or Destruction Due to Cause Not Required to be Covered by Insurance. If the Project is completely destroyed or suffers Substantial Damage (as hereinafter defined) caused by a casualty for which Tenant is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild then Tenant may, at its option, terminate this Lease upon written notice to Landlord, such termination to be effective on the date specified in such notice, which date shall be no sooner than the date of the casualty nor later than one hundred eighty (180) days after the date of such notice. In such event, Tenant shall immediately tender possession of the Property to Landlord. As used in this Section 13.2, “Substantial Damage” caused by a casualty not required to be (and not) covered by insurance means damage or destruction which is fifteen percent (15%) or more of the replacement cost of the improvements comprising the Project.
ARTICLE 14. TENANT COVENANTS.

14.1 Restrictive Covenants. During the Term, Tenant shall not permit any business to relocate within the Property exceeding 20,000 square feet in size from any other location within the Property and within 5 miles of the Property without the prior approval of the Landlord; provided further that no store of greater than 75,000 square feet of buildable area shall be permitted to relocate to the Property from a county or Landlord within the same market area as the Property as proscribed by Health & Safety Code Section 33426.7, Government Code Section 53084, and Government Code Section 53084.5.

14.2 Nondiscrimination Covenants. The Tenant covenants by and for itself and any successors in interest to all or any portion of the Property that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Property. The foregoing covenants shall run with the land.

The Tenant shall refrain from restricting the rental, sale or lease of the Property any portion thereof on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. 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 race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any 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, subtenants, sublessees or vendees in the land 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:

“There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry 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.”
In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee 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, subtenants, sublessees or vendees of the premises.”

14.3 Jobs Creation. The Parties acknowledge that (i) the Landlord has entered into that certain Funding Approval/Agreement (B-02-MC-06-0501) with HUD pursuant to which HUD has provided Ten Million Dollars ($10,000,000) to the Landlord to pay for certain costs associated with the Project (the “Section 108 Loan for the Project”), (ii) the City has also entered into that certain Brownfield Economic Development (BEDI) Grant Agreement (“BEDI Grant Agreement”) with HUD pursuant to which HUD granted the City Six Hundred Fifty Thousand Dollars ($650,000) to be used for the purpose of paying interest on the Section 108 Loan, (iii) pursuant to that certain Second Amended and Restated Cooperation Agreement (Lincoln/Beach Section 108 Loan) dated as of July 1, 2004 between the Landlord and Anaheim Redevelopment Agency (the “Landlord/Agency Cooperation Agreement”), the Anaheim Redevelopment Agency utilized the proceeds of the Section 108 Loan for the Project, and (iv) in consideration for making the Section 108 Loan for the Project entering into the BEDI Grant Agreement, HUD requires, among other things, that the Landlord provide that at least fifty-one percent (51%) of the jobs created by the operation of the Project (the “Project Jobs”) be held by, or be made available to, persons of low and moderate income (the “HUD Jobs Creation National Objective”). Accordingly, the Parties intend to satisfy the HUD Jobs Creation National Objective as set forth in this Section 14.3. For the purposes of this Section 14.3, the term “Project” shall include all activities that qualify as “Project Jobs.”

14.4 Project Jobs Description on the Property. Prior to commencing construction of the Project with respect to any Retailer, Tenant shall provide Landlord a description, in a form reasonably acceptable to Landlord, of all of the Project Jobs, indicating which of the Project Jobs are full time equivalent positions (the “Project Jobs Description”); the Project Jobs Description shall denote which of the Project Jobs have job qualifications requiring no more than a high school education and/or one (1) year of training or work experience (“Qualifying Project Jobs”). Tenant shall update the Project Jobs Description promptly upon a substantial change in such jobs and/or job qualifications, but in no event less than annually.

14.5 Project Jobs Available to Low and Moderate Income Persons. Tenant shall provide that at least fifty-one percent (51%) of the Project Jobs are made available to low and moderate income persons. Accordingly, Tenant shall do the following:

(a) Concurrently with Tenant’s delivery of the Project Jobs Description, Tenant shall submit to Landlord for Landlord review and approval a list of which employers within the Project shall provide “First Consideration” to “Qualifying Job Applicants” in accordance with (b), below. The list shall include employers of not less than 75% of the jobs available within the Project. (The employers included on the list are hereinafter referred to as the “Participating Employers.”) Landlord shall approve such list provided that the Project Jobs Description demonstrates that the Participating Employers will provide Qualifying Project Jobs greater than or equal to fifty-one percent (51%) of the aggregate Project Jobs.
(b) Tenant shall require that Participating Employers enter into a First Source Agreement with the Workforce Development Division of the Landlord of Anaheim (“WDD”) containing the following terms:

1. WDD will conduct community outreach designed to assemble a pool of potential low to moderate income job applicants for the Qualifying Project Jobs (“Potential Qualifying Job Applicants”).

2. WDD will prescreen and verify which of the Potential Qualifying Job Applicants are persons of low to moderate income (“Qualifying Job Applicants”).

3. Participating Employers will notify WDD of openings for Qualifying Project Jobs.

4. With respect to initial hires, WDD will direct Qualifying Job Applicants to Participating Employers; with respect to subsequent hires, WDD will create and update quarterly a list of Qualifying Job Applicants who are interested in seeking employment with Participating Employers (“Employment Interest List”).

5. Prior to opening, Participating Employers will meet with the Manager of the WDD to establish protocol specific to the tenant that address the following:
   
   A. Priority status for qualifying job applicants;

   B. Status of qualified job applicants considered by the participating employer, and;

   C. Appropriate documentation of qualified job applicants vitae for audit purposes for Federal Funding Program(s).

6. WDD will provide HUD with the documentation required under the HUD Jobs Creation National Objective.

7. The requirements of this Section 404.2 shall not apply to construction or remodeling of improvements on property owned or leased by Participating Employers within the Project.

8. Nothing in this Section 404.2 shall prohibit a Participating Employer from transferring an existing employee to a job located within the Project without complying with the requirements of Section 404.2(b)(v).

9. Nothing in this Section 404.2 shall require a Participating Employer to hire individuals who are not qualified for the intended position, and Participating Employers shall have the right to determine the most appropriate person to be hired.

14.6 Project Leases. Tenant will provide Landlord with executed copies of all Leases (with gross building area in excess of 5,000 square feet) with Participating Employers to insure compliance with this Section.
ARTICLE 15. EMINENT DOMAIN.

15.1 Notice. The party receiving any notice of the kind specified in this Section 15.1 shall promptly give the other party notice of the receipt, contents and date of the notice received. For purposes of this Article 15, the term “Notice” shall include:

(a) Notice of Intended Taking;

(b) Service of any legal process relating to condemnation of the Property or the Improvements;

(c) Notice in connection with any proceedings or negotiations with respect to such condemnation; or

(d) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

15.2 Representation in Proceedings or Negotiations. Landlord and Tenant (and if applicable, Mortgagee) shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their claims. Landlord and Tenant each agree to execute and deliver to the other any instruments which may be required to effectuate or facilitate the provisions of this Lease relating to condemnation. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure.

15.3 Total Taking.

15.3.1 In the event of a Total Taking, this Lease shall terminate as of the date of the Taking.

15.3.2 If this Lease is terminated pursuant to this Section 15.3, the Award for such Taking shall be apportioned and distributed as follows:

(a) First, to the Mortgagee, if any, to the extent of the Mortgage;

(b) All remaining damages awarded for any taking under the power of eminent domain, whether for the whole or part of the Property, including but not limited to loss of fee interest, interference with use, relocation, loss of business and goodwill, value of improvements and severance, shall belong to and be the property of Landlord and Tenant as their respective interests may appear.

15.4 Substantial Taking.

15.4.1 In the event of a Taking which, in Tenant’s and Landlord’s mutually agreeable judgment is substantial, Tenant may, subject to the rights of the Mortgagee, if any, terminate this Lease. If Tenant elects to terminate this Lease under this provision, Tenant shall give written notice of its election to do so to Landlord within forty-five (45) days after receipt of a copy of a Notice of Intended Taking. In the event Landlord disputes the right of Tenant to terminate this Lease under this provision, Landlord shall give Tenant notice of this fact within forty-five (45) days after receiving the notice of Tenant’s election to terminate. In the event it is determined that Tenant does not have the right to
terminate this Lease, the apportionment of the Award for such Taking and the obligations of Tenant to restore shall be governed by the terms of Section 15.6 or Section 15.8, whichever is applicable.

15.4.2 In the event it is determined that Tenant has the right to terminate this Lease, or in the event Landlord does not dispute Tenant’s right to terminate this Lease, such termination shall be as of the time when the Taking entity takes possession of the portion of the Property and the Improvements taken. In such event, the Award for such Substantial Taking (including any award for severance, consequential or other damages which will accrue to the portion of the Property and/or the Improvements not taken) shall be apportioned and distributed as follows:

(a) First, to the Mortgagee (or an independent trustee acceptable to Mortgagee), if any, to the extent of the Mortgage;

(b) Second, to Landlord and Tenant as provided in Section 15.3.2(b).

15.5 Tenant’s Right to Revoke Notice of Termination. Notwithstanding anything to the contrary contained in Section 15.4, if Tenant has elected to terminate this Lease, and the taking authority abandons or revises the Taking, Tenant shall have forty-five (45) days from receipt of written notice of such abandonment or revision to revoke its notice of termination of this Lease.

15.6 Partial Taking.

15.6.1 In the event of a Partial Taking, this Lease shall continue in full force and effect and there shall be an equitable abatement in or reduction of any of Tenant’s obligations hereunder.

15.6.2 The Award for such Partial Taking shall be apportioned and distributed first to the Mortgagee, if any, to the extent of the Mortgage, then to Landlord and Tenant in proportion to their respective interests in the Property and Improvements, as such interests existed immediately prior to such Partial Taking.

15.7 Obligation to Repair on Partial Taking. Promptly after any Partial Taking and regardless of the amount of the Award for such Taking, Tenant shall, to the extent of the Award received by Tenant and in the manner specified in the provisions of this Lease, repair, alter, modify or reconstruct the Improvements and/or other improvements on the Property so as to make them usable for the purposes set forth in this Lease and capable of producing a fair and reasonable net income.

15.8 Temporary Taking.

15.8.1 In the event of a Temporary Taking of the whole or any part of the Property and/or Improvements, the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full any sum or sums of money and charges herein reserved and provided to be paid by Tenant, and, subject to the other provisions of this Section 15.8, Tenant shall be entitled to any Award or payment for the temporary use of the Property and/or Improvements prior to the termination of this Lease, and Landlord shall be entitled to any Award or payment for such use after the termination of this Lease.

15.8.2 If, after the occurrence of a temporary taking, possession of the Property and/or Improvements shall revert to Tenant prior to the expiration of the Term, Tenant shall, to the extent of the amount of any award or payment, restore the Property and/or Improvements so that the Property
and/or Improvements in every respect shall upon completion of such restoration be in the same condition as they were prior to the taking thereof.

