

ATTACHMENT NO. 7-A

FORM OF PUBLIC USE GRANT DEED FOR CITY PARCELS
WITHIN THE ARENA SITE

OFFICIAL BUSINESS

Document entitled to free recording
per Government Code Section 27383

RECORDING REQUESTED BY:

CITY OF INGLEWOOD

Office of the City Manager
One Manchester Blvd., Ninth Floor
Inglewood, CA 90301
Attn: City Manager

WHEN RECORDED RETURN TO AND
MAIL TAX STATEMENTS TO:

[MURPHY'S BOWL LLC
PO Box 1558
Bellevue, WA 98009-1558
Attention: Brandt A. Vaughan]

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

PUBLIC USE GRANT DEED

[City Parcels – Arena Site]

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the CITY OF INGLEWOOD, a municipal corporation, herein called "**Grantor**" or the "**City**" hereby grants to MURPHY'S BOWL LLC, a Delaware limited liability company, herein called "**Grantee**," the real property hereinafter referred to as the "**Property**," described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference.

(1) Said Property is comprised of certain portions of real property referred to as the "Project Site" as described in the Disposition and Development Agreement (the "**DDA**") entered into by and between Grantor and Grantee on _____, 2020. The "**Project Site**" is comprised of the "**Arena Site**", the "**West Parking Garage Site**", the "**East Transportation Site**" and the "**Hotel Site**." The DDA is a public document on file in the office of the Inglewood City Clerk. Any capitalized term not herein defined shall have the same meaning as set forth in the DDA.

(2) Said Property is being conveyed pursuant to this Public Use Grant Deed ("**Grant Deed**") subject to the Public Use Restrictions in Exhibit B, attached hereto, and fully incorporated herein by this reference.

(3) Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that Grantee, such successors and such assigns, agrees to (a) construct the Improvements on the Property as required by the DDA; (b) conduct all activities undertaken pursuant to the DDA in conformity with all applicable provisions of the DDA including without limitation the provisions and the limitations of the Scope of Development, the Inglewood Municipal Code and any other applicable requirements of any governmental agency affected by the Project's construction, development, or work; and (c) use the Property in conformity with and abide by the covenants and restrictions set forth in this Grant Deed including, but not limited to, the Public Use Restrictions.

(4) Grantee, for itself and on behalf of its successors and assigns to all or any portion of the Property, or any interest therein, covenants and agrees that prior to the issuance of the Release of Construction Covenants as to the Property:

- (a) The qualifications and identities of Grantee and its owner are of particular concern to Grantor. It is because of those unique qualifications and identities that Grantor has entered into the DDA with Grantee, and is imposing restrictions upon any Change of Control of Grantee and any Transfer until Grantor issues the Release of Construction Covenants as to the Property. No voluntary or involuntary successor in interest to Grantee shall acquire any rights or powers in the Property, except as expressly set forth herein, or under the DDA, except as expressly set forth therein.
 - (i) Grantee shall not (i) Transfer the Property, or any portion thereof, or any interest therein, to a third party (a "**Transferee**") without the prior written approval of Grantor (except for Transfers duly executed and deemed approved by Grantor as provided in the DDA), which such approval shall be given within fifteen (15) City-business days if, in the reasonable determination of the Grantor, the proposed Transferee has the qualifications of a developer (including experience, character and financial capability) necessary to develop the Property, or (ii) effect any Change of Control by any method or means (except as the result of death or incapacity), without the prior written approval of Grantor, provided, however, such approval shall be given within five (5) business days if, in the reasonable determination of Grantor, Grantee after the Change in Control will have the qualifications of a developer (including experience, character and financial capability) necessary to develop the Property. Grantee shall promptly notify Grantor of any proposed Change in Control.
 - (ii) Any Transfer of the Property or any portion thereof or any interest therein, in violation hereof prior to the issuance of the Release of Construction Covenants as to the Property, shall entitle Grantor to the Excess Purchase

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Price resulting from such Transfer in accordance with the terms of the DDA.

