DISPOSITION AND DEVELOPMENT AGREEMENT

This *Disposition and Development Agreement*, hereinafter referred to as the "**Agreement**", is made in Douglas, Wyoming, by and between the City of Douglas, a Wyoming municipal corporation, hereinafter referred to as the "**City**", and TLC Development, LLC, a Wyoming limited liability company, hereinafter referred to as "**Developer**", for the purpose of development of the below listed property:

> Meadow Acres, Lots 35 through 46, inclusive; Meadow Acres #2, Lots 18 through 37, inclusive, Block 2; Meadow Acres #2, Lots 1 through 37, inclusive, Block 3; Meadow Acres #2, Lots 1 through 21, inclusive, Block 4; Meadow Acres #2, Lots 44 through 76, inclusive, Block 4; and Meadow Acres #2, Lots 24 through 57, inclusive, Block 5; situated in Section 8, T. 32 N., R. 71 W. of the 6th P.M.

hereinafter referred to as the "**Property**".

The City and Developer are collectively referred to as the "**Parties**" and individually as a "**Party**." This *Disposition and Development Agreement* is entered into for the mutual benefit of both Parties. The Developer wishes to develop the Property within the City of Douglas for benefits accrued from being a part of the City, and the City wishes to encourage the development the Property for the purpose of providing for the health, safety and welfare of those persons residing within, or providing commercial activity within, the above described property. The Parties have entered into this Agreement with reference to the following facts:

RECITALS

WHEREAS, the City is the owner of certain real Property as described above and is within the City of Douglas, County of Converse, and State of Wyoming; and

WHEREAS, the City issued a Request for Expressions of Interest (RFEI) Regarding the Disposition and Development of the Meadow Acres Property dated December 11, 2019, seeking proposals for residential development on the above described *Property*; and

WHEREAS, Developer filed a response to the RFEI dated March 7, 2020 for the development of the *Property*, which response was selected as the City's preferred developer, and the City and Developer entered into an Exclusive Right to Negotiate (ERN) dated May 15, 2020 pertaining to the *Property*; and

WHEREAS, the City and Developer agreed upon the scope and nature of the development project as outlined below to be constructed by Developer on the Property; and

WHEREAS, the City believes that development of the Property as defined herein will provide basic housing to the City of Douglas as identified in the *July 2019 Converse County and City of Douglas Housing Study* done by Community Partners Research, Inc. of Lake Elmo, MN; and

WHEREAS, the City and Developer desire to set forth their agreement regarding the terms and conditions upon which the City shall sell the Property to the Developer for residential development; and

WHEREAS, the City desires to set forth terms for development of the Property to ensure a clear understanding of expectations between the City and Developer.

NOW, **THEREFORE**, in consideration of good and valuable consideration, the City and Developer agree as follows:

ARTICLE 1. TERM OF AGREEMENT

Section 1.1 Effective Date. The effective date of this Agreement is the date this Agreement is last executed by the Parties.

Section 1.2 Term. The term of this Agreement shall commence on the Effective Date and end on the earliest of (a) _____, the Expiration Date, which is ___ years from the Effective Date; or (b) the date of any termination of this Agreement in accordance with the provisions contained in this Agreement.

Section 1.3 Extension of the Term. Except as a result of the express extension rights set forth in this Section 1.3, the term of this Agreement shall not extend beyond the Expiration Date, unless and until the City Council, in its sole discretion, approves such as extension amending the Agreement to provide for a term beyond the initial term.

Section 1.4 Force Majeure. In addition to an extension set forth in Section1.3, either Party has a right to extend the applicable schedule by Force Majeure. Force Majeure shall mean delay caused by any of the following: strikes, lock- outs or other labor disturbances; one or more acts of a public enemy; war; riot; sabotage; blockade; freight embargo; floods; earthquakes; fires; unusually severe weather; quarantine restrictions; lack of transportation; court order; delays resulting from changes in any applicable laws, rules, regulations, ordinances or codes; delays resulting from Hazardous Material Delay; litigation that enjoins construction or other work on the Project or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project except to the extent caused by the Party claiming an extension and provided further that the Party subject to such litigation is actively mounting a defense to such litigation; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such materials or substitute materials on a timely basis); and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform that prevents the Party claiming an extension of time from performing its obligations under this Agreement.

ARTICLE 2. LAND PAYMENT

Section 2.1 Land Payment. In accordance with the terms of this Agreement, the City will convey to the Developer the Property. The Developer and the City have determined that the Property is to be conveyed pursuant to this Agreement for Ten Dollars (**$10.00**) and other good and valuable consideration (the "**Land Payment**"). The Developer agrees to purchase and accept the Property from City, on the Closing Date, together with the following:

(a) Any City water and or sewer taps currently issued and appurtenant to the Property; and

(b) Any structure, building, improvements, and fixtures on or attached to the Property; and

(c) Any personal property not removed by the City and remaining on the Property on the Closing Date.

ARTICLE 3. FINANCING AND PHASING PLAN

Section 3.1 Financing Plan. Developer will submit to the City a financing plan for the Project. The Project Financing Plan shall be updated for each phase of the development of the Project if the Development is financed and constructed in phases. The City shall use good faith efforts to assist Developer in submission of funding applications for each Phase.

(a) **Phase Update.** If the development of the Property is done in phases, Developer shall submit to the City an update to the Project Financing Plan with respect to each Phase (each "**Phase Update**") for the City's review and approval pursuant to Section 3.2 prior to the applicable date in the schedule that contains the following documents and information, which shall be included as an update to the corresponding information for the applicable Phase that was previously included in the Project Financing Plan:

(i) A breakdown of the number of Affordable Units to be developed and sold or rented within the Phase.

(ii) An updated "sources and uses" breakdown of the costs of constructing the Phase. Such updated sources and uses breakdown shall reflect Developer's then current expectations for funding sources and development costs.

(iii) Copies of funding commitments for any financing source, including loans and grants, in amounts sufficient to demonstrate that the Phase is financially feasible and copies of any funding commitments for all other financing required to develop and operate the Phase. If at the time of submission of the Phase Update, Developer does not have commitments from all sources of financing, the Phase Update shall include information on Developer's actions to obtain such financing commitments and Developer's estimate of the likelihood of receiving such financing commitments.

(iv) Any other information reasonably requested by the City that would assist the City in determining that Developer has the financial capability to pay all costs of constructing the Phase and operating the Phase.

(v) An update to the Project Financing Plan for the balance of the Project. The update to the Project Financing Plan shall include the level of detail included in the original Project Financing Plan.

Section 3.2 Review of Financing Plan Updates by City. Upon receipt by the City of the proposed Phase Update, the City Administrator shall either approve or disapprove in writing the submitted plan or update within thirty (30) days from the date the City Administrator receives the proposed plan or update. If the proposed plan or update is not approved by the City Administrator, then the City Administrator shall notify the Developer in writing of the reasons for disapproval and the required revisions to the previously submitted plan or update. Developer shall thereafter submit a revised plan or update within thirty (30) days of the notification of disapproval.

