

**DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between

**THE CITY OF INGLEWOOD,**

City,

and

**MURPHY'S BOWL LLC,**

Developer.

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## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into by and between the CITY OF INGLEWOOD, a municipal corporation (the "**City**") and MURPHY'S BOWL LLC, a Delaware limited liability company (the "**Developer**"). This Agreement is dated as of the date the City executes this Agreement (the "**Effective Date**"). The City and Developer agree as follows:

### RECITALS

*[Recitals to be further developed and made consistent across documents]*

[ LISTNUM OutlineDefault\ 2 ] The City, the City of Inglewood as Successor Agency to the Inglewood Redevelopment Agency, a public body, corporate and politic (the "**Successor Agency**"), and the Inglewood Parking Authority, a public body, corporate and politic (the "**Authority**") are parties to that certain Amended and Restated Exclusive Negotiation Agreement dated as of August 15, 2017 (the "**ENA**") with respect to the proposed disposition and development of certain real property described in the ENA.[ LISTNUM OutlineDefault\ 2 ]

The subject matter of this Agreement are those certain real properties referred to in this Agreement collectively as the "**Project Site**" and generally depicted on the "**Depiction of the Overall Site**" attached hereto as **Attachment No. 1**. The "**Project Site**" is comprised of the "**Arena Site**" as generally depicted on the "**Depiction of the Arena Site**" attached hereto as **Attachment No. 1A-1**, the "**West Parking Garage Site**" as generally depicted on the "**Depiction of the West Parking Garage Site**" attached hereto as **Attachment No. 1A-2**, the "**East Transportation Site**" as generally depicted on the "**Depiction of the East Transportation Site**" attached hereto as **Attachment No. 1A-3**, and the "**Hotel Site**" as generally depicted on the "**Depiction of the Hotel Site**" attached hereto as **Attachment No. 1A-4**.

[ LISTNUM OutlineDefault\ 2 ] The City owns certain real properties within the Project Site which are referred to collectively as the "**City Parcels**" and more particularly identified and legally described in the "**City Parcels Legal Description**" attached hereto as **Attachment No. 1B**. Certain right-of-way areas within the Project Site are owned by the City and various individual owners (the "**Private Owners**") which are referred to collectively as the "**Right-Of-Way Areas**" and more particularly identified and legally described in the "**Right-Of-Way Areas Legal Description**" attached hereto as **Attachment No. 1B-1**. Certain airspace parcels within the Project Site are owned by the City and Private Owners which are referred to collectively as the "**Potential Pedestrian Bridge Airspace**" and more particularly identified and legally described in the "**Potential Pedestrian Bridge Airspace Legal Description**" attached hereto as **Attachment No. 1B-2**.

[ LISTNUM OutlineDefault\ 2 ] Private Owners own certain real properties within the Arena Site which are referred to collectively as the "**Potentially Participating Parcels**" and more particularly identified and legally described in the "**Potentially Participating Parcels**

**Legal Description**" attached hereto as **Attachment No. 1C**. In this Agreement, the term "Potentially Participating Parcels" also includes any leasehold or other possessory interest or right of acquisition of a Private Owner that hereafter is found to exist in a City Parcel by a governmental authority with jurisdiction. Developer has, prior to the Effective Date, made good faith efforts to directly acquire each of the Potentially Participating Parcels. None of the Potentially Participating Parcels contain churches or occupied residences.

[ LISTNUM OutlineDefault\ 2 ] The City has long pursued comprehensive plan of economic redevelopment of the City Parcels, which have remained undeveloped for [ 25? ] years. In furtherance of its redevelopment efforts, the City has entered into [ x? ] negotiations throughout such period, but such redevelopment efforts have never come to fruition, other than a portion of the City Parcels being underutilized as a private parking lot from 2013-2017. The City has continuously invested in the beautification of and redevelopment along Century Boulevard as a major arterial through Inglewood. The City desires to continue those efforts by providing for the redevelopment of the Project Site, as a key part of a cohesive plan of economic development and in a manner that generates jobs and brings businesses and facilities to Inglewood that will grow the City's General Fund in order to support and deliver better services to its residents. *[Expand and conform to fiscal impact analysis, staff report, etc.]*

[ LISTNUM OutlineDefault\ 2 ] The Project Site has significant use constraints, as it lies directly under the Los Angeles International Airport flight path and is materially affected by aircraft noise, and the City, the U.S. Federal Aviation Administration and the Los Angeles World Airports each have policies discouraging residential or other incompatible uses on the Project Site, requires the remediation of certain hazardous materials in connection with such redevelopment, and must be compatible with other commercial uses along the frontage of Century Boulevard.

[ LISTNUM OutlineDefault\ 2 ] *[Add Recital re: Successor Agency transfer, LRPMP, Compensation Agreements, FAA/LAWA grants, etc.]*

[ LISTNUM OutlineDefault\ 2 ] The Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site are each proposed to be conveyed to and developed by Developer (other than the Hotel Site, which is anticipated to be developed by a third party) subject to and in accordance with the terms and conditions of this Agreement (such development is collectively referred to as the "**Project**"), including as described in the Scope of Development and the Basic Site Plan Drawings. *[The following descriptions of the Project to be revised and made consistent across all documents]*

[ LISTNUM OutlineDefault\ 2 ] The Arena Site is proposed to be used for 18,000-fixed-seat arena suitable for National Basketball Association ("**NBA**") games, with up to 500 additional temporary seats for other sports or entertainment events, comprised of approximately 915,000 sf of space including the main performance and seating bowl, restaurant food service and retail space, and concourse areas. The Arena Site would include an integrated approximately 85,000 sf team practice and training facility, an approximately 25,000 sf sports medicine clinic, and approximately 71,000 sf of space that would accommodate the Los Angeles (LA) Clippers

team offices and other philanthropic activities. Also on the Arena Site would be a 650-space parking garage for premium ticket holders, VIPs, and certain team personnel.

[ LISTNUM OutlineDefault\ 2 ] The West Parking Garage Site is proposed to be used for a six-story, 3,110-space parking garage with entrances and exits on West Century Boulevard and South Prairie Avenue, including a new publicly accessible access road that would connect West 101st Street and West Century Boulevard on the western property boundary of the West Parking Garage Site.

[ LISTNUM OutlineDefault\ 2 ] The East Transportation Site is proposed to be used for a three-story structure on the south side of West Century Boulevard, east of the Arena Site. The first level of this structure would serve as a transportation hub, with bus staging for coach/buses, mini buses, and car spaces for Transportation Network Company (TNC) drop-off/pick-up and queuing. The second and third levels of the structure would provide 365 parking spaces for arena and retail visitors and employees.

[ LISTNUM OutlineDefault\ 2 ] The Hotel Site is proposed to be used for an up to 150-room limited service hotel and associated parking.

[ LISTNUM OutlineDefault\ 2 ] The Project seeks no public funding, with Developer incurring all costs of site assembly, development and construction. *[Add reference to other costs incurred by Developer, litigation costs, FEIR, City reimbursements, etc.]* Completion of the Project will solidify Inglewood's position as a major destination in California by extending the Los Angeles Stadium Entertainment District to the south with a powerful and complementary NBA arena. The combined event days in the district will make for a much more sustainable base for local businesses and employment opportunities. *[Review and revise as required]* In addition to the significant public benefits included in the Development Agreement (as described below), the Project will materially increase property tax, ticket tax and sales tax revenues to the City, as well as create highly skilled jobs that pay prevailing wages and living wages and will employ a skilled and trained workforce.

[ LISTNUM OutlineDefault\ 2 ] The Project will incorporate environmental sustainability objectives, including achieving LEED Gold certification, a "net zero" greenhouse gas emission standard for development of the Project, and taking other measures to benefit the environment, improve energy efficiency, and enhance the health and well-being of building occupants and users. *[Review and revise as required, add reference to AB987/Design Guidelines]*

[ LISTNUM OutlineDefault\ 2 ] On \_\_\_\_\_, \_\_\_\_\_, at a duly noticed public hearing, the City Council of the City of Inglewood, serving as the lead agency for purposes of the California Environmental Quality Act of 1970, as amended from time to time (California Public Resources Code, Section 2100 *et seq.*, hereinafter referred to as "**CEQA**"), reviewed and considered the Inglewood Basketball and Entertainment Center Environmental Impact Report for the Project (the "**FEIR**") and the Planning Commission's recommendations related thereto. Thereafter, the City Council certified the FEIR as adequate and complete and made findings in connection therewith pursuant to Resolution No. \_\_\_\_\_. The FEIR required mitigation

measures as part of a mitigation monitoring and reporting plan (the "MMRP"), which was adopted by the City Council under Resolution No. \_\_\_\_\_. The FEIR has served as the environmental documentation for the City's consideration and approval of this Agreement and the transactions contemplated by this Agreement.

[ LISTNUM OutlineDefault\1 2 ] City and Developer intend to enter into a certain development agreement relating to the Project Site (the "**Development Agreement**") which establishes certain development rights in the Site for the benefit of Developer and provides for certain vested rights. The Development Agreement also provides for substantial public benefits beyond the public benefits which could be expected from the Project in absence of the Development Agreement, including, but not limited to those described in Exhibit C to the Development Agreement. *[Conform to DA]*

[ LISTNUM OutlineDefault\1 2 ] The City has adopted certain conforming General Plan amendments, the Overlay District, a Development Agreement and Design Guidelines, and other documents to implement the Project which, together with approval of other on-site improvements contemplated thereby, as they may later be further refined, amended, enhanced, or modified, are more particularly defined in the Development Agreement, constitute the "**Project Approvals**".

[ LISTNUM OutlineDefault\1 2 ] *[Additional Recitals to be added as necessary]*

[ LISTNUM OutlineDefault\1 2 ] The City and Developer now wish to enter into this Agreement for the disposition of the Project Site to Developer for the development of the Project, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein, the City and Developer agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT

A. [§ 101] Purpose of this Agreement

The purpose of this Agreement is to provide for a comprehensive program of economic development for the Project Site through the sale of the City Parcels to Developer, along with the transfer of the Potentially Participating Parcels within the Arena Site (subject to and in accordance with the provisions of Section 202, *et seq.*), to provide for the development of the Project Site by Developer. Developer intends to construct certain improvements in connection with the Project (the "**Improvements**") on the Project Site, as well as certain improvements off the Project Site (the "**Public Infrastructure**"). The sale and development of the Project Site pursuant to this Agreement, and the fulfillment generally of this Agreement are in the vital and best interest of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable Federal, State, and local laws and requirements.

B.     [§ 102]           Project Site

As described in Recital B above, the Project Site is comprised of the Arena Site (which includes the Potentially Participating Parcels), the West Parking Garage Site, the East Transportation Site and the Hotel Site. The entire Project Site is located within the City of Inglewood. It is expressly understood and agreed by the parties hereto that as of the Effective Date, the City does not hold legal or equitable title to the Potentially Participating Parcels described on **Attachment No. 1B**, which are a portion of the Arena Site. Subject to the provisions of Section 202, *et seq.*, the City shall attempt to acquire fee simple absolute title to and all possessory rights, including but not limited to any leasehold or possessory interest or right of acquisition (purchase option), in the Potentially Participating Parcels by negotiated purchase, or in its sole and absolute discretion, elect to acquire such parcels by exercise of its power of eminent domain, recognizing that all of the Potentially Participating Parcels are within the Arena Site and the none of the Potentially Participating Parcels contain churches or occupied residences.

C.     [§ 103]           Parties to this Agreement

1.     [§ 104]           City

The City is a municipal corporation, organized and existing pursuant to the Constitution and laws of the State of California.

2.     [§ 105]           Developer

Developer is MURPHY'S BOWL LLC, a Delaware limited liability company. Wherever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

D.     [§ 106]           Prohibition Against Transfer and Change in Control of Developer

Developer represents and agrees that its acquisition of the Project Site and its other undertakings pursuant to this Agreement are for the purpose of development of the Project Site and not for speculation in land holding.

The qualifications and identities of Developer and its owners are of particular concern to the City. It is because of those unique qualifications and identities that the City will enter into this Agreement with Developer and impose certain restrictions on any Transfer or Change of Control of Developer until the City issues a Release of Construction Covenants as to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site. Accordingly, no voluntary or involuntary successor in interest to Developer shall acquire any rights or powers in the Project Site or under this Agreement except as expressly set forth herein.