- (iii) Any Change of Control (voluntary or involuntary, except as the result of death or incapacity) of Grantor in violation hereof prior to the issuance of the Release of Construction Covenants as to the Property, Grantor will constitute a breach and entitle Grantor to terminate the DDA as to the Property.
 - (iv) The restrictions on a Transfer or Change of Control set forth herein shall terminate upon the issuance of the Release of Construction Covenants as to the Property.
- (b) Representatives of the City shall have a reasonable right of access to Property, upon two (2) business days' prior written notice to Grantee, 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 Grantor 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 Grantee. All activities performed on the Property 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 Grantee and and/or its contractors, and shall not unreasonably interfere with the construction of the Improvements or the transaction contemplated by the DDA.
- (c) Grantee shall pay when due all real estate taxes and assessments assessed and levied on or against the Property. Grantee shall not place, or allow to be placed on the Property, any mortgage, trust deed, encumbrance or lien not authorized by or pursuant to the DDA or Paragraph [REF _Ref38890484 \r \h](d) below or not otherwise authorized by the Grantor. Grantee shall remove, or shall have removed, any levy or attachment made on the Property, 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 Grantee from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to Grantee in respect thereto.
- (d) 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 Property prior to the recordation of the Release of Construction Covenants as to the Property, but only for the purpose of securing loans and funds to be used for financing the acquisition of the Project Site, 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 Site or portion thereof as applicable, pursuant to the terms of the DDA. Grantee shall

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notify Grantor in advance of any mortgage, deed of trust, conveyance and leaseback, or other form of conveyance for financing for Grantor written approval if Grantee proposes to enter into the same before the recordation of the Release of Construction Covenants as to the Property. 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.

- (e) Prior to the recordation of a Release of Construction Covenants as to the Property, if Grantee, 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 Property, the Grantor shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Paragraph [REF _Ref38890484 \r \h](e) or the DDA shall require Grantee to pay or make provisions for the payment of any tax, assessment, lien or charge so long as Grantee in good faith contests the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale.
 - (f) The covenants of Grantee set forth in this Paragraph [REF _Ref38890484 \r \h] shall remain in effect only until a Release of Construction Covenants has been recorded as to the Property.
- (5) Prior to the recordation of a Release of Construction Covenants issued by Grantor for the improvements to be constructed on the Property or on any part thereof:
- (a) Grantor shall have the right, at its option, which must be exercised, if at all prior to the cure, to reenter and take possession of the Property hereby conveyed (or portion thereof) with all Improvements thereon, and to terminate and revest in Grantor the estate hereby conveyed (or portion thereof) to Grantee, if after conveyance of title and possession to the Property, and prior to the Release of Construction Covenants as to the Property, Grantee shall:
 - (i) fail to commence construction of the Improvements (recognizing that commencement of construction shall include any grading or other site preparation activities performed on the Property, by Grantee following conveyance) in accordance with the Schedule of Performance and within thirty (30) days following delivery of written notice of such failure by Grantor to Grantee, provided that Grantee has not obtained an extension or postponement of time pursuant to Section 605 of the DDA; or
 - (ii) abandon or substantially suspend construction of the Improvements on the Property 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 Grantor to Grantee, provided Grantee has not obtained an extension or postponement of time pursuant to Section 605 of the DDA; or

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- (iii) Transfer or attempt to Transfer the DDA, or any rights therein, or suffer any involuntary transfer of the Project Site or any portion thereof in violation of this Grantee Deed or the DDA, and such violation shall not be cured within thirty (30) days following delivery of written notice of such failure by Grantor to Grantee.
- (b) The right to reenter, repossess, terminate and revest, and the provisions below regarding the application of proceeds, 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 interest permitted by Paragraph [REF _Ref38890484 \r \h](d) of this Grant Deed or the DDA; or
 - (ii) any rights or interests provided in this Grant Deed or the DDA for the protection of the holders of such mortgages, deeds of trust, or other security interests.
- (c) The right to reenter, repossess, terminate and revest shall not apply to the Property, or portions thereof, on which any Improvements to be constructed thereon have been completed in accordance with the DDA and for which a Release of Construction Covenants has been recorded as provided in the DDA.
- (d) Subject to the rights of the holders of security interests as stated in subparagraphs (5)(b)(i) and (ii) above, upon the revesting in Grantor of title to the Property, as provided in this Paragraph (5), Grantor shall use commercially reasonable efforts to resell the Property as soon and in such manner as Grantor shall find feasible to maximize the value thereof to a qualified and responsible party or parties (as determined by Grantor in its reasonable discretion), who will develop the Property and not resell the Property prior to such development or hold the Property for speculation in land. Upon such resale of the Property or any part thereof, and satisfaction of the obligations owed to the holder of any mortgage, deed of trust or other security interest authorized by the DDA, the proceeds thereof shall be applied:
 - (i) First, to reimburse Grantor, for all reasonable costs and expenses incurred by Grantor arising from and after such revesting in Grantor, including but not limited to fees of consultants engaged in connection with the recapture, management, and resale of the Property (but less any income derived by Grantor from the sale of the Property in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of Grantor ownership, then such taxes, assessments, or charges, as would have been payable if the Property 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,