Section 3.3 Quarterly Reports. In addition to the Phase Update required above, Developer shall, on a quarterly basis, submit to the City for its review a progress report on funding applications for the development of the Project.

ARTICLE 4. DISPOSITION OF PROPERTY AND ESCROW

Section 4.1 Opening Escrow. The Closing of any Phase shall be completed through Escrow and the applicable Parties shall execute and deliver to the Escrow Holder joint written instructions that are consistent with this Agreement.

Section 4.2 Close of Escrow. Subject to any applicable conditions precedent set forth in Sections 4.3(a) and (b) and any extensions pursuant to Section 1.3 or 1.4 above, escrow shall close no later than thirty (30) calendar days after all conditions precedent to the applicable Closing set forth in Section 4.3 have been met. On the applicable Closing Date, the City shall convey to the Developer the applicable portions of the Property pursuant to a Quitclaim Deed.

Section 4.3 Pre-Closing Matters. Until the earlier of the Closing or the termination of this Agreement, City agrees as follows:

(a) to maintain any insurance coverage relating to the Property that is currently maintained by City, in the amounts and coverages currently in effect;

(b) to maintain the Property in its present condition ("AS IS"), subject to normal wear and tear and with acts of God, casualty and condemnation excepted;

(c) to notify Developer promptly upon receiving notice of any (i) fact or event that could make any of the representations or warranties of City of this Agreement untrue or misleading in any material respect, (ii) pending or threatened litigation that materially and adversely affects the Property or that would materially and adversely affect the transaction contemplated hereby, or (iii) material damage or destruction (excluding normal wear and tear) to the Property or any part thereof;

(d) not to intentionally do anything or knowingly permit anything to be done that would

materially and adversely affect the status of title to the Property as shown in the Title Commitment, without the prior written consent of Developer, which consent shall not be unreasonably withheld;

(e) to deliver to Developer copies of all notices relating to the physical condition of the Property that are received by City from any governmental agency;

(f) to notify Developer promptly upon receiving actual notice of any spilling, leaking, disposing, discharging, or migration of hazardous or toxic materials on the Property in violation of applicable law occurring; and

(g) not to enter into any leases, occupancy agreements, or service or other contracts affecting the Property that would remain in effect after the Closing without in each case obtaining Developer's prior written consent thereto, which consent shall not be unreasonably withheld.

Section 4.4 Closing Deliverables.

(a) **City Deliverables**. A duly executed and notarized original Quitclaim Deed conveying the applicable Property to the Developer.

Section 4.5 Condition of the Property.

(a) **Disclosure.** To the best of the City's knowledge, no Hazardous Materials have been located on the Property Documents depict the condition of the Property with respect to the matters covered in such documents as of the date of such documents and as of the Effective Date. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person, except for the express representations contained herein.

(b) **Developer Investigation.** The Developer and its agents have had the right and adequate opportunity to enter onto the Property for the purpose of taking materials samples and performing tests necessary to evaluate the development potential of the Property and to undertake tests related to the existence of Hazardous Materials on the Property.

(c) **"As is" Purchase.** Except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that the City is selling and the Developer is buying the Property on an "as is with all faults" basis, and that the Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City as to any matters concerning the Property, including, without limitation: (1) the quality, nature, adequacy and physical condition of the Property (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving the Property; (4) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose; (5) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property; (6) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about the Property or the adjoining or neighboring property; and (8) the condition of title to the Property.

(d) **No Warranties by City and No Reliance by Developer.** Except for the representations and warranties and covenants of the City contained in this Agreement,

(i) the Developer affirms that the Developer has not relied on the skill or judgment of the City or any of its elected and appointed officials, board members; commissioners,

officers, employees, attorneys, agents or volunteers to select or furnish the Property for any particular purpose;

(ii) that the City makes no warranty that the Property is fit for any particular purpose;

(iii) the Developer acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it made relative to the Property and shall rely upon its own investigation of the physical, environmental, economic and legal condition of the Property (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency);

(iv) as of the Closing, the Developer undertakes and assumes all risks associated with all matters pertaining to the Property's location in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local agency. Without limiting the generality of the foregoing provisions of this subsection 4.5(d), except for the representations and warranties and covenants of the City contained in this Agreement, the Developer specifically acknowledges and agrees that as between the Developer and the City, the City shall have no responsibility for the suitability of the Property for the development of the Project.

(e) **Acknowledgment.** The Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.5 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.5 are an integral part of this Agreement; and (3) the City would not have agreed to sell the Property (or any Phase thereof) to the Developer without the disclaimers and other agreements set forth in this Section 4.5. Nothing set forth in this Section 4.5 is intended to affect Developer's remedies in the event of a default by City in the payment and/or performance of its obligations under this Agreement.

Section 4.6 Costs of Escrow and Closing.

(a) All expenses that are required to be prorated including but not limited to non-delinquent ad valorem taxes, if any, for each Phase of the Property being transferred and the lien of any bond or assessment related to each Phase of the Property being transferred shall be prorated as of the applicable Closing Date.

(i) **Basis of Proration.** If taxes and assessments due and payable have not been paid before Closing, the City shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and the Developer shall pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation fixed as of the most recent date.

(ii) **Initial Use of Estimates; True Up Based on Final Amounts.** Any expense amount which cannot be ascertained with certainty as of the applicable Closing shall be prorated on the basis of the Parties' reasonable estimates of such amount. Once the previously estimated amounts have been finalized, the Parties shall prorate these new amounts pursuant to this Agreement and each party shall pay any amount due to a third party within ten (10) business days after receipt of the final amount. If either Party has overpaid an amount based on the prior estimate, the other Party shall reimburse the overpaying party within ten (10) business days after receipt of the final amount.

(iii) The provisions of this Section shall survive the applicable Closing and shall not merge with the applicable Quitclaim Deed.

(b) **Transaction and Closing Costs**. The Developer shall pay the premium for an ALTA Owner's Policy insuring the Developer interest in the Property subject only to any permitted exceptions and such other exceptions as may be caused by Developer (such as the lien of a Security Financing Interest) (collectively the "Title Policies") (including title endorsements) in excess thereof. All other costs of escrow (including, without limitation, any Escrow Holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be paid by the Developer. These costs borne by the Developer shall be in addition to the Land Payment.