15.8.3 Any Award or payment for damages or cost of restoration made on or after the termination of this Lease shall be paid first to the Mortgagee (or an independent trustee acceptable to Mortgagee), if any, to the extent of the Mortgage, then to Landlord absolutely, together with the remaining balance of any other funds paid to Tenant for such damages or cost of restoration and Tenant shall thereupon be excused from any obligation to restore the Property and/or Improvements upon the termination of such Temporary Taking except that any obligation that may have accrued for Tenant to restore the Property and/or Improvements prior to the commencement of said Temporary Taking shall continue to be the obligation of Tenant.

15.9 Mortgagee Protection. Notwithstanding anything contained in this Lease to the contrary, any and all condemnation proceeds shall be paid first to the Mortgagee (or an independent trustee acceptable to Mortgagee), if any, to be applied in accordance with the Mortgage and other documents that govern the loan secured by the Mortgage to reduce the Mortgage if required by the Mortgage documents.

ARTICLE 16. ENVIRONMENTAL.

16.1 Environmental Condition and Mitigation/Remediation.

16.1.1 Environmental Disclosure. California Health & Safety Code Section 5359.7 requires owners of nonresidential real property who know, or have reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the real property to provide written notice of same to the buyer of real property. Landlord hereby discloses that the Property, or portions of the Property were used as Landfills or as the Davis Mud Pit containing municipal solid waste, construction debris, oil well drilling, mud and fluid and other liquid wastes and Landfill Gases which Landfills and the Landfill Gases may contain Hazardous Materials (the “Environmental Condition”). To the extent Landlord has copies of investigation reports, it will provide copies to Tenant upon request; but the Parties acknowledge that Landlord will not be conducting a public records search of the RWQCB’s (or any other Responsible City) files – although Landlord urges Tenant to do so to satisfy itself regarding the Environmental Condition of the Property. By execution of this Lease, Tenant (i) acknowledges its receipt of the foregoing notice given pursuant to California Health & Safety Code Section 25359.7; (ii) acknowledges that it has conducted its own independent review and investigation of the Property prior to the Close of Escrow; (iii) agrees to rely solely on its own experts in assessing the Environmental Condition of the Site and its sufficiency for its intended use; and (iv) waives any and all rights Tenant may have to assert that Landlord has not complied with the requirements of Health & Safety Code Section 25359.7.

16.1.2 Environmental Condition of the Property. Based on the disclosure of Landlord as described in (a) above, and the Tenant’s investigation of the Property, it is acknowledged by the parties that the List of Environmental Condition Documents disclose that: (i) the Anderson Landfill was formerly used for disposal of primarily construction debris and demolition wastes, (ii) the Sparks Landfill was formerly used for the disposal of primarily solid waste, (iii) the Davis Mud Pit was formerly used for the disposal of oil well drilling fluid and other liquid wastes, and (iv) Landfill Gases, including methane, associated with the Anderson Landfill and the Sparks Landfill are presently being mitigated using Landfill Gas collection systems. Subject to the satisfaction of the conditions set
forth in Section 205.2(g) of the DDA, Tenant shall be deemed to have approved the Environmental Condition of the Property.

16.1.3 Preparation, Submittal and Processing of the Plans. Landlord and Tenant are aware that the environmental impacts to the air, soil and groundwater arising from the Landfills and the remediation of Hazardous Materials and Landfill Gases is required. The Agency (now Successor Agency) commenced proceedings pursuant to the Polanco Redevelopment Act and in connection therewith has submitted and RWQCB has conditionally approved the Remedial Action Plan pursuant to the letter from RWQCB dated April 27, 2007 (“Approved RAP”). The parties intend to seek further direction and approvals regarding the implementation of the Approved RAP.

16.2 Mitigation/Remediation of the Property. The Tenant will satisfy the conditions of the Entitlements.

16.3 Polanco Redevelopment Act. The Agency (now Successor Agency) has heretofore submitted its application to RWQCB for approval under the Polanco Redevelopment Act with the intention that the Remedial Action Plan be undertaken in accordance with the Polanco Redevelopment Act so as to effectuate reuse of the Landfills in accordance with the Merged Redevelopment Plan and to provide the Agency (now Successor Agency), the Tenant, subsequent purchasers of any portion of the Property and the lenders of the Tenant and any subsequent purchasers with the immunity from any release or releases of hazardous substances identified in the Remedial Action Plan pursuant to Section 33459.3 of the Polanco Redevelopment Act (“Liability Immunity”). Provided neither party has elected to terminate this Lease as permitted herein, the parties agree to implement the Remedial Action Plan in compliance with the Approved RAP. The Tenant acknowledges that the final construction drawings for the Remedial Improvements and the contents of the Approved RAP are intended to provide the basis for RWQCB to acknowledge in writing that, following completion of the Approved RAP, the Liability Immunity will apply under Section 33459.3(b) of the Polanco Redevelopment Act. The Tenant acknowledges that completion of the Approved RAP will be the basis for the issuance of the Immunity Letter at which time the Liability Immunity will attach to the Successor Agency and the Tenant. The parties further agree that the Tenant will not have a cause of action against the Landlord, Anaheim, and/ or Successor Agency if the Liability Immunity under the Polanco Redevelopment Act is limited or denied in any way by any decision or opinion of any court, administrative body or any action of the Responsible Agencies.

16.4 No Warranties As To Property; Release of Landlord, Anaheim, and/ or Successor Agency. Except as otherwise expressly provided herein, the physical condition of the Property is and shall be delivered from Landlord to Tenant in an “as-is” condition, with no warranty expressed or implied by Landlord and/ or Successor Agency, including without limitation, the presence of Hazardous Materials, Landfill Gases, the existence of refuse, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Property for the development purposes intended hereunder. To the extent authorized by contract or law, the Landlord and Successor Agency shall assign to the Tenant all warranties, indemnities, guaranties, claims and causes of action with respect to the Environmental Condition of the Property, if any, that the Landlord and/ or Successor Agency has received from or has against prior owners or operators of the Property, except that Tenant’s rights to pursue such parties shall be subject to the terms of the Settlement Agreement defined in the DDA.

16.5 Tenant Release. As of the Close of Escrow, Tenant agrees, with respect to the Property, to release the Successor Agency, Landlord, and Anaheim from and against any
Environmental Liabilities except as to (i) the County Dispute (defined in the DDA) which has been dealt with in the Settlement Agreement, (ii) the OCHCA Notice and Order (defined in the DDA), (iii) liabilities arising out of the negligence or willful misconduct of the Successor Agency and/or Landlord occurring after the Close of Escrow or occurring prior to the Close of Escrow but discovered after the Close of Escrow, and/or (iv) Landlord. The Tenant shall establish, by the preponderance of the evidence, the date that the Environmental Liability occurred. At the request of the Tenant, the Landlord shall cooperate with and assist the Tenant in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the Landlord shall not be obligated to incur any expense in connection with such cooperation or assistance. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Lease.

The Tenant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

As such relates to this Section 207.6, effective as of the Closing, the Tenant waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

16.6 Contractor’s Pollution Liability Insurance. The Successor Agency has obtained, at its cost and expense, a Contractor’s Pollution Liability Insurance naming the Named Insured and expiring on July 18, 2020. Concurrently with the Closing, Landlord will request that the Successor Agency cause the Tenant and/or its assignee to be added as a named insured. Once the Contractor’s Pollution Liability Insurance expires, Tenant will cause the replacement thereof on terms and conditions at least agreement to the current policy.

16.7 Environmental Insurance. The Successor Agency has obtained, at its cost and expense, a Pollution Legal Liability Insurance issued by Lloyd’s Syndicates (“Lloyd’s”), Policy Number W24F05180101 (“Environmental Insurance”) naming the Named Insured, which expires on October 31, 2028. During the term of the policy, Landlord shall timely provide to the Successor Agency, County, Tenant, and Zelman copies of all notices from Lloyd’s and/or notify the County and Tenant of any notices or other communications from Lloyd’s pertaining to the Environmental Insurance. Upon Tenant’s written request, Landlord shall cause Tenant and such other persons or entities with an insurable interest, as reasonably requested by Tenant, to be added as Named Insureds under the Environmental Insurance policy. Landlord shall continue to provide ongoing Environmental Insurance naming the Named Insured so long as the Successor Agency is being reimbursed for the costs of such Environmental Insurance. If and when the reimbursement of the Successor Agency ceases, Tenant shall be responsible for providing and paying for such insurance, which insurance shall be on terms and conditions at least equal to the current terms and conditions.

16.8 Landlord Obligations After Closing. Upon and after the Closing, the Landlord shall implement the Operations, Maintenance and Monitoring Plan. In the event that the Tenant acquires a
fees simple interest in the Property or the Successor Agency is prohibited from continuing to pay for the implementation of the Operations, Maintenance and Monitoring Plan, Tenant shall be responsible, at its sole cost and expense, for the implementation of the Operations, Maintenance, and Monitoring Plan.

16.9 Tenant Obligations After Closing. Upon and after the Closing, the Tenant shall exercise all reasonable precautions in an effort to prevent the release into the environment of any Hazardous Materials and/or Landfill Gases in violation of applicable environmental Governmental Requirements. Such precautions shall include compliance with the Environmental Deed Restrictions and the Governmental Requirements. Tenant further agrees to comply with all Governmental Requirements in connection with the disclosure, storage, use, removal and disposal of any Hazardous Materials or Landfill Gases.

16.10 Tenant and Landlord Indemnities. As of the Close of Escrow, Tenant agrees, with respect to the Property, to indemnify, defend and hold Indemnitees harmless from and against ("Indemnify" or "Indemnified") any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees) by third parties but expressly excluding the County Dispute, and the Landlord’s and Landlord’s performance with respect to the Landlord Remediation Component, Landlord, for bodily injury or property damage, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials and Landfill Gases including methane on, under, in, about, or from or the transportation of any such Hazardous Materials and Landfill Gases including methane to or from, the Property, and (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 and Landfill Gases including methane on, under, in or about, to or from the Property; and (iii) 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 and Landfill Gases including methane on, under, in or about, to or from the Property; and (iii) damage to person or property arising out of or related to the Tenant’s investigations of the Property (collectively “Environmental Liabilities”) except the Environmental Liabilities arising out of the negligence or willful misconduct of the Successor Agency or the Landlord occurring after the Close of Escrow or occurring prior to the Close of Escrow but discovered after the Close of Escrow. The Tenant shall establish with substantial evidence the date that the Environmental Liability occurred. This Indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity 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 by any third party other than the County Dispute. At the request of the Tenant, the Landlord shall cooperate with and assist the Tenant in its defense of any such Environmental Liability; provided that the Landlord shall not be obligated to incur any expense in connection with such cooperation or assistance. Landlord agrees to indemnify, defend and hold Tenant harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees) resulting from, arising out of, or based upon the County Dispute. The foregoing Indemnities shall survive the termination, expiration, invalidation, or performance in full or in part of this Lease, and, without limiting the foregoing, shall survive the Closing.