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or acts of Grantee; and any amounts otherwise owing to Grantor by Grantee; and

- (ii) Second, to reimburse Grantee up to the amount equal to (1) the Purchase Price for the Property; and (2) the hard and soft costs reasonably incurred for the construction of the Improvements and development of the Property, less (3) any gain or income withdrawn or made by Grantee therefrom or from the improvements thereon attributable to the Property.
 - (iii) Any balance remaining after such reimbursements shall be retained by the Grantee as its property.
- (e) For avoidance of doubt, the Grantor's exercise of its rights under this Paragraph (5) shall be its sole and exclusive remedy for the conditions described in the foregoing subparagraphs (5)(a)(i)-(iii) and such reverter rights shall only be applicable to the Property. To the extent that the right established in this Paragraph (5) involves a forfeiture, it must be strictly interpreted against Grantor, the party for whose benefit it is created. The rights established in this Paragraph [REF _Ref38890662 \r \h] are to be interpreted in light of the fact that Grantor hereby conveys the Property to Grantee for development and not for speculation in undeveloped land.

(6) Grantee covenants and agrees for itself, its successors, its 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, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall 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 the Property by, for, or with any tenants, lessees, sublessees, subtenants, or vendees on or about the Property. The foregoing covenants shall run with the land.

(7) All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: "The Grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the Grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees,

subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

- b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

- c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land. The aforesaid statutes are in amplification and do not restrict or diminish the requirement for Grantee to encourage such leases and contracts in furtherance of the Agreement, including the City of Inglewood Employment and Training Agreement and Requirements (Attachment No. 8 to the DDA) which must promote the local economy by encouraging local business enterprise(s) within the City of Inglewood to make bids and proposals in leasing and contracting concerning the use, operation, and maintenance of the Property and by providing preference to local contractors in procurements in the use, operation, and maintenance of the Property."

(8) All conditions, covenants and restrictions contained in this Grant Deed (including the Public Use Restrictions in Exhibit B, attached hereto) shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City of Inglewood and its successors and assigns, against Grantee, its successors and assigns, to or of the Property

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conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

(9) The conditions, covenants and restrictions contained in Paragraphs 3(a) and (b), [REF _Ref38890484 \r \h] and [REF _Ref38890662 \r \h] of this Grant Deed shall terminate and become null and void upon recordation of a Release of Construction Covenants issued by Grantor for the Property. The covenants concerning the Public Use Restrictions in Paragraphs (2) and 3(c) of this Grant Deed shall terminate and become null and void twenty (20) years after the issuance of a Release of Construction Covenants for the Arena Site. The covenants against discrimination set forth in Paragraphs [REF _Ref38890759 \r \h] and [REF _Ref38890760 \r \h] of this Grant Deed shall remain in perpetuity.

(10) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by Paragraph [REF _Ref38890484 \r \h](d) of this Grant Deed.

(11) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instructions between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Grant Deed until such time as a Release of Construction Covenants issued by Grantor is recorded for the Property conveyed hereby or such part thereof

(12) The covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions that might result in forfeiture of title, except for the covenant and condition contained in Paragraphs [REF _Ref38890662 \r \h] of this Grant Deed.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this ____ day of _____, 20____.

