

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

**THE CITY OF SAN LEANDRO, IN ITS CAPACITY AS SUCCESSOR
AGENCY TO THE SAN LEANDRO REDEVELOPMENT AGENCY**

and

INNISFREE VENTURES II, LLC

_____, 2012

Exhibits

- A Legal Description of Property
- B Form of Memorandum of DDA and Option
- C Form of Grant Deed
- D Form of Note
- E Form of Regulatory Agreement

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2012 (“**Effective Date**”) by and between the City of South San Leandro, a public body, corporate and politic, in its capacity as Successor Agency to the Redevelopment Agency of the City of San Leandro (“**City**”) and Innisfree Ventures II, LLC, a California limited liability company (“**Developer**”). City and Developer are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. City is the owner of the real property located at 1550 East 14th Street in the City of San Leandro and known as Alameda County Assessor’s Parcel No. 077-0540-009-00 and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Subject to the terms and conditions set forth in this Agreement: (i) the City will convey the Property to Developer, and (ii) Developer will develop a retail project on the Property as more particularly described herein.

C. The City Council, the governing board of the Successor Agency, and the Oversight Board have each determined that the disposition and development of the Property pursuant to this Agreement will be of benefit to the community and to the taxing entities that will share in the property taxes assessed against the Property.

D. The City Council, the governing board of the Successor Agency, and the Oversight Board have each approved the execution of this Agreement and the disposition of the Property as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing.

E. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Project within the time periods specified herein and in accordance with the provisions hereof and Developer’s agreement to maintain the Property, the Project, and the adjoining public improvements in accordance with the provisions of this Agreement, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“**AB 26**” means Assembly Bill x1 26, adopted by the California legislature and codified as Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code.

“**Additional Payment**” is defined in Section 3.2.1.

“**Certificate of Completion**” is defined in Section 4.13.

“**City Council**” means the City Council of the City of San Leandro.

“**City Documents**” means collectively, this Agreement, the Memorandum, the Grant Deed, the Note, and the Regulatory Agreement.

“**Claims**” is defined in Section 4.15.

“**Closing**,” “**Closing Date**” and “**Close of Escrow**” each mean the date that escrow closes for conveyance of the Property to Developer.

“**Conditions of Approval**” is defined in Section 4.1.

“**Construction Plans**” is defined in Section 4.9.

“**Deposit**” is defined in Section 3.3.1.

“**Environmental Laws**” is defined in Section 8.1.2.

“**Hazardous Material**” is defined in Section 8.1.1.

“**Indemnitees**” is defined in Section 4.15.

“**Lender’s Title Policy**” is defined in Section 3.8.1.

“**Memorandum**” is defined in Section 9.10.

“**Note**” means the promissory note described in Section 3.3.2 to be executed by Developer substantially in the form attached hereto as Exhibit D to evidence Developer’s obligation to make the Additional Payment.

“**Official Records**” means the Official Records of Alameda County.

“**Oversight Board**” means the oversight board established to review the actions of the Successor Agency pursuant to AB 26.

“**Owner’s Title Policy**” is defined in Section 3.8.2.

“**Permitted Exceptions**” is defined in Section 3.1.

“**Project**” means the development of the Property as a retail development as more particularly described in Section 4.1.

“**Property**” is defined in Recital A.

“**Purchase Price**” is defined in Section 3.2.

“**Regulatory Agreement**” is defined in Section 6.5.

“**Successor Agency**” means the Successor Agency to the Redevelopment Agency of the City of San Leandro and is the City of San Leandro acting solely in such capacity pursuant to AB 26 and Resolution 2012-001 adopted by the City Council on January 9, 2012.

“**Title Company**” is defined in Section 3.1.

“**Title Due Diligence Period**” is defined in Section 3.2.

“**Title Report**” is defined in Section 3.1.

“**Transfer**” is defined in Section 7.2.

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE

2.1 Developer’s Representations. Developer represents and warrants to City as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall promptly give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer’s representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority. Developer is a limited liability company, duly organized and in good standing under the laws of the State of California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement and the other City Documents constitute valid and binding obligations of Developer, enforceable in accordance with their respective terms.

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

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(iv) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2 City's Representations.

(i) Authority. City, acting in its capacity as the Successor Agency, has obtained the approval of the Oversight Board to undertake all obligations of City as provided herein, and the execution, performance and delivery of this Agreement by City has been duly authorized by the governing board of the Successor Agency and by the Oversight Board. The persons executing this Agreement on behalf of City have been duly authorized to do so.

(ii) 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.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement.

(iv) No City Bankruptcy. City is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date. The obligations of Developer and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

ARTICLE III

DISPOSITION OF THE PROPERTY

3.1 Purchase and Sale of Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, City, acting in its capacity as Successor Agency, shall sell to Developer, and Developer shall purchase from City, the fee interest in the Property in accordance with and subject to the terms, covenants and conditions of this Agreement.