(c) **Closing Procedures**. When all the funds, documents and other items required by the Closing have been timely deposited into Escrow, Escrow Holder shall Close Escrow as follows:

(i) Record the Quitclaim Deed in the Official Records of the Converse County Clerk;

(ii) Issue the Title Policy to the Developer;

(iii) Pro rate taxes, assessments and other charges pursuant to Section 4.7 and pay the applicable charges from the applicable funds deposited by the City or the Developer;

(iv) Pay the Closing Costs from the applicable funds deposited by the Developer;

(v) Deliver the following to the City: conformed copies of the Recording Documents, an original of the General Assignment, and

(vi) Deliver the following items to the Developer: conformed copies of the Recording Documents and the original Title Policy.

If Escrow Holder is unable to simultaneously perform all the instructions set forth above, Escrow Holder shall notify the Parties and retain all funds and documents pending receipt of further instructions jointly issued by Parties.

Section 4.7 Taxes. From and after Closing, the Developer shall pay when due all real property taxes and assessments assessed and levied on the portions of the Property conveyed to the Developer that are attributable to the period following the Closing and shall remove any levy or attachment made on such portion of the Property.

Section 4.8 Survival. The terms and conditions in Article 4 shall expressly survive the Closing, shall not merge with the provisions of the Quitclaim Deed or any other closing documents and shall be deemed to be incorporated by reference into the Quitclaim Deed. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

ARTICLE 5. CONSTRUCTION OF THE PROJECT

Section 5.1 Basic Obligations. From and after the Closing the Developer shall cause construction of the Improvements in each Phase in accordance with the terms of this Agreement, the approved Development Agreement, the Planning Documents, and any additional applicable approvals. The Developer shall be responsible for all costs associated with the Improvements for each Phase.

Section 5.2 Construction Pursuant to Approved Construction Documents. The Developer shall cause construction of the Improvements in each Phase in accordance with the applicable Approved Construction Documents (or modifications thereto processed and approved by the City in accordance with applicable City ordinances, rules and regulations), and the terms and conditions of all City and other governmental approvals. Nothing in this section shall preclude or modify the Developer's obligation to obtain any required City approval of changes in the Approved Construction Documents in accordance with applicable City ordinances, rules and regulations.

Section 5.3 Construction Permits and Approvals. The City and Developer shall coordinate the preparation and submission of any preliminary plats or final plats for the Property with the

developer of the adjacent property, to ensure that the appropriate level of mapping is in place before the installation of the infrastructure. The City shall cooperate with Developer on obtaining any approvals from other governmental entities and public utilities, provided the City shall not be obligated to incur any costs associated with obtaining such permits and approvals. The City, in its capacity as the property owner and not in its regulatory capacity, (i) will sign any application for a Preliminary or Final Plat if such application is filed while the City owns any property subject to the Plat; and (ii) sign any Preliminary or Final Plat as the owner of the property subject to the Plat once such Plat is approved in accordance with the City's standard process for approval of Subdivision Plats.

Section 5.4 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Project to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies; and (2) all rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

Section 5.5 Entry by the City. The Developer shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times upon reasonable notice to inspect the work of construction of the Project to determine that such work is in conformity with the Approved Construction Documents or to inspect the Property for compliance with this Agreement. The City is under no obligation to: (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection, except that the City shall inform the Developer of any information it obtains or discovers during inspection that could reasonably foreseeably affect rights or obligations of a Party under this Agreement. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 5.6 Necessary Safeguards. The Developer shall cause its Contractors to erect and properly maintain at all times all reasonable and necessary safeguards for the protection of workers and the public.

Section 5.7 Development Requirements and Standards. Developer agrees to construct the development according to the requirements of the City of Douglas Municipal and adopted Construction Codes, including the requirements of Title 15 Buildings and Construction and Title 16 Unified Land Development Code, including:

(a) General Requirements

(i) Calling for the required building, plumbing, mechanical, and electrical inspections (minimum 24 hour notice);

(ii) Calling for and receiving a final building inspection and Certificate of Occupancy prior to occupying any building;

(iii) Following manufacturer's instructions when supplied with building materials, provided such instructions do not violate building, plumbing, mechanical or electrical codes;

(iv) Providing drainage designed to deposit all run-off into either the municipal drainage system or into acceptable natural drainage;

(v) Conforming to all zoning requirements, including:

(vi) Providing the required number of designated off-street parking spaces;

(vii) Completion of the required landscaping and sidewalk, as indicated on the Site Plan, within one (1) year of issuance of Certificate of Occupancy;

(viii) Connecting to or utilizing required city utility services;

(ix) Designing and locating circulation and parking areas to facilitate removal and storage of snow; and

(x) Providing adequate access for emergency vehicles and personnel.

(b) During the course of the development and construction of the Property, Developer agrees to:

(i) Provide and place safety fencing or barriers around excavations during construction;

(ii) Providing a posted address on the construction site prior to beginning construction;

(iii) Providing for safe construction site access and egress;

(iv) Providing for temporary parking facilities for construction site workers;

(v) Maintaining construction site in neat and orderly condition, free of waste materials, debris, or rubbish; and

(vi) Completing construction of the development as required by the Building Permit.

(c) Public Improvements: Developer hereby agrees to abide by all applicable City subdivision and development regulations, and to construct all public streets, sidewalks, water and sewer lines to City specifications, and according to submitted plans as approved by the Wyoming Department of Environmental Quality.

All major utility relocations shall be done at the expense of Developer.

(d) Street Improvements: Developer agrees to construct the following streets, including curb, gutter and sidewalk, as part of the Development:

- Bluebird Drive between South Wind River Drive and Pearson Road as platted or replatted and filed at the Converse County Court House;
- Swallow Street between South Wind River Drive and Pearson Road as platted or replatted and filed at the Converse County Court House;
- Meadow Lane between South Wind River Drive and Pearson Road as platted or replatted and filed at the Converse County Court House; and
- Pearson Road between Flicker Street and Meadow Lane as platted.

(e) Storm Drainage: Developer agrees to provide for storm drainage and storm water diversion through and within the Subdivision to City specifications, and according to submitted plans as approved by the Wyoming Department of Environmental Quality.

(f) Streetlights: Developer agrees to install metal streetlight poles and lights as follows:

- One streetlight at each intersection; and
- One streetlight every three hundred (300) feet, on alternating sides of the streets.

(g) Water/Sewer System: Developer shall provide all water and sewer lines outside the Developer's property as required to transport water to and sewage effluent from the developed property. Developer agrees to abide by Department of Environmental Quality regulations regarding approval on construction plans for water and sewer mains and facilities, and to obtain all necessary permits prior to beginning construction.

(h) Other Utilities: Developer shall provide fifteen foot (15') public utility easements behind rear face of curb along all platted streets in the subdivision for the placement of "shallow" utilities (natural gas, electrical, telephone and cable television). Pursuant to Title 16 of the Douglas Municipal Code, all utilities shall be placed underground and utility stubs shall be provided from mains and/or laterals to lots within the subdivision prior to completion of finished road surfaces.