Prior to the issuance of a Release of Construction Covenants, Developer shall not Transfer the Arena Site, the West Parking Garage Site, the East Transportation Site, the Hotel Site (subject to the provisions of Section 322), or any portion thereof, or any interest therein, or



assign all or any part of this Agreement, to a third party (a "**Transferee**") without the prior written approval of the City, which such approval shall be given within five (5) business days if, in the reasonable determination of the City, the proposed Transferee has the qualifications of a developer (including experience, character and financial capability) necessary to develop that portion of the Project Site which is proposed to be Transferred. However, notwithstanding the foregoing, the City's consent shall not be required for any assignment of this Agreement (a) where Developer, or an Affiliate of Developer, is the controlling shareholder, general partner or managing member owning at least a fifty-one percent (51%) share or interest in the proposed Transferee or (b) to any Person who is a successor to LA Clippers LLC, a Delaware limited liability company ("**LA Clippers LLC**") by merger, consolidation or the purchase of all or substantially all of LA Clippers LLC's assets or equity interests. Notwithstanding anything to the contrary in this Agreement, in the event of the death or incapacity of any individual who directly or indirectly controls Developer prior to the recordation of the last Release of Construction Covenants pertaining to the Project Site, all times for performance by Developer hereunder, including the times for Developer's performance set forth in the Schedule of Performance, may be extended at the sole discretion of Developer upon notice to the City for a period of up to two (2) years.

For purposes of this Agreement, (i) "**Transfer**" shall mean any sale, transfer, assignment, conveyance, gift, hypothecation, or the like of the Project Site or Developer or any portion thereof or any interest therein or of this Agreement; notwithstanding the foregoing, from and after the conveyance of the Project Site to Developer, "**Transfer**" shall expressly exclude: (a) grants of leases, licenses or other occupancy rights for buildings or other improvements which will be part of the Project; (b) grants of easements or other similar rights granted in connection with the development or operation of the Project or Project Site; (c) the placement of mortgages or deeds of trust on the Project Site; (d) the exercise of any remedies of any lender holding a mortgage or deed of trust on the Project Site; or (e) the removal of a general partner or managing member by the exercise of remedies under any form of operating or partnership agreement, (ii) "**Affiliate**" shall mean, as to any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company or other legal entity or organization (each, a "**Person**"), any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, (iii) "**control**" shall mean, directly or indirectly, and either individually or in concert with any Immediate Family Members, (a) the ownership of more than fifty percent (50%) of the voting securities or other voting interests of any Person, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise, and (iv) "**Immediate Family Members**" shall mean, and be limited to, with respect to any individual, (a) such natural person's then-current spouse, children, grandchildren and other lineal descendants of such natural person, (b) any trust or estate of which the primary beneficiaries include such natural person and/or one or more of the persons described in the foregoing clause (iv)(a), or (c) any corporation, partnership, limited liability company or other entity that is 100% owned by one or more of the Persons described in the foregoing clauses (iv)(a) and (iv)(b).

If, in violation of this Agreement, Developer (i) Transfers this Agreement or any of the rights herein or (ii) Transfers the Arena Site, the West Parking Garage Site, the East Transportation Site, the Hotel Site, any portion thereof or any interest therein, prior to the issuance of the Release of Construction Covenants for such Transferred portion of the Project Site, the City shall be entitled to the Excess Purchase Price resulting from such Transfer. The "**Excess Purchase Price**" shall be the amount that the consideration paid to Developer for such property transferred exceeds (a) the amount of the Purchase Price and/or Acquisition Costs paid by Developer for such property transferred and (b) the cost of the Improvements developed thereon (and any related Public Infrastructure), including applicable carrying charges and all costs related thereto. If Developer is required to pay an Excess Purchase Price to the City and such Excess Purchase Price has not been paid to the City within ten (10) business days following such transfer, the City shall have a lien on the Project Site for the entire amount of the Excess Purchase Price. Any such lien shall be subordinate and subject to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to acquire the Site and/or construct the Improvements and Public Infrastructure as authorized herein.

Except for Transfers duly executed and deemed approved by the City as provided above, Developer covenants and agrees that prior to issuance by the City of the last Release of Construction Covenants pertaining to the Project Site there shall be no Change in Control of Developer by any method or means (except as the result of death or incapacity), without the prior written approval of the City, provided, however, such approval shall be given within five (5) business days if, in the reasonable determination of the City, the Developer after the Change in Control will have the qualifications of a developer (including experience, character and financial capability) necessary to develop the Arena Site, the West Parking Garage Site, the East Transportation Site, or the Hotel Site, as applicable.

Developer shall promptly notify the City of any proposed Change in Control. This Agreement may be terminated by the City if there is any Change in Control (voluntary or involuntary, except as the result of death or incapacity) of Developer in violation of this Agreement prior to the issuance of the last Release of Construction Covenants pertaining to the Project Site .

For purposes of this Agreement, "**Change in Control**" shall mean the issuance or Transfer of ownership interests in Developer, when, as a result of such issuance or Transfer, either (i) one or more Persons other than Steven A. Ballmer, Connie E. Ballmer, any of their children, grandchildren or other lineal descendants, or any Affiliates of any of the foregoing individuals becomes the direct or indirect owner of more than a controlling ownership interest in Developer, or (ii) Steven A. Ballmer, Connie E. Ballmer, any of their children, grandchildren or other lineal descendants, or any Affiliates of any of the foregoing individuals no longer holds a controlling ownership interest in Developer.

Any permitted or approved Transfer shall relieve Developer from any obligations under this Agreement arising from and after such Transfer, and City shall acknowledge in writing the foregoing release.

Consistent with the provisions of Section 320, the restrictions of this Section 106 shall terminate upon issuance by the City of a Release of Construction Covenants as to the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable.

This Agreement shall not be assigned by the City without the prior written consent of Developer. The City shall not voluntarily transfer, lease, license and/or encumber any portion of the Project Site during the term of this Agreement to any Person.

E. [§ 107] City Representations

The City represents, warrants and covenants to Developer as follows:

(i) The City is a municipal corporation operating in accordance with the laws of the State of California and is authorized and qualified to own the City Parcels. Further, the City (x) has complete and full authority to execute this Agreement and to agree to convey to Developer good and marketable fee simple title to the City Parcels as and when required under the terms and conditions of this Agreement, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are necessary to effectuate the transaction contemplated by this Agreement, and (z) will take all such additional action reasonably necessary or appropriate to effect and facilitate the transaction contemplated by this Agreement. The City further represents and warrants that the persons signing this Agreement on behalf of the City are duly qualified and appointed representatives of the City and have all requisite power and authority on behalf of the City to cause the City to enter into this Agreement as a valid, binding and enforceable obligation of the City.

(ii) The City has not received any notice of, and has no knowledge of, any pending or threatened taking or condemnation of the City Parcels or any portion thereof.

(iii) Upon the date scheduled for conveyance to Developer in the Schedule of Performance, the Project Site will be, free of any leasehold interest, right of possession or right of acquisition or claim of right of possession or right of acquisition of any party other than the City, and all mortgages, encumbrances, liens (whether statutory or otherwise), security interests or other security devices or arrangements of any kind or nature whatsoever. The City will not sell, encumber, convey, assign, pledge, lease or contract to sell, convey, assign, pledge, encumber or lease all or any part of the City Parcels (or the Potentially Participating Parcels, if and when acquired by the City) after the Effective Date and prior to the date of conveyance to Developer.

(iv) Neither the entry into this Agreement nor consummation of the transactions contemplated hereby will constitute or result in a violation or breach by the City of any judgment, order, writ, injunction or decree issued against or imposed upon it, or any agreement or other instrument to which the City is a party or by which the City or any of its respective properties are bound, or will result in a violation of any applicable law, order, rule or regulation of any governmental authority.

F.     [§ 108]           Developer Representations

Developer represents, warrants and covenants to the City as follows:

(i)     Developer is a limited liability company, duly organized and in existence in accordance with the laws of the State of Delaware, and is in good standing under the laws of the State of California, and is authorized and qualified to own and develop the Project Site in accordance with this Agreement. Further, Developer (x) has complete and full authority to execute this Agreement and to accept conveyance from the City and develop the Project Site in accordance with the terms and conditions of this Agreement, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are necessary to effectuate the transaction contemplated by this Agreement, and (z) will take all such additional action reasonably necessary or appropriate to effect and facilitate the transaction contemplated by this Agreement. Developer further represents and warrants that the person signing this Agreement on behalf of the Developer is a duly qualified and appointed representative of Developer and has all requisite power and authority on behalf of Developer to cause Developer to enter into this Agreement as a valid, binding and enforceable obligation of Developer.

(ii)    Neither the entry into this Agreement nor consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Developer of any judgment, order, writ, injunction or decree issued against or imposed upon it, or any agreement or other instrument to which Developer is a party or by which Developer or any of its respective properties are bound.

(iii)   Developer does not have any contingent obligations or any contractual agreements which could materially adversely affect the ability of Developer to carry out its obligations hereunder.

(iv)    To the best of Developer's knowledge, no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other similar proceedings are pending or threatened against Developer, nor are any of such proceedings contemplated by Developer.

G.     [§ 109]           Special Limited Obligations

Any obligation of the City hereunder shall be a special limited obligation, which is not and shall not be a pledge of or an obligation payable through the City's general fund, and any recovery against the City in connection with this Agreement or the transactions contemplated by this Agreement shall be being limited to the City's interest in the City Parcels and the proceeds therefrom. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in this Agreement, subject to the City's obligation to expend monies provided the Developer for the specific purposes hereunder and under such other agreements with the City (e.g., the Acquisition Deposit).

H.     [§ 110]           Attachments Incorporated

All attachments to this Agreement, or agreements entered into by the City and Developer substantially in the form of such attachments, as now existing and as the same may from time to time be modified by agreement of the City Manager and Developer, are incorporated herein by this reference.

II.     [§ 200]           DISPOSITION OF THE PROJECT SITE

A.     [§ 201]           Sale and Purchase of City Parcels

In accordance with and subject to all the terms, covenants, and conditions of this Agreement, the City agrees to sell to Developer and Developer agrees to purchase the City Parcels. Developer shall pay to the City as the purchase price for the City Parcels a Purchase Price of [\_\_\_\_\_ (\$\_\_\_\_,000)] (the "**Purchase Price**"). The sale of the City Parcels shall be subject to satisfaction of all conditions precedent as set forth in this Agreement and shall be within the applicable time frame set forth in the "**Schedule of Performance**", attached hereto as **Attachment No. 3**.

The City has determined that the Purchase Price is equal to the appraised fair market value of the City Parcels [(as defined in California Code of Civil Procedure Section 1263.320)] pursuant to an independent third party appraisal, without taking into account the cost of any remediation of Hazardous Materials, and does not include the significant economic and other public benefits that will result from the completion of the Project. If the Closing Date occurs more than one (1) year following the Effective Date but less than two (2) years following the Effective Date, then the Purchase Price shall be increased to [\_\_\_\_\_ (\$\_\_\_\_,000)] [**103% of existing Purchase Price**]. If the Closing Date occurs two (2) years or more following the Effective Date, the City and Developer shall agree upon the appraisal instructions for an updated appraisal, each select a suitably qualified independent appraiser, such two appraisers shall select a third suitably qualified independent appraiser, and the Purchase Price shall be the average of the three appraisals submitted by such appraisers, which determination shall be made not less than sixty (60) days prior to the Closing Date. [***Appraised value of the Existing Well Site to be discounted by Developer's actual cost of demolition and relocation to the New Well Site- address in same manner as remediation costs?***]

Notwithstanding the foregoing, the Purchase Price shall be subject to reduction to the extent of any costs associated with any remediation of Hazardous Materials required for the City Parcels actually paid by Developer, in accordance with the terms and conditions of this Agreement and in compliance with applicable laws, statutes, rules and regulations and such reasonable procedures established by the City (the "**Remediation Cost Adjustment**"). In order to implement the provisions of this paragraph, and without limiting the duties of Developer with respect to Hazardous Materials pursuant to this Agreement, the Developer shall promptly following the Effective Date, perform such environmental site assessments to determine whether any remediation of Hazardous Materials required for the City Parcels, as well an assessment of the cleanup methods, costs and logistics of such remediation (the "**Remediation Plan**"). The Remediation Plan shall be subject to the review and approval of the City Manager. The City and

Developer shall include in the escrow instructions provisions for the holdback from the Purchase Price of the estimated Remediation Cost Adjustment (plus a ten percent (10%) contingency), as set forth in the Remediation Plan. Such escrow instructions shall further require that any balance of the holdback amount remaining after completion by Developer of any required Hazardous Materials remediation required by this Agreement for the City Parcels be paid to the City; with the Developer being solely responsible for all costs of any remediation of Hazardous Materials for the City Parcels in excess of the Remediation Cost Adjustment and ten percent (10%) contingency.