GRANTOR:

CITY OF INGLEWOOD
a municipal corporation

By: _____
Mayor

APPROVED AS TO FORM AND LEGALITY:

KENNETH R. CAMPOS
City Attorney

By: _____
Kenneth R. Campos

APPROVED:

KANE, BALLMER & BERKMAN
City Special Counsel

By: _____
Royce K. Jones

ATTEST:

YVONNE HORTON
City Clerk

By: _____
Yvonne Horton

ACCEPTANCE OF CONVEYANCE

The Grantee hereby accepts the conveyance of the Property by this Grant Deed, subject to all of the matters hereinbefore set forth.

GRANTEE:

MURPHY'S BOWL LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Legal Description of Property

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY OF INGLEWOOD, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, AND IS DESCRIBED AS FOLLOWS:

[To be inserted]

EXHIBIT B

Public Use Restrictions

Grantee, on behalf of its successors, assigns, and each successor in interest to Grantee's interest in the Property or any part thereof, and Grantor, on behalf of its successors and assigns, agree as follows:

1. PUBLIC USE OF THE PROPERTY.

1.1 PUBLIC USE OF THE PROPERTY. During the Term (as defined in Section [REF _Ref37340597 \r \h] below) of this Exhibit B, Grantee, on behalf of its successors, assigns, and each successor in interest to Grantee's interest in the Property or any part thereof, hereby covenants and agrees that Grantee shall not use or operate the Property for any use other than as an arena that provides the public with access to amusement, enjoyment, and recreation in the form of spectator sports, such as basketball, and other entertainment and civic events and other uses reasonably related thereto and incidental 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 (individually and collectively, the "**Public Use**"). Notwithstanding anything to the contrary, nothing in this Exhibit B shall require Grantee to use, operate, or develop the Property.

1.2 CHANGE IN USE OF THE PROPERTY. If and only if Grantee seeks to modify the use of the Property to another use, Grantee may request that the City modify the Public Use by providing written notice to the City including the proposed use modifications (the "**Proposed Use**"). The City may elect, in its sole discretion, to approve or disapprove the Proposed Use.

2. TERM. The term of the provisions, covenants, obligations and restrictions in this Exhibit B shall be in effect until the date which is twenty (20) years after the issuance of a Release of Construction Covenants for the Arena Site (the "**Term**").

3. DEFAULT. It shall be an event of default under this Exhibit B if Grantee uses or operates the Property for any use other than uses consistent with the Public Use (each such use, an "**Unpermitted Use**") and Grantee fails to cease such Unpermitted Use within thirty (30) days after receipt of notice to cure from the City to Grantee specifying the Unpermitted Use and the default at issue (a "**Default Notice**"), or if cure cannot be accomplished within thirty (30) days, to commence to cure such failure within thirty (30) days and thereafter diligently prosecute such cure within a reasonable time. Grantee shall have the opportunity to appear before the City Council at a public hearing prior to the exercise of any of City's rights or remedies under this Exhibit B with respect to an event of default.

4. REMEDIES. Upon the occurrence of any event of default set forth in Section [REF _Ref37257014 \r \h] above which is not cured by Grantee within the applicable cure period provided therein, the City may file an action seeking specific performance of Grantee's obligations under Section [REF _Ref37324438 \r \h] or prohibitory injunction with respect to the Unpermitted Use specified in the Default Notice.

4.1 **REQUEST FOR CHANGE IN USE.** The parties agree that, notwithstanding anything to the contrary provided herein, upon receipt of a Default Notice, Grantee may request that the City modify the Public Use in accordance with Section [REF _Ref37324930 \r \h] above, including in the Proposed Use the Unpermitted Use specified in the Default Notice. If Grantee submits such request to the City within thirty (30) days following Grantee's receipt of the Default Notice, then the Grantee shall have an additional thirty (30) days beyond the expiration of the applicable cure period to cure such default.

4.2 **REMEDIES EXCLUSIVE.** The remedies set forth in this Section [REF _Ref37324280 \r \h] constitute the sole and exclusive remedy for any breach of this Exhibit B. The parties have determined that monetary damages are an inappropriate remedy for any default under this Exhibit B. Each party waives any provision of law to the extent that it would limit or restrict the agreements contained in this Section [REF _Ref37324280 \r \h * MERGEFORMAT].