(i) Public Improvements – Guarantee Form & Deposit: Developer agrees to deposit cash,

performance bond, irrevocable letter of credit, or other acceptable collateral readily convertible to cash, in an amount not less than one hundred ten percent (110%) of the City Engineer's estimate of the cost of complete installation of all public improvements within the subdivision, as specified in Title 16 of the Douglas Municipal Code, to guarantee the complete installation of all public improvements within the Subdivision, and the construction of same to city specifications. All public improvements shall be completed within one year from the date of the application for the first building permit, unless a deferred development agreement is entered into pursuant to Title 16 of the Douglas Municipal Code.

Pursuant to Title 16 of the Douglas Municipal Code, as a condition for releasing construction bonding on public improvements, Developer shall submit to the city, as-built drawings of all main, primary, secondary, and service utilities installed as part of the development. Monumentation must be verified by the city engineering department as a condition of releasing bonds.

Developer agrees to call for inspection(s) upon completion of all public improvement installations. Developer shall enter into a one year guarantee period following completion of public improvements, in which Developer agrees to maintain, repair, correct, and keep all public improvements in full operating order at his own expense, pursuant to Title 16 of the Douglas Municipal Code. The City, after the one-year guarantee period, and following inspection and approval, shall release the Developer from all responsibilities and accept all public improvements and utilities. The City shall provide all maintenance on said streets, water mains, and sewer mains in perpetuity.

(j) Contractor & Subcontractor Licensing: Developer agrees to provide the City with a list of all contractors and subcontractors involved in the Development of the Property, and to insure all said contractors and subcontractors are properly licensed by the City of Douglas before beginning work.

ARTICLE 6. CITY OBLIGATIONS

Section 6.1 Permits and Approvals.

(a) **City Assistance.** The City shall provide reasonable cooperation to the Developer in processing Developer's applications for City permits and approvals, and all other permits, approvals, and "will serve" letters necessary for construction of the Project.

(b) **City Retains Discretion.** The Developer acknowledges and agrees that execution of this Agreement by the City, and the City's approvals obtained pursuant to this Agreement are with regard to this Agreement only and do not constitute approval by the City in its typical regulatory or administrative capacity of any required permits, applications, allocations or maps, are not a substitute for the City's typical application, allocation, mapping, permitting, or approval process, and in no way limits the discretion of the City in the permit, applications, allocation, mapping or approval process. In addition to complying with the terms and conditions of this Agreement, Developer must comply with the City's and other government entities' regulatory and administrative processes.

Section 6.2 City Representations. The City acknowledges that the execution of this Agreement by the Developer is made in material reliance by the Developer on each and every one of the representations and warranties made by the City in this Section 6.2.

(a) **Authority.** The City has all requisite right, power and authority to enter into this Agreement and the documents and transactions contemplated herein and to carry out the obligations of this Agreement and the documents and transactions contemplated herein. The City has taken all necessary or appropriate actions, steps and company and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement. This Agreement is a legal, valid

and binding obligation of the City, enforceable against it in accordance with its terms. The representations and warranties of the City in the preceding sentence of this Section 6.2 are subject to and qualified by the effect of: (a) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and (b) the fact that equitable remedies, including rights of specific performance and injunction, may only be granted in the discretion of a court.

(b) **No Actions.** As of the Effective Date only, there is no pending or threatened suit, action, arbitration, or other legal, administrative, or governmental proceeding or investigation that affects the Property or that adversely affects the City's ability to perform its obligations under this Agreement.

(c) **Commitments to Third Parties.** Except as disclosed in the Preliminary Title Report, the City has not made any commitment, agreement or representation to any government authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on the Developer or would interfere with the Developer's ability to develop and improve the Property into the Project.

(d) **Hazardous Materials.** To the best of the City's knowledge and except as disclosed herein, the City has received no written notice from any government authority regarding any, and, to the best of the City's knowledge, there are no, violations with respect to any law, statute, ordinance, rule, regulation, or administrative or judicial order or holding (each, a "**Law**"), whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of the date hereof or on the Closing Date, or releases of Hazardous Materials that have occurred during the City's possession of the Property, excluding Incidental Migration. The City has not assumed by contract or law any liability, including any obligation for corrective action or to conduct remedial actions, of any other Person relating to Hazardous Materials.

ARTICLE 7. ASSIGNMENT AND TRANSFERS

Section 7.1 Definition of Transfer. As used in this Article 7, the term "**Transfer**" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of this Agreement or of the Property and/or the Project or any part thereof or any interest therein (including, without limitation, any Phase) or of the improvements constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any Controlling Interest (defined below) in the Developer, or any contract or agreement to do any of the same. As used herein, the term "**Controlling Interest**" means (1) the ownership (direct or indirect) by one Person of more than twenty (20%) of the profits, capital, or equity interest of another Person; or (2) the power to direct the affairs or management of another person, whether by contract, other governing documents or operation of Law or otherwise, and Controlled and Controlling have correlative meanings. Common Control means that two persons are both Controlled by the same other person.

Section 7.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Project on the Property and subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the any future Collaborating Partners and are of particular concern to the City, in view of:

(a) The importance of the redevelopment, use, operation and maintenance of the Project to the general welfare of the community.

(b) The fact that a change in ownership or control of the owner of the Property, or any other act resulting in a change in ownership of the parties in control of any of the Developer, is for practical purposes a transfer or disposition of the Property and the Project.

(c) Restrictions on transfer are necessary in order to assure the achievement of the goals, objectives and public benefits of this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 7 as reasonable and as a material inducement to City to enter into this Agreement. It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 7.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 7 shall apply with respect to any portion of the Property until issuance by the City of a Temporary Certificate of Occupancy or Letter of Completion or without prior written consent from the City. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City pursuant to Section 7.5. Any Transfer made in contravention of this Section 7.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 7.4 Permitted Transfers. Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted (subject to satisfaction of all applicable conditions to such Transfer):

(a) Any Transfer creating a Security Financing Interest consistent with the Financing Plan, or Phase Update , as applicable, approved by the City pursuant to Section 3.2 (as demonstrated to the City's reasonable satisfaction), or otherwise consistent with the provisions of Section 8.1 and 8.2.

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest and if the Permitted Mortgagee is the immediate Transferee pursuant to such foreclosure or deed in lieu, the Permitted Mortgagee's initial Transfer of any portion of the Property to a subsequent Transferee.

(c) Any Transfer consisting of the rental or subletting of a Residential Unit in the normal course of the Developer's business operations.

(d) Any Transfer due solely to the death or incapacity of an individual.

(e) Any Transfer of a utility, public right of way, maintenance or access easement reasonably necessary for the development of the Project (each a "**Development Easement**").