B.     [§ 202]           Acquisition of Potentially Participating Parcels

1.     [§ 203]           Election to Acquire by Eminent Domain

Prior to the Effective Date, Developer utilized reasonable good faith efforts to negotiate with the Private Owners and occupants of the Potentially Participating Parcels within the Arena Site in order to acquire the Potentially Participating Parcels. Despite such efforts, Developer has been unable to either acquire the Potentially Participating Parcels or to enter into a contract for the acquisition of the Potentially Participating Parcels. In the City's sole and absolute discretion, the City may obtain appraisals of the Potentially Participating Parcels, attempt in good faith to negotiate the voluntary acquisition of the Potentially Participating Parcels pursuant to California Government Code Section 7260 *et seq.*, and, if such negotiations are unsuccessful, may schedule, notice and hold a public hearing at which the City may consider the adoption of one or more resolutions of necessity to consider authorizing the acquisition of the Potentially Participating Parcels by eminent domain. Following such public hearing, the City will determine in the City's sole and absolute discretion whether or not to adopt resolutions of necessity and to proceed with eminent domain to acquire the Potentially Participating Parcels. Developer expressly acknowledges, understands and agrees that the City undertakes no obligation to adopt any resolution of necessity, and the City makes no commitment to Developer regarding the findings and determinations the City may make in connection therewith. In the event that the City does not acquire the Potentially Participating Parcels by negotiated purchase and does not elect to acquire such parcels by exercise of its power of eminent domain within the time period set forth in the Schedule of Performance, neither the City nor Developer shall be in default under this Agreement, but Developer shall have the right to terminate this Agreement pursuant to Section 510.

2.     [§ 204]           Acquisition by Eminent Domain

If the City approves one or more resolutions of necessity and elects to exercise its power of eminent domain to acquire any Potentially Participating Parcels, any such eminent domain proceedings shall be filed within the time set forth in the Schedule of Performance, and the City shall diligently exercise reasonable efforts to prosecute any such eminent domain actions to completion and obtain fee simple absolute title to the affected Potentially Participating Parcels within the time set forth in the Schedule of Performance.

If the City exercises its power of eminent domain to acquire, at the earliest practicable time, any Potentially Participating Parcel, the City shall (i) exercise reasonable efforts to apply

for and obtain a judicial order or orders (the "**Orders of Prejudgment Possession**") authorizing the City, given the immediate need to commence construction of the Project and the potential hardship to the City if the Project were delayed, to take prejudgment possession of the Potentially Participating Parcels prior to entry of final judgments and orders of condemnation (the "**Final Orders**"), (ii) comply with all applicable provisions of the California Relocation Assistance Law (California Government Code Section 7260 et seq.), all State and local regulations implementing such law, and all other applicable laws and regulations (collectively "**Relocation Laws**"); and (iii) to relocate or cause to be relocated, in accordance with such Relocation Laws any "**displaced person**", as defined in California Government Code Section 7260(c)(1), occupying the Potentially Participating Parcels. Any and all eligible expenses incurred in accordance with California Government Code Section 7262, relating to the displacement and/or relocation of any displaced persons from the Potentially Participating Parcels, and any reasonable costs incurred by the City in retaining a relocation consultant, shall be paid by Developer. Upon obtaining the Orders of Prejudgment Possession, the City shall, upon the request of Developer, process and sign any required final parcel and subdivision maps, lot line adjustments, and/or mergers, in its capacity as deemed record title owner of the property pursuant to California Government Code Section 66465.

Notwithstanding any other provision of this Agreement to the contrary, Developer may elect, in its sole discretion upon written notice to the City, to accept from the City the conveyance of (a) the City's rights of possession under an Order of Prejudgment Possession prior to the City's acquisition of fee simple absolute title and the entry of a Final Order as to a Potentially Participating Parcel or (b) fee simple absolute title from the City after the filing of a Final Order. If Developer elects to accept conveyance of the City's rights of possession under an Order of Prejudgment Possession, the City shall deliver possession of such Potentially Participating Parcel to Developer on the Closing Date, the City shall diligently proceed with such eminent domain proceedings to obtain the Final Order, and upon the City's acquisition of fee simple absolute title and the recording of a Final Order as to a Potentially Participating Parcel, transfer fee simple absolute title of such Potentially Participating Parcel to Developer, which obligations shall survive closing.

3.     [§ 205]           Payment of Acquisition Costs

Developer shall pay all reasonable direct and indirect costs and expenses incurred by the City in connection with the acquisition of the Potentially Participating Parcels, their conveyance to Developer, and the relocation of and displaced person (collectively, the "**Acquisition Costs**"), including, without limitation:

- (a)     appraisal fees, title reports and any required environmental assessments;
- (b)     preparation of documents for public hearing on resolutions of necessity, including without limitation, attorneys' fees and cost of publishing notice;
- (c)     the total amount paid to owners and occupants of the Potentially Participating Parcels, including the price paid to acquire any and all interests in the Potentially Participating Parcels including without limitation amounts paid, if any, for the fee interest in the

land and improvements, leaseholds, tenant improvements, furnishings, fixtures and equipment, leasehold bonus value and loss of business goodwill;

(d) relocation assistance and benefits to any displaced person as required by Relocation Laws, and the City's payments to its relocation consultant;

(e) court costs and fees required to prosecute eminent domain proceedings, if any, and to defend actions if any, filed in cross-complaint to any eminent domain proceedings, or as separate actions by owners, occupants or other interested parties in response to the eminent domain proceedings, and any monies paid in settlement thereof or pursuant to a judgment in such proceedings;

(f) costs of litigation and trial incurred in prosecuting such eminent domain proceedings, including without limitation, document preparation, appraisers' fees, expert witness fees, court costs and attorneys' fees; and

(g) escrow fees, recording fees, title insurance fees, litigation guarantees, and all other costs incurred in connection with the acquisition of the Potentially Participating Parcels by the City and the conveyance of the Potentially Participating Parcels to Developer.

4. [§ 206] Acquisition Deposit and Payments

Within ten (10) days after the Effective Date, Developer shall deposit with the City the sum of [ \$\_\_\_\_\_ ] ("**Acquisition Deposit**") which the City shall be authorized to draw upon to pay costs and expenses the City reasonably incurs in connection with acquisition of the Potentially Participating Parcels and relocation of the occupants thereof. If at any time the Acquisition Deposit is insufficient to cover reasonably anticipated expenses, the City shall notify Developer in writing, and Developer shall deposit the necessary additional funds within ten (10) days.

The City shall hold the Acquisition Deposit in a separate interest-bearing account. Any unused portion of the Acquisition Deposit shall be promptly refunded to Developer following conveyance of title of the Potentially Participating Parcels to Developer. The City shall prepare and maintain an accounting of the costs and expenses that the City has reasonably incurred and that the City anticipates incurring in connection with acquisition of the Potentially Participating Parcels and relocation of the occupants thereof, and shall provide such information to Developer no less frequently than quarterly, and such accounting shall be provided together with each request the City makes for additional funds or upon Developer's request. Developer and/or Developer's consultants shall be entitled to audit the City's books and records relating to the Acquisition Costs, to determine whether such Acquisition Costs were properly reimbursable under this Agreement, during normal business hours and following at least five (5) business days' prior notice. The City shall reasonably cooperate with Developer to the extent required in connection with such audit, including, without limitation, providing copies of all invoices and other back-up information.



The City expressly reserves the right to suspend or abandon any condemnation action if Developer fails to make a required deposit of funds in accordance with this Agreement within thirty (30) days after receipt of a notice from the City of such failure. In such event, Developer shall pay any and all damages, claims or sanctions resulting from the City's suspension of such proceedings, including without limitation attorneys' fees, litigation expenses and damages which may be awarded in favor of a condemnee.

5.     [§ 207]           Consultation

Developer shall have the right to approve or disapprove of any settlement with Private Owners and occupants, prior to finalization of any such settlement, regarding the acquisition of Potentially Participating Parcels. The City shall keep Developer apprised of negotiations with the Private Owners and occupants of the Potentially Participating Parcels and shall consult with Developer during the course of negotiations and any eminent domain proceedings, particularly with regard to any negotiated settlement of any eminent domain proceeding. The City shall promptly provide Developer with any proposed settlement offers, for Developer's approval. If a proposed settlement offer is not approved by Developer, the City shall reject (or not propose, as the case may be) the settlement offer and shall prosecute with the eminent domain proceeding, subject to the provisions of Section 208. The City agrees to consult with, and obtain the approval of, Developer prior to engaging counsel, approving fee budgets or making any other commitment for costs for which Developer will be responsible as Acquisition Costs, including, without limitation, any Final Offers of Compensation delivered to the Private Owners and occupants of the Potentially Participating Parcels.

6.     [§ 208]           Termination of the Action

Once an eminent domain proceeding is filed, the City shall not formally abandon that proceeding with respect to the Potentially Participating Parcels without Developer's consent. At any time, Developer may request that the City may formally abandon any eminent domain proceeding filed with respect to the Potentially Participating Parcels. If Developer makes such request, Developer shall remain responsible for all Acquisition Costs incurred up to the City's receipt of such request, including, without limitation, any award of the condemnee's litigation expenses and any remaining Acquisition Deposit after the City has paid all such costs will be promptly refunded to Developer. In the City's sole discretion, the City may continue to prosecute the proceeding, but any such continuation after Developer's requested termination shall be at the City's sole expense as to any and all direct and indirect costs incurred thereafter in connection with such continuation, including without limitation Acquisition Costs. In addition, to the extent and cross-complaints or separate actions arising from the eminent domain proceeding remain pending after Developer's request that the City abandon that proceeding, Developer shall not be responsible for cost incurred in connection with defending such cross-complaints or separate actions.

7.     [§ 209]           Contact with Private Owners

Nothing in this agreement shall prevent Developer from seeking to reach a settlement with Private Owners of Potentially Participating Parcels. During the period commencing upon

the Effective Date through the earlier of the termination of this Agreement or the City's conveyance of title to the Potentially Participating Parcels to Developer, Developer shall keep the City apprised of negotiations with the Private Owners and occupants of the Potentially Participating Parcels, particularly with regard to any negotiated acquisition by Developer of the Potentially Participating Parcels. In the event that Developer reaches a settlement with any Private Owner that obviates the need for an eminent domain proceeding, such proceeding shall be dismissed and Developer shall not be responsible for litigation costs incurred in any dispute with such Property Owner after the closing of the settlement.

C.     [§ 210]     Escrow

The City and Developer agree to open an escrow account with [Fidelity National Title Company] (the "**Escrow Agent**") within the times provided in the Schedule of Performance. This Agreement shall constitute the joint escrow instructions of the City and Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow account for the conveyance. The City and Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary for such conveyance. The Escrow Agent hereby is empowered to act under such instructions, and upon indicating its acceptance thereof in writing delivered to the City and to Developer within five (5) days after opening of such escrow account, the Escrow Agent shall carry out its duties as Escrow Agent hereunder for such conveyance.

Upon delivery of the Grant Deed for each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site to the Escrow Agent by the City pursuant to Section 217 of this Agreement, the Escrow Agent shall record each Grant Deed in accordance with these escrow instructions for each such conveyance, provided that title to the entire Project Site can be vested in Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall also disclose and provide Developer with all pertinent documentary transfer tax information and costs prior to the close of escrow for each such conveyance. Any insurance policies governing the Project Site are not to be transferred.

Developer shall deposit into the escrow with the Escrow Agent before closing all fees, charges and costs necessary for the acquisition and conveyance of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site to Developer that are chargeable to Developer hereunder, promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs for the escrow account. Such fees, charges and costs shall include, without limitation:

- (1)     One half of the escrow fee;
- (2)     All premiums for title insurance required by Developer in excess of a California Land Title Association ("**CLTA**") title insurance policy; and
- (3)     All notary fees required of the Developer.

Developer shall also deposit the Purchase Price and any portion of the Acquisition Costs not previously paid with the Escrow Agent at the same time in accordance with the provisions of Section 218 of this Agreement.

With the exception of payment by the City of (i) one half of the escrow fee, (ii) the costs attributed to the CLTA title insurance policy for the conveyance, (iii) notary fees required of the City, and (iv) any State, County or City documentary or transfer tax, unless otherwise set forth herein, the City shall not be required to pay any costs, fees or charges in connection with the conveyance of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site and in no event shall the City's costs exceed the net amount of the Purchase Price actually received by the City after repayment of all applicable obligations to the FAA and LAWA, and any applicable taxing entities with regard to those City Parcels formerly owned by the Successor Agency. Unless otherwise specified in this Agreement, each party shall be responsible for the payment of its own legal fees.

The City shall timely and properly execute, acknowledge and deliver the Grant Deed conveying to Developer title to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site in accordance with the requirements of Section 213, together with an estoppel certificate with regard to Developer and the obligations under this Agreement certifying: (i) that this Agreement is in full force and effect, (ii) that this Agreement has not been amended or modified, or if this Agreement has been amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information, (iii) that the City is not aware of any default by Developer hereunder, or the occurrence of an event that with notice or the passage of time or both would be default by Developer hereunder if not cured (or if there is a default, a description of the nature of such default), and (iv) such other reasonable matters as may be requested. In addition, the City agrees to, from time to time, execute and deliver to any lender or prospective lender of Developer, or other applicable third-party, within ten (10) business days after the request is made, such an estoppel certificate.

Upon the closing of escrow, the Escrow Agent is authorized to:

- (1) Pay, and charge Developer for any fees, charges and costs payable under this Section 210. Before such payments are made, the Escrow Agent shall notify the City and Developer of the fees, charges and costs necessary to clear title and close escrow.
- (2) Disburse funds and deliver each Grant Deed and other documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by the City and Developer. The Purchase Price shall not be disbursed by the Escrow Agent unless and until it has recorded a Grant Deed for each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site and has delivered to Developer a title insurance policy insuring title and conforming to the requirements of Section 219 of this Agreement.

- (3) Record any instruments delivered through this escrow if necessary or proper to vest title in Developer in accordance with the terms and provisions of this Agreement, including the FAA Restrictions.

All funds received in escrow shall be deposited by the Escrow Agent in a separate interest-earning escrow account with any state or national bank doing business in the State of California and reasonably approved by Developer and the City. All interest earned on the funds shall be payable or credited to Developer with all interest adjustments made on the basis of a thirty (30) day month. Any payment of interest to Developer shall be made by check by the Escrow Agent. Developer shall also be fully responsible for any and all costs required to establish and/or maintain the separate interest-earning account.

If escrow is not in a position to close on or before the Closing Date, any party who then shall have fully performed the acts to be performed before the conveyance of title to the Project Site to Developer may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return shall be recognized until five (5) days after the Escrow Agent (or the party making such demand) shall have mailed copies of such demand to the other party or parties at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within such five (5) day period, in which event the Escrow Agent is authorized to hold all money, papers, and documents with respect to the Project Site until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible.

If objections are raised as above provided for, the Escrow Agent shall not be obligated to return any such money, papers, or documents except upon the written instructions of the City and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within such five (5) day period the Escrow Agent shall immediately return the demanded money, papers, or documents.

Any amendment to the escrow instructions shall be in writing and signed by the City and Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the City or Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands, and communications between the City and Developer.

D.     [§ 211]           Conveyance of Title and Delivery of Possession

Conveyance to Developer of title to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site in accordance with the provisions of this Agreement shall be completed on or prior to the date specified in the Schedule of Performance or such later date mutually agreed to in writing by the City Manager and Developer and communicated in writing to the Escrow Agent (the "**Closing Date**").

Except as otherwise provided herein, exclusive possession of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site shall be delivered to Developer by the City concurrently with each such conveyance of title. Developer shall accept title and possession to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site on the Closing Date, subject to satisfaction of the conditions of closing set forth in this Agreement.

E.     [§ 212]         Forms of Deed

The City shall convey to Developer title to the Project Site in the condition required in this Agreement by a "**Grant Deed**" substantially in the form attached hereto as **Attachment No. 6A** as to the Arena Site, and substantially in the form attached hereto as **Attachment No. 6B** as to each of the West Parking Garage Site, the East Transportation Site and the Hotel Site. The City shall, within the time frame set forth in the Schedule of Performance, approve and record a lot line adjustment and merger to create the Hotel Site as a separate legal parcel, which can be conveyed to Developer at closing.

F.     [§ 213]         Condition of Title

The City shall convey to Developer fee simple title to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site free and clear of all rights of possession (including billboard leases or agreements), liens, bonds, encumbrances, assessments, easements, leases and taxes, and any rights of acquisition by any party; except those covenants included in each Grant Deed, the Arena Site Use Agreement (City Parcels), the Arena Site Use Agreement (Potentially Participating Parcels), the FAA Restrictions, and except those permitted encumbrances set forth on **Attachment No. 8**; provided however that no covenants, conditions, restrictions or equitable servitudes shall prohibit or limit the development permitted by the Scope of Development.

G.     [§ 214]         FAA Restrictions

Certain City Parcels were acquired by the City or Successor Agency with grant funds from the U.S. Federal Aviation Administration ("**FAA**") and Los Angeles World Airports ("**LAWA**"). The City shall be solely responsible for compliance with and satisfaction of the terms and conditions of any grant agreements with FAA and LAWA, including, without limitation, repayment to FAA and LAWA as may be required under such grant agreements and confirming the termination of all ongoing obligations under such grant agreements. The City and Developer shall, promptly following the Effective Date, draft, negotiate and finalize the form of the restrictive covenants related to compatible uses required under such grant agreements with FAA and LAWA (the "**FAA Restrictions**") within the time frame set forth in the Schedule of Performance. The FAA Restrictions shall be subject to the approval of Developer in its sole discretion and shall be recorded against, and encumber, the applicable City Parcels at closing.

H.     [§ 215]         Street Vacation

In order to accommodate for the development of the Arena Site and the West Parking

Garage Site, the City will determine in its sole and absolute discretion whether or not to vacate and abandon as a public street and right of way the Right-Of-Way Areas more particularly identified and legally described in **Attachment 1B-1**. The City shall make such determination within the time frame set forth in the Schedule of Performance, and if it elects to vacate and abandon such parcels, adopt such required resolutions of necessity, and complete such vacations and abandonments [(and the vacation and abandonment of any in-place utilities)] within the time frames set forth in the Schedule of Performance and in any event prior to the Closing Date. The City shall reasonably cooperate with Developer to the extent required in connection with the relocation of any in-place utilities.

I.       [§ 216]       Pedestrian Bridge(s)

In order to provide additional pedestrian access to the Arena Site and the West Parking Garage Site, the City will determine in its sole and absolute discretion whether or not to vacate and abandon any air space rights the Potential Pedestrian Bridge Airspace more particularly identified and legally described in **Attachment 1B-2**. The City shall make such determination within the time frame set forth in the Schedule of Performance, and if it elects to vacate and abandon such parcels, adopt such required resolutions of necessity, and complete such vacations and abandonments within the time frames set forth in the Schedule of Performance and in any event prior to the Closing Date. The City shall reasonably cooperate with Developer to the extent required in connection with obtaining all rights to construct the pedestrian bridge(s) in the Airspace Parcels, including, as necessary, reasonably cooperating with Developer in negotiations between Developer and any Private Owners or governmental agencies.

J.       [§ 217]       Time For and Place For Delivery of the Grant Deeds

The City shall deposit each of the Grant Deeds with the Escrow Agent on or before the date set forth in the Schedule of Performance.

K.       [§ 218]       Payment of the Purchase Price and Recordation of the Grant Deeds

Developer shall promptly deposit the Purchase Price (and any portion of the Acquisition Costs not previously paid) with the Escrow Agent upon or prior to the scheduled Closing Date, provided that the Escrow Agent shall have notified Developer in writing that each Grant Deed for the conveyance, properly executed and acknowledged by the City has been delivered to the Escrow Agent and that title to and the right to possession of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site are each in condition to be conveyed to Developer in conformity with the provisions of this Agreement. The Escrow Agent shall deliver the Purchase Price (and any portion of the Acquisition Costs not previously paid) to the City immediately following the delivery to Developer of the Title Policy in conformity with this Agreement and the recording of all of the Grant Deeds among the land records in the Office of the County Recorder for Los Angeles County.

L.     [§ 219]           Title Insurance

Concurrently with recordation of the Grant Deeds, [Fidelity National Title] ("**Title Company**") shall provide and deliver to Developer a CLTA coverage owner's title insurance policy or policies issued by Title Company insuring that the title to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site are vested in Developer in the condition required by this Agreement, along with any special endorsements which Developer reasonably requests. At the sole election and cost of Developer, Developer may obtain an ALTA survey of each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site and cause the Title Company to issue a ALTA owner's title insurance policy or policies. The title insurance policy shall be in the amount of the combination of the Purchase Price and the Acquisition Costs (collectively the "**Total Site Cost**") or in such greater amount as Developer may specify as hereinafter provided.

Concurrently with the issuance of the title policy or policies for the Project Site (the "**Title Policy**"), the Title Company shall, if requested by Developer, provide Developer with an endorsement to insure the amount of Developer's estimated construction costs of the Improvements to be constructed thereon and any lender's interest therein.

Developer shall pay for all premiums attributable to any extended coverage or special endorsements which it requests above and beyond a CLTA title insurance policy.

M.     [§ 220]           Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Project Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period, commencing prior to the conveyance of title of the Project Site shall be borne by the City. Ad valorem taxes and assessments, if any, on the Project Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing after conveyance of title of the Project Site shall be borne by Developer.

N.     [§ 221]           Occupants of the Project Site

The City agrees that title to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site shall be conveyed free of any possession, right of possession or right of acquisition.

O.     [§ 222]           Zoning of the Project Site

As described in Recital O, the City granted the Project Approvals. Subject to the provisions of, and as described in, the Development Agreement and the Scope of Development, prior to the Closing Date, Developer shall take such actions as are necessary to procure or to obtain those future approvals and actions by the City that will be approved after the Effective Date, including discretionary and ministerial actions by the City (as defined in the Development Agreement, the "**Subsequent Approvals**"), which may include but are not limited to, which may include but are not limited to, demolition permits, determinations of consistency with the Design

Guidelines adopted as part of the Project Approvals, grading permits, building permits, final parcel and subdivision maps, lot line adjustments, and mergers. The City shall provide all proper and reasonable assistance and cooperation to Developer in connection therewith, and shall use its good faith and best efforts in cooperating with and facilitating Developer's efforts to obtain all of the necessary Subsequent Approvals and/or any other permits required for the development of the Project Site, in accordance with, and as described in, the Development Agreement and the Design Guidelines.

P.     [§ 223]           Physical Condition of the Project Site

The Project Site shall be conveyed in an "as is" physical condition, with no warranty, express or implied by the City as to the condition of the soil, water, or presence of Hazardous Materials (as defined herein), the Project Site's geology, or the presence of known or unknown faults. In this regard, the City, at the written request of Developer, shall make available to Developer all documents within the City's possession or control pertinent to the physical condition of the Site, including any reports related to the presence of Hazardous Materials on the Site, within fifteen (15) business days of the request. It shall be the sole responsibility of Developer, at Developer's sole cost and expense, to investigate and determine the soil and water conditions of the Site and the suitability of the Site for the construction of the Improvements by Developer, and to pay for the demolition and clearance of improvements on, in or under the Site as necessary for the development of the Site. *[Discuss potential stadium parking issues, City restoration obligations to deliver Project Site clear of all construction materials/debris based on ongoing use of the Project Site]*

Developer shall be solely responsible for all necessary testing of the Project Site for Hazardous Materials pursuant to all applicable laws, statutes, rules and regulations. Upon the acquisition of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, Developer shall also be responsible for making the Project Site usable for the proposed development as a result of any conditions including, without limitation, flood zones, Alquist-Priolo Earthquake Fault Zoning Act, and similar matters, and, subject only to the Remediation Cost Adjustment, subsequent to Developer's acquisition of the Project Site, Developer shall be responsible for any costs associated with any required remediation of Hazardous Materials which is necessary for the Project Site and for performing all work required in connection therewith. For purposes of this Agreement, "**Hazardous Materials**" shall mean any substance, material or waste which is or becomes regulated by any local governmental authority, the State of California and/or the United States Government, including, but not limited to asbestos; polychlorinated biphenyls (whether or not highly chlorinated); radon gas; radioactive materials; explosives; chemicals known to cause cancer or reproductive toxicity; hazardous waste, toxic substances or related materials; petroleum and petroleum products, including, but not limited to, gasoline and diesel fuel; those substances defined as a "Hazardous Substance", as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or as "Hazardous Waste" as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*; an "Extremely Hazardous Waste," a "Hazardous Waste" or a "Restricted Hazardous Waste," as defined by The Hazardous Waste Control Law under Section 25115, 25117 or 25122.7 of the California Health



and Safety Code, or is listed or identified pursuant to Section 25140 of the California Health and Safety Code; a "Hazardous Material", "Hazardous Substance," "Hazardous Waste" or "Toxic Air Contaminant" as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under Sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code; "Oil" or a "Hazardous Substance" listed or identified pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1321; a "Hazardous Waste," "Extremely Hazardous Waste" or an "Acutely Hazardous Waste" listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1 through 66261.126; chemicals listed by the State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code; a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, materially damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or government agency requires in order for the Site to be put to the purpose proposed by this Agreement; any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*; asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*; any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste" and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code, Sections 25800 *et seq.*; hazardous substances regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code, Sections 6300 *et seq.*; and/or regulated under the Clean Air Act, 42 U.S.C. 7401 *et seq.* or pursuant to The California Clean Air Act, Sections 3900 *et seq.* of the California Health and Safety Code. Any studies and reports generated by Developer's testing for Hazardous Materials shall be made available to the City upon the City's request.

Q.     [§ 224]           Relationship of the City and Developer

Nothing contained in this Agreement or in any other document or instrument made in connection with this Agreement shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture or co-ownership by or between the City and Developer.

O.     [§ 225]           Preliminary Work by Developer

Prior to the conveyance of title to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, representatives of Developer shall have the right of access to and entry upon the City Parcels (and the Potentially Participating Parcels, if and when acquired by the City) at all reasonable times for the purpose of inspecting the Project Site,

obtaining data and making surveys and tests necessary to carry out this Agreement. Developer agrees to defend, indemnify and hold the City, and its officers, employees, contractors and agents, harmless for any and all claims, liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising out of work or activity of Developer, its officers, employees, contractors and agents, permitted pursuant to this Section 225, except to the extent arising out of the gross negligence or willful misconduct of the City, and/or its officers, staff, employees, contractors or agents or relating to the discovery of any Hazardous Materials on the Project Site. Developer shall not commence any activities under this Section 225 without first providing the City with satisfactory evidence of insurance meeting the requirements of this Agreement, and the provision of adequate restoration of the Project Site to its condition prior to the commencement of any activities under this Section 225 with the exception of any Hazardous Materials condition discovered on the City Parcels prior to Closing Date; the remediation of which shall be dealt with the provisions of Section 201 relating to the Remediation Cost Adjustment.

P.     [§ 226]           Submission of Evidence of Financing

Within the times established respectively therefor in the Schedule of Performance, Developer shall submit to the City evidence reasonably satisfactory to the City that Developer has sufficient equity capital and/or has obtained commitments for financing necessary to pay for all costs related to Developer's purchase and development of the Project Site, including, without limitation, the costs for the construction of the Improvements (the "**Development Costs**"), in accordance with this Agreement.

Developer's submission of such evidence of financing shall include:

1.     A project budget, estimated as of the Closing Date, setting forth all anticipated Development Costs, or a certification by Developer that the applicable portion of the Project Budget attached hereto as **Attachment No. 2** remains accurate. The Project Budget shall be maintained as a sources and uses budget, which shall be based upon a financial *pro forma* that has been reasonably approved by the City, and a feasible method of financing, reasonably demonstrating to the City the availability of all funds needed to complete the proposed development of the Project Site.
2.     If applicable, a copy of any commitment or commitments obtained by Developer for any mortgage loan or loans or other debt financing for construction financing to finance all or portions of the Total Site Costs and Development Costs, certified by Developer to be a true and correct copy or copies thereof. The commitment or commitments for financing shall be in such form and content reasonably acceptable to the City, or in such a form and with such content as typically issued by an institutional lender (subject to customary conditions).
3.     Documentary evidence reasonably satisfactory to the City of sources of equity capital sufficient to demonstrate that Developer has adequate funds committed to

cover the difference, if any, between the Total Site Costs and Development Costs and the proposed mortgage loan or loans.

The City Manager shall approve or disapprove each such submission of evidence of financing within the times established in the Schedule of Performance. If the City disapproves any such evidence of financing, the City shall do so by timely written notice to Developer stating with specificity the reasons for such disapproval. If the City gives Developer such timely written notice, Developer shall promptly, but in any event prior to the date required for submission of evidence of financing in the Schedule of Performance, obtain and submit to the City new evidence of financing. The City Manager shall approve or disapprove such new evidence of financing in the same manner and within the same time period established in the Schedule of Performance for the approval or disapproval of the evidence of financing initially submitted to the City.

Q.     [§ 227]           CEQA Requirements

As referenced in Recital O, the City Council certified the FEIR as adequate and complete and made findings in connection therewith for the development of the Project by Developer. All costs and expenses associated with further environmental clearance and/or documentation required for the development of the Project as contemplated by this Agreement shall be the sole responsibility of Developer.

R.     [§ 228]           Brokers

Neither party shall be liable in any manner for any real estate commission or brokerage fees which may arise from the transactions contemplated by this Agreement, other than any broker, agent, or finder engaged in writing by such party. Each party hereto agrees to indemnify and hold the other party harmless from any claim by any broker, agent, or finder retained by the indemnifying party.

III.    [§300]            DEVELOPMENT OF THE PROJECT SITE

A.     [§301]            Responsibilities for Development of the Project Site

Developer shall be solely responsible for developing the Project Site and constructing the Improvements thereon in accordance with the requirements of this Agreement and the Development Agreement, including, but not limited to the development of the Arena Site for use as an arena suitable for sports, entertainment and civic events and activities related thereto, including other uses reasonably related to or incidental to such arena uses, including, without limitation, restaurant, food service and retail uses, philanthropic activities, ancillary and administrative office uses, concourse area uses, practice and training facilities, a sports medicine clinic and parking uses (the "Arena Use") [*Conform definition as necessary*].

B.     [§ 302]           Scope of Development; Design Guidelines

Each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site shall be developed in accordance with and within the limitations established in the "**Scope of Development**" which is attached hereto as **Attachment No. 4**. The Scope of Development includes the approximate square footage of the Project, Project Site merger/parcelization requirements, and other general design elements such as building height, access and circulation, on-site and off-site improvements, infrastructure and parking.

The City has adopted those certain Sports and Entertainment Overlay Design and Development Standards and Guidelines (the "**Design Guidelines**") [*Update references as required*], in implementing the Sports & Entertainment Overlay Zone (Overlay Zone). The Design Guidelines to establish the development standards, guidelines, and procedures for development of the Project Site.

Developer shall deliver to the City whatever information shall be reasonably requested by the City's Planning Director concerning the drawings and architectural renderings for the development of the Project Site. The drawings and architectural renderings required by this Agreement shall include a well-defined architectural concept, showing vehicular circulation and access points, amounts and location of parking, location and size of all buildings (including height and perimeter dimensions), pedestrian circulation, landscaping and architectural character. However, no such drawings or architectural renderings shall be deemed final until the City's Economic & Community Development Director has approved the Drawings (as defined below).

C.     [§ 303]           Basic Site Plan Drawings

Developer has prepared those certain Basic Site Plan Drawings attached hereto as **Attachment No. 5** for the public portions of each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site. The City has determined that the Basic Site Plan Drawings conform to the requirements of the Scope of Development, the Design Guidelines and the Project Approvals. [*Consider treatment of Hotel Site in this Article 300*]

D.     [§ 304]           Construction Drawings and Related Documents for the Project Site

Within the time established in the Schedule of Performance, Developer shall prepare and submit to the City's Economic & Community Development Director for review and written approval, construction drawings and related documents for the public portions of the Project Site and final landscaping plans and finish grading plans, including all applicable off-site public improvements, for each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site (as may be updated from time to time, collectively called the "**Drawings**"). The City's Economic & Community Development Director's review shall be limited to a determination whether Drawings are materially consistent with the Basic Site Plan Drawings, the Design Guidelines, and any previously approved Drawings.

During the preparation of the Drawings, the City and Developer shall, at the request of the City's Economic & Community Development Director, hold regular progress meetings to

coordinate the preparation of, submission to, and review of the Drawings by the City's Economic & Community Development Director. The City and Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

Developer shall at the request of the City's Economic & Community Development Director be available for and shall participate in any presentations that are necessary or desirable to be made to the community or any department, board or commission of the City.

If any revisions or corrections of the Drawings approved by the City's Economic & Community Development Director shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Site, Developer and the City shall cooperate in efforts (i) to revise or correct the Drawings in order to comply with the required revision or correction of such government official, agency, department, or bureau, (ii) to obtain a waiver of such requirements, or (iii) to develop a mutually acceptable alternative. Any such changes shall be within the limitations of the Scope of Development, the Design Guidelines and the Project Approvals.

E.     [§ 305]           City Approval of the Drawings

Subject to the terms of this Agreement and the Development Agreement, the City's Economic & Community Development Director's sole purpose of review of the Drawings shall be limited to a determination whether Drawings are materially consistent with the Basic Site Plan Drawings, the Design Guidelines, and any previously approved Drawings, including any proposed changes therein or thereto. The City's Economic & Community Development Director shall approve or disapprove the Drawings within the times established in the Schedule of Performance. Any disapproval shall state in writing with specificity the reasons for disapproval and any changes which the City's Economic & Community Development Director requests to be made. Such reasons and such changes must be consistent with the Basic Site Plan Drawings, Scope of Development, the Design Guidelines and the Project Approvals and such approval shall not be withheld if such changes logically evolve from the Basic Site Plan Drawings or any previously approved Drawings. Developer, upon receipt of a disapproval based upon powers reserved by the City's Economic & Community Development Director hereunder, shall promptly revise the Drawings, and resubmit the Drawings to the City's Economic & Community Development Director as soon as reasonably possible after receipt of the notice of disapproval.

F.     [§ 307]           Cost of Construction

All costs of developing the Project, and constructing the Improvements on each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as well as the Public Infrastructure, shall be borne by the Developer.

G.     [§ 307]           Schedule of Performance

It is the intention of the City and Developer that the disposition and development of the Site be completed in a timely and an expeditious manner. Accordingly, the Schedule of

Performance encompasses appropriate and necessary benchmarks to be met by the appropriate party, together with required conditions precedent for the conveyance of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site. The City agrees to assign the appropriate planning, engineering, building, safety and other staff to enable the parties to meet the timelines in the Schedule of Performance.

After the conveyance of title to and possession of each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements thereon, and the development thereof as provided in the Scope of Development. Developer shall use commercially reasonable efforts to begin and complete the construction of the Improvements on each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site within the times specified in the Schedule of Performance. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing by the City Manager and Developer or pursuant to Section 605 hereof.

During periods of construction, Developer shall submit to the City a written report of the progress of the construction when and as reasonably requested by the City, but in no event shall Developer be required to submit any such report more often than monthly. The report shall be in such form and detail as may be reasonably required by the City and shall include a reasonable number of construction photographs (if requested) taken since the last report by Developer.

H.     [§ 308]           Indemnification during Construction; Bodily Injury and Property Damage Insurance

During the period commencing with the conveyance of title to and possession of each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site to Developer and continuing until such time as the City has issued a Release of Construction Covenants as to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, respectively, Developer agrees to and shall defend, indemnify and hold the City and its officers, employees, contractors and agents harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Developer or its officers, employees, contractors or agents, with the exception of the acts, errors or omissions of the City, and/or its officers, staff, employees, contractors or agents.

During the period commencing with any preliminary work on the Site by Developer under Section 225 and ending on the date when a Release of Construction Covenants has been issued with respect to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, Developer shall furnish or cause to be furnished to the City, duplicate originals or appropriate certificates of bodily injury and property damage

insurance policies in the amount of at least [\$5,000,000] in combined single limit liability, and naming the City, and its officers, employees, contractors and agents as additional insureds.

I.     [§ 309]           Antidiscrimination during Construction

Developer agrees that in the construction of the Improvements on the Site as provided for by this Agreement, Developer will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, religion, national origin, or ancestry.

J.     [§ 310]           Local, State and Federal Laws

Developer shall carry out the construction of the Improvements on the Site in conformity with applicable laws, statutes, rules and regulations (taking into account the terms of the Development Agreement, if approved), including all applicable Federal and State labor standards. Developer shall carry out development, construction (as defined by applicable law) and operation of the improvements on the Project Site, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, State and Federal laws, including, without limitation, all applicable Federal and State labor laws (including, without limitation, the requirement to pay state prevailing wages to the extent applicable). Developer hereby expressly acknowledges and agrees that the City has not affirmatively represented to Developer or its contractor(s) for the construction or development of the Improvements in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Agreement is or is not a "public work," as defined in California Labor Code Section 1720. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures or identifications required by California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law to the extent applicable to Developer; provided, however, nothing herein shall be deemed an agreement or admission by Developer that Developer and/or the Project or any portion of the Project is a "public work". Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Improvements, results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, State and/or Federal law, including, without limitation, any applicable Federal and/or State labor laws (including, without limitation, any requirement to pay State prevailing wages); (2) the implementation of California Senate Bill No. 966; (3) the implementation of California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law; and/or (4) failure by Developer to provide any required disclosure or identification as may be required by California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. It is mutually agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of the Improvements, including, without limitation, any public works (as defined by applicable law) to be constructed as part of the Improvements, Developer shall bear all risks of payment and/or non-payment of

State prevailing wages and/or the implementation of California Senate Bill No. 966 and/or California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, and/or any other similar law. "**Increased costs**" as used in this Section 310 shall have the meaning ascribed to it in California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Improvements by Developer. Notwithstanding the foregoing, the parties agree and acknowledge the City Parcels are being conveyed at a purchase price representing the fair market price of the City Parcels established pursuant to an independent third party appraisal.

K.     [§ 311]           City and Other Governmental Agency Permits

Before commencement of construction of the Improvements upon each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, Developer, with the City's assistance where reasonably necessary and appropriate, shall secure or cause to be secured, any and all permits which may, under applicable laws, statutes, rules and regulations be required by the City or any other governmental agency having jurisdiction over such construction.

L.     [§ 312]           Right of Access

Prior to the issuance of a Release of Construction Covenants for the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, representatives of the City shall have a reasonable right of access to the applicable portion of the Project Site, upon two (2) business days' prior written notice to Developer, without charges or fees, during normal construction hours for the purposes of inspection of the work being performed in constructing the Improvements. However, no such notice shall be required in the event of an emergency involving the Project Site or any portion thereof.

Representatives of the City shall be those who are so identified in writing by the City Manager of the City (or his/her designee) necessary for such construction inspection purposes. Such representatives shall also be responsible for providing any required written notice to Developer. All activities performed on the Project Site by the City's representatives shall be done in compliance with all applicable laws, statutes, rules and regulations, and any written safety procedures, rules and regulations of Developer and and/or its contractors, and shall not unreasonably interfere with the construction of the Improvements or the transaction contemplated by this Agreement.

M.     [§ 313]           Responsibilities of the City

The City shall not be responsible for performing any work specified in the Scope of Development[, other than the decommissioning and relocation of the City-owned and operated potable water well in accordance with the provisions of Section 702, at Developer's sole cost and expense]. ***[Include restoration obligations in the time periods in the Schedule of Performance (no later than closing) for potential stadium parking and City restoration obligations to deliver***



***Project Site clear of all construction materials/debris based on ongoing use of the Project Site. Confirm no other City obligations.]***

N.     [§ 314]           Taxes, Assessments, Encumbrances and Liens

Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Project Site and all portions thereof, subsequent to the Closing Date. Developer shall not place, or allow to be placed on the Project Site or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by or pursuant to this Agreement or not otherwise authorized by the City. Developer shall remove, or shall have removed, any levy or attachment made on the Project Site or any portion thereof, or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto. The covenants of Developer set forth in this Section 314 relating to the placement of any unauthorized mortgage, trust deed, encumbrance, or lien, shall remain in effect only until a Release of Construction Covenants has been recorded with respect to the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable.

O.     [§ 315]           No Encumbrances except Mortgages, Deeds of Trust, Conveyances and Leasebacks or Other Conveyance for Financing for Development

After conveyance of title and possession of the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site to Developer, mortgages, deeds of trust, conveyances and leasebacks, or any other form of conveyance required for any reasonable method of financing are permitted with respect to the Project Site at any time, prior to the recordation of the Release of Construction Covenants for the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, but only for the purpose of securing loans and funds to be used for financing the acquisition of the Project, or portion thereof as applicable, the construction of the Improvements on the Project Site, and any other expenditures necessary and appropriate to develop the Project or portion thereof as applicable, pursuant to the terms of this Agreement. Developer shall notify the City in advance of any mortgage, deed of trust, conveyance and leaseback, or other form of conveyance for financing if Developer proposes to enter into the same before the recordation of the Release of Construction Covenants.

The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction, and land development, including, without limitation, mezzanine financing.

P.     [§ 316]           Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or Public Infrastructure or to guarantee such construction or

completion; nor shall any covenants or any other provision in a Grant Deed be so construed as to so obligate such holder. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such holder to devote the Project Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Q.     [§ 317]     Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by Developer, the City shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right at its option (but without any obligation) within the later of ninety (90) days after the receipt of the notice or thirty (30) days following any applicable cure period accorded to Developer, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest; provided, however, that in the case of a default which cannot diligently be remedied or cured, or the remedy or cure of which cannot be commenced within such 90-day or 30-day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession of the property or other asset subject to the applicable mortgage, deed of trust or other security interest authorized by this Agreement, and such holder has elected to remedy or cure such default, such holder shall seek to obtain possession of the applicable property or other asset with diligence and continuity through foreclosure, deed in lieu of foreclosure or such other procedure as the holder may elect, and shall remedy or cure such default within one hundred and twenty (120) days after obtaining possession; provided, however, that in the case of a default which cannot diligently be remedied or cured, or the remedy or cure of which cannot be commenced within such 120-day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed Developer's obligations to the City by written agreement reasonably satisfactory to the City; provided, however, such holder shall not be bound by any amendment, implementation, or modification to this Agreement to which such lender has not given its prior written consent for Developer to enter into. Any such holder that has so assumed Developer's obligations to the City shall not be required to remedy or cure any default of Developer that is not susceptible of being cured by such holder. Any such holder that has so assumed Developer's obligations to the City must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder related, and submit evidence reasonably satisfactory to the City that it, or a development manager retained by such holder, has the qualifications and/or financial responsibility necessary to perform such obligations. Any such holder properly completing such Improvements shall be entitled, upon written request made to the City, to a Release of Construction Covenants as to the Arena Site, the

West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, from the City. For purposes of this Section 317, the term "holder" shall be deemed to include any designee, nominee or affiliate of such holder as well as any other foreclosure sale purchaser or any purchaser taking title directly from such holder, designee, nominee or affiliate following foreclosure.

R.     [§ 318]     Right of City to Cure Mortgage, Deed of Trust, or Other Security Interest Default

In the event of a default or breach by Developer of a mortgage, deed of trust or other security interest with respect to the Project Site prior to the issuance of a Release of Construction Covenants as to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, by the City, and the holder has not exercised its option to complete the Improvements thereon, the City may cure any monetary default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Project Site to the extent of such costs and disbursements, which lien shall be subordinate to any such mortgage, deed of trust or other security interest.

Notwithstanding the preceding paragraph, Developer hereby acknowledges that the City shall be under no obligation pursuant to this Section 318 to cure any such default.

S.     [§ 319]     Right of the City to Satisfy Other Liens on the Property after Title Passes

Prior to the recordation of a Release of Construction Covenants as to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, if Developer, after a thirty (30) day period following its receipt of notice of the existence of any such liens or encumbrances, has failed to challenge, cure or satisfy any such liens or encumbrances on the Project Site (or the applicable portion thereof), the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge so long as Developer in good faith contests the validity or amount thereof, and so long as such delay in payment shall not subject the Project Site (or the applicable portion thereof) to forfeiture or sale.

T.     [§ 320]     Release of Construction Covenants

Promptly after completion of the applicable Improvements as evidenced by final inspection approvals by the City, the City shall furnish Developer with a Release of Construction Covenants as to each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable (each a "**Release of Construction Covenants**") within ten (10) business days upon written request therefor by Developer. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, in substantial compliance

with the Drawings, and of full compliance with the terms hereof with respect to the construction of the Improvements upon such portion of the Project Site. After the recordation of the Release of Construction Covenants with regard to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in applicable Grant Deed for the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site. Neither the City nor any other person, after the recordation of the Release of Construction Covenants, shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Agreement with respect to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to the Project Site (or portion thereof) shall be limited thereafter to those set forth in the applicable Grant Deed. The parties shall take such actions and execute such documents as may be necessary or advisable to memorialize the termination of this Agreement as to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, promptly upon the recordation of a Release of Construction Covenants.

Each Release of Construction Covenants shall be in such form as to permit it to be recorded in the Office of the Recorder of Los Angeles County.

If the City refuses or fails to furnish a Release of Construction Covenants after written request from Developer, the City shall, within ten (10) business days of the written request, provide Developer with a written statement which describes with specificity Developer's failure to construct the applicable Improvements pursuant to this Agreement and explains the reasonable reasons the City refused or failed to furnish a Release of Construction Covenants. The statement shall also contain the City's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reasons for such refusal are confined to the immediate unavailability of specific items or materials for landscaping, the City will issue its Release of Construction Covenants upon the posting of a bond by Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said ten (10) business day period, Developer shall be deemed entitled to the Release of Construction Covenants.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, nor any part thereof. A Release of Construction Covenants is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

U.     [§ 321]           Project Identification Sign

Prior to commencement of any construction on the Project Site, up until the issuance of a Release of Construction Covenants by the City for the Arena Site, Developer shall prepare and install, at its cost and expense, a project identification sign at one location along the street

frontage of the Project Site. The sign shall be at least [eighteen (18) square feet] in size and visible to passing pedestrian and vehicular traffic. The design of the sign as well as its proposed location shall be submitted to the City for review and approval, which approval shall be given or reasonably withheld within five (5) business days prior to installation. The sign shall, at a minimum, include:

- Development name: Inglewood Basketball and Entertainment Center
- Developer: MURPHY'S BOWL LLC
- Mayor: James T. Butts, Jr.
- Councilmembers: George W. Dotson, 1st District  
Alex Padilla, 2nd District  
Elroy Morales, Jr., 3rd District  
Ralph L. Franklin, 4th District
- Estimated Completion Date \_\_\_\_\_, 2024.
- For information call \_\_\_\_\_.

Developer shall obtain a current roster of the City's officials before signs are printed.

V. [§ 322] Release of Hotel Site

The City acknowledges that Developer currently intends to Transfer the Hotel Site to a third-party developer for the development and construction of a hotel and that the Scope of Development does not address the construction of such hotel. ***[Confirm not addressing Hotel in Scope of Development- to be provided by third-party developer upon conveyance]*** Provided that the Transfer of the Hotel Site is to [\_\_\_\_\_], or one of its Affiliates, the City's consent shall not be required; provided, however, Developer shall obtain the City's consent, if required under Section 106, for a Transfer to any other Person. Notwithstanding the foregoing, in connection with any Transfer of Hotel Site, the Transferee shall assume Developer's obligations under this Agreement as to the Hotel Site (which obligations may be amended and restated between the Transferee and the City, as the City may reasonably require) and Developer shall be released from all obligations hereunder as to the Hotel Site. Any Transferee of the Hotel Site shall be solely responsible for obtaining all land use entitlements and permits required for the development and construction on the Hotel Site.

IV. [§ 400] USE OF THE PROJECT SITE

A. [§ 401] Use of the Arena Site

As more particularly set forth in the Arena Site Use Agreement (City Parcels) attached hereto as **Attachment No. 9A-1**, Developer covenants and agrees that for a period of twenty (20) years following the recordation of the Release of Construction Covenants for the Arena Site, Developer not shall utilize the Arena Site for any other use, other than the Arena Use without the prior written consent of the City. If Developer utilizes the Arena Site for any other use, other

than the Arena Use, the City may serve written notice of such breach upon Developer. If Developer fails to cease such unpermitted use within thirty (30) days after receipt of a notice from the City, then the City may thereafter (but not before, unless necessary to prevent immediate harm), as the City's sole remedy, commence an action for specific performance or prohibitory injunction with respect to such unpermitted use. The Arena Site Use Agreement (City Parcels) shall be recorded upon transfer fee simple absolute title to Developer for each City Parcel in the Arena Site.

As more particularly set forth in the Arena Site Use Agreement (Potentially Participating Parcels) attached hereto as **Attachment No. 9A-2**, Developer shall further agree (in addition to the covenant set forth in the previous paragraph) that if Developer utilizes any Potentially Participating Parcel acquired by the City through filing of a Final Order for any other use, other than the Arena Use during such twenty (20) year period, the City may serve written notice of such breach upon Developer. If Developer fails to cease such unpermitted use within six (6) months after receipt of a second notice from the City (delivered not less than 30 days following the first notice), then the City may thereafter, as the City's sole remedy (in addition to the remedy set forth in the previous paragraph), commence an action to terminate and revert in the City such Potentially Participating Parcel conveyed to Developer. The Arena Site Use Agreement (Potentially Participating Parcels) shall be recorded upon transfer fee simple absolute title to Developer for each Potentially Participating Parcel acquired by the City through filing of a Final Order as to such Potentially Participating Parcel.

B.     [§ 402]           Maintenance of the Project Site

From the date of this Agreement until Closing, the City agrees to continue its maintenance of the Project Site in the same manner as was conducted in the ordinary course of business prior to the date of this Agreement. *[Discuss potential stadium parking issues, City restoration obligations to deliver Project Site clear of all construction materials/debris based on ongoing use of the Project Site, other obligations related to City's continued use of the Project Site]* During construction of the Improvements, Developer shall maintain Project Site in a good and professional manner, keep the Project Site reasonably free from graffiti and any accumulation of debris or waste materials and perform its construction activities in compliance with all applicable equal opportunity standards established by Federal, State and local law.

C.     [§ 403]           Obligation to Refrain from Discrimination

Developer covenants and agrees that (i) there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site and (ii) neither Developer nor any person claiming under or through it shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Site.

D.     [§ 404]           Form of Nondiscrimination and Nonsegregation Clauses

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

1.     In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
  
2.     In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:  
  
"That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."
  
3.     In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

E.     [§ 405]           Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on Developer for the benefit and in favor of the City. Any covenants, conditions or restrictions that are intended to survive the recordation of the Release of Construction Covenants by the City shall be contained in a Grant Deed, the Arena

Site Use Agreement (City Parcels) or the Arena Site Use Agreement (Potentially Participating Parcels) and shall remain in effect for the period specified therein. *[Only contemplate covenants in Section 404 to survive the Release of Construction Covenants- separate Use Agreements to be recorded against the Area Site]* The parties expressly acknowledge and agree that certain benefits set forth in the Development Agreement, if entered into by the parties, are intended to, and will, survive the recordation of the Release of Construction Covenants in accordance with the terms of the Development Agreement. Covenants, conditions and restrictions in this Agreement not expressly set forth in a Grant Deed, the Arena Site Use Agreement (City Parcels) or the Arena Site Use Agreement (Potentially Participating Parcels) shall terminate upon the issuance of a Release of Construction Covenants.

V. [§ 500] DEFAULTS, REMEDIES AND TERMINATION

A. [§501] Defaults - General

Subject to the extensions of time set forth in Section 605 and the notice and cure periods provided in Sections 507-512 hereof, any material failure or delay by any party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The party who fails or delays must promptly commence to cure, correct or remedy such failure or delay and continue to take all steps necessary to completely cure, correct or remedy such failure or delay with reasonable diligence. *[Consider clarifying that a "Default" only occurs after notice and an opportunity to cure, use of "default" before notice and cure is not consistent with each party's obligations/cure rights]*

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failures or delays by any party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any party in asserting any of its rights and remedies shall not deprive any party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies provided such actions or proceedings are initiated prior to the default being cured by the defaulting party.

B. [§ 502] Legal Actions

1. [§ 503] Institution of Legal Actions; Venue

Subject to the terms of this Agreement, any party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the terms of this Agreement. The parties hereby agree that in the event of litigation between the parties, venue for litigation brought in any State court shall lie exclusively in the County of Los Angeles, Superior Court, Southwest District located at 825 Maple Avenue, Torrance, California 90503-5058, and venue for any litigation brought in any Federal court shall lie exclusively in the Central District of California, Los Angeles.



2.     [§ 504]         Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement and the legal relations between the parties.

3.     [§ 505]         Acceptance of Service of Process

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

If any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon any officer or managing member of Developer and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

C.     [§ 506]         Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

D.     [§ 507]         Damages

The parties have determined that, except in connection with a party's default of its express monetary payment or reimbursement obligations under this Agreement (*e.g.*, the indemnity obligations under Sections 220, 223, or 307 or those payment obligations under Section 205), monetary damages are an inappropriate remedy for any default hereunder. If any party is in default with regard to any of the provisions of this Agreement relating to monetary payments or reimbursements due by such party, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after receipt of a notice of default, then the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Notwithstanding the foregoing, Developer and the City would not have entered into this Agreement if they could be liable for indirect or consequential, punitive, or special damages. Accordingly, Developer and the City each waive any costs, claims, damages or liabilities against, and covenant not to sue, the other party for indirect, consequential, punitive, or special damages, including loss of profit, loss of business opportunity, or damage to goodwill.

E.     [§ 508]         Specific Performance

In addition to the rights and remedies set forth in Section 507 hereof, if any party is in default with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the

defaulting party within thirty (30) days after receipt of a notice of default, then the non-defaulting party may thereafter (but not before, unless necessary to prevent immediate harm) commence an action for specific performance of the terms of this Agreement with respect to such default. However, if the default is the type in which the defaulting party is incapable of curing within the thirty (30) day cure period, then if the defaulting party fails to commence the necessary actions to cure the default within the requisite thirty (30) days and fails to continuously and diligently cure the subject default within a reasonable period of time after commencement, then the non-defaulting party may thereafter (but not before, unless necessary to prevent immediate harm) commence an action for specific performance of the terms of this Agreement against the defaulting party with respect to such default.

F.     [§ 509]           Remedies and Rights of Termination

1.     [§510]           Termination by Developer

If prior to the conveyance of title and possession of the Project Site to Developer pursuant to the provisions of this Agreement:

- a.     Developer is unable, despite using commercially reasonable efforts, to obtain any of the Subsequent Approvals; or
- b.     Developer is unable, despite using commercially reasonable efforts, to obtain financing consistent with this Agreement for the acquisition of the Project Site and construction of the Improvements and to deliver to the City any submission of evidence of such financing within the times set forth in the Schedule of Performance; or
- c.     there has occurred a material change to the condition of the Project Site or title to the Project Site (including, without limitation, entry of judgment affecting title or the right of the City to deliver possession of any City Parcel, the imposition of any assessment district which has not been consented to by Developer) since the Effective Date or an eminent domain action is initiated against all or any portion of the Project Site (other than an eminent domain action initiated by the City as to the Potentially Participating Parcels); or
- d.     there has occurred a material change in the market and/or local, State or national economy which, in the written and reasonable opinion of Developer, negatively impacts the ability of Developer to develop, finance and/or lease the Project; or
- e.     the City is unable, despite using commercially reasonable efforts, to tender conveyance of title to all City Parcels and the complete and absolute right to possession thereof without lis pendens to Developer in the manner and condition, and within the established time therefor in the Schedule of Performance; or

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- f. the City is unable to acquire fee simple absolute title to the Potentially Participating Parcels (other than those Potentially Participating Parcels acquired directly by Developer) by purchase, exchange, gift, eminent domain proceedings or any other method available to the City under Federal or State law (recognizing that the institution of eminent domain proceedings shall be at the sole discretion of the City) and to tender conveyance of title to the Potentially Participating Parcels and the complete and absolute right to possession thereof to Developer in the manner and condition, and within the established time therefor in the Schedule of Performance, recognizing that Developer may elect, pursuant to Section 204, to accept from the City the conveyance of the City's rights of possession under an Order of Prejudgment Possession prior to the City's acquisition of title and the filing of a Final Order as to a Potentially Participating Parcel, and have the City transfer fee simple absolute title to the Potentially Participating Parcels upon the filing of the Final Order; or
- g. the City fails to elect to vacate and abandon the Right-Of-Way Areas and the Potential Pedestrian Bridge Airspace within the established time therefor in the Schedule of Performance (recognizing that such vacation proceedings shall be at the sole discretion of the City) or is thereafter unable to tender conveyance of title to the Right-Of-Way Areas and the Potential Pedestrian Bridge Airspace and the complete and absolute right to possession to Developer in the manner and condition, and within the established time therefor in the Schedule of Performance; or
- h. the Title Company is unwilling or unable to issue the Title Policy at closing, or
- i. if Developer fails to approve the FAA Restrictions on or before the date provided therefor in the Schedule of Performance, or
- j. if any Challenge is filed relating to this Agreement, including any challenge to the validity of this Agreement or any of its provisions, or if a referendum petition relating to this Agreement is timely and duly circulated, filed, and certified as valid, or
- k. City fails to timely perform any material obligation required of City under this Agreement, or
- l. if Developer reasonably concludes that Developer will be unable, despite using commercially reasonable efforts, to complete construction of the Project in sufficient time to utilize the arena for professional basketball games for the 2024-2025 NBA season (including typical pre-season use),

and, if any such default(s) or failure(s) referred to in subdivision (a) through (l) of this Section 510 is susceptible to cure by the City and shall not be cured within thirty (30) days after the date

of written demand therefor by Developer, then this Agreement and any rights of the City in this Agreement, may, at the option of Developer, be terminated with respect to the Site by written notice thereof to the City, and neither Developer, nor any assignee or transferee of Developer, shall have any further rights against or liability to the City under this Agreement with respect to the Site.

2.     [§511]           Termination by City

A.     First, if prior to the conveyance of title and possession of the Site to Developer pursuant to the provisions of this Agreement:

1.     Developer shall fail to deliver to the City any submission of evidence of equity and, if applicable, financing commitments with respect to the Site within the times set forth in the Schedule of Performance; or
2.     Developer, in violation of the provisions of this Agreement, Transfers or attempts to Transfer this Agreement or any right herein, or in the Project Site (or portion thereof); or
3.     there is a Change in Control in the ownership of Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 106, in violation of the provisions of this Agreement; or
4.     Developer does not deliver the Drawings within the times set forth in the Schedule of Performance without the advance written consent of the City; or
5.     Developer does not pay the Total Site Costs and take title and possession to the Project Site by the date provided therefor in the Schedule of Performance, under a tender of conveyance by the City pursuant to this Agreement other than as a result of a prior termination of this Agreement or a default by the City; or
6.     Developer fails to approve the FAA Restrictions on or before the date provided therefor in the Schedule of Performance, or
7.     Developer fails to timely perform any other material obligation of the development of the Site as required under this Agreement,

B.     Secondly, if the City serves Developer with a written demand specifying with particularity Developer's failure under subdivisions 1) through 8) of the foregoing part A of this Section 511, and such failure is not cured within thirty (30) days after the date of such written demand by the City, or if the failure is the type in which Developer is incapable of curing within the thirty (30) day period, then if Developer fails to commence the necessary actions to cure the failure within the

requisite thirty (30) days and fails to continuously and diligently cure the failure within a reasonable period of time after commencement,

then this Agreement and any rights of Developer in this Agreement, or arising therefrom with respect to the City may, at the option of the City, be terminated with respect to the Project Site by written notice of the City given to Developer specifying such termination, and thereafter neither the City nor Developer, nor any assignee or transferee of Developer, shall have any further rights against or liability to the other under this Agreement with respect to the Site.

G.     [§512]           Right of Re-Entry

The City shall have the right, at its sole option, to reenter and take possession of each of the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, and all Improvements thereon, and to terminate and revest in the City the estate conveyed to Developer, if after conveyance of title and possession to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site, as applicable, and prior to the recordation of the Release of Construction Covenants pertaining to the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, Developer shall:

- (a) fail to commence construction of the Improvements (which shall include any grading or other site preparation activities performed on the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, by Developer following conveyance) in accordance with the Schedule of Performance and within thirty (30) days following delivery of written notice of such failure by the City to Developer, provided that Developer has not obtained an extension or postponement of time pursuant to Section 605; or
- (b) abandon or substantially suspend construction of the Improvements on the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, for a period of nine (9) consecutive months and within thirty (30) days following delivery of following written notice of such abandonment or suspension has been given by the City to Developer, provided Developer has not obtained an extension or postponement of time pursuant to Section 605; or
- (c) Transfer or attempt to Transfer this Agreement, or any rights herein, or suffer any involuntary transfer of the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, in violation of this Agreement, and such violation shall not be cured within thirty (30) days following delivery of written notice of such failure by the City to Developer.

Such right to re-enter, repossess, terminate, and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

- (i) any mortgage, deed of trust, or other security interests permitted by this Agreement with respect to the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable; or

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

The rights established in this Section 512 shall not apply to the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, on which any Improvements to be constructed thereon have been completed in accordance with this Agreement and for which a Release of Construction Covenants has been recorded therefor as provided in Section 320.

The Grant Deeds to the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site shall contain appropriate reference and provision to give effect to the City's right, as set forth in this Section 512 under specified circumstances prior to the recordation of the applicable Release of Construction Covenants, to re-enter and take possession of the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, with all Improvements thereon, and to terminate and re-vest in the City the estate conveyed to Developer and the terms of such Grant Deeds shall control over any inconsistent provisions of this Agreement.

Subject to the rights of the holders of security interests as stated in subparagraphs (i) and (ii) above, upon the re-vesting in the City of title to the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, as provided in this Section 512, the City shall use commercially reasonable efforts to resell the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, as soon and in such manner as the City shall find feasible to maximize the value thereof to a qualified and responsible party or parties (as determined by the City in its reasonable discretion), who will develop the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable, and not re-sell the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable, prior to such development or hold the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable, for speculation in land.

Upon such resale of the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable, or any part thereof, the proceeds thereof shall be applied:

- (y) first, to reimburse the City, for all reasonable costs and expenses incurred by the City arising from and after such re-vesting in the City, including but not limited to fees of consultants engaged in connection with the recapture, management, and resale of the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable (but less any income derived by the City from the sale of the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable (or, in the event the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, is exempt from taxation or assessment or such charges during the period of City

ownership, then such taxes, assessments, or charges, as would have been payable if the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable was not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer; and any amounts otherwise owing to the City by Developer; and

- (z) second, to reimburse Developer up to the amount equal to (1) the sum of the Purchase Price for the Arena Site, the West Parking Garage Site, the East Transportation Site and/or the Hotel Site, as applicable and the Acquisition Costs for the Arena Site paid to the City by Developer; and (2) the hard and soft costs reasonably incurred for the construction of the Improvements and development of the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, less (3) any gain or income withdrawn or made by Developer therefrom or from the improvements thereon attributable to the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable, or applicable part thereof.

Any balance remaining after such reimbursements shall be retained by the City as its property.

For avoidance of doubt, the City's exercise of rights under this Section 512 shall be its sole and exclusive remedy for the conditions described in the foregoing subparts (a) – (c). To the extent that the right established in this Section 512 involves a forfeiture, it must be strictly interpreted against the City, the party for whose benefit it is created. The rights established in this Section 512 are to be interpreted in light of the fact that the City will convey the Arena Site, the West Parking Garage Site, the East Transportation Site and the Hotel Site to Developer for development and not for speculation in undeveloped land.

VI. [§ 600] GENERAL PROVISIONS

A. [§ 601] Notices, Demands and Communications between the Parties

Notices, demands, and communications between the City and Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested or by reputable overnight service that maintains delivery receipts (*e.g.*, Federal Express) to the principal offices of the City and Developer, as set forth below. All notices, demands, and communications under this Agreement will be deemed given, received, made, or communicated on the delivery date or attempted delivery date shown on the return receipt. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 601. The respective mailing addresses of the parties are, until changed as provided herein, the following:

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City: City of Inglewood  
One Manchester Boulevard  
Inglewood, CA 90301  
Attention: City Manager

with a copy to: Office of the City Attorney  
One Manchester Boulevard  
Inglewood, CA 90301  
Attention: City Attorney

with a copy to: Kane, Ballmer & Berkman  
(and shall not constitute 515 S. Figueroa Street, Suite 1850  
notice to City) Los Angeles, CA 90071  
Attention: Royce K. Jones

Developer: Murphy's Bowl LLC  
PO Box 1558  
Bellevue, WA 98009-1558  
Attention: Brandt A. Vaughan

with a copy to: Wilson Meany  
(and shall not constitute Four Embarcadero Center, Suite 3330  
notice to Developer) San Francisco, CA 94111  
Attention: Chris Meany

with a copy to: Helsell Fetterman LLP  
(and shall not constitute 1001 Fourth Avenue, Suite 4200  
notice to Developer) Seattle, WA 98154  
Attention: Mark Rising

with a copy to: Coblenz Patch Duffy & Bass LLP  
(and shall not constitute One Montgomery Street, Suite 3000  
notice to Developer) San Francisco, CA 94104  
Attention: Matthew Bove

B. [§ 602] Conflicts of Interest

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



Developer warrants that it has not paid or given, and will not pay or give, any third-party any money or other consideration for obtaining this Agreement from the City, other than brokers, if any.

C.     [§ 603]           Nonliability of City Officials and Employees

No member, official, employee or consultant of the City shall be personally liable to Developer in the event of any default or breach by the City or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.

D.     [§ 604]           Nonliability of Developer Members and Employees

No member, director, officer, partner, employee, or agent of Developer or any affiliate of Developer shall be personally liable to the City in the event of any default or breach by Developer or for any amount which may become due to the City or on any obligations under the terms of this Agreement.

E.     [§ 605]           Force Majeure; Extension of Time of Performance

In addition to specific provisions of this Agreement, the time period for performance by either party hereunder shall be extended where delays are due to or resulting from any cause beyond a party's reasonable control, including but not limited to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, a failure of the National Basketball Association to grant a required approval which is not caused by a failure or default of Developer, acts or failure to act of the City or any other public or governmental agency or entity (other than an act or failure to act of the City which shall give rise to the delaying act described above), or an administrative appeal, judicial challenge, or filing an application for referendum relating to this Agreement or for any Project Approval or Subsequent Approval, even if development or construction activities are not stayed, enjoined, or otherwise prohibited (collectively a "**Challenge**") until the Challenge is finally resolved on terms satisfactory to Developer or the City or waived each in their sole discretion. An extension of time for any such cause shall be for the period of the 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 knowledge of the commencement of the cause. Times of performance under this Agreement, including all of the provisions of the Schedule of Performance, may also be extended in writing by the City Manager and Developer, and a party's consent to such extension shall not be unreasonably withheld, conditioned or delayed.

Wherever this Agreement refers to performance by a specific time, or in accordance with the Schedule of Performance, such times shall include any extensions pursuant to this Section 605. Subject to this Section 605, time is of the essence with respect to each provision of this Agreement.

F.     [§ 606]           Inspection of Books and Records

Prior to the issuance by the City of a Release of Construction Covenants for the development of the entire Site as contemplated by this Agreement, the City shall have the right at all reasonable times upon five (5) business days' written notice to inspect the books and records of Developer pertaining to the Site as pertinent to the purposes of this Agreement when needed by the City to: (1) determine the final Remediation Cost Adjustment to the Purchase Price, (2) establish the evidence of financing referred to in Section 226; (3) determine the Excess Purchase Price, if any; and (3) determine amounts necessary to cure under Section 318 and 319.

G.     [§ 607]           Approvals

Except where this Agreement expressly provides for an approval of either party in its sole discretion, approvals required of the City or Developer shall not be unreasonably withheld, conditioned or delayed.

H.     [§ 608]           No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the City and Developer, and no other Person shall have any rights or causes of action against either the City or Developer hereon or hereunder nor shall any third party beneficiaries be established in any way by this Agreement. The City and Developer expressly acknowledge and agree they do not intend, by their execution of this Agreement, to benefit any Persons not signatory to this Agreement, including, without limitation, any brokers that may represent the parties to this transaction.

I.     [§ 609]           Attorneys' Fees

If any litigation is commenced between the parties to this Agreement concerning any provision of this Agreement, including all attachments hereto, or the rights and obligations of any party, the parties to this Agreement hereby agree that the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted by the court, to a reasonable sum as and for its attorneys' fees in that litigation which shall be determined by the court in that litigation or in a separate action brought for that purpose.

J.     [§ 610]           Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

K.     [§ 611]           Severability

Except as is otherwise specifically provided for in any Development Agreement entered into between the City and Developer, the invalidation of any provision of this Agreement, or of its application to either party, by judgment or court order shall not affect any other provision of this Agreement or its application to any party or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as

invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the fundamental purposes of this Agreement.

VII. [§ 700] SPECIAL PROVISIONS

A. [§ 701] Employment and Training Agreement

Notwithstanding anything contained in this Agreement to the contrary, Developer hereby agrees to comply and/or cause the compliance with the contracting as well as employment and training requirements set forth in the Employment and Training Agreement, which is attached to this Agreement as **Attachment No. 7**.

*[Coordinate with Development Agreement/Public Benefit provisions]*

B. [§ 702] Relocation of City Well

City shall relocate the City-owned and operated potable water well from its existing location on the City Parcels as set forth on **Attachment No. 1** (the "**Existing Well Site**"), to its new location, off of the City Parcels, also as set forth on **Attachment No. 1** (the "**New Well Site**"), at Developer's sole cost and expense. The construction of such new well improvements shall be in substantial accordance with plans, specifications and budget prepared by the City and approved by Developer. The City acknowledges and agrees that the decommissioning of the Existing Well Site shall occur prior to Closing and shall be completed by the City within the time period set forth in the Schedule of Performance, so that Developer may complete the demolition of the Existing Well Site after Closing within the time period set forth in the Schedule of Performance. The City shall complete the construction of the new well improvements on the New Well Site shall occur after Closing within the time period set forth in the Schedule of Performance. The City shall terminate all agreements relating to the Existing Well Site within the time period set forth in the Schedule of Performance, including, without limitation, all agreements with West Basin Municipal Water District relating to the Existing Well Site. *[Confirm decommissioning/demolition/completion timing. Separate reimbursement agreement for these costs?]*

C. [§ 703] Point of Sale

To the extent legally permissible, Developer shall designate, and shall use commercially reasonable efforts to cause its contractors, subcontractors, vendors and other third parties under its control or with whom it enjoys privity of contract to designate the City of Inglewood as the point of sale for California sales and use tax purposes (to the extent the payment of sales and use tax is required by applicable law), for all purchases of materials, fixtures, furniture, machinery, equipment and supplies for the development of the Project Site during construction thereof. *[Further review/revision required]*

VIII. [§ 800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement shall be executed in five (5) duplicate originals each of which is deemed to be an original. This Agreement includes [\_\_\_\_\_ ( )] pages and [\_\_\_\_\_ ( )] attachments which constitute the entire understanding and agreement of the parties.

This Agreement constitutes the entire agreement of the parties hereto with respect to the disposition of the Project Site to Developer and integrates all of the terms and conditions mentioned herein or incidental hereto, and all agreements or understandings or representations between the parties. This Agreement supersedes the ENA and all negotiations or previous agreements between the parties related to the ENA.

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with the Grant Deed and this Agreement shall continue in full force and effect with respect to the Project Site from the date on which this Agreement is executed by the City until a Release of Construction Covenants is recorded for the Arena Site, the West Parking Garage Site, the East Transportation Site or the Hotel Site, as applicable.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

This Agreement and any provisions hereof may be amended by mutual written agreement by Developer and the City and such amendment shall not require the consent of any other fee owner, tenant, lessee, easement holder, licensee, or any other person or entity having an interest in the Project Site. The City Manager and Developer may approve minor amendments to this Agreement (which shall not include changes related to monetary contributions or payments by Developer) by written agreement without a public hearing to the extent permitted by applicable laws, statutes, rules and regulations, including without limitation Government Code Section 65868; provided however, the City Manager shall have the discretion to seek such approval by the City Council.

IX. [§ 900] TIME FOR ACCEPTANCE OF AGREEMENT BY THE CITY; DATE OF AGREEMENT

This Agreement, when executed by Developer and delivered to the City, must be authorized, executed and delivered by the City to Developer within thirty (30) days after this Agreement is signed by Developer, or the offer to enter into this Agreement may be revoked by Developer on written notice to the City. This Agreement shall be effective as of the Effective Date.

**THE CITY:**

CITY OF INGLEWOOD,  
a municipal corporation

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

By: \_\_\_\_\_  
James T. Butts, Jr.  
Mayor

**DEVELOPER:**

MURPHY'S BOWL LLC,  
a Delaware limited liability company

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

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

**APPROVED AS TO FORM AND LEGALITY:**

KENNETH R. CAMPOS  
City Attorney

By: \_\_\_\_\_  
Kenneth R. Campos, Esq.

**APPROVED:**

KANE, BALLMER AND BERKMAN  
City Special Counsel

By: \_\_\_\_\_  
Royce K. Jones, Esq.

**ATTEST:**

YVONNE HORTON  
City Clerk

By: \_\_\_\_\_  
Yvonne Horton