16.11 Notice and Remediation by Tenant. Tenant shall promptly give Landlord, and Landlord shall give Tenant, written notice of any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials which may affect the Property.
16.12 Obligation of the Landlord and Landlord Remediation Component. Upon and after the Commencement Date, Landlord shall be responsible for the implementation of the Landlord Remediation Component. To this end, Tenant hereby grants Landlord a License Agreement (OM&M).

ARTICLE 17. ASSIGNMENT.

Because of the importance that Landlord places on Tenant’s qualification, expertise and identity, and the reliance Landlord makes upon Tenant’s ability to operate the Project, during the Term of this Lease, Tenant shall not assign or attempt to assign this Lease or any right herein, except to such transferees as approved or permitted pursuant to this Article 17.

17.1 Prohibition Against Transfer: No Sale or Assignment During Term. The identities and qualifications of Tenant, as an experienced and successful developer and operator of first quality, “Class A” retail project, are of particular concern to Landlord. It is because of this identity and these qualifications that Landlord has entered into this Lease with Tenant. Except as expressly set forth in Sections 17.1.1 and 17.1.2, no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease by assignment, assumption or otherwise, nor shall Tenant make any total or partial transfer, conveyance, encumbrance to secure financing or refinancing, assignment or sublease of the whole or any part of the leasehold interest in the Property (collectively, a “Transfer”), without the prior written approval of the Landlord pursuant to Section 17.1.4 below, which approval shall not be unreasonably withheld or delayed. Any Transfer or Permitted Transfer (except for Permitted Transfers described in Section 17.1.1, subdivisions (a) and (b) below) shall be of the Tenant’s entire interest in the Property under this Lease, and not portions thereof, unless expressly permitted in this Lease or as expressly approved by Landlord in writing, which approval shall be in Landlord’s sole and absolute discretion.

17.1.1 Permitted Transfer(s). Notwithstanding other provisions of this Lease to the contrary, Landlord approval of an assignment or transfer of this Lease or conveyance of Tenant’s leasehold interest in the Property, or any part thereof, shall not be required in connection with any of the following (each a “Permitted Transfer”):

(a) Any Transfer of the Property to an entity or entities in which (i) Tenant, (ii) Zelman or Zelman Development Co. a California corporation, (iii) Brett Foy and Paul Casey, and/or (iv) Greenlaw or Greenlaw Partners, LLC, a California limited liability company, directly or indirectly, retains ownership or beneficial interest and retains management and control of the Transferee entity or entities.

(b) The conveyance or dedication of any portion of the Property to the Landlord or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Project.

(c) Any requested assignment for financing purposes permitted pursuant to this Lease, including the grant of a mortgage or deed of trust or sale-leaseback to secure the funds necessary for construction and permanent financing with respect to each Development Parcel and, excepting therefrom any Transfer to any entity to which any interest is held by the Tenant, or the principals of Tenant, the following in connection with such financing as shall have theretofore been approved by the Landlord: (i) any Transfer to any person or entity pursuant to foreclosure or deed-in-lieu of foreclosure of any such mortgage or deed of trust; (ii) any Transfer of the reversionary interest
and estate of the lessor in any sale-leaseback; and (iii) any lease termination by the lessor under the lease in a sale-leaseback due to default of the lessee thereunder.

(d) Transfers of a Development Parcel for which the Landlord has issued a Release of Construction Covenants.

(e) The sale or leasing of parcels, buildings or portions thereof to retail and/or commercial tenants or occupants as permitted under this Lease.

(f) A transfer of the Property to Zelman or an entity or entities in which (i) Zelman or Zelman Development Co. a California corporation, and/or (ii) Brett Foy and Paul Casey, directly or indirectly, retains an ownership or beneficial interest and retains management and control of the transferee entity or entities.

(g) A transfer of the Property to an entity in which Greenlaw or the Greenlaw Venture, retains an ownership or beneficial interest and retains management and control of the transferee entity or entities.

In the event of a Permitted Transfer by Tenant pursuant to this Section 17.1.1 not requiring Landlord’s prior approval, Tenant nevertheless agrees that within thirty (30) days following such pre-approved assignment or transfer it shall give written notice to Landlord of such assignment or transfer along with a true and complete copy of the proposed assignment or transfer document conforming to the requirements of this Lease.

17.1.2 Conditions. In addition to the provisions of Section 17.1.1, Tenant’s right to make an assignment shall be subject to compliance with the following further conditions:

(a) No Default. At the time of such assignment, this Lease shall be in full force and effect and either no Default (as defined in Section 21.1) then exists or no Default will exist upon consummation of the assignment.

(b) Completion of Improvements. Excepting with respect to Permitted Transfers as provided under Section 17.1.1, as of the time of such assignment, Developer shall have completed the Improvements in conformity with the Lease.

(c) Payment of Certain Amounts. Excepting with respect to Permitted Transfers as provided under Section 17.1.2, Tenant shall have paid to Landlord all Rent, including Extension Payment(s), if applicable, which have become due or which otherwise would become due and payable for the extension of times. Any such amounts so received by Landlord shall be retained by Landlord as its sole property.

(d) Assumption and Release. The assignee shall have executed an express assumption of the obligations and liabilities of Tenant under this Lease from and after the date of delivery and recording of the assignment and there shall have been delivered to Landlord at the time of the request for such assignment a conformed copy of such assumption, Tenant shall have no liability for obligations arising on or after the date of such assignment; provided that Landlord has approved the assignment or the assignment is permitted pursuant to Section 17.1.1.
(e) Hold Property Interests Together. Tenant shall hold the Property, both its leasehold interest under this Lease and the Improvements held hereunder together, and shall not separately sell, lease, assign or transfer all or any part of its leasehold interest in the Property or its fee interest in the Improvements.

17.1.3 Landlord Consideration of Requested Transfer. Landlord agrees that it will not unreasonably withhold, condition or delay approval of a request for an assignment of this Lease pursuant to this Section 17.1, provided (a) Tenant delivers written notice to Landlord requesting such approval, (b) the proposed assignee or transferee (each, a “Proposed Transferee”) satisfies the Transferee Criteria and Qualifications, (c) such assignment or transfer will not negatively affect the consideration to be paid to Landlord pursuant to this Lease, and (d) the assignee(s) or transferee(s) completely and fully assume(s) the obligations of Tenant under this Lease pursuant to an assignment and assumption agreement(s) in a form which is reasonably acceptable to Landlord and its legal counsel(s). Such notice shall be accompanied by evidence regarding the proposed assignee’s or purchaser’s qualifications and experience and its financial commitments and resources sufficient to enable Landlord to evaluate the proposed assignee or purchaser pursuant to the Transferee Criteria and Qualifications set forth in this Section 17.1.3, as described in the Transferee Criteria and Qualifications, and such other criteria as may reasonably be requested by Landlord. Landlord shall approve or disapprove the request within sixty (60) days of its receipt of Tenant’s notice and submittal of complete information and materials required herein. Landlord approval shall not be required for transfers or assignments for foreclosure of a Mortgage authorized by this Lease or deed in lieu of foreclosure in favor of a Mortgagee or any subsequent transfer or assignment by or on behalf of a Mortgagee. In no event, however, shall Landlord be obligated to approve the assignment or transfer of this Lease requiring Landlord’s approval, pursuant to this Section 17.1.3, except to an approved transferee or assignee of Tenant’s rights in and to the Property and the Project, based on Landlord’s reasonable determination that such transferee or assignee has the experience, financial strength, knowledge, and overall capability to own, operate and manage the Project in accordance with the terms, conditions, and restrictions contained in this Lease (the “Transferee Criteria and Qualifications”). In addition, Landlord shall not be required to grant its approval of any proposed transfer or assignment unless all information reasonably requested by Landlord relating to the Proposed Transferee or assignee entity and all general partners and/or managers of such entity, plus current certified financial statements of the entity and financial statements relating to other projects developed and/or operated by such entity(ies) and reporting and compliance documentation for such projects submitted for public entities providing funding to such projects, etc., as applicable. Tenant shall pay Landlord’s reasonable costs and expenses, including staff time, incurred in connection with Tenant’s consideration, analysis, evaluation and approval (or disapproval) of each proposed Transfer (or confirmation of any Permitted Transfer) pursuant to Section 17.1. In no event shall Landlord provide any incentive to any assignee of Landlord, whether to facilitate a sale or transfer to a substitute developer or assignee or for any other reason.

17.1.4 Assignment Agreement. No assignment of any interest under this Lease made with Landlord’s consent or as herein otherwise permitted shall be effective unless and until there shall have been delivered to Landlord an executed counterpart of such assignment or other transfer document containing an agreement, in recordable form, executed by the assignor and the proposed assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor’s part to be performed under this Lease from the effective date of the assignment to the end of this Lease.
17.1.5 **Further Assignments.** The consent by Landlord to an assignment shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment if required by the terms of this Lease.

17.1.6 **Other Rights of Mortgagees.** Landlord agrees that none of the restrictions or limitations on assignment or transfer by Tenant set forth in this Article 17 shall be construed to limit or abrogate the rights of a Mortgagee to (a) seek the appointment of a receiver, or (b) delegate or assign its rights under this Lease to any third party in connection with the exercise of said Mortgagee’s rights and remedies under its Mortgage.

**ARTICLE 18. ENCUMBRANCES.**

18.1 **Leasehold Mortgage.** Landlord agrees and consents that Tenant (and Tenant’s successors and assigns) may mortgage, encumber and hypothecate all right, title and interest of Tenant in the leasehold estate created by this Lease (and assign any such interest in this Lease and the leasehold estate in the Property created hereby, as collateral security for such mortgage, encumbrance or hypothecation or assign its interest in the same in connection with an assignment and leaseback transaction) to any lender with net assets in excess of Five Hundred Million and No/100 Dollars ($500,000,000.00) (“Mortgagee”), which term means a commercial or savings bank, savings or building and loan association, life or casualty insurance company, public or private employee pension trust, investment bank, mortgage conduit lender, mortgage banker, opportunity fund (including loan service correspondent companies designated by any of the foregoing institutions), or other institutional lender imposing a first and/or second lien on Tenant’s leasehold interest in the Property. Tenant shall give Landlord notice of any such mortgage, encumbrance or hypothecation (and/or assignment of its interest in the same), and shall accompany the notice with a true copy of the note and mortgage (and/or assignment, if applicable), together with the recording date and instrument number of the recorded mortgage (and/or assignment, if applicable), within ten (10) days after recordation thereof.