Section 7.5 Other Transfers in City's Sole Discretion. Any Transfer not permitted pursuant to an express provision of Section 7.4 shall be subject to prior written consent by the City in accordance with this Section 7.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, the Developer shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee's financial strength and the proposed transferee's experience, capacity and expertise with respect to the development, operation and management of affordable housing developments similar to the Project (or applicable portion thereof). The City shall approve or disapprove the proposed Transfer, in its sole discretion, within ninety (90) days of the receipt from the Developer all of the information specified above including backup documentation and supplemental information reasonably requested by the City. The City shall specify in writing the basis for any disapproval. If the City should fail to act within such ninety (90) day period the Party requesting the Transfer shall provide the City with written notice of such failure to act.

If the City fails to respond to the Party requesting the Transfer's notice containing the within ten (10) business days of the date of the notice and such notice is delivered to the address and in the manner set forth in Section 12.1 below, the proposed Transfer shall be deemed approved.

ARTICLE 8. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 Security Financing Interests; Permitted and Prohibited Encumbrances.

(a) Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 8.1. Any security instrument and related interest approved pursuant to Section 8.1(c) is referred to as a "**Security Financing Interest**."

(b) Any mortgage, deed of trust or other real property security interest securing a loan set forth in any approved Project Financing Plan or Phase Update (or any approved amendment to such plan or update) shall be deemed an approved Security Financing Interest pursuant to this Article 8. The holder of a Security Financing Interest is referred to herein as a "**Permitted Mortgagee**."

Section 8.2 Permitted Mortgagee Not Obligated to Construct. No Permitted Mortgagee is obligated by, or to perform, any of the Developer's obligations under this Agreement, including, without limitation, to construct or complete any improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to the Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such Permitted Mortgagee. However, nothing in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 8.3 Notice of Default and Right to Cure. Whenever the City, pursuant to its rights set forth in Article 1, delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Project, the City shall at the same time deliver to each Permitted Mortgagee a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the applicable portion of the Project and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize any Permitted Mortgagee to undertake or continue the construction or completion of the applicable portion of the Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to the applicable portion of the Project under this Agreement. The Permitted Mortgagee in that event must agree to complete the applicable portion of the Project, in the manner provided in this Agreement. Any Permitted Mortgagee properly completing the applicable portion of the Project pursuant to this Section 10.3 shall assume all applicable rights and obligations of the Developer under this Agreement.

Section 8.4 Failure of a Permitted Mortgagee to Complete the Project. In any case where six (6) months after default by the Developer in completion of construction of the Project under this Agreement, the applicable Permitted Mortgagee, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such Permitted Mortgagee it would otherwise have against the Developer under this Agreement.

Section 8.5 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the Project, and if the Permitted Mortgagee has not exercised its option to complete the Project or applicable Phase, upon five (5) Business Days' prior written notice to the Developer and the Permitted Mortgagee, the City may, in its sole discretion (but with no obligation to do so) cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the 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 thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from

time to time any and all documentation reasonably requested by the holder to affect such subordination.

Section 8.6 Right of City to Satisfy Other Liens. After the Developer has had a reasonable time (but not less than twenty (20) days) to challenge, cure, or satisfy any liens or encumbrances on any portion of the Property conveyed to the Developer thereof, and has failed to do so, in whole or in part, the City may in its sole discretion (but with no obligation to do so), upon five (5) Business Days' prior written notice to the Developer, satisfy any such lien or encumbrances. Nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 8.7 Permitted Mortgagee to be Notified. The Developer shall insert each term contained in this Article 8 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Permitted Mortgagee of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 8.8 Modifications. If any actual or potential Permitted Mortgagee should, as a condition of providing financing for development of all or a portion of the Project, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

Section 8.9 Miscellaneous Provisions.

(a) **Limitation on Liability.** In the event that any Permitted Mortgagee assumes the obligations of the Developer under this Agreement, such Permitted Mortgagee shall only be liable or bound by the Developer's obligations hereunder for such period as the Permitted Mortgagee is in possession and/or control of the portion of the Property in which the Permitted Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

(b) **Termination.** Notwithstanding any other provision of this Agreement to the contrary, if any Developer Event of Default shall occur which, pursuant to any provision of this Agreement, entitles the City to terminate this Agreement and/or to exercise its rights under Section 11.5, the City shall not be entitled to terminate this Agreement or to exercise its rights under Section 11.5 unless (i) the City has provided the Permitted Mortgagee with notice of default pursuant to Section 8.3 and (ii) within the applicable cure period set forth in Section 8.3, such Permitted Mortgagee shall fail to either:

(i) **Cure (Monetary)**. Cure the Developer Event of Default if the same consists of the nonperformance by the Developer of any covenant or condition of this Agreement requiring the payment of money by Developer to the City; and

(ii) **Cure (Non-Monetary)**. If the Developer Event of Default is not of the type described in clause (1) above, either, in such Permitted Mortgagee's sole discretion, (x) cure such Developer Event of Default, if the same is capable of being cured within the applicable cure period, or (y) commence, or cause any trustee under the Permitted Mortgage to commence, and thereafter diligently pursue to completion, steps and proceedings to foreclose on the applicable portion of the Property pursuant to judicial foreclosure, non-judicial foreclosure or deed-in-lieu process ("**Foreclosure**"); provided that except as extended by clause (3) below, such Foreclosure shall be completed within a maximum of eighteen (18) months following the commencement of such proceeding. Any Developer Event of Default which does not involve a covenant or condition of this Agreement requiring the payment of money by the Developer to the City shall be deemed cured if any Permitted Mortgagee shall

diligently pursue to completion Foreclosure and shall, upon acquiring title to all or any portion of the Property, thereafter undertake its obligations (if any) with respect such portion of the Property pursuant to Section 9.3.

(iii) **Inability to Foreclose**. If a Permitted Mortgagee is prohibited from commencing or prosecuting a Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 8.9(b)(ii) above, for commencing or prosecuting a Foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Developer Event of Default required by Section 8.9(b)(i) above and shall continue to perform and/or cure all such obligations as and when the same fall due.

(c) **Failure of Permitted Mortgagee to Complete Improvements.** Upon the date upon which all cure periods of the Developer have expired following a Developer Event of Default related to the Completion of construction of any improvements on the Property under this Agreement, and the notice required by Section 8.3 to a Permitted Mortgagee was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 8.9(b), the City may, at its option, upon thirty (30) calendar days' written notice to the Developer and such Permitted Mortgagee either: (a) purchase the Permitted Mortgage by payment to the Permitted Mortgagee of all amounts thereunder, including all unpaid principal, interest, late fees and all other advances and amounts secured by the Permitted Mortgage; or (b) exercise its rights under Section 11.5 with respect to the applicable portions of the Property.

(d) **Amendment; Termination.** No amendment or modification to this Agreement may impair or materially alter a Permitted Mortgagee's rights hereunder, or increase a Permitted Mortgagee's obligations hereunder (whether ongoing or contingent obligations) without the consent of such Permitted Mortgagee, provided that such Permitted Mortgagee has agreed that its consent will not be unreasonably withheld. The Developer shall not terminate this Agreement as to any portion of the Property which is subject to any Security Financing Interest without first obtaining the prior written consent of all Permitted Mortgagees whose Permitted Mortgages encumber that portion of the Property.