5. **MORTGAGES.** Notwithstanding any other provision of this Exhibit B, mortgages and deeds of trust, and any other reasonable method of security instruments are permitted to be placed upon the Property. Mortgages, deeds of trust, or other reasonable security instruments securing financing with respect to the Property are each referred to herein as a "Security Interest". The words "mortgage" and "deed of trust" as used in this Exhibit B shall include all other appropriate modes of financing real estate acquisition, construction and land development. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Exhibit B shall defeat or render invalid or in any way impair the lien or charge of any Security Interest; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. The City shall afford any holder of the beneficial interest under such Security Interest (the "**Mortgagee**") the mortgagee protections provided for in this Section [REF _Ref37333893 \r \h].

5.1 **MORTGAGEE OBLIGATIONS.** A Mortgagee not in legal possession of the Property or any portion thereof shall not be subject to the obligations or liabilities of Grantee under this Exhibit B. A Mortgagee in legal possession of the Property or portion thereof shall only be entitled to use the Property in accordance with this Exhibit B if Mortgagee fully complies with the terms of this Exhibit B.

5.2 **NOTICE OF DEFAULT AND RIGHT TO CURE.** Whenever the City pursuant to its rights set forth in Section [REF _Ref37257014 \r \h] and Section [REF _Ref37324280 \r \h] above delivers any notice or demand to Grantee with respect to the occurrence of any event of default, the City shall at the same time deliver to each Mortgagee a copy of such notice or demand. After receipt of such notice, each such Mortgagee shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within the same cure period afforded to Grantee hereunder plus ninety (90) days, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the Security Interest held by such Mortgagee and to add the cost thereof to the security interest debt and the lien on its security interest; provided, however, if cure cannot be accomplished within such 90-day period, such Mortgagee shall have the right to commence to cure such failure within such 90-day period

and thereafter diligently prosecute such cure within a reasonable time. If such default shall be a default which can only be remedied or cured by such Mortgagee upon obtaining possession of the property or other asset subject to the Security Interest, and such Mortgagee has elected to remedy or cure such default, such Mortgagee 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 Mortgagee may elect, and such Mortgagee, or such successor-in-interest to Grantee who acquires the Property by way of such foreclosure, deed in lieu of foreclosure or such other procedure, shall remedy or cure such default within one hundred eighty (180) days after obtaining possession; provided, however, if cure cannot be accomplished within such 180-day period, such Mortgagee or successor-in-interest shall have the right to commence to cure such failure within such 180-day period and thereafter diligently prosecute such cure within a reasonable time. In addition, in the event that, due to a default by Grantee under the applicable Security Interest, a Mortgagee seeks 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 Mortgagee may elect at any time prior to the date that the City has the right to exercise its remedies in Section [REF _Ref37324280 \r \h] above, then the City shall not have the right to exercise its remedies in in Section [REF _Ref37324280 \r \h] above until the date that is six (6) months following the date that the Mortgagee or such other successor-in-interest acquires possession or title to the Property.

6. **EXCUSE FOR NONPERFORMANCE.** Notwithstanding any provision of this Exhibit B to the contrary, Grantee and the City shall be excused from performing any obligation or undertaking provided in this Exhibit B in the event of, and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by, a(n) act of God, fire, earthquake, flood, explosion, epidemic, pandemic, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, condemnation, requisition, applicable law, litigation, orders of governmental, civil, military or naval authority, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the party claiming the extension of time to perform (a "**Permitted Delay**").

7. **SEVERABILITY.** Except as set forth herein, if any term, covenant or condition of this Exhibit B or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Exhibit B, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Exhibit B shall be valid and be enforced to the fullest extent permitted by law; *provided, however*, if any provision of this Exhibit B is determined to be invalid or unenforceable and the effect thereof is to deprive a party of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Exhibit B (with respect to the portions of the Property in which such party has an interest) from and after such determination.

8. **FURTHER ASSURANCES.** Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Exhibit B.

[Remainder of Page Intentionally Left Blank.]