Title to the Property shall be conveyed to Developer by grant deed substantially in the form attached hereto as Exhibit C (the "**Grant Deed**") free and clear of all exceptions to title except: (a) the provisions and effects of the City Documents, (b) applicable building and zoning laws and regulations, (c) any lien for nondelinquent taxes and assessments or taxes and assessments (to be prorated at closing), (d) subject to Section 3.1.1, exception numbers 1 through 6 as shown on that certain preliminary title report for the Property ("**Title Report**") issued by First American Title Insurance Company ("**Title Company**") and dated April 9, 2012, and (e) such other conditions, liens, encumbrances, restrictions, easements and exceptions as approved by Developer pursuant to this Section. All of the foregoing are collectively hereinafter referred to as the "**Permitted Exceptions.**"

3.1.1 Title Review. By not later than (20) business days following the Effective Date ("**Title Due Diligence Period**"), Developer shall deliver to City written notice of any objections to exceptions listed in the Title Report or on any surveys of the Property provided by City or obtained by Developer. Within five (5) business days after receipt of Developer's written

notice, City shall advise Developer in writing whether or not City is able to cause the objectionable exceptions to be removed at or prior to Closing. If City indicates that it is unable or unwilling to remove any such exception, then within five (5) business days after receipt of City's notice, Developer shall, by written notice to City, either (i) agree to accept title subject to the exceptions which City is unable to cause to be removed (in which case such exceptions shall be considered Permitted Exceptions), or (ii) terminate this Agreement, in which case the Deposit and accrued interest thereon shall be returned to Developer, and thereafter, except for those obligations herein which are specifically stated to survive the termination of this Agreement, neither Party shall have any further right, liability or obligation under this Agreement. If by the Closing Date, City has failed to cause to be removed any exception that City had agreed in writing to cause to be removed, and Developer is unwilling to accept title subject to such exceptions, Developer shall have, as its exclusive remedy, the right to terminate this Agreement, in which case the Deposit and accrued interest thereon shall be returned to Developer, and thereafter, except for those obligations herein which are specifically stated to survive the termination of this Agreement, neither Party shall have any further right, liability or obligation under this Agreement.

3.1.2 Developer's Continuing Environmental Investigations. City acknowledges that Developer is continuing its environmental investigation of the Property and pursuant to Section 8.5, agrees to provide Developer with access to the Property to conduct environmental testing; provided that, Developer shall not engage in or otherwise conduct any additional environmental studies or environmental testing or sampling of any kind with respect to the Property or with respect to the soils or ground water, or other studies which would require test boring or which testing would otherwise damage or disturb any portion of the Property, without obtaining City's prior written consent thereto, which consent City shall not unreasonably withhold, delay or condition. City or its representative may be present to observe any testing performed on the Property by Developer or its representatives. By not later than sixty (60) days following the Effective Date ("**Environmental Due Diligence Period**"), Developer shall provide written notice to City of whether or not Developer has objections to the environmental condition of the Property or the estimated cost to conduct any required remediation of the Property. If Developer has any such objections, Developer's exclusive remedy shall be the right to terminate this Agreement prior to the end of the Environmental Due Diligence Period, in which case the Deposit and accrued interest thereon shall be returned to Developer, and thereafter, except for those obligations herein which are specifically stated to survive the termination of this Agreement, neither Party shall have any further right, liability or obligation under this Agreement. If Developer does not terminate this Agreement prior to the end of the Environmental Due Diligence Period, City shall be entitled to retain the Deposit if Developer whether or not Developer completes the purchase of the Property.

3.2 Purchase Price. City shall sell the Property to Developer for the sum of Two Million, Two Hundred Fifty Thousand Dollars (\$2,250,000) (the "**Purchase Price**").

3.2.1 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(i) Within three (3) business days after the Effective Date, Developer shall deposit in escrow with the Title Company a deposit in the amount of One Hundred

Thousand Dollars (\$100,000) (the “**Deposit**”). Any interest earned on the Deposit shall belong to Developer. The Deposit shall be applied to the Purchase Price.

(ii) The balance of the Purchase Price shall be paid to City at the Closing in immediately available funds.

3.2.2 Additional Payment. If a full-service restaurant is not opened on the Property by the date (the “**Restaurant Deadline**”) which is the earlier of (i) twenty-four (24) months following the date upon which City issues a certificate of occupancy or equivalent for the Project, or (ii) forty-eight (48) months following the Effective Date of this Agreement, Developer shall pay to City in its capacity as Successor Agency, an additional Two Hundred and Fifty Thousand Dollars (\$250,000) (the “**Additional Payment**”). To secure Developer’s obligation to pay the Additional Payment, at the Closing Developer shall deliver the Note to City, executed by David Irmer substantially in the form attached hereto as Exhibit D. If Developer does not pay the Additional Payment to City on the Restaurant Deadline, City shall be entitled to collect on the Note. The Note shall not bear interest, and shall be due and payable on the Restaurant Deadline. City agrees to promptly cancel and return the Note to Developer if a full-service restaurant opens for business on the Property prior to the Restaurant Deadline.

3.3 Escrow. City and Developer shall open escrow with Erwin Broekhuis (“**Escrow Agent**”) at the office of First American Title Insurance Company located at 901 Mariners Island Blvd., Suite 380, San Mateo, California in order to consummate the conveyance of the Property to Developer and the closing of escrow for the transactions contemplated hereby.

3.4 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Property and the financing of the Project, shall pay for the cost of any lender’s policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby, and shall pay one-half of all conveyance and recording fees, transfer taxes, and escrow fees incurred in connection with the conveyance of the Property. Property taxes and assessments shall be prorated as of the Closing Date. City, in its capacity as Successor Agency shall pay one-half of all conveyance and recording fees, transfer taxes and escrow fees.

3.5 Escrow Instructions; Deposit of Funds; Recordation of Documents. City and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Developer, shall serve as escrow instructions for the conveyance of Property.

3.6 Closing. The Closing Date shall be a date no later than March 1, 2013 (subject to extension for force majeure events) which is mutually acceptable to the Parties, and which shall occur within thirty (30) days following the Developer’s satisfaction or City’s waiver of all conditions precedent to conveyance of the Property as set forth in Section 3.8. Prior to the Close of Escrow, Developer shall deposit into escrow the Purchase Price and all other funds Developer is obligated to pay pursuant to this Agreement and all City Documents to which Developer is a party, executed and acknowledged as applicable. Provided that all conditions precedent to conveyance of the Property have been satisfied or waived, City shall deposit into escrow the

executed Grant Deed and executed copies of the City Documents to which City is a party. On the Closing Date, the Escrow Agent shall cause the Grant Deed, the Memorandum, and the Regulatory Agreement to be recorded in the Official Records of Alameda County.

3.7 Intentionally omitted.

3.8 Conditions to Closing. City's obligation to convey the Property to Developer is conditioned upon the satisfaction of all of the requirements set forth in this Section 3.8 unless any such condition is waived by City acting in the discretion of the City Manager.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects.

(c) Due Authorization and Good Standing. Developer shall have delivered to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is properly organized and authorized to do business in the State of California, (ii) a certified resolution indicating that Developer has authorized the execution of the City Documents and the transactions contemplated thereby and that the persons executing the City Documents on behalf of Developer have been duly authorized to do so, and (iii) certified copies of Developer's articles of organization/certificate of formation and operating agreement.

(d) No Litigation. There shall be no litigation pending with respect to this Agreement or any City approval related to the Project, the outcome of which could materially interfere with the development of the Property as set forth herein.

(e) Approvals. This Agreement shall have been approved by the Oversight Board and any other public agency whose approval is required.

(f) Execution and Delivery of Documents. Developer shall have executed, acknowledged as applicable, and delivered to City or deposited into escrow this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Note, the Regulatory Agreement, and the Memorandum.

(g) Design Review. City shall have reviewed and approved the Site Development Plan and Project design.

(h) Construction Plans, Budget and Schedule. City shall have approved the Construction Plans and specifications for development of the Project pursuant to Article IV, and City shall have approved the construction schedule for the Project.

(i) Permits and Approvals; Cooperation. Developer shall have obtained all entitlements, permits, licenses and approvals required for the development of the Project on the Property, including without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve.

(j) Payment of Fees. Developer shall have paid when due all customary and reasonable City fees and charges in connection with the processing of City permits and approvals.

(k) Evidence of Financing. Developer shall have delivered to City evidence reasonably satisfactory to City that Developer has secured binding commitments for all construction financing required for the Project.

(l) Insurance. Developer shall have provided evidence reasonably satisfactory to City that Developer has obtained insurance coverage meeting the requirements set forth in Article X

(m) Performance Bonds. Developer shall have provided to City performance bonds or other assurance of completion reasonably satisfactory to City pursuant to the requirements set forth in Section 4.19.

(n) Land Acquisition and Construction Loan Closing. Developer's land acquisition/construction loan(s) shall be ready to close not later than concurrently with the Closing.

(o) Recordation of City Documents. The Memorandum and the Regulatory Agreement shall be recorded in the Official Records on the Closing Date.

(p) Lender's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of City ("**Lender's Title Policy**") in the amount of the Purchase Price and the Additional Payment, insuring that the Regulatory Agreement, and the Memorandum are subject only to: (a) the provisions and effects of the City Documents, (b) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed, and (c) the Permitted Exceptions, and containing such endorsements as City may reasonably require, with the cost of such Title Policy to be paid by Developer.

3.8.1 Intentionally omitted.

3.8.2 Developer's Conditions to Closing. Developer acknowledges that prior to the Effective Date, Developer has had an opportunity to inspect the Property and to undertake such tests and analyses as Developer deems necessary or advisable to evaluate the condition of the Property and its suitability for development of the Project (other than Developer's continuing environmental investigation, as described in Section 3.8). Developer's obligation to proceed with the acquisition of the Property is subject to the satisfaction of or waiver by Developer of the following conditions:

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

(b) Representations. All representations and warranties of City contained herein shall be true and correct in all material respects.

(c) No Litigation. There shall be no litigation pending with respect to this Agreement or any City approval related to the Project, the outcome of which could materially interfere with the development of the Property as set forth herein.

(d) Execution of Documents. City shall have executed and acknowledged the Grant Deed, the Memorandum, the Regulatory Agreement, and any other documents required hereunder, and shall have delivered such documents into escrow.