18.1.1 Except as hereinafter otherwise expressly provided, said mortgage, encumbrance or hypothecation and all rights thereunder, shall be subject to each and every of the covenants, conditions and restrictions of this Lease, and the same shall be subject to all rights and interests of Landlord hereunder. Upon the request of Landlord, any Mortgagee shall expressly agree, in a writing satisfactory to Landlord, that upon foreclosure of or a trustee’s sale under a mortgage or deed of trust or a deed in lieu thereof, the purchaser at the foreclosure sale or the grantee of the deed lieu of foreclosure, as the case may be, shall be bound by and subject to each and every of the covenants, conditions and restrictions of this Lease first arising or accruing from and after the date of such foreclosure sale or deed in lieu of foreclosure (as applicable) as to themselves and their respective successors and assigns. In the event of any conflict between the provisions of this Lease and the provisions of any mortgage, encumbrance or hypothecation, the terms of this Lease shall prevail.

18.1.2 Mortgagee may transfer all or any part of its interest in said mortgage to another person or entity, and in addition, or in the alternative, may collaterally assign its interest in Tenant’s leasehold interest in the Property and in said mortgage to another person or entity and such other person or entity shall be deemed a Mortgagee, and such person or entity shall be entitled to the benefits afforded to a Mortgagee hereunder; provided however, each such person or entity described in this paragraph shall meet the qualifications of a Mortgagee set forth in the first paragraph of Section 18.1 above.
18.2 Cure by Mortgagee; Notices to Mortgagee.

18.2.1 Any Mortgagee shall have the right, at any time during the Term, while this Lease is in full force and effect:

(a) to do any act required by Tenant hereunder, and all such acts done or performed shall be effective as to prevent a forfeiture of Tenant’s rights hereunder as if the same had been done or performed by Tenant;

(b) to rely on the security afforded by the leasehold estate, and to acquire and to succeed to the interest of Tenant hereunder by foreclosure, whether by judicial sale, by power of sale contained in any security instrument, or by assignment given in lieu of foreclosure. If the Mortgagee or Tenant shall have furnished, in writing, to Landlord a request for notice, then:

(i) Landlord shall send to Mortgagee, concurrently with any notice it sends to Tenant, a duplicate copy of such written notice (excluding periodic billing or rental notices), and

(ii) in the event of any Default hereunder on the part of Tenant, then Landlord will not terminate this Lease by reason of such Default (or exercise any other remedies with respect to any such Default) if the Mortgagee shall, within sixty (60) days after the expiration of the applicable cure periods set forth in Section 21.1 hereof and service on Mortgagee of written notice from Landlord of Landlord’s intention to terminate this Lease (A) cure such Default if the same can be cured by the payment of money and (B) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary covenants of this Lease capable of performance by Mortgagee. Mortgagee shall be deemed to have cured such non-monetary Default if Mortgagee proceeds in a timely and diligent manner to accomplish said cure; provided, however, that if in order to accomplish such cure, Mortgagee must foreclose on its security interest or obtain leave of the court as in the case of bankruptcy proceedings, such Default shall be deemed cured, nevertheless, if Mortgagee shall have made every reasonable effort to obtain such leave in a timely and diligent manner or shall have commenced foreclosure proceedings and diligently pursues to completion all appropriate steps and proceedings for judicial foreclosure, the exercise of the power of sale under and pursuant to a trust deed in the manner provided by law, or the obtaining from Tenant of an assignment of this Lease in lieu of foreclosure (collectively “foreclosure remedies”). Provided that Mortgagee cures any additional defaults in the manner and within the time herein specified, the inability of Mortgagee to cure a Default based upon Tenant’s bankruptcy or insolvency or other non-curable Default shall not permit Landlord to terminate this Lease on account of such Default. Further, this section shall not be deemed to obligate Mortgagee to undertake to cure any Default based upon Tenant’s bankruptcy or insolvency, or other non-curable Default. No notice of Breach by Landlord to Tenant under this Lease shall be effective as to the Mortgagee unless and until a copy thereof shall have been mailed or delivered to Mortgagee in accordance with Section 26.1 below, addressed to Mortgagee at the address previously provided to Landlord. Notwithstanding anything to the contrary set forth in this Lease, including this Section 18.2.1, any cure by a Mortgagee of a failure to Complete the Improvements by the Commencement and Completion or an Extended Deadline pursuant to Section 3.2 and Section 7.1 hereof must occur and cause such cure to be completed on or before the applicable Commencement and Completion or Extended Deadline set forth in Section 3.2; such deadlines are absolute and shall not be extended for any reason, including any failure of a Mortgagee to receive notice of Breach or notice of failure to Complete the Improvements by the applicable Commencement and Completion or Extended Deadline.

18.2.2 Any provisions contained in this Lease to the contrary notwithstanding, any Mortgagee of the Property or its assignee or nominee, may enforce such mortgage and acquire title to the leasehold estate in any lawful manner; and, pending foreclosure of any such mortgage, may take
possession of the Property, provided following such foreclosure the transferee of the leasehold shall thereupon and thereby assume the performance of and be bound by each and all of the covenants, conditions, obligations restrictions and provision herein provided to be kept and performed by Tenant, and Landlord shall recognize such Mortgagee or its assignee or nominee as the Tenant under this Lease and shall not disturb its use and enjoyment of the Tenant’s leasehold interest in the Property, and such mortgagee, or its assignee or nominee, as the Tenant under this Lease shall perform all of the obligations of Tenant set forth in this Lease which accrue thereafter. Mortgagee and its assignee or nominee shall not be liable for any obligations as tenant under this Lease (including, without limitation, any unpaid amounts owing under this Lease as of the date Mortgage or its assignee or nominee takes title to Tenant’s interest in this Lease) except for those acts or omissions that occur during the period in which Mortgagee has title to Tenant’s interest in this Lease. During such time as a mortgage encumbers the leasehold estate, if Landlord or Tenant shall acquire the interest of the other in the demised premises or any portion thereof (except for any acquisition by Landlord following a Default by Tenant hereunder), there shall be no merger of the leasehold estate into (a) the fee simple estate in the Property, (b) the subreversion interest held by Landlord or (c) any leasehold estate superior to that of Tenant. The obligation of Mortgagee for the performance of the terms of this Lease shall terminate upon the sale, transfer or assignment of the right, title and interest of Mortgagee in the leasehold estate to any other person, firm or corporation in accordance with the provisions of this Article 18.

18.3 No Subordination. The foregoing provisions do not give any person whatsoever the right to mortgage, hypothecate or otherwise encumber or to cause any liens to be placed upon the single estate of Landlord, nor shall the foregoing provisions in any event be construed as resulting in a subordination in whole or in part of the single estate of Landlord or to any indebtedness of Tenant.

18.4 New Lease on Termination of this Lease. In the event this Lease is terminated for any reason except for a termination for Default or a termination pursuant to Section 3.3 resulting from Tenant’s failure to Complete the Improvements by the Commencement and Completion Deadlines (as it may be extended pursuant to Section 3.2(b)), a Mortgagee shall have the right within sixty (60) days after receipt of notice of such termination to demand that Landlord execute a new lease of the Property with Mortgagee as Tenant hereunder (a “New Lease”), or any designee or nominee which Mortgagee may designate or name. In such event Mortgagee (or such designee or nominee) shall immediately execute a New Lease which shall be for the unexpired term of this Lease and shall otherwise be identical with the terms of this Lease. Such New Lease shall be executed and delivered by the Landlord to the Mortgagee (or such designee or nominee) within sixty (60) days after receipt by the Landlord of written notice from the Mortgagee of such election to obtain a New Lease and upon payment by the Mortgagee of all sums owing by Tenant under the provisions of this Lease (less the rent and other income actually collected by Landlord in the meantime from any subtenants or other occupants of the Property) and upon performance by the Mortgagee of all other obligations of Tenant under the provisions of this Lease with respect to which performance is then due and which are susceptible of being cured by Mortgagee. After such termination of this Lease and prior to the expiration of the period within which Mortgagee may elect to obtain such New Lease from the Landlord, Landlord shall refrain from executing any new subleases or amending, canceling or terminating any existing subleases without the prior written consent of Mortgagee. Any such New Lease shall have the same priority of title as this Lease, and Mortgagee (or such designee or nominee) under such New Lease shall have the benefit of all of the right, title, interest, powers and privileges of Tenant hereunder in and to the Property. Landlord shall execute and return to Mortgagee any and all documents reasonably requested by Mortgagee to secure or evidence such priority of title, and Mortgagee’s title to the improvements on the Property, within twenty (20) days after request therefor. Upon the execution and delivery of the New Lease, title to all Improvements on the Property, shall automatically vest in Mortgagee or the
designee until the expiration or earlier termination of the New Lease. By accepting any Mortgage or other security interest with respect to this Lease or the Property, each Mortgagee expressly acknowledges the provisions of Section 3.3 of this Lease, which entitle the Landlord to terminate this Lease and retake the Property, free and clear of all Mortgages and other liens and encumbrances on the Property not in existence prior to the Commencement Date. Landlord shall have no obligation to enter into a New Lease as a result of a termination of the Lease pursuant to Section 3.3.

18.5 Consent of Mortgagee. Notwithstanding the provisions of this Lease to the contrary, until such time as the indebtedness of Tenant to Mortgagee shall have been fully paid, this Lease shall not be modified, terminated, cancelled or surrendered, and the Landlord shall not, without the prior written consent of Mortgagee first had and obtained, (i) accept rent that is more than thirty (30) days in advance, (ii) accept any termination, cancellation or surrender of this Lease, or (iii) consent to any modification hereof or consent to the assignment hereof, or of any part or portion of the term created thereby, or of any interest therein. Any exercise or attempted exercise of the foregoing shall be void, at the option of Mortgagee.

18.6 Rights Under Bankruptcy Code. Landlord and Tenant agree, for the benefit of Mortgagee, that so long as a mortgage shall encumber Tenant’s leasehold interest in the Property, the right of election arising under Section 365(h)(1) of the United States Bankruptcy Code may be exercised solely by Mortgagee and not by Tenant. Any exercise or attempted exercise of such right of election by Tenant shall be void, at the option of Mortgagee.

18.7 Estoppel Certificate. Landlord shall execute, acknowledge and deliver to Mortgagee, Tenant, proposed assignees and subtenants, promptly upon request, and in any event not later than ten (10) business days following receipt of such request, a certificate identifying all documents constituting the Lease, and certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and describing or referencing the modifications), (b) the dates, if any, to which all rental due thereunder has been paid, (c) whether, to the best of Landlord’s knowledge, there are then existing any charges, offsets or defenses against the enforcement by Landlord of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed (and, if so, specifying the same), (d) whether, to the best of Landlord’s knowledge, there are then existing any Breaches or Defaults by Tenant in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed under this Lease and whether any notice has been given to Tenant of any Breach which has not been cured (and, if so, specifying the same), (and further, whether any conditions existing which, but for the passage of time or the giving of notice would result in a Default by Tenant under the Lease, and, if so, specifying the same) and (e) such other matters as Mortgagee shall reasonably request.