(e) **Condemnation or Insurance Proceeds.** Except as otherwise expressly set forth in this Agreement, the rights of any Permitted Mortgagee, pursuant to its Security Financing Interest, to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired.

(f) **Loss Payable Endorsement to Insurance Policy.** The City agrees that the name of the senior-most Permitted Mortgagee may be added as the primary loss payee to the "loss payable endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement.

(g) **Bankruptcy Affecting the Developer.** The Developer and City hereby agree that this Agreement and the Quitclaim Deed shall contain and consist of covenants running with the land and that neither this Agreement, nor any Quitclaim Deed shall be subject to rejection in bankruptcy and Developer hereby waives its rights to reject this Agreement and/or any Quitclaim Deed in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement, or any Quitclaim Deed in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to such Permitted Mortgagee's acceptance, be deemed the Developer's assignment

of the Agreement or Quitclaim Deed, as applicable, and the portions of the Property corresponding thereto to the Developer's Permitted Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Agreement shall not terminate and each Permitted Mortgagee shall, become the Developer hereunder as if the Bankruptcy Proceeding had not occurred, unless such Permitted Mortgagee(s) shall reject such deemed assignment by written notice to the City within fifteen (15) calendar days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

(h) **New Agreement and Ground Lease with Permitted Mortgagee.**

(i) **Request by Senior Permitted Mortgagee**. In the event of termination of this Agreement for any reason (including by reason of any Developer Event of Default or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property), the City, if requested by the then-most senior Permitted Mortgagee (or by the next most senior Permitted Mortgagee if Permitted Mortgagees with more senior priority do not so request) will enter into a new disposition and development agreement with the Permitted Mortgagee, provided that such party is the then-owner of the Property, upon the same terms, provisions, covenants and agreements set forth in this Agreement and commencing as of the date of termination of this Agreement (collectively, the "**New Agreement**"), subject to the following:

(A) **Request for New Agreement**. Such Permitted Mortgagee or requesting party shall have provided written notice to the City requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement;

(B) **Payment of Due and Unpaid Sums**. Such Permitted Mortgagee or requesting party shall pay to the City at the time of the execution and delivery of the New Agreement those sums specified in Section 8.9(b) which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any reasonable attorneys' fees and experts' fees and court costs and court expenses (including attorney's and expert's fees) to which the City shall have been subjected by reason of the Developer Event of Default; and

(C) **Perform and Observe All Covenants**. Such Permitted Mortgagee or requesting party shall, subject to the provisions of this Article, be subject to and shall perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee, and failure to do so shall, after notice and opportunity to cure as provided by this Agreement, be a Developer Event of Default under this Agreement.

(ii) **Request by the City.** In the event of termination of this Agreement for any reason (including by reason of any Developer Event of Default by Developer or by reason of the disaffirmance thereof by the Developer, as a debtor-in-possession, or by a receiver, liquidator or trustee for Developer or its property) the then-most senior Permitted Mortgagee, if requested by the City, and provided that such party is the then-owner of the Property, will enter into a new Agreement with the City upon the same terms, provisions, covenants and agreements set forth in this Agreement and commencing as of the date of termination of this Agreement ("**New Agreement**"), subject to the following:

(A) **Response to Request for New Agreement**. The City shall have provided written notice to such Permitted Mortgagee requesting the New Agreement within thirty (30) calendar days after the date of termination of this Agreement, with a copy to each other Permitted Mortgagee; and

(B) **Perform and Observe All Covenants**. The Permitted Mortgagee shall, subject to the provisions of Section 8.9(a) and (b), perform and observe all covenants in this Agreement to be performed and observed by a Permitted Mortgagee and failure to do so shall, after notice and opportunity to cure, be a Developer Event of Default under this Agreement.

(iii) **Priority of New Agreement.** Any New Agreement shall be prior to any Security Financing Interest or other lien, charge, or encumbrance on the Property in favor of such Security Financing Interest and each Security Financing Interest shall execute such additional consents and/or subordination agreements as may reasonably requested by the City or the new Developer to evidence the priority of the New Agreement to all Security Financing Interests, whether recorded prior or subsequent to execution of the New Agreement.

ARTICLE 9. INDEMNIFICATION

Section 9.1 General Indemnification. The Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to the Developer), and hold harmless the City against all third party suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the Developer's or the Contractors' performance or non-performance under this Agreement, including or arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by the Developer, the Contractors, any Licensee, or the tenants. This defense, hold harmless, and indemnity obligation shall not extend to any claim arising solely from the City's gross negligence or willful misconduct. If the Developer effectuates a Transfer permitted pursuant to Article 7 in the manner required by Article 7, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer. The Developer's obligation to indemnify, defend and hold harmless under this Section 9.1 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Notwithstanding the foregoing to the contrary, provisions of this Section 9.1 shall not apply to matters arising out of or related to Hazardous Materials, which are addressed in Section 9.2 below.

Section 9.2 Hazardous Materials Indemnification. The Developer shall indemnify, defend (with counsel chosen by City and reasonably acceptable to the Developer), and hold harmless the Indemnified Parties from and against all third party suits, actions, claims, causes of action, costs, demands, judgments, liens, damage, cost, expense or liability the City may incur directly or indirectly arising out of or attributable to any New Release, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Property or the Project, and the preparation and implementation of any closure, remedial or other required plans and (2) all reasonable costs and expenses incurred by the City in connection with clause (1), including but not limited to reasonable attorneys' fees. The defense, hold harmless, and indemnity obligations contained in this Section 9.2 shall not extend to any claim arising solely from the applicable Indemnified Party's gross negligence or willful misconduct. The Developer's obligation to indemnify, defend and hold harmless under this Section 9.2 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action. If the Developer effectuates a Transfer permitted pursuant to Article 7 in the manner required by Article 7, then the transferring Developer shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs after the effectiveness of the Transfer. If the Developer effectuates a partial Transfer permitted pursuant to Article 7 in the manner required by Article 7, the transferee shall have no obligation to indemnify claims arising out of actions or a failure to act that occurs as a result of the Developer's action with respect to any portion of the Property not transferred to the transferee.

Section 9.3 No Limitations Based Upon Insurance. The indemnification, defense and hold harmless obligations of the Developer under this Article 9 and elsewhere in this Agreement

(sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which the Developer is required to carry under this Agreement. In claims against any of the City by an employee of the Developer, or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for the Developer or anyone directly or indirectly employed by the Developer or anyone for whose acts the Developer may be liable.