(e) Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be irrevocably committed to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Owner's Title Policy**") showing title to the Property vested in Developer, subject only to Permitted Exceptions.

(f) Approvals. This Agreement shall have been approved by the Oversight Board and any other public agency whose approval is required.

(g) Design Review. City shall have reviewed and approved the Site Development Plan and Project design.

(h) Construction Plans, Budget and Schedule. City shall have approved the Construction Plans and specifications for development of the Project pursuant to Article IV, and City shall have approved the construction schedule for the Project.

(i) Permits and Approvals; Cooperation. Developer shall have obtained all entitlements, permits, licenses and approvals required for the development of the Project on the Property, including without limitation, building permits, grading permits and use permits, subject only to such conditions as Developer has reasonably approved.

(j) No Contracts or Occupancy Rights. City shall have terminated any contracts, leases or other rights of use or occupancy affecting the Property, effective as of the Closing Date.

ARTICLE IV

DEVELOPMENT OF THE PROPERTY

4.1 Development of the Project. Developer shall develop a retail project (the "**Project**") on the Property in accordance with the terms and conditions of this Agreement and

in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”). The Project will consist of the development of a first-class retail project constructed with high quality building materials, and which includes public amenities including a water feature, outdoor dining areas, and high-quality façade improvements, landscaping, paving and signage. If a full-service restaurant does not open on the Property within the earlier of (i) twenty-four (24) months following the date upon which City issues a certificate of occupancy or equivalent for the Project, or (ii) forty-eight (48) months following the Effective Date of this Agreement, Developer shall pay the Additional Payment.

4.1.1 Public Art. As part of the Project, Developer will construct, at Developer’s expense, a public art component that may include a fountain or other water feature, sculpture, mural or other art form. Developer shall obtain input from the San Leandro Arts Council on the public art component of the Project.

4.1.2 Sidewalk Reconstruction. Developer shall reconstruct the sidewalks surrounding the Property, will add street trees along East 14th Street, and will replace street trees on Dolores Avenue and Juana Avenue as detailed in the approved Site Improvement Plans for the Project.

4.1.3 Bike Racks. Developer shall install and maintain bike racks on the Property, including multiple bike racks near the outdoor seating area to be created on the southeast corner of Juana and East 14th Street.

4.2 Intentionally omitted.

4.3 Project Approvals. Developer acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for the construction of the Project and development of the Property, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review.

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City, City, or any other governmental agency having jurisdiction over the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction work on the Project prior to issuance of building permits required for such work.

City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for development of the Project on the Property as contemplated by this Agreement.

4.4 Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Project.

4.5 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition and development of the Property, and none of such costs and expenses shall be the obligation of the City.

4.6 Development Schedule. Developer shall commence and complete construction of the Project and development of the Property and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth herein, as such time periods may be extended upon the mutual written consent of the Parties. Subject to force majeure, Developer shall commence construction of the Project not later than ninety (90) days following the Closing Date, and Developer shall diligently prosecute the construction work to completion in order to allow City to issue a final certificate of occupancy within eighteen (18) following commencement of construction, but in no event later than twenty-four (24) months following the Effective Date. Subject to force majeure, Developer's failure to commence or complete the Project in accordance with the time periods specified in this Section 4.6 shall be an Event of Default hereunder.

4.7 Rights of Access. For the purpose of ensuring that the development of the Project and the Property are completed in compliance with this Agreement, Developer shall permit representatives of the City to enter upon the Property following 24 hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

4.8 City Disclaimer. Developer acknowledges that the City is under no obligation, and City neither undertakes nor assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the improvements or otherwise.

4.9 Construction Plans. By not later than one hundred and fifty (150) days following the Effective Date Developer shall submit to City's Building Department detailed construction plans for the development of the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" means all construction documents upon which Developer and Developer's contractors shall rely in developing the Property (including the landscaping, parking, and public areas) and shall include, without limitation, a site development plan which shall show the use, size, elevation and location of all buildings, the number and location of parking spaces, specific treatment and location of all pedestrian and outdoor dining areas, the location of all pedestrian and vehicular ingress and egress points, and the location of public streets and all other improvements; final architectural drawings, landscaping, exterior lighting and signage plans and specifications; materials specifications; final elevations; and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, including the Development Concept Plan approved by the City Council, and shall not materially deviate therefrom without the express written consent of City.

4.10 Construction Pursuant to Plans. Developer shall develop the Project on the Property in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

4.11 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. City shall respond reasonably promptly to requests from Developer for approval of material changes. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

4.12 Defects in Plans. City shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the

recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

4.13 Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City and the written request of Developer, the City will provide an instrument ("**Certificate of Completion**") so certifying. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the development of the Property.

At Developer's option, the Certificate of Completion shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

4.14 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

4.15 Prevailing Wage Requirements. To the full extent required by all applicable state and federal laws, rules and regulations, if any, Developer and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

Developer shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of

competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 4.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

4.16 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Project and development of the Property in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's 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.* Developer shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. Developer's indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees. Developer's defense and indemnification obligations set forth in this Section 4.16 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

4.17 Liens and Stop Notices. Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Property, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

4.18 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 4.17 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer and all sums advanced by City for such purpose shall be payable by Developer to City upon demand. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Developer to immediately deposit with City

the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

4.19 Performance and Payment Bonds. Prior to commencement of construction work on the Project, Developer shall cause its general contractor to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the City as co-obligee. In lieu of such performance and payment bonds, subject to City's approval of the form and substance thereof, Developer may submit evidence satisfactory to the City of the contractor's ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. Such evidence must be submitted to City in approvable form in sufficient time to allow for City's review and approval prior to the scheduled construction start date.

4.20 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article X.

4.21 Effectiveness. Developer shall have no obligations under this Article IV if Developer does not acquire the Property pursuant to this Agreement.

ARTICLE V

Intentionally omitted.

ARTICLE VI

USE OF THE PROPERTY

6.1 Use. Developer covenants and agrees for itself and its successors and assigns that if Developer acquires the Property pursuant to this Agreement, the Property shall be used for a retail development consistent with the Conditions of Approval for the Project and the City's Zoning Ordinance.

6.2 Maintenance. Developer shall at its own expense, maintain the Property, including the landscaping and common areas in good physical condition, in good repair, and in decent, safe, and sanitary conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer agrees to

maintain the Property (including without limitation, the landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Developer shall prevent and/or rectify any physical deterioration of the Property and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair.

6.2.1 Maintenance of Public Right of Way and Improvements. Developer and its successors in interest shall maintain, at their expense, the Property, the Project and the public improvements and landscaping located adjacent to the Property. Such improvements, include without limitation, the sidewalks that abut the Property, the 23 public parking spaces located on the south side of Juana Avenue, pedestrian lighting, landscaping, irrigation of landscaping and all other improvements on the Property or in the public right of way to the nearest curblane(s) abutting the Property. Developer's obligation shall include keeping all such areas in a neat, clean, safe, litter-free and odor-free, sanitary condition. Without limitation, the foregoing maintenance obligations include the following: steam cleaning the sidewalk and paved surfaces as necessary to remove grime and grease, removal of graffiti, and on-going removal of food and trash from the area and the return of shopping carts. Developer shall ensure that the Property and the Project are well-lighted and secure. Developer shall ensure that retailers using the Property or part thereof who provide customer shopping carts identify such carts with company logos, use a mechanism such as a magnetic locking wheel control system to ensure that all carts remain on the Property, and collect all carts from the parking areas in a timely manner.

6.2.2 Property-Based Business Improvement District. Developer agrees to support the creation of a Property-Based Business Improvement District or similar funding mechanism to support enhanced security, maintenance and marketing in Downtown San Leandro. The City will determine the amount of the assessment in accordance with all applicable laws. Developer, and Developer's successors in interest shall pay all assessments imposed in accordance with such districts or other financing mechanisms.

6.2.3 Signage Plan. Developer agrees to follow the signage plan approved by City. Sign modifications will require approval by the City Planning Department consistent with the City's sign ordinance. City agrees to permit Developer to install signage on the Property announcing the future development and opening date, subject to compliance with applicable laws and reasonable approval by City of the content, size and placement of such signage.

6.3 Taxes and Assessments. Following the Closing, Developer or its successors or assigns shall pay all real and personal property taxes, assessments and charges and all other taxes assessed against the Property, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

6.4 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

6.5 Regulatory Agreement. The obligations set forth in this Article VI shall survive the Closing and the termination of this Agreement, and will be set forth in the Grant Deed and in a Regulatory Agreement and Declaration of Restrictive Covenants (“**Regulatory Agreement**”) for the benefit of City that shall be recorded at Closing in the Official Records. Notwithstanding anything to the contrary set forth in this Article VI, Developer shall have no obligation to repair or repave public streets.

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Change Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to City’s issuance of the final certificate of occupancy or equivalent for the Project, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property or this Agreement, without the prior written approval of City, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to City’s issuance

of the final certificate of occupancy or equivalent for the Project, except as expressly permitted by this Agreement, without the prior written approval of City, Developer shall not undergo any significant change of ownership other than the transfer of limited liability company interests in Developer of forty percent (40%) or less to Michael Stoner or an entity owned or controlled by Michael Stoner. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner or member, nor the transfer by the investor limited partner or member to subsequent limited partners or members shall be restricted by this provision.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the leasing of commercial and retail space to tenants of the Property; (iv) the assignment, pledge, mortgage or other encumbrance of the Property in connection with financing of the Project, (iv) a Transfer to an entity which is under the direct control of Developer (“**Controlled Affiliate**”) or (v) a Transfer following completion of the Project.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i) through (v) of Section 7.3):

(i) The proposed transferee demonstrates to the City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(ii) The Developer and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee’s qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement and the City Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer’s obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City’s governing

board. If a proposed Transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Developer, it shall be deemed rejected.

7.5 Effect of Transfer Without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

7.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, it shall be an Event of Default hereunder entitling City to terminate this Agreement if without the prior written approval of the City, Developer assigns or Transfers this Agreement or the Property prior to City's issuance of a final certificate of occupancy or equivalent for the Project. This Section 7.5.2 shall not apply to Transfers described in clauses (i) through (v) of Section 7.3.

7.5.3 If, in violation of this Agreement, the Developer Transfers all or any part of the Property or the improvements thereon, the City shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (a) the purchase price paid by the Developer to the City for the Property, and (b) the costs incurred by Developer in connection with the improvement and development of the Property, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to the City by the Developer and until so paid, the City shall have a lien on the Property for such amount. The provisions of this Section 7.5.3 have been agreed upon so as to discourage land speculation by Developer; accordingly, these provisions shall be given a liberal interpretation to accomplish that end.

7.6 Recovery of City Costs. Developer shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery to Developer of an invoice detailing such costs.

7.7 Mortgages and Deeds of Trust.

7.7.1 No Encumbrances Except Mortgages and Deeds of Trust for Development. Pursuant to the terms set forth herein, mortgages and deeds of trust may be recorded against the Property, but only for the purpose of securing loans used for financing the costs of constructing the Project or financing the acquisition of the Property. The requirements of this Section 7.7.1 shall terminate effective upon the City's issuance of a final certificate of occupancy or equivalent for the Project. The Developer shall promptly notify the City of any mortgage or deed of trust that has been recorded against the Property. The words "mortgage" and "deed of trust" as used hereinafter shall include sale and lease-back financing.

7.7.2 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the Project. Nothing in this Agreement shall be deemed to or be construed to permit or

authorize any such holder to devote the Property to any uses, or to construct any improvements other than the uses and improvements provided for or authorized by this Agreement.

7.7.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.

Whenever the City delivers any notice or demand to Developer with respect to any breach or default by the Developer hereunder, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall have the right, at its option, within 120 days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. In the event possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within 120 days, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy. Nothing in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already undertaken) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. Any such holder properly completing the Project shall be entitled to a Certificate of Completion.

ARTICLE VIII

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

8.1 Definitions.

8.1.1. “**Hazardous Material**” means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

8.1.2 “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of

1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

8.2 Environmental Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential 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. City has delivered to Developer copies of the following reports on the environmental condition of the Property prepared by Ninyo & Moore: Phase I Report dated May 13, 2009 and Phase II Report dated June 12, 2009. To the extent the City has copies of investigative reports related to the Property, it will provide copies to Developer upon request; but the Parties acknowledge that City will not be conducting a public records search of any regulatory agency files—although the City urges Developer to do so to satisfy itself regarding the environmental condition of the Property. By execution of this Agreement, Developer: (i) acknowledges it receipt of the foregoing notice given pursuant to Health & Safety Code section 25359.7; (ii) acknowledges that it will have an opportunity to conduct 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 Property 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.

8.3 Property Sold “AS IS.” Developer specifically acknowledges that the City is selling and Developer is purchasing the Property on an “AS IS”, “WHERE IS” and “WITH ALL FAULTS” basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its employees, officials, officers, board members, agents, or brokers as to any matters concerning the property. The City makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's fitness, suitability, value or adequacy for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the

adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, or (ix) the condition of title to the Property.

8.4 Developer to Rely on Own Experts. Developer understands that notwithstanding the delivery by City to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Property.

8.5 Right of Entry. Prior to the Close of Escrow, Developer and Developer's authorized representatives may enter upon and conduct further reviews and assessments of the physical and environmental condition of the Property and the condition of any existing improvements. City may require Developer to execute a right of entry agreement satisfactory to City prior to entry onto the Property for such purpose and shall require Developer to provide proof of liability insurance acceptable to City. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide City with copies of all reports and test results promptly following completion of such reports and testing. Developer hereby agrees to notify the City twenty-four (24) hours in advance of its intention to enter the Property and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must keep the Property in a safe condition during its entry. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Property prior to Close of Escrow. Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 8.5. Developer's indemnification obligations set forth in this Section 8.5 shall survive the Close of Escrow and the termination of this Agreement.

8.6 Release by Developer. Effective upon the Close of Escrow, Developer WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the City and the Successor Agency and their respective officers, board members, employees, agents, consultants and contractors, and any other person acting on behalf of the City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Developer now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Materials in, on, under or about the property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws. Nothing contained in this Section 8.6 shall release claims against City for fraud or intentional misrepresentation or prevent Developer from asserting rights to develop the Project, including, without limitation, defending Project entitlements or enforcing Developer's rights under this Agreement pursuant to Section 9.5.

DEVELOPER ACKNOWLEDGES THAT DEVELOPER IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS

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

BY INITIALING BELOW, DEVELOPER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Developer's initials: _____

8.7 Environmental Indemnification. From and after the Closing, the Developer shall indemnify, defend and hold the City and the Successor Agency harmless from and against any Claim resulting from, arising out of, or based upon the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property in violation, or alleged violation, of any Environmental Laws, no matter when occurred. This indemnity shall include any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for bodily 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, trespass, contamination, leak, spill, release or other adverse effect on the environment. The provisions of this Section 8.7 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

8.8 Intentionally omitted.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.0 Liquidated Damages.

BY PLACING THEIR INITIALS IMMEDIATELY BELOW, CITY AND DEVELOPER EACH ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO ASCERTAIN ACTUAL DAMAGES THAT WOULD BE INCURRED BY CITY IF DEVELOPER DEFAULTS UNDER OR BREACHES THIS AGREEMENT AND FAILS TO PURCHASE THE PROPERTY, THAT THE DEPOSIT (DEFINED IN SECTION 3.3.1) IS A REASONABLE ESTIMATE OF SUCH DAMAGES, AND THAT UPON DEVELOPER'S DEFAULT IN ITS PURCHASE OBLIGATIONS UNDER THIS AGREEMENT NOT CAUSED BY ANY BREACH BY CITY,

CITY SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES,
WHICH SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY IN LAW OR AT EQUITY
FOR SUCH DEFAULT.

City's Initials _____

Developer's Initials _____

9.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer (“**Event of Developer Default**”):

(a) Developer fails to commence or complete construction of the Project within the times set forth in Section 4.6, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of 120 days or more;

(b) [Reserved.]

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within ten (10) days;

(e) Subject to Developer’s right to contest the following charges pursuant to Section 6.3, if Developer fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Developer fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period, and the holder of such security instrument has recorded a notice of default;

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“**Bankruptcy Law**”), Developer or any member or manager thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any member or manager thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any member or manager thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business for a period of 90 days or longer, or Developer shall have been dissolved or terminated;

(l) An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Developer Event of Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default.

9.2 City Default. An event of default on the part of City (“**Event of City Default**”) shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within thirty (30) days, City fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 City’s Right to Terminate Agreement. If prior to the Closing Date, an Event of Developer Default described in paragraphs (g), (h), (i), (j) or (k) of Section 9.1 shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement and retain the Deposit. If City makes such election, City shall give written notice to Developer stating that this Agreement shall expire and terminate on the date specified in such notice, and upon such date, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

9.4 City’s Remedies and Rights Upon an Event of Developer Default. Subject to the provisions of Section 9.0, upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Developer, except for notices or demands required

by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

- (a) Seek specific performance to enforce the terms of the City Documents;
- (b) Pursue any and all other remedies available under this Agreement, under the City Documents, or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

9.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an City Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement, and may pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and Developer's rights thereunder.

9.6 Remedies Cumulative; No Consequential Damages. 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 time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a Party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Right of Reverter. If following conveyance of the Property to Developer, Developer (i) fails to begin construction of the Project within the time specified in Section 4.6 as such date may be extended pursuant to the terms hereof, (ii) subject to force majeure, abandons or suspends construction work on the Project for a period of ninety (90) days after written notice from City, (iii) fails to complete construction of the Project by the time specified in Section 4.6 as such date may be extended pursuant to the terms of this Agreement, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property or this Agreement in violation of Article VII, the City may deliver a written notice to Developer of City's intention to exercise its rights under this Section 9.8. Following receipt of such notice, if Developer fails to remedy the condition giving rise to the right of reverter within thirty (30) days, the City may re-enter and take possession of the Property or any portion thereof with all improvements thereon without payment or compensation to Developer, and revert in the City the estate theretofore conveyed to the Developer. The interest created pursuant to this Section 9.8 shall be a "power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from the City's option to purchase the Property under the same or similar conditions

specified in Section 9.9. City's rights pursuant to this Section 9.8 shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

Upon revesting in the City of title to the Property or any portion thereof as provided in this Section 9.8, the City shall use its best efforts to resell the Property or applicable portion thereof and as soon as possible, in a commercially reasonable manner to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Project in accordance with the uses specified for such property in this Agreement and in a manner satisfactory to the City. Upon such resale of the Property or any portion thereof the sale proceeds shall be applied as follows:

(a) First, to reimburse the City for all costs and expenses incurred by City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture and resale of the Property; all taxes and assessments payable prior to resale, and all applicable water and sewer charges; any payments necessary to discharge any encumbrances or liens on the Property at the time of revesting of title thereto in the City or to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property; and any other amounts owed to the City by Developer and its successors or transferee.

(b) Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the Developer's default.

(c) Third, to reimburse the Developer, its successor or transferee, up to the amount equal to:

(1) The payment made to the City for the Property; plus

(2) The appraised fair market value of the improvements Developer has placed on the Property or applicable portion thereof (as determined by an appraiser with not less than 10 years' experience in appraising retail developments in Alameda County and who is mutually acceptable to City and Developer);

(3) Any gains or income withdrawn or made by the Developer from the Property or applicable portion thereof or the improvements thereon.

Notwithstanding the foregoing, the amount calculated pursuant to this subsection (c) shall not exceed the fair market value of the Property or applicable portion thereof, together with the improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the right of reverter.

(4) Any balance remaining after such reimbursements shall be retained by the City.

The rights established in this Section 9.8 are to be interpreted in light of the fact that the City will convey the Property to the Developer for completion of the Project as specified herein and not for speculation. The rights of City under this Section 9.8 shall automatically terminate and have no further force or effect upon completion of the Project.

9.9 Option to Purchase, Enter and Possess. The City shall have the additional right at its option to purchase, enter and take possession of the Property with all improvements thereon (the "**Repurchase Option**"), if after conveyance of the Property, Developer (i) fails to begin construction of the Project within the time specified in Section 4.6 as such date may be extended pursuant to the terms of this Agreement, (ii) subject to force majeure, abandons or suspends construction of the Project for a period of ninety (90) days after written notice from City, (iii) fails to complete construction of the Project by the time specified in Section 4.6 as such date may be extended pursuant to the terms of this Agreement, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Property or this Agreement in violation of Article VII. Notwithstanding the foregoing, the City may not exercise its rights under this Section 9.9 unless City first delivers a written notice to Developer of City's intention to exercise such rights. Following receipt of such notice, if Developer fails to remedy the condition giving rise to the option to purchase within thirty (30) days, the City may re-enter and take possession of the Property pursuant to this Section 9.9.

To exercise the Repurchase Option, the City shall pay to the Developer cash in an amount equal to:

- (i) The purchase price paid to the City by the Developer for the Property; plus
- (ii) The appraised fair market value of the improvements Developer has placed on the Property or applicable portion thereof (as determined by an appraiser with not less than 10 years' experience in appraising retail developments in Alameda County and who is mutually acceptable to City and Developer); less
- (iii) Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less
- (iv) The value of any liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to and the amount of any unpaid current or past-due installments of taxes or assessments against the Property that City agrees to pay; less
- (v) Any damages to which the City is entitled under this Agreement by reason of Developer's default.

In order to exercise the Repurchase Option, City shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide City with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of City's receipt of such summary, City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.9, and Developer shall execute and deposit into such escrow a grant deed transferring to City all of Developer's interest in the Property, or portion thereof, as applicable and the improvements located thereon. The

rights of City under this Section 9.9 shall automatically terminate and have no further force or effect upon completion of the Project.

9.10 Memorandum of Right of Reverter/Option to Purchase. Developer and City shall execute and acknowledge a Memorandum of this Agreement (“**Memorandum**”) substantially in the form attached hereto as Exhibit B, and City shall cause the Memorandum to be recorded in the Official Records of Alameda County on the Closing Date. The Memorandum will include a description of the rights granted to the City in Sections 9.8 and 9.9 and the restrictions on Transfer described in Article VII.

9.11 Construction Plans. If this Agreement is terminated pursuant to Section 9.3 or if the City exercises its rights under Section 9.8 or 9.9, the Developer, at no cost to the City, shall deliver to the City copies of any construction plans and studies in the Developer's possession or in the possession of the Developer's consultants related to development of the Project on the Property, and City shall be entitled to use such plans and studies, subject to the rights of third parties.

9.12 Rights of Mortgagees. Any rights of the City under this Article IX shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or reverter of the Property to the City pursuant to this Article IX shall be subject to mortgages and deeds of trust permitted by this Agreement.

ARTICLE X

INDEMNITY AND INSURANCE.

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Developer that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Developer, of any of the insurance policies described in this Agreement.

10.2 Liability and Workers Compensation Insurance.

(a) Prior to initiating work on the Project and continuing through the issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors

working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(d) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee as its interests may appear.

(f) Prior to commencement of construction work, Developer shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Developer's

expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(h) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Developer shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

11.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. 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. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the governing board of the City). City and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of San Leandro
835 East 14th Street
San Leandro, CA 94577
Attention: City Manager

Developer:

Innisfree Ventures II, LLC
c/o The Innisfree Companies
1221 Bridgeway, Suite 1
Sausalito, CA 94965
Attention: David Irmer

with a copy to :

Lake Street Ventures
800 Oak Grove Avenue, Suite 210
Menlo Park, CA 94025
Attention: Michael Stoner

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 Survival. The release provided pursuant to Section 8.6, Developer's obligations pursuant to Sections 4.12, 4.15, 4.16, 8.5, 10.1, 11.1, and 11.18, Developer's obligations under Articles IV, VI, and VII, and the respective rights of Developer and City pursuant to Article IX, and all other provisions that so state, shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion. All representations made by Developer hereunder shall survive for a period of six (6) months following the Closing Date.

11.8 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City Manager or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

11.10 Entire Agreement. This Agreement, including Exhibits A through F attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.13 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Developer or its successors in interest in the event of any default or breach by City or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.17 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

CITY

CITY OF SAN LEANDRO,
a municipal corporation

By: _____
Chris Zapata, City Manager

ATTEST:

By: _____
Marian Handa, City Clerk

APPROVED AS TO FORM:

By: _____
Jayne Williams, City Attorney

DEVELOPER

INNISFREE VENTURES, II
a California limited liability company

By: _____

Print Name: _____

Title: _____

Exhibit A

LEGAL DESCRIPTION PROPERTY

(Attach legal description.)

Exhibit B

**FORM OF MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT
AND OPTION**

(Attach form of Memorandum.)

Exhibit C

FORM OF GRANT DEED

(Attach form of Grant Deed.)

Exhibit D

FORM OF NOTE

(Attach form of Note.)

Exhibit E

FORM OF REGULATORY AGREEMENT

(Attach form of Regulatory Agreement.)