18.8 Cost of Loans to be Paid by Tenant. The Tenant affirms that it shall bear all of the costs and expenses in connection with (i) the preparation and securing of the Mortgage loans, (ii) the delivery of any instruments and documents and their filing and recording, if required, (iii) all taxes and charges payable in connection with the Mortgage loans, and (iv) all costs reasonably incurred by Landlord in providing any estoppel certificates and/or in making any amendments of this Lease requested by Tenant or Mortgagees.

18.9 Lender Liability. As long as Mortgagee (including its nominee, designee, or other successor or assign of any such Mortgagee) is acting as a secured lender, the liability of Mortgagee
(including any nominee, designee or other successor or assign of any such Mortgagee) shall not exceed the value of such lender’s interest in the Property and this Lease.

18.10 Additional Mortgagee Provisions. Notwithstanding anything to the contrary in this Lease, in the event of any damage or destruction of the Property or Improvements or any portion thereof or interest therein, upon the request of Mortgagee, the proceeds of Tenant’s insurance shall be deposited with Mortgagee (or an independent trustee acceptable to Mortgagee) and shall be applied in accordance with the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage. Notwithstanding anything in the contrary in this Lease, in the event of condemnation of the Property or Improvements, or any portion thereof or any interest therein, upon the request of Mortgagee, the proceeds of the condemnation award shall be deposited with Mortgagee (or an independent trustee acceptable to Mortgagee), who shall act as the disbursing agent and apply the condemnation proceeds in accordance with the terms of this Lease. Landlord acknowledges that, except as otherwise provided in this Lease, Tenant’s interest in its portion of any condemnation proceeds to which it is entitled under this Lease shall be applied in accordance with the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage. Nothing herein shall be construed to effect, in any way, any separate insurance or condemnation proceeds payable to Landlord based upon Landlord’s interest in the Property, or otherwise separate insurance or condemnation proceeds from those proceeds attributable to Tenant’s leasehold estate in the property and interest in the Improvements. Subject to the applicable provisions of the Mortgage and other documents that govern the loan secured by the Mortgage, this Lease may not be terminated by Tenant following a casualty or condemnation unless the indebtedness of Tenant to Mortgagee shall have been fully paid.

18.11 Landlord Financing. Landlord shall have the right at any time to encumber Landlord’s ground leasehold interest in the Property pursuant to a mortgage or deed of trust (a “Landlord Mortgage”); provided, however, the holder of any such mortgage or deed of trust must agree to recognize this Lease, and otherwise the relative lien priorities with respect to this Lease shall not be required to change. No default, foreclosure or other enforcement of remedies under any such Landlord Mortgage shall extinguish or otherwise affect in any manner, and any person who acquires title to the Landlord’s leasehold interest pursuant to any foreclosure, assignment in lieu of foreclosure or other exercise of remedies under any Landlord Mortgage shall take title to the Landlord’s leasehold interest subject to, (i) this Lease and all of Tenant’s rights hereunder, (ii) the rights of the subtenants hereunder and (iii) the rights granted to any Mortgagee hereunder. Upon request of Landlord, any leasehold mortgage lender of Landlord, Tenant and/or any Mortgagee, or any fee mortgage lender, such parties shall enter and execute a commercially reasonable nondisturbance and attornment agreement(s) between and amongst Tenant, Mortgagee, Landlord, Landlord’s leasehold mortgage lender, and any fee mortgage lender, as applicable; provided that the parties acknowledge that the mortgage lender is not party to this Lease and not bound hereby. In the event Landlord encumbers its interest pursuant to a Landlord Mortgage, in no event shall Tenant be required to subordinate its leasehold interest and its interests in subleases and subrents to such Landlord Mortgage unless Landlord, any leasehold mortgage lender of Landlord, Tenant and/or any Mortgagee, or any fee mortgage lender shall enter and execute a commercially reasonable subordination, nondisturbance and attornment agreement(s) between and amongst Tenant, Mortgagee, Landlord, Landlord’s leasehold mortgage lender, and any fee mortgage lender, as applicable.
ARTICLE 19. NON-DISTURBANCE AGREEMENTS.

19.1 Nondisturbance Agreements. Landlord shall execute nondisturbance agreements with any subtenant of the Improvements, which nondisturbance agreement shall provide that (a) so long as such subtenant has not defaulted under the terms of its Lease with Tenant, such subtenant’s rights will not be terminated by Landlord on Landlord’s exercise of Landlord’s right to terminate this Lease for Tenant’s breach, and (b) Landlord shall not be bound by prepayments of more than one month’s rent or security deposits in excess of one month’s rent under such nondisturbance agreement unless such excess prepayment and/or deposit has, in fact, been transferred to Landlord.

ARTICLE 20. PERFORMANCE OF TENANT’S COVENANTS.

20.1 Right of Performance.

20.1.1 Rights of Landlord. If Tenant shall at any time fail to pay any Real Property Taxes or other charge in accordance with Article 4 hereof, within the time period therein permitted, or shall fail to pay for or maintain any of the insurance policies provided for in Article 9 hereof, within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder, within the time permitted by this Lease, then Landlord, after thirty (30) days’ written notice to Tenant (or, in case of an emergency, on such notice, or without notice, as may be reasonable under the circumstances) and without waiving or releasing Tenant from any obligation of Tenant hereunder, may (but shall not be required to):

(a) pay such Real Property Taxes or other charge payable by Tenant pursuant to the provisions of Article 4 hereof, or

(b) pay for and maintain such insurance policies provided for in Article 9 hereof, or

(c) make such other payment or perform such other act on Tenant’s part to be made or performed as in this Lease provided.

20.2 Reimbursement and Damages. All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the rate provided in Section 4.6 from the respective dates of Landlord’s making of each such payment or incurring of each such cost or expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord within thirty (30) days following Tenant’s receipt of Landlord’s written demand (which shall include copies of contractors’ invoices for any work performed by Landlord on Tenant’s behalf). Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant’s failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach, the uninsured amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including reasonable attorneys’ fees, suffered or incurred by reason of damage to, or destruction of, the Improvements, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.
ARTICLE 21. BREACH, DEFAULT; REMEDIES.

21.1 Breach. Any one or all of the following events shall constitute a Breach hereunder:

21.1.1 If Tenant shall fail to make payment of any Rent or Additional Rent when and as the same become due and payable; or

21.1.2 Intentionally deleted.

21.1.3 The entry of any decree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter “Assignee”), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee, or of any substantial part of the property of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of ninety (90) days or more (whether or not consecutive); or the commencement by Tenant or any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing.

21.1.4 If Tenant shall fail to perform or comply with any other term, covenant or condition of this Lease.

21.2 Default. Except as to the Breach described in Section 21.1.3 which Breach will become a Default without notice and an opportunity to cure, if any other Breach shall continue for more than thirty (30) days after Landlord shall have given written notice thereof to Tenant, then Tenant shall be in “Default;” provided, however, if cure of such Breach reasonably requires more than thirty (30) days, then, provided that Tenant commences to cure within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure to completion, Tenant shall not be in Default during the cure period.

21.3 Termination and Other Remedies of Landlord in Event of Default.

21.3.1 If a Default shall occur, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and bring suit against Tenant and recover as an award in such suit the following:

(a) termination of this Lease and the return of the Property and Improvements free and clear of all liens and encumbrances;

(b) the worth at the time of award of the unpaid Percentage Rent, Additional Rent, Extension Payments, and Additional Special Rent Amounts which had been earned at the time of termination;
(c) the worth at the time of award of the amount by which the unpaid Percentage Rent and Additional Rent has been earned after termination until the time Tenant is no longer in possession of the Property; and

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things could be likely to result therefrom.

21.3.2 The “worth at the time of the award” of the amounts referred to in Sections 21.2.1(a) and 21.2.1(b) above shall be computed by allowing interest at the rate provided in Section 4.6 as of the date of the award (the “Interest Rate”). Notwithstanding the foregoing, in no event shall Landlord recover any Rent or other sums from Tenant which would have been earned after Tenant is no longer in possession of the Property.

21.3.3 If a Default occurs, Landlord shall also have the right, with or without terminating this Lease, but subject to any nondisturbance agreements entered into with subtenants, to reenter the Property by legal process and remove all persons and property from the Property, subject to the rights of Equipment Lessors; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

21.3.4 Intentionally omitted.

21.3.5 No reentry or taking possession of the Property by Landlord pursuant to Section 21.3.3 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction.

21.4 Specific Performance. If a Default occurs, Landlord shall, in addition to any other rights of Landlord under this Lease, have the right to pursue the remedy of specific performance to require Tenant to perform Tenant’s obligations and comply with covenants of Tenant under this Lease.

21.5 Intentionally Omitted.

21.6 Receipt of Rent, No Waiver of Default. The receipt by Landlord of the rents or any other charges due to Landlord, with knowledge of any Breach of this Lease by Tenant or of any Default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by Landlord of any rent or any other sum of money or any other consideration paid by Tenant after the termination of this Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Property or the
Improvements, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

21.7 Effect on Indemnification. Notwithstanding the foregoing, nothing contained in this Article 21 shall be construed to limit the Indemnitees’ right to indemnification as otherwise provided in this Lease.

21.8 Landlord Default. If Landlord shall violate, neglect or fail to perform or observe any of the representations, covenants, provisions, or conditions contained in this Lease on its part to be performed or observed in any material way, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (provided Landlord must have undertaken procedures to cure the default within such thirty (30) day period and thereafter diligently pursues such efforts to cure to completion), Tenant may, at its option (in addition to all other rights and remedies specifically set forth in this Lease or available to Tenant at law or in equity), either terminate this Lease upon written notice thereof given to Landlord, or, upon further written notice to Landlord of Tenant’s intention to exercise its self-help remedies hereunder, and after providing Landlord with an additional thirty (30) day cure period thereafter, incur any reasonable expense necessary to perform the obligation of Landlord specified in such notice and bill Landlord for the costs thereof. Notwithstanding the foregoing, if in Tenant’s reasonable judgment, an emergency shall exist, Tenant may cure such default with only reasonable (under the circumstances) notice to Landlord being required. If Landlord has not reimbursed Tenant within thirty (30) days after receipt of Tenant’s bill, then Tenant may deduct the reasonable cost of such expense from the Rent next becoming due, together with interest thereon at the Interest Rate. The self-help option given in this Section is for the sole protection of Tenant, and its existence shall not release Landlord from its obligation to perform the terms, provisions, covenants and conditions herein provided to be performed by Landlord or deprive Tenant of any legal rights which it may have by reason of any such default by Landlord.

ARTICLE 22. PERMITTED CONTESTS.

Tenant, at no cost or expense to Landlord, may contest (after prior written notice to Landlord), by appropriate legal proceedings conducted with due diligence, the amount or validity or application, in whole or in part, of any Real Property Taxes or lien or any Governmental Requirements or Insurance Requirements, provided that (a) in the case of liens of mechanics, materialmen, suppliers or vendors, or Real Property Taxes or liens therefor, such proceedings shall suspend the collection thereof from Landlord, and shall suspend a foreclosure against the Property and/or the Improvements, or any interest therein, or any Rent, if any, or Tenant shall have furnished to Landlord, if requested, a bond or other security, satisfactory to Landlord, (b) neither the Property nor the Improvements, nor any part thereof or interest therein, nor the Rent, if any, nor any portion thereof, would be in any danger of being sold, forfeited or lost by reason of such proceedings, and (c) in the case of Governmental Requirements, Landlord would not be in any danger of any criminal liability or, unless Tenant shall have furnished a bond or other security therefor satisfactory to Landlord, any additional civil liability for failure to comply therewith and the Property and the Improvements would not be subject to the imposition of any lien as a result of such failure. Tenant further agrees to defend, indemnify and hold harmless Landlord from and against any demands, claims, actions, causes of action, judgments, awards, damages, fines, penalties, liabilities, obligations, losses, costs and expenses, including without limitation, attorneys’ fees incurred in connection with any Real Property Taxes, lien, Governmental Requirements or Insurance Requirements to which Tenant is subject and which is Tenant’s obligation.
under this Lease, as provided above. If Tenant shall fail to contest any such matters, or to give Landlord security as hereinabove provided, Landlord may, but shall not be obligated to, post a bond, at Tenant’s cost and expense. Landlord, at the sole cost and expense of Tenant, will cooperate with Tenant and execute any documents or pleadings legally required for any such contest.

ARTICLE 23. FORCE MAJEURE.

23.1 Delay of Performance. Subject to Section 23.2 below, any prevention, delay, nonperformance or stoppage by Tenant or Landlord due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof (except that action or inaction of the Landlord shall not excuse timely performance by Landlord), or civil or military authority; acts of God; acts or omissions of the other party or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, terrorism, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of the party claiming the enforced delay.

23.2 Notice and Cure Requirements. No prevention, delay, or stoppage of performance shall be excused unless:

(a) The party claiming the enforced delay notifies the other party within thirty (30) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Article 23; and

(b) The party claiming the enforced delay diligently proceeds within thirty (30) days of the conclusion of such prevention, delay or stoppage to cure the condition causing the prevention, delay or stoppage; and

(c) The party claiming the enforced delay effects such cure within a reasonable time.

ARTICLE 24. OPTION TO PURCHASE.

Landlord hereby grants to Tenant an option to purchase the Property (“Option”), on the terms and conditions set forth in this Article 24; provided that Tenant is not in Breach or Default under this Lease. The Option may be exercised by Tenant’s delivery, at any time during the Term of a written notice of such exercise (“Exercise Notice”). The Exercise Notice shall include the Tenant’s calculation of the Purchase Price, contingencies, if any, to Closing, and a scheduled Closing Date not later than one hundred twenty (120) days after the date of the Exercise Notice. The “Purchase Price” shall equal Two Million Dollars ($2,000,000.00) and shall increase by two and one-half percent (2.50%) per annum commencing on the Commencement Date. By way of example and not limitation, if Tenant purchases the Property on the second anniversary of the Commencement Date, then the Purchase Price shall be Two Million One Hundred One Thousand Two Hundred Fifty and 00/100 Dollars ($2,101,250.00).

If Tenant desires to purchase one or more Development Parcels, then Tenant shall provide Landlord with written notice thereof in accordance with the terms of this Article 24. It shall be at the Director’s absolute and sole discretion regarding whether or not to allow the sale of one or more Development Parcel pursuant to this Article 24. If the Director consents to the sale of one or more
Development Parcel pursuant to this Article 24, then (i) the purchase price for such portion of the Property shall be an amount equal to the Purchase Price multiplied by a fraction, the numerator of which is the number of square feet of land that comprises the portion of the Property to be sold, and the denominator of which is the number of square feet of land that comprises the Property.

Notwithstanding the foregoing, if Tenant elects to enter into a separate Ground Lease of the Grocery Store Component Property pursuant to Section 201.3.2 of the DDA, then the Purchase Price payable under this Article 24 shall be reduced by the Purchase Price payable for the Grocery Store Component Property. The Purchase Price payable for the Grocery Store Component Property shall equal the Purchase Price set forth above in this Article 24 multiplied by a fraction, the numerator of which is the number of square feet of land that comprises the Grocery Store Component Property, and the denominator of which is the aggregate number of square feet of land that comprises the Property and the Grocery Store Component Property.

ARTICLE 25. CITY PARTICIPATION.

25.1 Participation Payment. All Sale Proceeds shall be distributed as follows: (A) five percent (5%) to the Landlord, and (B) ninety-five percent (95%) to the Tenant.

25.2 Termination. The terms of this Article 25 shall terminate upon the Sale of the Property (or, if applicable, each Development Parcel) by the Tenant to a person or entity that is not affiliated with the Tenant.

ARTICLE 26. GENERAL PROVISIONS.

26.1 Notices. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Lease must be in writing and may be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) by facsimile transmission or (iv) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below, or at any other address as that party may later designate by Notice. Service shall be deemed conclusively made at the time of service if personally served; upon confirmation of receipt if sent by facsimile transmission; the next business day if sent by overnight courier and receipt is confirmed by the signature of an agent or employee of the party served; the next business day after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by express mail; and three (3) days after deposit thereof in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail.

26.1.1 Any notice to Landlord shall be given to and rent shall be paid to:

City of Anaheim
200 South Anaheim Boulevard
Anaheim, California  92805
Attention:  Director
Copy to:  City Attorney
Attention:  Leonie Mulvihill
With Copies To:

John E. Woodhead IV, Director of Community and Economic Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

26.1.2 Any notice to Tenant shall be given to:

39 Commons Partners, LLC
515 South Figueroa Street, Suite 1230
Los Angeles, CA 90071
Attention: Brett Foy and Paul Casey

Zelman Development Co.
515 S. Figuerao St. #1230
Los Angeles, CA. 90071
Attention: Brett M. Foy, Co-President

Greenlaw Partners, LLC
18301 Von Karman Avenue, Suite 250
Irvine, California 92612
Attention: Scott Murray and Rob Mitchell

With a copy to:

Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

Cochran Law Group
18301 Von Karman Avenue, Suite 270
Irvine, California 92612
Attention: Thia Cochran, Esq.

Any party may, by virtue of written Notice in compliance with this Section 25.1, alter or change the address or the identity of the person to whom any notice, or copy thereof, is to be sent.

26.2 No Merger of Title. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate in the Property or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly: (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate, and (b) any other estate in the Property and the Improvements or any part thereof or
any interest in such estate, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including any leasehold Mortgagee or leasehold Mortgagees, having any interest (including a security interest) in (i) this Lease or the leasehold estate created by this Lease, and (ii) any other estate in the Property or the Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

26.3 **Quiet Enjoyment.** Tenant, upon paying the Rent and other charges herein provided for and upon performing and complying with all covenants, agreements, terms and conditions of this Lease to be performed or complied with by it, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation by Landlord, or any person or persons claiming through Landlord.

26.4 **No Claims Against Landlord.** Nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property with respect to the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord or its interest in the Property in respect thereof.

26.5 **No Waiver by Landlord.** To the extent permitted by applicable law, no failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a default under this Lease, and no acceptance of rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. No waiver of any default shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Landlord with respect to any other then existing or subsequent default.

26.6 **Holding Over.** In the event Tenant shall hold over or remain in possession of the Property or the Improvements with the consent of Landlord after the expiration of the Term, such holding over or continued possession shall create a tenancy for month to month only, upon the same terms and conditions as are herein set forth so far as the same are applicable.

26.7 **No Partnership.** Anything contained herein to the contrary notwithstanding, Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or member of a joint enterprise with Tenant hereunder.

26.8 **Remedies Cumulative.** The various rights, options, elections and remedies of Landlord and Tenant, respectively, contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease. No party shall have the right to recover consequential damages.

26.9 **Attorneys’ Fees.** In the event of a dispute between the parties arising out of or in connection with this Lease, whether or not such dispute results in litigation, the prevailing party (whether resulting from settlement before or after litigation is commenced) shall be entitled to have and recover from the losing party reasonable attorneys’ fees and costs of suit incurred by the prevailing party.

26.10 **Time Is of the Essence.** Time is of the essence of this Lease and all of the terms, provisions, covenants and conditions hereof.
26.11 Construction of Lease. This Lease shall be construed in accordance with the substantive laws of the State of California, without regard to the choice of law rules thereof. The rule of construction that a document be construed strictly against its drafter shall have no application to this Lease. Whenever the singular number is used in this Lease and required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

26.12 Severability. If one or more of the provisions of this Lease shall be held to be illegal or otherwise void or invalid, the remainder of this Lease shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted under applicable laws and regulations.

26.13 Entire Agreement; Modification. This Lease and the Exhibits attached hereto, each of which is incorporated by this reference, contain the entire agreement of the parties with respect to the matters discussed herein. This Lease may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

26.14 Binding Effect and Benefits. This Lease shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. Nothing in this Lease, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Lease.

26.15 Further Assurances. Each party hereto will promptly execute and deliver without further consideration such additional agreement, assignments, endorsements and other documents as the other party hereto may reasonably request to carry out the purposes of this Lease.

26.16 Counterparts. This Lease may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

26.17 Request for Approval. In order for a request for any approval or consent required under the terms of this Lease to be effective, it shall be given by way of a Notice in accordance with Section 26.1 clearly marked “Request for Approval” and state (or be accompanied by a cover letter stating) substantially the following:

(a) the section of this Lease under which the request is made and the action or response required;

(b) if applicable, the period of time as stated in this Lease within which the recipient of the Notice shall respond;

(c) if so provided in this Lease, notice that the failure to refuse consent or approval within the stated time period will constitute a Breach under the Lease; and

(d) notice that, other than when consent is in the party’s sole discretion, if the consent or approval requested is denied, the explanation for such denial must be given in writing and the party whose request is denied must be given the opportunity to respond.

If a request for approval states a period of time for approval which is less than the time period provided for in this Lease for such approval, the time period stated in this Lease shall be the controlling time period.
In no event shall a recipient’s approval of or consent to the subject matter of a Notice be deemed to have been given by its failure to object or respond to such Notice.

In the event that a recipient does not approve all or any portion of a Request for Approval, the recipient shall concurrently deliver Notice describing in reasonable detail the specific reason for such disapproval.

26.18 Quiet Possession. Tenant shall have quiet possession of the Property for the entire Term hereof subject to all of the provisions of this Lease and all matters of record against the Property. If Tenant’s quiet possession of Property is disrupted by any final determination that this Lease is not enforceable against Landlord, Landlord shall immediately refund and repay Tenant the portion of the Base Rent paid by Tenant that is allocable to the remaining original scheduled Term of the Lease determined by amortizing the Base Rent payment over the full Lease Term on a straight-line basis; and upon Tenant’s receipt of such refund, this Lease shall automatically terminate.

26.19 No Third Party Beneficiaries. This Lease is made for the purpose of setting forth rights and obligations of Tenant and Landlord. Except for Tenant and Landlord, no other person shall have any rights hereunder or by reason hereof.

ARTICLE 27. RECAPTURE OPTION.

Tenant hereby grants to Landlord an option to recapture (the “Recapture Option”) a portion of the Property the location of which will be mutually agreed upon the parties, but not to exceed five (5) acres (the “Public Use Component Property”), on the terms and conditions set forth in this Article 27. The Recapture Option may be exercised by Landlord’s delivery, at any time prior to the opening for the business to the general public of the Grocery Store, as described in Section 201.3.2 of the DDA, the “Recapture Date,” of a written notice of such exercise (“Landlord’s Exercise Notice”). Notwithstanding the foregoing, the Recapture Option shall terminate if the Public Use Component Property is subleased or sold to a purchaser that intends to operate a business upon the Public Use Component Property, so long as such lease or sale is approved by the Landlord in accordance with the terms of this Lease and the DDA.

If Landlord timely elects to exercise the Recapture Option, Landlord and Tenant shall enter into an amendment of this Lease upon terms and conditions reasonably approved by Landlord and Tenant. Such amendment shall provide, among other things, as follows:

(a) Tenant’s lease of the Public Use Component Property shall terminate as of the termination date set forth in Landlord’s Exercise Notice, but in no event later than the Recapture Date;

(b) The parties shall agree upon the size and location of the Public Use Component Property and Landlord shall cause a Parcel Map to be recorded in the Official Records on or before the Recapture Date to cause the Public Use Component Property to be a separate legal parcel. The boundaries, configuration, (if other than as depicted in the Site Plan) and legal description of the Public Use Component Property shall be reasonably approved by Landlord and Tenant.

(c) The Base Rent payable under this Lease shall be reduced by the Base Rent payable for the Public Use Component Property. The Base Rent payable for the Public Use Component Property shall equal the Base Rent payable pursuant to Section 4.1.1 multiplied by a
fraction, the numerator of which is the number of square feet of land that comprises the Public Use Component Property, and the denominator of which is the aggregate number of square feet of land that comprises the Property and the Grocery Store Component Property.

(d) The Purchase Price payable under Article 24 shall be reduced by the Purchase Price allocable to the Public Use Component Property. The Purchase Price allocable to the Public Use Component Property shall equal the Purchase Price set forth in Article 24 multiplied by a fraction, the numerator of which is the number of square feet of land that comprises the Public Use Component Property, and the denominator of which is the aggregate number of square feet of land that comprises the Property and the Grocery Store Component Property.

(e) The Lease amendment shall provide for reciprocal pedestrian and vehicular access, but not reciprocal parking between the Property and the Public Use Component Property.

(f) Landlord shall at its sole cost and expenses maintain, repair and replace the Public Use Component Property in accordance with the standards set forth in Article 10 of this Lease.

(g) The square footages of the buildings set forth in the Commencement and Completion Schedule attached hereto as Exhibit E shall be revised to reflect Landlord’s recapture of the Public Use Component Property as reasonably agreed upon by Landlord and Tenant.

(h) On or before the Recapture Date, the parties shall cause an Amended Memorandum of Ground Lease that modifies the description of the Property to exclude the Public Use Component Property to be recorded in the Official Records, in the form attached hereto on Exhibit C-2 and incorporated herein by reference.

[Signatures to Ground Lease appear on following pages]
IN WITNESS WHEREOF, the undersigned have executed this Lease as of the date first above written.

“TENANT”

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

By: Zelman Anaheim, LLC, a Delaware limited liability company
Its: Managing Member

By: Zelman Development Co., a California corporation
Its: Manager

By: __________________________
   Brett Foy, Co-President

[Signatures to Ground Lease continue on following page]
“LANDLORD”

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: __________________, 20___

By: ____________________________________________

John E. Woodhead, IV, Director of
Community and Economic Development

THERESA BASS, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Leonie Mulvihill
Assistant City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel
EXHIBIT B-1

LEGAL DESCRIPTION

[to come]
EXHIBIT B-2
GROCERY STORE COMPONENT PROPERTY LEGAL DESCRIPTION
[to come]
MEMORANDUM OF GROUND LEASE

This MEMORANDUM OF GROUND LEASE ("Memorandum") is executed as of __________, 20___ by and between the CITY OF ANAHEIM, a California municipal corporation and charter city ("Landlord"), and 39 COMMONS PARTNERS, LLC, a Delaware limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant have entered into that certain Ground Lease ("Lease") dated concurrently herewith pursuant to which Landlord has conveyed a ground subleasehold interest in that certain parcel of real property, which is legally described in Attachment No. 1 attached hereto and incorporated herein by reference ("Property") to Tenant and Tenant has agreed to operate, manage and maintain a first-quality, mixed use commercial development on separate parcels. In no event shall Landlord’s ground leasehold interest in the Property or any land use entitlements for the Project be subordinated to any deed of trust or other lien or encumbrance for financing.

B. The Lease contains an option to purchase as set forth in Section 23 of the Lease.

C. Copies of the Lease are available for public inspection at Landlord’s office at 200 South Anaheim Boulevard, Anaheim, California 92805.

D. The Rent payable under the Lease includes the Base Rent payable pursuant to Section 4.1.1 of the Lease, the Percentage Rent payable pursuant to Section 4.1.2 of the Lease, and Additional Rent payable pursuant to Section 4.1.3 of the Lease including, if applicable, Extension Payments payable pursuant to Section 3.2(b) of the Lease.

E. The Lease provides that a short form memorandum of the Lease shall be executed and recorded in the Official Records of Orange County, California.
NOW, THEREFORE, the parties hereto certify as follows:

Pursuant to the Lease, Landlord has conveyed a leasehold interest in the Property to Tenant for a term commencing on the Commencement Date and ending on __________ unless earlier terminated or extended as provided by the Lease. The Lease restricts the Tenant’s right to encumber, assign or transfer Tenant’s leasehold interest in the Property, as more particularly set forth in the Lease. The Lease further provides Tenant with an option to Purchase, as more particularly specified in the Lease.

This Memorandum is not a complete summary of the Lease, and shall not be used to interpret the provisions of the Lease.

[Signatures to Memorandum of Ground Lease appear on the following pages]
“LANDLORD”

CITY OF ANAHEIM,
a California municipal corporation and charter city

By: ________________________________
   Director of Community and Economic Development

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

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

WITNESS my hand and official seal.

Signature ________________________________
   (Seal)

[Signatures to Memorandum of Ground Lease continue on following page]
“TENANT”

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

By: Zelman Anaheim, LLC, a Delaware limited liability company
Its: Managing Member

By: Zelman Development Co.,
a California corporation
Its: Manager

By: Brett Foy, Co-President

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

STATE OF CALIFORNIA )
COUNTY OF _________________ ) ss.

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

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

WITNESS my hand and official seal.

Signature ______________________________
(Seal)
ATTACHMENT NO. 1 TO EXHIBIT C

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Anaheim, County of Orange, State of California, described as follows:

[to come]
EXHIBIT C-2

AMENDED MEMORANDUM OF GROUND LEASE

[to follow if necessary]
EXHIBIT D

RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

39 COMMONS PARTNERS, LLC

__________________________________

__________________________________

__________, California __________

ATTN: ________________________

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the “Release”) is made by the CITY OF ANAHEIM, a California municipal corporation and Charter City (the “City”), in favor of 39 COMMONS PARTNERS, LLC, a Delaware limited liability company (the “Developer”), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain ground lease (the “Ground Lease”) dated __________, 2019 concerning the development of certain real property situated in the City of Anaheim, California as more fully described in Exhibit “A” attached hereto and made a part hereof.

B. As referenced in Section ___ of the Ground Lease, the City is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in Article 2 of the Ground Lease) upon completion of construction of each Development Parcel (as defined in Article 2 of the Ground Lease), which Release is required to be in such form as to permit it to be recorded in the Recorder’s office of Orange County. This Release is conclusive determination of satisfactory completion of the construction and development required by the Ground Lease with respect to each Development Parcel.

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

NOW, THEREFORE, the City hereby certifies as follows:

1. The Improvements to be constructed on the Development Parcel described in Exhibit B attached hereto and incorporated herein by reference, have been fully and satisfactorily completed in conformance with the Ground Lease. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the Ground Lease and other documents executed and recorded pursuant to the Ground Lease 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 Ground Lease.

IN WITNESS WHEREOF, the City has executed this Release this ___ day of ______________________, 201_.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

By: ____________________________
______________________________
John E. Woodhead, IV, Director of Community and Economic Development

THERESA BASS, CITY CLERK

________________________________________
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

________________________________________
City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel
EXHIBIT E

COMMENCEMENT AND COMPLETION SCHEDULE

Commencement of construction of 50,000 square feet (gross leasable area) of commercial development, exclusive of the Grocery Store, shall occur on or before the sixth (6th) anniversary of the Commencement Date and completed within eighteen (18) months thereafter.

Commencement of construction of an additional 50,000 square feet (gross leasable area), exclusive of the Grocery Store, shall occur on or before the eleventh (11th) anniversary of the Commencement Date and completed within eighteen (18) months thereafter.

The Grocery Store Component shall be commenced and completed in accordance with the DDA.
EXHIBIT F
LICENSE AGREEMENT (OM&M)

This LICENSE AGREEMENT (OM&M) (this “Agreement”), dated for purposes of identification only as of ______________, 2019 (the “Date of Agreement”), is entered by and between the CITY OF ANAHEIM, a charter city and a municipal corporation duly organized and existing under the Constitution and laws of the State of California, on the one hand (the “City”), and 39 COMMONS PARTNERS, LLC, a Delaware limited liability company (“Owner”).

RECITALS:

A. Owner has acquired, pursuant to that certain disposition and development agreement between the City and Owner dated ______________, (the “DDA”) that certain property containing approximately 30 acres (the “Owner’s Property”) which is composed of, among other property, the Sparks Landfill, Anderson Landfill, and Rains Pit Landfill (the “Landfills”). The legal description of Owner’s Property is attached hereto as Exhibit A and incorporated herein by reference. All capitalized terms not defined herein shall have the meaning set forth in the DDA.


C. Among the conditions set forth in the Conditional Approval Letter was the requirement of a post closure maintenance and monitoring program in compliance with California Code of Regulations, Title 27, Subchapter 5, section 21180 requiring continued maintenance of landfill gas systems and ongoing monitoring of landfill gas levels on closed landfills which plan was approved by the Orange County Solid Waste Local Enforcement Agency (the “OM&M Plan”).

D. The subject of the OM&M Plan are those certain remedial improvements installed on the Landfills in connection with the implementation of the RAP (“Remedial Improvements”) which includes, among other things, a portion of the monitoring system on the Owner’s Property.

E. Pursuant to the DDA, the City is responsible for entering into a contract and paying costs for providing maintenance, operation and monitoring of the Landfill gas control system pursuant to the OM&M Plan, as provided in Section 2.1 of the OM&M Plan, or as provided in any corresponding provision of any amendment, revision or update to the current OM&M Plan.

F. Owner is willing to permit the City to enter the Owner’s property to perform the operation, maintenance and monitoring in accordance with the OM&M Plan by granting a license as provided herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Right of Entry. Owner hereby grants to City and its agents, contractors, subcontractors and their invitees a license to enter the Owner’s Property for the purpose of conducting the Permitted Work (the “License”) and for no other purposes without the prior written approval of
Owner. The License shall include such rights of ingress and egress over and through the Owner’s Property as are reasonably necessary to implement the OM&M Plan. This Agreement shall run for a term commencing on the Effective Date and terminating upon termination of the OM&M Plan (the “License Term”).

1.1 Permits. Prior to commencing any activities under this Agreement, City shall secure all permits needed to carry out the actions to be performed on the Owner’s Property pursuant to this Agreement.

Section 2. Liens. With regard to actions performed on the Owner’s Property under this Agreement, City shall not permit to be placed against the Owner’s Property, or any part thereof, any design professional’s, mechanic’s, materialmen’s, contractor’s, or subcontractor’s liens (collectively, “Liens”). City shall indemnify, defend and hold harmless Owner from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys’ fees, arising from any Liens. Owner reserve the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Owner’s Property, or any portion thereof, or on the improvements on the Owner’s Property, any notices of non-responsibility or other notice as may be desirable to protect Owner against liability. In addition to, and not as a limitation of Owner’s other rights and remedies under this Agreement, should City fail, within ten (10) days of written request from Owner, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless Owner from and against any loss, damage, injury, liability or claim arising out of a Lien, then Owner, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys’ fees incurred in doing so shall be paid to Owner by City upon written demand.

Section 3. Compliance With Laws/Permits. City shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, City, at its sole cost and expense, shall obtain any and all permits which may be required by any law for any activities City desires to conduct or have conducted pursuant to this Agreement. Owner shall provide reasonable assistance to City in obtaining such permits.

Section 4. Assignment of License. This License Agreement (OM&M) is assignable to either the Successor Agency or the OM&M Contractor.

Section 5. No Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Owner’s Property to City.

Section 6. Notices. Any notices, requests or approvals given under this Agreement from one party to another shall be in writing and shall be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, by certified mail, return receipt requested, to the addresses of the other party as stated in this Section, and shall be deemed to have been received at the time of personal delivery or three (3) days after the date of deposit for mailing. Notices shall be sent to:
To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: Director
Copy to: City Attorney

with a copy to: John E. Woodhead IV, Director of Community and Economic Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
Tel: 714-765-4301

with a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.
Tel: 949-725-4140

To Owner: 39 Commons Partners, LLC
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey

Zelman Anaheim, LLC
515 S. Figueroa St. #1230
Los Angeles, CA. 90071
Attention: Brett M. Foy, Co-President

Greenlaw Partners, LLC
18301 Von Karman Avenue, Suite 250
Irvine, California 92612
Attention: Scott Murray and Rob Mitchell

With copies to: Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

Cochran Law Group
18301 Von Karman Avenue, Suite 270
Irvine, California 92612
Attention: Thia Cochran, Esq.

Section 7. Governing Law. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.
Section 8. Interpretation. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

Section 9. Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Owner and City.

Section 10. Owner’s Representations. Owner represent and warrant that Owner has the authority to enter into this Agreement, but otherwise make no representations and warranties with respect to the Owner’s Property.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

Section 12. Effective Date of this Agreement. This Agreement shall take effect immediately upon the execution of this Agreement by City (the “Effective Date”).

[Signatures appear on following page.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

“CITY”:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: __________________, 20__

By: ________________________________
John E. Woodhead, IV, Director of Community and Economic Development

THERESA BASS, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel
OWNER:

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

By: Zelman Anaheim, LLC, a Delaware limited liability company
Its: Managing Member

By: Zelman Development Co.,
a California corporation
Its: Manager

Dated: ___________________________ By: ___________________________

Brett Foy, Co-President
EXHIBIT A

LEGAL DESCRIPTIONS OF OWNER’S PROPERTY

APN: ______________
LICENSE AGREEMENT

This LICENSE AGREEMENT (OM&M) (this “Agreement”), dated for purposes of identification only as of ______________, 2019 (the “Date of Agreement”), is entered by and between the CITY OF ANAHEIM, a charter city and a municipal corporation duly organized and existing under the Constitution and laws of the State of California, on the one hand (the “City”), and 39 COMMONS PARTNERS, LLC, a ______________ (“Owner”).

RECITALS:

A. Owner has acquired, pursuant to that certain disposition and development agreement between the City and Owner dated ______________, (the “DDA”) that certain property containing approximately 30 acres (the “Owner’s Property”) which is composed of, among other property, the Sparks Landfill, Anderson Landfill, and Rains Pit Landfill (the “Landfills”). The legal description of Owner’s Property is attached hereto as Exhibit A and incorporated herein by reference. All capitalized terms not defined herein shall have the meaning set forth in the DDA.


C. Among the conditions set forth in the Conditional Approval Letter was the requirement of a post closure maintenance and monitoring program in compliance with California Code of Regulations, Title 27, Subchapter 5, section 21180 requiring continued maintenance of landfill gas systems and ongoing monitoring of landfill gas levels on closed landfills which plan was approved by the Orange County Solid Waste Local Enforcement Agency (the “OM&M Plan”).

D. The subject of the OM&M Plan are those certain remedial improvements installed on the Landfills in connection with the implementation of the RAP (“Remedial Improvements”) which includes, among other things, a portion of the monitoring system on the Owner’s Property.

E. Pursuant to the DDA, the City is responsible for entering into a contract and paying costs for providing maintenance, operation and monitoring of the Landfill gas control system pursuant to the OM&M Plan, as provided in Section 2.1 of the OM&M Plan, or as provided in any corresponding provision of any amendment, revision or update to the current OM&M Plan.

F. Owner is willing to permit the City to enter the Owner’s property to perform the operation, maintenance and monitoring in accordance with the OM&M Plan by granting a license as provided herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:
Section 1. Right of Entry. Owner hereby grants to City and its agents, contractors, subcontractors and their invitees a license to enter the Owner’s Property for the purpose of conducting the Permitted Work [“Permitted Work is not defined”] (the “License”) and for no other purposes without the prior written approval of Owner. The License shall include such rights of ingress and egress over and through the Owner’s Property as are reasonably necessary to implement the OM&M Plan. This Agreement shall run for a term commencing on the Effective Date and terminating upon termination of the OM&M Plan (the “License Term”).

1.1 Permits. Prior to commencing any activities under this Agreement, City shall secure all permits needed to carry out the actions to be performed on the Owner’s Property pursuant to this Agreement.

1.2 Non-Interference. Notwithstanding the foregoing or anything contained herein to the contrary, City shall not enter any tenant’s or occupant’s premises without 48 hours’ prior written notice to Owner and the tenant or occupant, except in the event of an emergency. City shall use reasonable efforts to avoid interfering with a tenant’s or occupant’s operation of its business. City shall repair any damage caused by the City, its agents, contractors or employees.

Section 2. Liens. With regard to actions performed on the Owner’s Property under this Agreement, City shall not permit to be placed against the Owner’s Property, or any part thereof, any design professional’s, mechanic’s, materialmen’s, contractor’s, or subcontractor’s liens (collectively, “Liens”). City shall indemnify, defend and hold harmless Owner from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys’ fees, arising from any Liens. Owner reserve the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Owner’s Property, or any portion thereof, or on the improvements on the Owner’s Property, any notices of non-responsibility or other notice as may be desirable to protect Owner against liability. In addition to, and not as a limitation of Owner’s other rights and remedies under this Agreement, should City fail, within ten (10) days of written request from Owner, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless Owner from and against any loss, damage, injury, liability or claim arising out of a Lien, then Owner, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys’ fees incurred in doing so shall be paid to Owner by City upon written demand.

Section 3. Compliance With Laws/Permits. City shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, City, at its sole cost and expense, shall obtain any and all permits which may be required by any law for any activities City desires to conduct or have conducted pursuant to this Agreement. Owner shall provide reasonable assistance to City in obtaining such permits.

Section 4. Assignment of License. This License Agreement (OM&M) is assignable to either the Successor Agency or the OM&M Contractor.

Section 5. No Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Owner’s Property to City.
Section 6. Notices. Any notices, requests or approvals given under this Agreement from one party to another shall be in writing and shall be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, by certified mail, return receipt requested, to the addresses of the other party as stated in this Section, and shall be deemed to have been received at the time of personal delivery or three (3) days after the date of deposit for mailing. Notices shall be sent to:

To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: Director
Copy to: City Attorney

with a copy to: John E. Woodhead IV, Director of Community and Economic Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
Tel: 714-765-4301

with a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.
Tel: 949-725-4140

To Owner: [Zelman Greenlaw Venture]
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey

[Zelman Development Co.]
515 S. Figueroa St. #1230
Los Angeles, CA. 90071
Attention: Brett M. Foy, Co-President

Greenlaw Partners, LLC
18301 Von Karman Avenue, Suite 250
Irvine, California 92612
Attention: Scott Murray and Rob Mitchell

With copies to: Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

Cochran Law Group
18301 Von Karman Avenue, Suite 270
Irvine, California 92612
Attention: Thia Cochran, Esq.
Section 7. Governing Law. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

Section 8. Interpretation. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

Section 9. Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Owner and City.

Section 10. Attorneys’ Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys’ fees as established by the judge or arbitrator presiding over such dispute.

Section 11. Owner’s Representations. Owner represent and warrant that Owner has the authority to enter into this Agreement, but otherwise make no representations and warranties with respect to the Owner’s Property.

Section 12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

Section 13. Effective Date of this Agreement. This Agreement shall take effect immediately upon the execution of this Agreement by City (the “Effective Date”).

[Signatures appear on following page.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

“CITY”:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: __________________, 20___ By: __________________________________________

John E. Woodhead, IV, Director of
Community and Economic Development

THERESA BASS, CITY CLERK

__________________________________________
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

__________________________________________
City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Special Counsel
OWNER:

39 COMMONS PARTNERS, LLC,
a Delaware limited liability company

By: Zelman Anaheim, LLC, a Delaware limited liability company
Its: Managing Member

By: Zelman Development Co., a California corporation
Its: Manager

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

STATE OF CALIFORNIA

COUNTY OF __________________________

On ___________________ before me, ____________________________________, Notary Public,

personally appeared _____________________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF __________________________

On ___________________ before me, ____________________________________, Notary Public,

personally appeared _____________________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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
EXHIBIT A

LEGAL DESCRIPTIONS OF OWNER’S PROPERTY

APN: ______________