ARTICLE 10. INSURANCE REQUIREMENTS

Section 10.1 Required Insurance Coverage. Except as otherwise provided in Section 10.10, during the Term the Developer shall maintain or cause to be maintained and kept in force, at the sole cost and expense of the Developer or the Contractors the insurance applicable to the Project and required under this Article 10.

Section 10.2 Comprehensive General Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, comprehensive general liability insurance in an amount not less than Two Million Dollars ($2,000,000) with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and Five Million Dollars ($5,000,000) general aggregate limit, which minimum amounts shall be increased by the CPI Increase every five (5) years on the anniversary of the Effective Date and covering, without limitation, all liability to third parties arising out of or related to the Developer's performance of its obligations under this Agreement or other activities of the Developer at or about the Property and the Project, including, without limitation, the Developer's obligations under Section 9.1. Such insurance in excess of One Million Dollars ($1,000,000) may be covered by a so-called "umbrella" or "excess coverage" policy.

Section 10.3 Vehicle Liability Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, vehicle liability insurance in an amount not less than One Million Dollars ($1,000,000) (combined single limit) including any automobile or vehicle whether hired or, if applicable, owned by the Developer.

Section 10.4 Workers' Compensation Insurance. During the Term the Developer shall maintain or cause to be maintained and kept in force, workers' compensation insurance in an amount not less than the statutory limits.

Section 10.5 Property Insurance. After conveyance of any portion of the Property to the Developer and continuing through the Term, the Developer shall maintain or cause to be maintained and kept in force, property insurance covering all real and personal (non-expendable) property (except for personal property otherwise typically covered by insurance maintained by tenants) conveyed to Developer and improvements, in form appropriate for the nature of such property, covering all risks of loss, for 100% of the replacement value, with deductible, if any, reasonably acceptable to the City.

Section 10.6 Construction Contractor's Insurance. The Developer shall cause the General Contractor to maintain insurance of the types and in at least the minimum amounts described in Sections 10.2 (exclusive of the cross-reference to Section 9.1), 10.3, and 10.4, and shall require that such insurance shall meet all of the general requirements of Sections 10.8 and 10.9. Except with respect to construction of tenant improvements, the Developer shall also cause the General Contractor to obtain and maintain Contractor's Pollution Liability Insurance covering the General Contractor and all subcontractors in an amount of not less than Ten Million Dollars ($10,000,000) with a maximum deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction.

Section 10.8 General Insurance Requirements. The insurance required by this Article 10 shall

be provided under an occurrence form, and the Developer shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two and one-half (2.5) the occurrence limits specified above.

Section 10.9 Additional Requirements. The insurance policies required pursuant to this Article 10 (other than Workers' Compensation insurance) shall be endorsed to name as additional insureds the City and its elected and appointed officials, board members, commissions, officers, employees, attorneys, agents, volunteers (the "**Additional Insureds**"). All insurance policies shall contain:

(a) an agreement by the insurer to give the City at least thirty (30) days' notice prior to cancellation or any material change in said policies;

(b) an agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by the City;

(c) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained by the Additional Insureds up to applicable policy limits; and

(d) a waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any claim, loss or damage thereby insured against.

(e) all insurance companies providing coverage pursuant to this Article 10, shall be insurance organizations authorized by the Insurance Commissioner of the State of Wyoming to transact the business of insurance in the State of Wyoming, and shall have an A. M. Best's rating of not less than "A:VII".

Section 10.10 Certificates of Insurance. Upon the City's request at any time during the Term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City, and/or insurance policies including all endorsements, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

ARTICLE 11. DEFAULT AND REMEDIES

Section 11.1 Application of Remedies. This Article 11 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 11.2 No Fault of Parties.

(a) **Bases for No Fault Termination**. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other: if despite the responsible Party's good faith and diligent efforts, a condition precedent set forth in Section 4.3 is not satisfied or, when applicable, waived by the benefitting Party, prior to the date for such satisfaction/waiver (as such date may be extended pursuant to this Agreement), unless such failure is caused by the default of a Party, in which case Section 11.3 or 11.4 shall apply.

(b) **Termination Notice; Effect of Termination**. Upon the happening of an event described in Section 11.2(a):

(i) The Parties shall meet and confer in good faith for a period not to exceed sixty (60) calendar days in an effort to agree upon a mutually acceptable amendment to this Agreement to address the failed condition; and

(ii) If the parties fail to reach agreement pursuant to Section 11.2(b)(1), at the election of either Party, this Agreement may be terminated.

Upon a termination pursuant to this Section 11.2, any costs incurred by a Party in connection with this Agreement and the Project shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except with respect to: (1) any payments made by the Developer to the City prior to the termination pursuant to Article 2 shall remain the property of the City; (2) any funds remaining in Escrow pursuant to Article 4 shall be returned to Developer, (3) the delivery of plans and documents as set forth in Section 11.6; and (4) the survival of certain terms of this Agreement as provided in Section 11.7.

Section 11.3 Fault of City.

(a) **City Event of Default**. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "**City Event of Default**":

(i) The City breaches any other material provision of this Agreement.

(ii) The material breach of any of the City's representations or warranties set forth in this Agreement.

(b) **Notice and Cure; Remedies**. Upon the happening of an event described in Section 11.3(a), the Developer shall first notify the City in writing of its purported breach or failure. The City shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the City has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure, provided, however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the City has caused a breach or failure of performance of this Agreement, then the City shall not be deemed to have caused such breach or failure of performance until the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a City Event of Default and the Developer shall be afforded all of the following rights and remedies: (A) prosecute an action for damages against the City; (B) seek specific performance of this Agreement against the City; and/or (C) exercise any other remedy against the City permitted by law or under the terms of this Agreement.

Section 11.4 Fault of Developer.

(a) **Developer Event of Default**. Each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "Developer Event of Default":

(i) The Developer refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the City of the Transfer Property or any portion thereof within the time and in the manner specified in Article 4.

(ii) The Developer attempts or completes a Transfer except as permitted under Article 9.

(iii) The Developer breaches any material provision of this Agreement.

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

(v) A court having jurisdiction shall have made or entered any decree or order: (A) adjudging the Developer to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (C) appointing a receiver, trustee, liquidator, or assignee of the Developer

in bankruptcy or insolvency or for any of their properties, or (D) directing the winding up or liquidation of Developer.

(vi) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a Security Financing Interest) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event.

(vii) Developer shall have voluntarily suspended its business, or the Developer shall have been dissolved or terminated.

(b) **Notice and Cure; Remedies**. Upon the happening of any event described in Section 11.4(a), the City shall first notify the Developer in writing of its purported breach or failure. The Developer shall have thirty (30) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such thirty (30) day period and the Developer has commenced the cure within such thirty (30) day period and thereafter is diligently working in good faith to complete such cure, provided however, in any event the breach or failure must be cured within one hundred twenty (120) days. Notwithstanding the above cure period, a default described in paragraph (5) (6) or (7) of Section 11.4(a) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure. Notwithstanding anything to the contrary herein, if the City and the Developer are in good faith disputing whether the Developer has caused a breach or failure of performance of this Agreement, then the Developer shall not be deemed to have caused such breach or failure of performance until the Developer has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement.

If the Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies: (A) prosecute an action for damages against the Developer; (B) seek specific performance of this Agreement against the Developer; and/or (C) exercise any other remedy against the Developer permitted by law or under the terms of this Agreement.

Section 11.5 Option to Repurchase, Reenter and Repossess.

(a) The City shall have the additional right at its option to repurchase, reenter, and take possession of the Property if the Developer does not construct improvements that meet the standards set forth in Article 5.

(b) Such right to repurchase, reenter, and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit any Security Financing Instrument with respect to the Property; or any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property, provided that the Permitted Mortgagee has elected to complete the Project in a manner provided in this Agreement.

(c) To exercise its right to repurchase, reenter and take possession with respect to the Property not subject to (i) Certificate of Completion or (ii) a current building permit, the City shall pay to the applicable Developer in cash an amount equal to any payments made by the Developer to the City in cash pursuant to Sections 2.2 of this Agreement, plus the lesser of the (1) actual cost and (2) the fair market value of the improvements constructed on the Property subject to the Option by the Developer at the time of the repurchase, reentry, and repossession, less any gains or income withdrawn or made by the Developer from the portion of the Property subject to the Option, less the amount of any liens or encumbrances on the portion of the Property subject to the Option which the City assumes or takes subject to, less any damages to which the City is entitled under this Agreement by reason of the Developer Event of Default.

Section 11.6 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 11.2(a), then the Developer shall promptly deliver to the City copies of all plans and specifications for the Project (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Project, and all applications for permits and approvals not yet obtained but needed in connection with the Project.

Section 11.7 Survival. Upon termination of this Agreement under this Article 11, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 11.8 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

ARTICLE 12. GENERAL PROVISIONS

Section 12.1 Notices, Demands and Communications.

(a) **Method**. Any notice or communication required hereunder to be given by the City or the Developer shall be in writing and shall be delivered by each of the following methods: (1) electronically (e.g., by e-mail delivery); and (2) either personally, by reputable overnight courier, or by registered or certified mail, return receipt requested. Notwithstanding the time of any electronic delivery, the notice or communication shall be deemed delivered as follows:

(i) If delivered by registered or certified mail, the notice or communication shall be deemed to have been given and received on the first to occur of: (A) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (B) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally or by overnight courier, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed.

(ii) Either Party may at any time, by giving ten (10) days' prior written notice to the other Party pursuant to this section, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) **Addresses.** Notices shall be given to the Parties at their addresses set forth below:

City of Douglas
Attn: City Administrator
P.O. Box 1030
Douglas WY 82633

TLC DEVELOPMENT, LLC
Attn: Tom Civin
1461 Thomas Drive
Sheridan, WY 82801

Section 12.2 Government Immunity. City does not waive government immunity by entering into this lease, and specifically retains immunity and all defenses available to it pursuant to Wyo. Stat. § 1-39-101(a) and all other state law.

Section 12.3 Time of the Essence. Time is of the essence in this Agreement.

Section 12.4 Title of Parts and Sections. Any titles of the Sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 12.5 Applicable Law; Interpretation. This Agreement shall be interpreted under the laws of the State of Wyoming. This Agreement shall be construed in accordance with its fair

meaning, and not strictly for or against either Party. This Agreement has been reviewed and revised by counsel for each Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

Section 12.6 Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force.

Section 12.7 Legal Actions. Any legal action under this Agreement shall be brought in the Eighth Judicial District, Converse County, Wyoming. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, each Parties shall be responsible for its own attorney's fees.

Section 12.8 Binding Upon Successors; Covenants to Run with Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties, and the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer by the Developer except as permitted in Article 7. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 12.9 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another. The City has not provided any financial assistance in connection with this Agreement or the Project, this Agreement constitutes an arms-length transaction.

Section 12.10 Provisions Not Merged with Quitclaim Deed. None of the provisions of this Agreement shall be merged by the Quitclaim Deed or any other instrument transferring title to any portion of the Property, and neither the Quitclaim Deed nor any other instrument transferring title to any portion of the Property shall affect this Agreement.

Section 12.11 Entire Understanding of the Parties. This Agreement and any subsequent agreements contemplated by this Agreement to be entered into by the Parties constitute the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project.

Section 12.12 Approvals.

(a) **City Actions**. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Administrator, without further approval by the City Council, and any such action shall be in writing.

(b) **Standard of Approval**. Whenever this Agreement grants the City or the Developer the right to take action, exercise discretion or make allowances or other determinations, the City or the Developer shall act reasonably and in good faith, except where a sole discretion standard is specifically provided.

Section 12.13 Authority of Developer. The Developer does hereby covenant and warrant that:

(a) Developer is a duly authorized and existing Wyoming business entity;

(b) Developer is and shall remain in good standing and qualified to do business in the State of Wyoming;

(c) Developer has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement;

(d) the execution and delivery of this Agreement are duly authorized by proper action of Developer, and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect;

(e) the persons executing this Agreement on behalf of Developer have full authority to do so; and

(f) this Agreement constitutes the valid, binding and enforceable obligation of

Section 12.14 Amendments. This Agreement may be amended only by means of a writing signed by the Parties, and pursuant to a resolution approved by the City Council, except that amendments expanding the Property to which this Agreement applies shall be approved by ordinance adopted by the City Council.

Section 12.15 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 12.16 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties agree to cooperate with each other with regard to changes that may be needed in this Agreement as a result of the proposed development and improvements. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an "**Operating Memorandum**", and collectively, "**Operating Memoranda**") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

This Agreement, as signed below, constitutes a legal contract between the City and the Developer for the legally described property as set out above. Any addenda to this Agreement between the Developer and the City, shall become part and parcel of this Agreement.

NOW, THEREFORE, the parties mentioned in this Agreement do hereby agree to the terms and conditions of this Agreement.

Dated this _____ day of _____, 2020.

TLC DEVELOPMENT, LLC

_____
Tom Civin, Owner

CITY OF DOUGLAS

_____
Jonathan Teichert, City Administrator

STATE OF WYOMING)
) SS.
COUNTY OF SHERIDAN)

The foregoing instrument was acknowledged before me by _____, Owner, this _____ day of _____, 2020.

_____
Notary Public

My Commission expires:

STATE OF WYOMING)
) SS.
COUNTY OF CONVERSE)

The foregoing instrument was acknowledged before me by City Administrator, Jonathan Teichert, on behalf of the City of Douglas, Wyoming, this _____ day of _____, 2020.

Witness my hand and official seal.

_____
Notary Public

My Commission expires: