

PAYMENT AND PERFORMANCE AGREEMENT

by and between

THE CITY OF CULVER CITY

and

THE CULVER STUDIOS OWNER LLC

Draft: December 17, 2015

PAYMENT AND PERFORMANCE AGREEMENT

THIS PAYMENT AND PERFORMANCE AGREEMENT (“**Agreement**”) is made and entered by and between the CITY OF CULVER CITY, a charter city of the State of California (“**City**”) and THE CULVER STUDIOS OWNER LLC, a Delaware limited liability company (“**TCS**”). The City and TCS are sometimes referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.” This Agreement is dated as of the Effective Date, defined below. The City and the TCS agree as follows:

RECITALS

The following recitals are a substantive part of this Agreement.

A. As of the Effective Date, the Successor Agency to the Culver City Redevelopment Agency (“**Successor Agency**”) is the owner of the “**City Parcel**”, which is legally described in Exhibit “A - 1” and is the owner of the “**Parcel B**” which is legally described in Exhibit “A - 2.”

B. TCS is the owner of the “**TCS Parcel**”, which is legally described in Exhibit “B”.

C. City and Combined/Hudson 9300 Culver LLC (“**Parcel B Developer**”) have previously entered into a DDA (as defined below) which provides, among other things, for the sale of certain property owned by the Successor Agency and denominated therein as “**Developer Parcel**” and hereinafter referred to as “**Parcel B**” to the Parcel B Developer, and the construction thereon and for construction on the City Parcel (collectively referred to herein as the “**Site**”) of, among other things, certain Public Improvements (as defined below).

D. Upon approval by the City Council (anticipated to occur concurrently with approval of this Agreement), the City and Parcel B Developer will enter into (a) a Reimbursement Agreement Relating to Design Services for the Parcel B Improvements and Public Improvements (“**Public Improvements Reimbursement Agreement**”), and (b) a Reimbursement Agreement Relating to Design Services for the Town Plaza Expansion Improvements (“**Town Plaza Reimbursement Agreement**”). The City Council previously approved, and the City and Parcel B Developer executed, the Reimbursement Agreement for Costs to Date (“**Reimbursement Agreement (Past Costs)**”). The Public Improvements Reimbursement Agreement, the Town Plaza Reimbursement Agreement, and the Reimbursement Agreement (Past Costs) are collectively referred to as the “**Reimbursement Agreements**”. City and Parcel B Developer have also negotiated the form of the Development and Construction Contract for Public Improvements to be entered into at the close of escrow for the conveyance of Parcel B to the Parcel B Developer (“**Development Contract**”) and Parcel B Developer has confirmed its acceptance of the form of Development Contract in writing to the City. The form of such negotiated Development Contract is subject to the approval of the City Council pursuant to the DDA (anticipated to occur concurrently with approval of this Agreement). The DDA, the Reimbursement Agreements and the Development Contract are sometimes collectively referred to herein as the “**Public Improvement Agreements**.”

E. Pursuant to, and in accordance with the terms of the Public Improvement

Agreements, Parcel B Developer has agreed to develop and construct certain improvements described therein as the **“Parcel B Improvements,”** together with the Public Parking Improvements and the Town Plaza Expansion Improvements (each as defined below), and City has agreed to reimburse Parcel B Developer for certain costs of the Public Improvements.

F. As part of the Public Improvements, the City has required that Parcel B Developer construct the Culver Boulevard Access Improvements (defined below). The concept plan for the Culver Boulevard Access Improvements are conceptually shown on Exhibit “C” (as so depicted, the **“Conceptual Culver Boulevard Access Improvements Design”**) has been approved by the City concurrently with and as part of the City Council approval of the Public Improvements parking garage design and concurrently with its approval of the Reimbursement Agreements, the Development Contract and this Agreement and shall include the following Culver Boulevard Access Improvements:

(a) a ramp with one (1) entry lane and two (2) exit lanes connecting the intersection of Culver Boulevard and Main Street to the portion of the parking structure proposed to be constructed on the City Parcel (**“Ramp”**);

(b) a tunnel providing two-directional vehicular access connecting the Ramp to the boundary of the TCS Parcel, through the portion of the Parking Improvements to be constructed on the City Parcel (**“Tunnel”**); and

(c) a knock-out panel at the boundary of the TCS Parcel in a location and of sufficient size to permit pedestrian and vehicular access to existing TCS parking facilities on the TCS Parcel.

G. This Agreement is entered into by the City and TCS in order to, among other things; (a) establish certain obligations of the City to (i) cause the construction by Parcel B Developer of the Culver Boulevard Access Improvements and (ii) agree to implement this Agreement by enforcing the City’s rights and carrying out the City’s obligations under the Public Improvement Agreements related to the Culver Boulevard Access Improvements; (b) establish the terms and conditions on which TCS shall pay the City for certain costs of design and construction of the Culver Boulevard Access Improvements incurred by the City under the Reimbursement Agreements and the Development Contract, and (c) establish the terms on which the City, TCS and the Parcel B Developer, if applicable, will enter into an easement agreement providing vehicular and pedestrian access to TCS in and through the Ramp and Tunnel, all as further set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and TCS hereby agree as follows:

1. **DEFINITIONS**

1.1 **Definitions.**

Capitalized terms used herein unless otherwise defined herein shall have the meanings set forth below:

“Actual Modification Costs” means the Total Costs less: (a) the amount of the TCS Credit,

(b) the amount of the Management Fee, (c) the Initial Credit, (d) the Additional Credit, (e) any costs for which the Parcel B Developer is responsible under the Development Contract and (f) amounts excluded from Construction Costs pursuant to Section 5.2.3 or from Actual Modification Costs pursuant to Sections 5.4.3.

“Additional Capacity Trips” is defined in Section 12.1.

“Additional Credit” is defined in Section 6.4.2.

“Additional Deposit” is defined in Section 6.1.4.

“Additional Share Amount” is defined in Section 6.4.2.

“Approved Change Order” means a Change Order under the Construction Contract or Development Contract that has been approved by the City after complying with the Meet and Confer procedures set forth in this Agreement.

“Approved Plans” means the Plans for the Culver Boulevard Access Improvements approved by the City, and to the extent required by Section 3.3, TCS.

“Back-Up Easement Agreement” is defined in Section 9.6.

“Building Permit/Construction Drawings” or **“Construction Drawings”** means the building permit ready construction drawings for the Culver Boulevard Access Improvements.

“Change Order” means any change order or any modification to price or schedule requested by the City or by or through Parcel B Developer under the terms of the Development Contract or by Contractor pursuant to the Construction Contract.

“City” means the City of Culver City, a charter city of the State of California, having its offices at 9770 Culver Boulevard, Culver City, California 90232-0507, and any assignee or nominee of, or successor to, the rights, powers, and responsibilities of the City.

“City Indemnitees” is defined in Section 11.1.

“City Manager” means the City Manager of the City or designee.

“City Parcel” means the approximately .91 acres of land in Culver City, California owned by the City as depicted on Exhibit “A-1”.

“City Representative” means the individual or individuals authorized by the City to act and coordinate with TCS on behalf of the City with respect to the matters described in this Agreement.

“Claims” is defined in Section 10.2.

“Completion” or **“Complete”** means, with regard to development of the Culver Boulevard Access Improvements, the satisfaction of each of the following events: (i) the City shall have determined that development and construction of the Culver Boulevard Access Improvements have been completed, in each case in substantial compliance with the Public Improvement Agreements, and the Approved Plans (ii) a certificate of occupancy (or equivalent) shall have been issued for the

Culver Boulevard Access Improvements and the other Public Improvements to the extent required by the City as a condition to commencing use of the Culver Boulevard Access Improvements, (iii) provided that the City promptly commences and diligently pursues such action following the satisfaction of the event described in (i) above, the City has officially accepted ownership of the Public Improvements or any portion thereof in the manner prescribed by the City for acceptance of public improvements to the extent such official acceptance is required by the City, (iv) a Notice of Completion for the Culver Boulevard Access Improvements has been recorded in the Official Records, (v) the time for Parcel B Developer's contractor, suppliers and subcontractors to file a claim pursuant to Civil Code Sections 8412 and 8414 in connection with the Public Improvements has expired or Parcel B Developer has delivered to the City unconditional lien releases for its contractor, suppliers and subcontractors, and any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against.

“Conceptual Culver Boulevard Access Improvements Design” is defined in Recital F.

“Construction Contract” means the construction contract approved by the City and thereafter awarded by the Parcel B Developer to the Contractor for construction of the Public Improvements, including the Culver Boulevard Access Improvements, in accordance with the procedures and meeting the requirements set forth in the Development Contract. The Construction Contract shall include a GMAX Price for the Culver Boulevard Access Improvements.

“Construction Cost” means the actual cost to the Parcel B Developer without mark up for constructing the Culver Boulevard Access Improvements on the City Parcel in accordance with the Plans, including labor, material and equipment costs, and costs of obtaining and maintaining payment and performance bonds and insurance, established in the Construction Contract approved by the City, but specifically excluding the Management Fee. Such Construction Cost will include the payment of prevailing wages in accordance with applicable law.

“Construction Costs Escrow” is defined in Section 6.1.1.

“Contractor” means the licensed general contractor selected by Parcel B Developer and approved by the City for construction of the Public Improvements, including the Culver Boulevard Access Improvements in accordance with the requirements of the Development Contract.

“Culver Boulevard Access Improvements” means that portion of the Public Parking Improvements to be located on and within the City Parcel as described by the Concept Culver Boulevard Access Improvements Design depicted on Exhibit “C” (which is the same as the City-approved Construction Drawings as the “Culver Blvd. Access Improvements” attached to and forming a part of the Development Contract approved by the City Council on December 21, 2015) and comprising the ramp, access, roadway, structural and other related improvements providing ingress and egress to and from Culver Boulevard through the City Parcel to a potential access point at the TCS Parcel and to an access point at Parcel B to connect such improvements to the remaining Parking Improvements, together with gating, signage and subterranean access road improvements on the City Parcel, and to the extent required for the construction of the Culver Boulevard Access Improvements, off-site improvements related to the Ramp including, without limitation, any measures to address ramp ingress/egress requirements such as traffic signals, median improvements,

streetlights and utility relocations, including but not limited to, storm drains, sewers, water, electricity and telephone, all in accordance with the Approved Plans. The Ramp Cover Enhancements shall be excluded from the definition of Culver Boulevard Access Improvements.

“Currently Estimated Modification Costs” is defined in Section 6.1.3.

“Days” means calendar days and the statement of any time period herein shall be calendar days and not working or business days, unless otherwise specified. With respect to any provision in this Agreement that places an obligation on the City or involves noticing the City within a certain number of business days, a general business day on which the Culver City City Hall is closed shall not constitute a business day in that provision for purposes of calculating business days.

“DDA” means that certain Disposition and Development Agreement by and between City and Parcel B Developer dated as of January 31, 2012 as amended by eleven (11) letter agreements.

“Default” is defined in Section 13.1.1.

“Determination Date” means the later of (a) September 1, 2016, (b) the date of issuance by the City of a building permit for the Parcel B Improvements or (c) thirty (30) Days following the issuance by the Contractor of the GMAX Price pursuant to the executed Construction Contract.

“Deposit Amounts” is defined in Section 6.1.4.

“Develop and Cause Construction” means, with respect to any component of the Public Improvements, including the Culver Boulevard Access Improvements, that the Parcel B Developer shall develop and cause a qualified and licensed contractor to construct such component. As used in the immediately preceding sentence, “cause” shall include, without limitation, the Parcel B Developer taking all necessary steps and signing all necessary documents to effectuate such construction activities to be performed by duly licensed construction contractors or to otherwise be done in compliance with all applicable contractor licensing requirements of the State of California.

“Development Contract” is defined in Recital D.

“Disbursement Procedures” is defined in Section 6.4.1.

“Earmark Accounts” is defined in Section 6.1.1.

“Earmark Funds” is defined in Section 6.1.1.

“Effective Date” means the last date on which this Agreement is signed by both the City and TCS.

“Environmental Law(s)” means, as amended from time to time, (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Article 9 or Article

11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) Section 311 of the Clean Water Act (33 U.S.C. Sec.1317), (vii) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec.6901 et seq. (42 U.S.C. Sec.6903) or (viii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 6901 et seq.

“Escrow Agent” means the escrow agent of the Escrow Company.

“Escrow Company” means First American Title Company acting out of its Los Angeles, California office located at 777 South Figueroa Street; Suite 400, Los Angeles, California 90017 or such other escrow company as designated by the City Manager and Parcel B Developer pursuant to the DDA and the Development Contract.

“Event of “Default” is defined in Section 13.1.3.

“Final Cost” means the final Actual Modification Costs for the Culver Boulevard Access Improvements as approved and determined by the City and TCS after deducting any and all credits and other reductions therefrom due to TCS under this Agreement.

“Final Culver Boulevard Access Improvement Design” is defined in Section 3.1.

“GMAX Price” means a separate guaranteed maximum price under the Construction Contract for the Culver Boulevard Access Improvements.

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, orders, decrees, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, the environment, labor relations, prevailing wage, notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including all Environmental Laws and Labor Laws) of the United States, the State of California, the County of Los Angeles, the City and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Parcel B Developer or the Site.

“Grading Plans” means the grading plans for the Public Improvements approved by the City in accordance with the DDA.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, asbestos; polychlorinated biphenyls (whether or not highly chlorinated); radon gas; radioactive materials; explosives; chemicals known to cause cancer or reproductive toxicity; hazardous waste, toxic substances or related materials; petroleum and petroleum product, including but not limited to, gasoline and diesel fuel; those substances defined as a “Hazardous Substance”, as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., or as “Hazardous Waste” as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; an “Extremely Hazardous Waste,” a “Hazardous Waste” or a “Restricted Hazardous Waste”, as defined by The Hazardous Waste Control Law under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to Section 25140 of the

California Health and Safety Code; a “Hazardous Material”, “Hazardous Substance,” “Hazardous Waste” or “Toxic Air Contaminant” as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under Sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code; “Oil” or a “Hazardous Substance” listed or identified pursuant to 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; a “Hazardous Waste,” “Extremely Hazardous Waste,” or an “Acutely Hazardous Waste” listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1-66261.126; chemicals listed by the State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code; a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, materially damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or government agency requires in order for the property to be put to the purpose proposed by this Agreement; any material whose presence would require remediation pursuant to the guidelines set forth in the California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.; asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; any radioactive material including, without limitation, any “source material,” “special nuclear material,” “by-product material,” “low-level wastes,” “high-level radioactive waste,” “spent nuclear fuel” or “transuranic waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code, Sections 25800 et seq.; hazardous substances regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 et seq., or the California Occupational Safety and Health Act, California Labor Code, Sections 6300 et seq.; and/or regulated under the Clean Air Act, 42 U.S.C. 7401 et seq. or pursuant to the California Clean Air Act, Sections 3900 et seq. of the California Health and Safety Code; or any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to human health or the environment.

“Hazardous Materials Activity” means any actual, proposed or threatened storage, holding, existence or suspected existence, release or suspected release, emission, discharge, generation, processing, abatement, removal, disposition, treatment, handling or transportation of any Hazardous Materials from, under, into, on, above, or across the Site or surrounding property or any other use of or operation on the Site or the surrounding property in violation of Environmental Laws that creates a risk of Hazardous Materials contamination of the Site.

“Indemnified Parties” is defined in Section 11.1.

“Initial Credit” is defined in Section 6.4.2.

“Initial Deposit” is defined in Section 6.1.1.

“Initial Share Amount” is defined in Section 6.4.2.

“Labor Laws” means any applicable federal, state and local labor standards which such standards shall include, without limitation, and if applicable: (a) the payment of not less than the wages prevailing in the locality as determined by the Secretary of Labor pursuant to the Davis Bacon Act (40 U.S.C. 276a to 276a-5), to all laborers and mechanics employed in the development of any part of the Project; (b) the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 332); (c) Labor Code Section 1720 *et seq.*, including, without limitation, the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code Sections 1776 and 1812, and employment of apprentices in accordance with Labor Code Section 1777.5; and (d) applicable requirements of Senate Bill No. 854 signed into law on June 20, 2014.

The Parties acknowledge that the definition of Labor Laws in the Development Contract includes the following language:

“Any work performed pursuant to this Agreement (the “work”) shall comply with the requirements of Labor Code Section 1720 *et seq.*, including without limitation the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code Sections 1776 and 1812, employment of apprentices in accordance with Labor Code Section 1777.5, and compliance with applicable requirements of Senate Bill No. 854 signed into law on June 20, 2014. In all bid specifications for any such public work, and contracts and subcontracts for that work, [Parcel B] Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract for any such public work must contain the following provision:

It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of Labor Code Section 1775 and the payroll record keeping requirements of Labor Code Section 1776.

The provisions of Labor Code Sections 1775 and 1813 regarding penalties to be paid upon the failure to pay prevailing wage and for failure to comply with the hours laws respectively shall be enforced. As set forth in Labor Code Section 1810, eight (8) hours labor constitutes a legal day’s work. In accordance with the provisions of Labor Code Section 3700, [Parcel B] Developer is required to secure payment of compensation to its employees. [Parcel B] Developer shall include or cause to be included in every contract for the Public Parking Improvements and the Town Plaza Expansion Improvements: (a) a statement that in accordance with the provisions of Labor Code Section 3700, the contractor will be required to secure the payment of compensation to its employees; and (b) copies of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815.”

“Labor Requirements” is defined in Section 11.4.

“Losses and Liabilities” means and includes all claims, causes of action, liabilities (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings,

regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including, without limitation, attorneys' fees and costs, court costs, interest or defense costs, and expert witness fees), losses, damages (including penalties, fines and monetary sanctions), injuries, expenses, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney's fees and costs actually incurred by the indemnified party and if permitted by the terms of the indemnity, with respect to counsel of its choice, whether to property or to person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent.

"Management Fee" means the fee to be paid to Parcel B Developer by the City for all construction management services, including construction observation and administration and Parcel B Developer overhead, performed by Parcel B Developer or third parties under contract with Parcel B Developer in conjunction with the activity necessary to Develop and Cause Construction of the Culver Boulevard Access Improvements pursuant to the DDA and the Development Contract.

The Parties acknowledge that the definition of Management Fee in the Development Contract includes the following language:

"The Management Fee shall be equal to the sum of the total costs, hard and soft, of 4% of the Public Improvements design and construction costs as such costs are calculated pursuant to the Reimbursement Agreements and this Agreement and paid in accordance with the Disbursement Procedures and this Agreement; provided, however, that as to the portion of the Management Fee allocable to the Culver Boulevard Access Improvements such Management Fee shall not exceed the amount of Two Hundred and Four Thousand Dollars (\$204,000). The payment of the Management Fee will be due and payable by the City to the [Parcel B] Developer in monthly installments based upon the percentage of completion of the work on the Public Improvements. The portion, if any, of the Management Fee in fact paid to [Parcel B] Developer in connection with a reimbursement to [Parcel B] Developer under any of the Reimbursement Agreements shall be deducted from any overlapping Management Fee payable under [the Development Contract] so that, in no event, shall there be any double payment of the same portion of the Management Fee."

"Meet and Confer" or **"Meeting and Conferring"** means that the City and TCS or such representatives as each may designate, shall have the mutual obligation personally to meet and confer reasonably and in good faith promptly upon request by either Party and continuing for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters prior to the adoption by the City of a position with respect to the matter at issue.

"Notice" means a notice in the form prescribed by Section 14 of this Agreement.

"Notice of Completion" means a valid notice of completion as defined in California Civil Code Section 8180 et seq.

"Official Records" means the official location for recording of documents established by the County of Los Angeles.

"Parcel B" means the approximately 1.16 acres of land in Culver City, California as depicted on Exhibit "A-2" being acquired by Parcel B Developer for the development of, among

other things, the Parcel B Improvements and certain private parking improvements.

“Parcel B Developer” means Combined/Hudson 9300 Culver LLC, a Delaware limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns as permitted in accordance with the DDA.

“Parcel B Improvements” is defined in Recital E.

“Parking Improvements” means collectively, the private parking improvements to be constructed by Parcel B Developer on Parcel B and the Public Parking Improvements.

“Party” means either TCS or City.

“Parties” means both TCS and City.

“Payment Bond(s)” means the bond or bonds issued by a surety authorized to do business in the State of California that guarantees the payment in full of the all Subcontractors, surveyors, engineers, laborers, material suppliers and other Persons performing Work.

“Performance Bond(s)” means the bond or bonds issued by a surety authorized to do business in the State of California and guaranteeing due and punctual performance and completion (within the respective times provided in the Public Improvement Agreements) in accordance with the applicable Plans that specifically describe the Work to be performed in sufficient detail for the issuance of such Performance Bond, and including all obligations of the Contractor, Subcontractors and other Persons with respect to the Work covered by such bond.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

“Plans” means any and all final construction, architectural, design, landscaping and grading plans, drawings and specifications prepared for the Culver Boulevard Access Improvements and approved by the City, including the Building Permit/Construction Drawings, and which are consistent with or a logical progression of the Conceptual Culver Boulevard Access Improvement Design, unless otherwise approved by City and, to the extent required by Section 3.3, TCS.

“Public Improvement Agreements” is defined in Recital D.

“Public Improvements” means collectively, the Public Parking Improvements (including the Culver Boulevard Access Improvements comprised therein) and the Town Plaza Expansion Improvements.

“Public Improvements Budget” means the sources and uses of City funds for development and construction of the Public Improvements under the Public Improvement Agreements (but excluding funds budgeted for planning, design, and construction observation services to be paid under the Reimbursement Agreements and for any design phase contingency) as set forth in Exhibit “G” attached to the Development Contract, which Exhibit includes in its entirety the Total Costs Budget attached to this Agreement as Exhibit “F”. The Public Improvements Budget shall provide separate maximum construction amounts and separate maximum contingency amounts budgeted

and allocated for development and construction of each of (i) the Public Parking Improvements but excluding the Culver Boulevard Access Improvements, (ii) the Town Plaza Expansion Improvements, and (iii) the Culver Boulevard Access Improvements.

“Public Parking Improvements” means certain subterranean public parking improvements, including the driveway and ramp to provide access to the Parking Improvements, which includes the Culver Boulevard Access Improvements, to be located on and within the City Parcel and be owned by the City, certain related off-site improvements to be owned by the City, and certain subterranean public parking spaces and related access improvements to be located within the Parcel B with irrevocable and perpetual easement rights of use and access by the City pursuant to a reciprocal easement agreement between the City and Parcel B Developer, which Public Parking Improvements the Parcel B Developer shall Develop and Cause Construction to Completion on and within and adjacent to the Site in accordance with the Public Improvement Agreements and the approved plans therefor, including the Plans.

“Ramp” is defined in Recital F.

“Ramp Cover Enhancements” means the portion of the Town Plaza Enhancement Improvements comprising the finishes on the cover constructed upon and above the Ramp and related landscaping, hardscaping and trellis work, which shall be expressly excluded from the definition of Culver Boulevard Access Improvements.

“Release” (with respect to Hazardous Materials) means any releasing, or threat of releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping into the environment.

“Reimbursement Agreements” means collectively, the Public Improvements Reimbursement Agreement, the Town Plaza Reimbursement Agreement and the Reimbursement Agreement (Past Costs).

“Representatives” means the agents, staff, employees, members, independent contractors, affiliates, principals, shareholders, officers, officials, council members, board members, committee members, and planning and other commissioners, partners, attorneys, accountants, representatives, and staff of the referenced entity and the predecessors, heirs, successors and assigns of all such Persons.

“Right of Entry” is defined in Section 10.1.

“Shared Overage Amount” is defined in Section 6.4.2.

“Shared Overage Amount Credit” is defined in Section 6.4.2.

“Shared Use Agreement” is defined in Section 9.2.

“Significant Increase” means with respect to any request for Change Order made by City or by or through Parcel B Developer or any Contractor, either (a) an increase of \$50,000 for any individual change, or (b) a cumulative change of \$250,000 over the Initial Deposit.

“Site” is defined in Recital C.

“State” means the State of California.

“SUA Date” is defined in Section 9.2.

“Subcontractor” means any Person retained to perform a portion of the Work that does not have a direct contractual relationship with the Parcel B Developer and shall include entities retained by a Subcontractor at any tier to perform a portion of the Work under the Construction Contract.

“TCS” means The Culver Studios Owner LLC, a Delaware limited liability company and its successors and assigns.

“TCS Credit” means the credit to TCS against the actual costs to the City of the Culver Boulevard Access Improvements in an amount equal to Five Hundred Eighty Thousand Dollars (\$580,000), reflecting the third party soft and hard costs which were to be incurred by the City and/or the Parcel B Developer for the originally contemplated exit driveway from the Parking Improvements providing egress to West Washington Boulevard and the originally contemplated Washington Place right-of-way ramp, as described in the DDA.

“TCS Parcel” is defined in Recital B.

“TCS Parties” is defined in Section 10.1.

“TCS Representative” means the individual or individuals authorized by TCS to act and coordinate with the City on behalf of TCS with respect to the matters described in this Agreement.

“Total Costs” means the following costs with respect to the Culver Boulevard Access Improvements: (a) the actual cost of professional services directly related to the design and construction of the Culver Boulevard Access Improvements, which services are provided pursuant to any professional services agreement approved by the City, including design, surveying, engineering, inspection, materials testing and similar professional services, and insurance required in connection with the design and construction of the Culver Boulevard Access Improvements; (b) Construction Costs; (c) any fees to obtain permits, licenses or other necessary governmental inspections, approvals and reviews for the Culver Boulevard Access Improvements; (d) the Management Fee; (e) costs of obtaining and maintaining Payment Bonds and Performance Bonds and insurance as required by the Public Improvement Agreements in connection with construction of the Culver Boulevard Access Improvements, but only as to the component thereof allocable to the Culver Boulevard Access Improvements allocated in a commercially reasonable manner provided, however, that each item of cost shall include only amounts (i) approved by the City in accordance with the provisions of the Public Improvement Agreements and this Agreement after implementation of the Meet and Confer provisions of this Agreement, if applicable, and (ii) actually paid or required to be paid by the City to Parcel B Developer or other third parties in connection with the Culver Boulevard Access Improvements.

“Total Costs Cap” is defined in Section 5.6.1.

“Town Plaza Expansion Improvements” means certain public improvements relating to the expansion of the Town Plaza Project (as defined in the DDA), which shall be located on the City Parcel adjacent to the Parcel B Improvements, be owned by the City and shall include the Ramp

Cover Enhancements. The Town Plaza Expansion Improvements shall exclude the Culver Boulevard Access Improvements.

“**Tunnel**” is defined in Recital F.

“**Work**” means the construction, installation, maintenance and services required by the Plans, and includes all labor, services, equipment or materials provided or to be provided by Parcel B Developer to fulfill Parcel B Developer’s obligations with respect to Culver Boulevard Access Improvements under the Public Improvement Agreements.

2. RELATIONSHIP TO CITY PUBLIC IMPROVEMENTS AGREEMENTS

2.1 The Parties acknowledge and agree that design of the proposed Public Parking Improvements approved by the City as of the Effective Date of this Agreement includes certain access improvements from Culver Boulevard and Main Street through the City Parcel to the TCS Parcel (more specifically identified above as the “**Culver Boulevard Access Improvements**”), which improvements were requested by TCS to be constructed as part of the Parking Improvements on the City Parcel in order to provide more efficient access for TCS, the City and the Parcel B Developer and their respective users. The Culver Boulevard Access Improvements are included as part of the Public Parking Improvements in the Public Improvement Agreements pursuant to which the City and Parcel B Developer will Develop and Cause Construction of the Culver Boulevard Access Improvements. The City and TCS have agreed to provide for access easements with respect to such improvements in accordance with the provisions of this Agreement.

2.2 The City acknowledges that in entering into this Agreement, TCS is relying upon City’s agreement to exercise of rights granted to the City by Parcel B Developer with respect to, among other things: (a) review and approval of the scope of work, budget, change orders, design, and other matters related to the Culver Boulevard Access Improvements as set forth in the versions of the Reimbursement Agreements approved by the City Council on December 21, 2015 and the Development Contract attached thereto, and (b) the requirement set forth in the Public Improvements Reimbursement Agreement that Parcel B Developer and City negotiate and enter into a Shared Use Agreement. City agrees that in order to effectuate the purposes of this Agreement, it shall exercise and enforce all rights granted to it by the Public Improvement Agreements and as a third party beneficiary under the Construction Contract, for the benefit of the Parties.

2.3 Prior to deposit of the Initial Deposit, TCS shall have a right to review the Public Improvement Agreements to confirm that (a) the executed Reimbursement Agreements are consistent in all material respects with the terms of such agreements approved by the City Council on December 21, 2015 and that the form of Development Contract approved by the City Council on December 21, 2015 is required by the DDA to be executed by the City and Parcel B Developer at the close of escrow for Parcel B, and (b) the Culver Boulevard Access Improvements are included in the “Public Improvements” as defined in the DDA.

2.4 The City shall not (a) materially modify, amend or terminate, or permit the termination of any of the Reimbursement Agreements from the form approved by the City Council on December 21, 2015, (b) permit the material amendment or modification of the form of

Development Contract approved by the City Council on December 21, 2015, and upon execution thereof, the material amendment, modification or the termination of the Development Contract by City or Parcel B Developer or (c) enter into or permit Parcel B Developer to enter into any agreement or other instrument materially modifying or negating the rights of City or releasing Parcel B Developer from any of its obligations under the Public Improvement Agreements without obtaining the prior written consent of TCS to such amendment, modification, termination, instrument or agreement, which consent shall not be withheld by TCS unless such modification, amendment, termination, instrument or agreement: (1) was “material”, in that it materially affected in a manner adverse to TCS any of the provisions of the Public Improvement Agreements relating to or affecting in any manner the Culver Boulevard Access Improvements or the Shared Use Agreement or the City’s approval or negotiation rights with respect to same, including by reducing the rights of the City or the obligations of Parcel B Developer thereunder, or (2) (x) would have a material adverse effect upon TCS’s rights under this Agreement (including its right to rely upon the enforcement of the DDA in its current form or the other Public Improvement Agreements in form approved by the City Council on December 21, 2015) and/or construction of the Culver Boulevard Access Improvements, (y) would cause or result in a Significant Increase in Actual Modification Costs to TCS or (z) would result in an exceedance of the Total Costs Cap.

2.5 Without limiting the generality of the foregoing, the City hereby covenants and agrees that it will take all necessary steps to exercise the following rights, including any approval rights granted thereunder, to the maximum extent permitted by the Public Improvement Agreements, so as to effectuate the provisions of this Agreement and where required by this Agreement shall Meet and Confer with or, to the extent required by Section 3.3, shall obtain the consent of TCS prior to undertaking or refraining from undertaking any action with respect to the following:

2.5.1 The right to review and approve or disapprove the Final Culver Boulevard Access Improvements Design, the Building Permit/Construction Drawings and the Plans (as part of its overall approval of the Public Parking Improvements);

2.5.2 The right to review and approve the Contractor selected by Parcel B Developer for construction of the Public Improvements based on review of not less than three general contractor bids for the construction and development of the Public Improvements as obtained and presented by the Parcel B Developer;

2.5.3 The right to approve Change Orders that involve Significant Increases in Actual Modification Costs and to approve allocations to the Culver Boulevard Access Improvements of consultant costs, utility relocation costs and Hazardous Material remediation costs; and

2.5.4 The right to obligate the Parcel B Developer to enter into a Shared Use Agreement with the City and TCS which shall be, to the extent provided in the DDA and the Public Improvements Reimbursement Agreement, a condition precedent for the benefit of the City for the conveyance of Parcel B to the Parcel B Developer, which right City covenants not to waive without the consent of TCS to the extent the City has such right under the DDA and the Public Improvement Reimbursement Agreement, unless TCS has failed to make the Initial Deposit.

2.6 Enforcement of Rights. The City hereby covenants and agrees to enforce its rights and obligations under the Public Improvement Agreements so as to implement this Agreement in accordance with its terms, including by promptly exercising its rights and remedies under the Public Improvement Agreements in the event of a breach thereof by Parcel B Developer, including as required by Section 12.5.

2.7 Pay Amounts Due. Except in the event of Default by TCS with respect to payment of the Deposit Amounts, the City shall timely pay all sums due to Parcel B Developer for the Culver Boulevard Access Improvements in accordance with the requirements of the Public Improvement Agreements, including payment of all Actual Modification Costs from amounts payable from the Deposit Amounts as described in this Agreement.

2.8 Additional Covenants. The City shall (a) cooperate with TCS in TCS's pursuit of any rights it may have directly against any Person with respect to the Culver Boulevard Access Improvements, the Work or this Agreement and (b) use its good faith commercially reasonable efforts to (i) expeditiously seek to enforce its franchise rights with Southern California Edison in an attempt to eliminate or reduce utility relocation costs and (ii) effectuate the purposes of this Agreement.

3. **DESIGN OF CULVER BOULEVARD ACCESS IMPROVEMENTS**

3.1 The Plans, including the Construction Drawings for the Culver Boulevard Access Improvements Design ("**Final Culver Boulevard Access Improvements Design**") shall be a logical progression from the Conceptual Culver Boulevard Access Improvements Design, and shall be subject to the right of review and approval (a) by the City, and to the extent required by Section 3.3, TCS, of design and (b) by the City (subject to the Meet and Confer provisions of this Agreement) of construction costs and other oversight rights of the City for the Public Parking Improvements set forth in the DDA and the Parcel B Public Improvement Agreements and shall be approved by the City pursuant to the procedures of the Public Improvement Agreements. TCS shall be provided with a reasonable opportunity prior to approval by the City of the Plans or any earlier iterations thereof, including Schematic Drawings, to review such documents.

3.2 **Preparation of Plans.**

3.2.1 The City shall cause the Parcel B Developer to cause the Plans for Culver Boulevard Access Improvements to be prepared by licensed engineers in the State in a competent, professional and satisfactory manner in accordance with (a) all standards prevalent in the industry and (b) all Governmental Regulations in effect at the time the Plans are prepared. The City shall provide TCS with two (2) paper copies of the complete set of Plans for Culver Boulevard Access Improvements, together with an electronic copy of the Plans in PDF and AutoCad format.

3.2.2 The Construction Drawings for the Public Improvements shall include sufficient detail and specifications as necessary to allow separate or segregated computation and documentation of the costs to Develop and Cause Construction and completion of each of the following Public Improvement components: the Public Parking Improvements (excluding the Culver Boulevard Access Improvements), the costs of the Town Plaza Expansion Improvements,

and the costs of the Culver Boulevard Access Improvements, as each is calculated and determined pursuant to and in accordance with the Public Improvement Agreements.

3.3 **Design Approval Rights of TCS.** Unless the City and, to the extent TCS has the right to approve such change under the immediately following sentence, TCS otherwise approve in writing, the final Plans for the Culver Boulevard Access Improvements shall reflect the logical evolution of that certain Concept Design for the Culver Boulevard Access Improvements approved by the City Council of the City on December 21, 2015. Such TCS right to approve shall be limited to apply only (a) to any changes to the scope of the Culver Boulevard Access Improvements Design that are not a logical progression from the City Council approved Concept Culver Boulevard Access Improvements Design or (b) in the event any of the following occur: (i) there is more than a de minimis change in the location of the Ramp and/or Tunnel of the Culver Boulevards Access Improvements, (ii) the proposed change would have a material impact to the look, quality, costs, or operations of Culver Boulevard Access Improvements, or (iii) the proposed change would result in a Significant Increase to the Actual Modification Costs or would cause an exceedance of the Total Costs Cap.

3.4 **Modifications to Plans.** Following completion and approval thereof by the City, the City shall exercise its rights to approve a modification to the Plans only after (i) the City obtains any consent of TCS which may be required by Section 3.3 and (ii) the City Meeting and Conferring with TCS. The Costs of any modification to the Plans shall be solely borne by the Parcel B Developer if such modification reflects a Parcel B Developer elective modification or solely borne by the City if such modification reflects a City elective modification.

4. **CONSTRUCTION OF CULVER BOULEVARD ACCESS IMPROVEMENTS**

4.1 **Covenants of the City.** The City makes the following covenants for the benefit of TCS:

4.2 **Completion of Culver Boulevard Access Improvements.** The City will (a) use its reasonable and diligent efforts to do all things that may be lawfully required of it in order to cause the Parcel B Developer to cause the Culver Boulevard Access Improvements to be completed in accordance with the Public Improvement Agreements, (b) shall cause the Parcel B Developer to Develop and Cause Construction of the Culver Boulevard Access Improvements in accordance with the Public Improvement Agreements, (c) shall use commercially reasonable efforts to enforce the obligation of Parcel B Developer to comply with the Construction Contract and its service contracts including with respect to payment of consultants, the Contractor, Subcontractors vendors, material suppliers and other Persons performing any portion of the Work for materials and labor in a timely manner for reasons other than Default by TCS under this Agreement and (d) shall enforce all of its rights under the Public Improvement Agreements for the purpose of causing the Parcel B Developer to cause Completion of the Culver Boulevard Access Improvements in accordance with the Public Improvement Agreements.

4.2.1 **Compliance with Laws.** In carrying out its obligations under this Agreement and in causing the Parcel B Developer to Develop and Cause Construction of the Culver Boulevard Access Improvements, the City shall cause the Parcel B Developer to comply with all applicable Governmental Requirements, including Labor Requirements.

4.2.2 Payment Requests. The City covenants that it will not request any deposit or payment from TCS under this Agreement for any improvements that are not part of the Culver Boulevard Access Improvements or not otherwise due under the terms of this Agreement.

4.2.3 Financial Records. Until the date that is four years following the Completion of the Culver Boulevard Access Improvements, the City covenants to maintain and to cause Parcel B Developer to maintain proper books of record and account for the Culver Boulevard Access Improvements and all costs related thereto for which the City requires payment from TCS and agrees to make such records available for inspection by TCS within a reasonable time after TCS submits a written request to the City requesting that such records be made available for inspection.

4.2.4 Cause Compliance by Parcel B Developer. City shall cause the Parcel B Developer to comply with and, at such intervals and in such form as the City may reasonably require, provide proof to the City that the following requirements have been satisfied as to the Culver Boulevard Access Improvements, the Plans and/or the Work, as applicable, which information or proof received by the City shall be provided to TCS at the request of TCS:

(a) Compliance with Contract Requirements. The compliance with the contracting provisions of the Public Improvement Agreements, including with respect to the form and extent of bidding required thereunder and with respect to the form and content of the Construction Contract as set forth in Section 2.1 of the Development Contract.

(b) Construction Management. The obligations of the Parcel B Developer to (i) manage, coordinate and administer all aspects of the development and construction of the Public Improvements, including all aspects of the Construction Contract and other applicable Parcel B Developer contracts approved by the City for the development of the Public Improvements in accordance with their terms, including as set forth in Section 2.1 and 2.2 of the Development Contract and (ii) coordinate the Work of the Contractor and all other Parcel B Developer and City consultants and contractors involved in the construction of the Public Improvements so as to achieve the integrated and coordinated development of the Public Improvements in compliance with the approved Plans.

(c) Bidding Requirements. Award by Parcel B Developer of the Construction Contract for the construction of the Culver Boulevard Access Improvements in the manner required by law utilizing a form of Construction Contract approved by the City which incorporates the required provisions of the Development Contract and the terms and conditions required to be included by the Development Contract, including a GMAX Price for the Culver Boulevard Access Improvements, and which shall not include any provisions that diminish the rights of the City or the obligations of Contractor or any Subcontractors, and (b) cause Parcel B Developer to (i) require all bidders to specify the cost of Culver Boulevard Access Improvements separately, and (ii) require in any Construction Contract awarded to the successful bidder that all progress payment and final payment applications submitted by the Contractor break out separately the costs to be charged for constructing Culver Boulevard Access Improvements in accordance with the requirements imposed upon Parcel B Developer under the Development Contract and upon Contractor under the Construction Contract, each as approved by the City.

(d) Quality and Care. The City shall use commercially reasonable

efforts to cause Parcel B Developer to comply with Parcel B Developer's obligations under the Public Improvement Agreements including Parcel B Developer's obligation to cause all Contractors and Subcontractors to perform the Work and conduct all operations with respect to the Work in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified Persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices in appropriate to the activities undertaken and in a manner that complies with the requirements of any manufacturers' warranties applicable to equipment or materials included in any of the Culver Boulevard Access Improvements. Unless otherwise specified in the Plans, all materials shall be new and of good quality and City shall, if requested by TCS, cause Parcel B Developer to furnish satisfactory evidence to the City as to the kind and quality of materials.

(e) Public Works Contract Requirements; Prevailing Wages. To actively enforce the obligation of City's consultants and Parcel B Developer under the Public Improvement Agreements and the Contractor and each Subcontractor, vendor, material supplier and consultant under the Development Contract, Construction Contract and related contracts to perform all Work in accordance with Labor Requirements, including as set forth in [Section 2.1(l)(16) and (19)] of the Development Contract and the City shall actively monitor such compliance.

(f) Compliance With Law. To comply and to cause each Contractor and Subcontractor and other Person performing any portion of the Work to comply with all Governmental Requirements in connection with construction of the Culver Boulevard Access Improvements and performance of the Work.

(g) Liens and Stop Notices. (i) To keep the TCS Parcel free from any and all liens and to cause the City, Parcel B Developer, the Contractor and the City Parcel to be free from any and all stop notices relating to the Work and the Culver Boulevard Access Improvements and to obtain conditional and unconditional lien releases in accordance with applicable provisions of the California Civil Code from each Contractor, Subcontractor, vendors, material supplier and other Persons performing any portion of the Work and (ii) to cause to be removed or bonded against (with bonds satisfying California statutory requirements), any and all mechanic's liens, stop notices and bonded stop notices that are recorded or served in connection with the construction of any Culver Boulevard Access Improvements or other Work against the TCS Parcel.

(h) Notice of Completion. Within fifteen (15) calendar days after the acceptance of the Culver Boulevard Access Improvements by the City in accordance with the terms of the Development Contract, the City shall cause Parcel B Developer to file a Notice of Completion in the Official Records.

4.2.5 Change Orders. The City shall require that all Change Orders must be approved in advance by the City, except where such approval is expressly exempt under the terms of the Development Contract.

4.2.6 Repairs. The City shall repair, or cause Parcel B Developer to repair, any damage caused by City, Parcel B Developer and its Contractors, Subcontractor and consultants to

the Culver Boulevard Access Improvements, or any portion of the TCS Parcel at Parcel B Developer's sole cost and without use of Deposit Amounts.

4.2.7 Insurance. The City shall require that Parcel B Developer, the Contractor and each of its Subcontractors engaged to perform Work on the Culver Boulevard Access Improvements provide proof of insurance coverage satisfying the requirements of the Public Improvement Agreements throughout the term of the construction of the Culver Boulevard Access Improvements. The City shall not reduce or eliminate the insurance coverages required by the Public Improvement Agreements, including by reducing the amounts of coverage, increasing the permitted self-insured retention or deductibles or reducing any requirements relating to the insurance carriers, ratings or types of insurance required without the prior written approval of the City, in its sole discretion. In no event shall Deposit Amounts be required or used to pay for any cost, Loss or Liability incurred by any Person including costs for repair or replacement of Work damaged or destroyed in whole or in part which otherwise would have been covered by required insurance but which was not due to a failure to acquire or lapse in required insurance under the Public Improvement Agreements, the Construction Contract or any other contracts for the Work.

4.2.8 Inspection. At the request of TCS, the City shall provide representatives of TCS with the opportunity to review the Plans and the Work at normal work hours during the period of construction for the purpose of ensuring compliance with this Agreement, so long as the TCS representatives comply with all safety rules, do not interfere with the Work and, if requested by Parcel B Developer, are escorted by a representative of Parcel B Developer.

5. **ALLOCATION OF COSTS; CHANGES TO DESIGN AND CONSTRUCTION COSTS; VALUE ENGINEERING**

5.1 Payment for Services. Services performed by the consultants of Parcel B Developer that are attributable to the Culver Boulevard Access Improvements will not be based on proportionate share and shall be separately identified in invoicing prepared by Parcel B Developer with specific cost amounts delineated for the Culver Boulevard Access Improvements.

5.2 Changes to Construction Costs and Other Total Costs. TCS acknowledges that the Actual Modification Costs may change as the Final Culver Boulevard Access Improvements Design and Plans are completed and bids obtained and a GMAX Price is established under the Development Contract for the Culver Boulevard Access Improvements. Notwithstanding the foregoing, the City hereby agrees as follows:

5.2.1 GMAX Price. In the event that the GMAX Price proposed by all contractors providing bids is in an amount exceeding ten percent (10%) of the hard cost component of the Currently Estimated Modification Costs or results in a Significant Increase over the Currently Estimated Modification Costs, the parties shall Meet and Confer to make commercially reasonable efforts consistent with the approved Plans to value engineer the Culver Boulevard Access Improvements to within ten percent (10%) of the estimated hard cost component depicted on Exhibit "F". In the event that the GMAX Price proposed by all contractors providing bids, together with all other then-expended or otherwise reasonably foreseeable Total Costs, exceeds the Total Costs Cap, the provisions of Section 5.6 shall apply.

5.2.2 Change Orders. Once a GMAX Price is established, Construction Costs shall only be increased above the established GMAX Price by Approved Change Order. Following approval of the Construction Contract and the establishment of the GMAX Price, City will promptly notify TCS in the event of any Change Order request associated with the Culver Boulevard Access Improvements Work made by Parcel B Developer. To the extent the requested Change Order (individually, or in connection with other requested Change Orders) represents a Significant Increase, the Parties will Meet and Confer prior to approval of such Change Order(s). If such Change Order request occur before the Determination Date and would result in an exceedance of the Total Costs Cap, the provisions of Section 5.6 shall also apply.

5.2.3 Exclusions from Construction Costs. Construction Costs shall not include the costs of any Change Order that reflects a Parcel B Developer elective change order, but may, in compliance with the TCS approval rights under Section 3.3 (to the extent the change order relates to design changes) or the Meet and Confer rights of TCS hereunder, as applicable, include as to any Approved Change Order initiated by the Contractor or other Approved Change Order established by neutral determination pursuant to the provisions of the Construction Contract, that portion of the Approved Change Order cost properly allocable to the City for the Culver Boulevard Access Improvements in accordance with the cost allocation procedures established in the Development Contract.

5.2.4 Meet and Confer Regarding Escalation in Costs. If at any time during the design and construction of the Culver Boulevard Access Improvements: (a) there is a proposed increase in Total Costs that (i) would result in an exceedance of the Total Cost Cap or (ii) would constitute a Significant Increase in Actual Modification Costs payable by TCS or (b) the City is required by the provisions of the Development Contract to meet and confer with Parcel B Developer due to an escalation in Culver Boulevard Access Improvements costs over the Maximum Budgeted Construction Amount for the Culver Boulevard Access Improvements, the City shall promptly notify TCS and shall Meet and Confer with TCS (and in the event of clause (b) above, shall do so prior to meeting and conferring with Parcel B Developer) and shall include TCS in one or more meetings between City and Parcel B Developer, in each case in order to seek a resolution of the matter in a manner that results in no, or the lowest reasonable, cost increase that can reasonably be achieved or to achieve other reasonable solutions to address the cost increases, provided that the foregoing shall take place within the Meet and Confer Period. If such cost changes occur before the Determination Date and would result in an exceedance of the Total Costs Cap, the provisions of Section 5.6 shall also apply.

5.3 Limitations on Actual Modification Cost. Without limiting any other provision of this Agreement, in no event shall TCS be responsible to pay as Actual Modification Costs or shall the City otherwise disburse funds from the Earmarked Account for the following: (a) Change Orders or design modifications approved by the City, to the extent subject to the City's approval in the Development Contract, for which City failed to comply in good faith with the Meet and Confer provisions of this Agreement or to obtain TCS consent if required by Section 3.3 of this Agreement, (b) amounts attributable to any component of the Public Improvements other than the Culver Boulevard Access Improvements; (c) any Loss, Liability or other cost or expense incurred by City or Parcel B Developer as a result of (i) the breach of any of the Public Improvement Agreements by City or Parcel B Developer or the Construction Contract by Contractor or any other contract by a

consultant or Subcontractor or (ii) a defect in the Work or faulty workmanship; (d) repair required due to damage caused by Parcel B Developer or any Person acting under the authority of Parcel B Developer or for damage or casualty of any nature for which insurance is or was required to be provided under this Public Improvement Agreements; or (e) amounts requested by Parcel B Developer that are not in compliance with the disbursement procedures set forth in the Public Improvement Agreements.

5.4 **Management Fee.** In consideration of Parcel B Developer's management of the construction process of the Public Improvements as provided herein, the City has agreed in the Public Improvement Agreements to pay Parcel B Developer a Management Fee. The Management Fee will not be a cost or expense of TCS or deducted from funds paid by TCS pursuant to this Agreement.

5.5 **Parking Space Reduction Costs.** In no event shall TCS be obligated to pay or reimburse the City for any costs associated with the reduction in parking space count or other modifications within the garages on Parcel B or the City Parcel as a result of design modifications made to achieve the Culver Boulevard Access Improvements.

5.6 **Total Costs Cap; Exceedances.**

5.6.1 **Total Costs Cap.** If prior to the Determination Date, it is reasonably estimated by the Parties based on the Approved Plans, the GMAX Price approved by the City pursuant to the Development Contract and other cost estimates obtained by the Parties, that the Total Costs of the Culver Boulevard Access Improvements, including the cost to design, Develop and Cause Construction to Completion such improvements, shall exceed Eight Million Dollars (\$8,000,000) (the "**Total Costs Cap**"), the City shall Meet and Confer with TCS and thereafter or concurrently with Parcel B Developer for a total period not to exceed thirty (30) Days ("**Meet and Confer Period**") and shall make commercially reasonable efforts to bring about the Completion of the Culver Boulevard Access Improvements without the expenditure of additional funds and without exceeding the Total Costs Cap by considering modifications to the Plans, modifications to the specifications, introduction of new materials or treatments, reduction in scope and nature of the improvements, and/or such other modifications or adjustments to the Culver Boulevard Access Improvements as reasonably necessary to bring the costs of the Culver Boulevard Access Improvements back within budgeted and available funds.

5.6.2 **Termination of Agreement.** Upon compliance with the Meet and Confer provisions in Section 5.6.1 for the Meet and Confer Period, if (a) the Parties and Parcel B Developer are unable to revise the Plans or otherwise reduce the Total Costs to an amount not to exceed the Total Costs Cap and (b) none of TCS, City or Parcel B Developer agrees to pay such additional costs, then TCS shall have the right to terminate this Agreement subject to the following: (i) the City shall refund in full the Deposit Amounts paid by TCS and not disbursed or incurred by the City for Actual Modification Costs prior to the date of expiration of the Meet and Confer Period, and (ii) except with respect to payment by the City to TCS as aforesaid, compliance with the audit provisions of this Agreement if invoked by TCS, and payment due under any of the indemnity provisions of this Agreement for claims that have accrued to the date of termination, neither TCS nor City shall have further obligations or liabilities under this Agreement. Notwithstanding the foregoing, if the exceedance is due to elective Change Order by Parcel B Developer or Default or

Event of Default by Parcel B Developer (each as defined in the Public Improvement Agreements), then City shall properly exercise its remedies under the Public Improvements Agreements to cause Parcel B Developer to pay such exceedances, the City shall not be excused from its performance under this Agreement, and this Agreement shall remain in full force and effect.

5.7 **Environmental Insurance.** At TCS's sole election and sole cost, TCS may procure environmental and pollution legal liability insurance coverage for the City Parcel and/or the TCS Parcel, including coverage for loss, remediation expense and legal defense expenses ("**Costs**"), and naming the City as an additional insured, to address pollution risks at the City Parcel. In the event that TCS does procure such a policy with respect to the City Parcel, the City and TCS agree to the extent such insurance could reasonably be determined to be applicable to the type, extent, value and/or location of the claim being made that the City and TCS shall seek recourse for such Costs under the insurance coverage and the City shall assist and cooperate with TCS in its tender of claims and Costs thereunder. TCS shall be entitled to all proceeds paid under such insurance policies and the City shall promptly remit to TCS any and all proceeds paid by the insurer to the City.

6. PAYMENTS, REIMBURSEMENT PROCEDURES AND RECONCILIATION

6.1 **Deposits into Earmarked Account for Culver Boulevard Access Improvements.**

6.1.1 **Initial Deposit.** Upon execution of this Agreement, TCS shall deposit with the City as the "**Initial Deposit**" the amount of the Currently Estimated Modifications Costs. The "**Currently Estimated Modification Costs**" of Four Million Six Hundred Thirty Nine Thousand One Hundred Twenty Eight Dollars (\$4,639,128) has been determined by reference to the Total Costs Budget attached as Exhibit "F" and represents the City's share of the estimated Total Costs to develop and construct the Culver Boulevard Access Improvements less the TCS Credit and Management Fee. Upon its receipt of the Initial Deposit, the City shall place the Initial Deposit amount and all Additional Deposit amounts received into one of the following two accounts (the "**Earmark Accounts**"): (a) the City shall establish a separate account in the City's accounts, books and records in the amount of the Initial Deposit, or (b) if and only if the City is required by the terms and conditions of Parcel B Developer's construction loan documents to place City funds for Public Improvements in an escrow account, as to funds earmarked to pay Construction Costs only, the City may establish and place such amounts in an escrowed account held by Escrow Agent or other escrow agent approved by the City and to which the City is a party ("**Construction Costs Escrow**"). Moneys in the Earmark Accounts ("**Earmarked Funds**") shall not be commingled with any other funds and shall be used by the City solely for payments from the City to Parcel B Developer for Actual Modification Costs incurred by the City to Develop and Cause Construction of the Culver Boulevard Access Improvements to Completion pursuant to the Public Improvement Agreements, as said costs are to be calculated and determined pursuant to and in accordance with this Agreement. Subject to the limitations set forth in Sections 5 and 6 (inclusive), the Earmarked Funds shall be available to City upon delivery to City for payment of Actual Modification Costs, and may be disbursed by the City only in accordance with the provisions of this Section 6. Funds remaining in the Earmark Account following Completion of the Culver Boulevard Access Improvements shall be returned to TCS in accordance with the relevant provisions of this Agreement and the Development Contract.

6.1.2 Interest Bearing Account. Upon TCS's written request, the City shall deposit the Earmarked Funds in an interest-bearing account and as interest accrues or becomes payable thereon, such interest shall be and remain the sole property of TCS. The City shall not be liable in any way as to the amount, if any, of such earned interest. The Earmarked Funds, together with any accrued interest thereon shall be held and applied to pay for the Actual Modification Costs and for no other purpose.

6.1.3 Additional Deposits. Payment of Actual Modification Costs by TCS to the City shall be made first by the disbursement by City of the Initial Deposit, and then by the payment to City by TCS of additional payments (each an "**Additional Deposit**") and collectively with the Initial Deposit, the "**Deposit Amounts**") within thirty (30) Days of receipt by TCS of written notice from the City in the form of the Additional Deposit Request attached as Exhibit "D" to this Agreement that Actual Modification Costs exceed or, based upon the established GMAX Price or Approved Change Orders, are reasonably anticipated to exceed, the Initial Deposit and any prior Additional Deposits previously made by TCS. Any Additional Deposit requested by the City shall exclude the Initial Credit, the Additional Credit, the Management Fee and the TCS Credit. Additional Deposit amounts paid by TCS shall be promptly deposited by the City into the Earmarked Accounts.

6.2 Conditions Precedent to Disbursement of Deposit Amounts for Design. The following comprise the conditions precedent to disbursement by the City of Deposit Amounts from the Earmarked Account for preparation of the Plans:

6.2.1 Approval, execution and delivery by the City and Parcel B Developer of Reimbursement Agreements each without material modification (as described in Section 2.3 and 2.4) from the form and substance of the documents approved by the City Council on December 21, 2015, or in such other form as may be agreed by City, Parcel B Developer and pursuant to the rights of TCS set forth in Sections 2.3 and 2.4, TCS.

6.2.2 The approval by the City Council of (a) the Concept Culver Boulevard Access Improvements Design and (b) the form of Development Contract incorporating the terms set forth herein in the form approved by the City Council on December 21, 2015 as a condition to close of escrow for Parcel B, or in such other form as may be agreed by City, Parcel B Developer and pursuant to the rights of TCS set forth in Sections 2.3 and 2.4, TCS.

6.2.3 .

6.3 Conditions Precedent to Disbursement of Earmarked Funds for Construction Work. Prior to the commencement of construction of the Culver Boulevard Access Improvements and disbursement by the City or if applicable, authorization by the City to the holder of the Construction Cost Escrow for disbursement, of Deposit Amounts for Construction Costs, the following conditions precedent shall have been satisfied

6.3.1 Parcel B Developer and City shall have executed and delivered (i) the Reimbursement Agreements and the Development Contract, each without material modification (as described in Section 2.3 and 2.4) from the form and substance of the documents approved by the

City Council on December 21, 2015, or in such other form as may be agreed by City, Parcel B Developer and pursuant to the rights of TCS set forth in Section 2.3 and 2.4, TCS;

6.3.2 The completion in accordance with the Public Improvement Agreements of the Final Culver Boulevard Access Improvements Design, and the approval by City and TCS, to the extent required by Section 3.3, of the Plans, including in connection therewith, review and approval of Schematic Drawings, Grading Plans and Building Permit/Construction Drawings, for the Public Improvements and, based thereon, Parcel B Developer shall have solicited bids for the construction and development of the Public Improvements;

6.3.3 Approval by the City, Parcel B Developer and TCS of the form of the Shared Use Agreement, execution thereof in recordable form by each of TCS, the City and Parcel B Developer and recording thereof in the official records of Los Angeles County, or, in the alternative, approval by the City and TCS of the form of the Back-Up Easement Agreement, execution thereof in recordable form by each of TCS and the City and recording thereof in the Official Records;

6.3.4 Approval by the City of the construction budget for the Culver Boulevard Access Improvements Work (as part of its overall approval of the City-funded work);

6.3.5 The City shall have received and reviewed three bids, each including separate bids for the Culver Boulevard Access Improvements, and shall have provided final approval of the general contractor bid selected by Parcel B Developer, and any objection thereto by the City shall have been addressed and resolved to the City's reasonable satisfaction, including any rebidding required in connection therewith, in accordance with the Public Improvement Agreements; provided however that utility relocation costs may be contracted for on a cost-plus basis subject to the reasonable approval of the City, after Meeting and Conferring with TCS as to the form and substance and the methods of calculation of the costs;

6.3.6 Parcel B Developer and a Contractor approved by the City shall have executed a Construction Contract in form consistent with the requirements of the Development Contract and the City shall be satisfied that the Construction Contract with the Contractor meets the requirements of the Development Contract including Section 2.1 thereof and that it establishes a GMAX Price consistent with the requirements of the Development Contract;

6.3.7 The Parcel B Developer shall have delivered to the City Performance Bonds and Payment Bonds for the Public Improvements in an amount that is at least equal to 100% of the amount of the bid for the Public Improvement Agreements approved by the City pursuant to the Development Contract, including for the Culver Boulevard Access Improvements, naming the City and Parcel B Developer as co-obligees; and

6.3.8 Parcel B Developer shall have secured and obtained all approvals and permits required by the City and any other governmental agency that are necessary and required for development and construction of the Public Improvements in accordance with the requirements of applicable law and the Public Improvement Agreements.

6.3.9 Parcel B Developer and or the City shall have secured all permits and approvals for the for the Culver Boulevard Access Improvements, including utility relocation, and to the extent that either the cost of utility relocation or Hazardous Materials remediation imposes costs in excess of the budgeted costs therefor set forth on Exhibit “F”, the Parties shall Meet and Confer in accordance with the provisions of this Agreement.

6.3.10 Parcel B Developer shall have secured, to the satisfaction of the City in its reasonable discretion, all insurance required under the Public Improvement Agreements as a condition or requirement to commencement of construction.

6.3.11 Fee title to the City Parcel shall be held by the City and the representations and warranties of City set forth in Section 8.2 shall remain true and correct.

6.4 **Conditions and Restrictions to Disbursement; Credits to TCS.**

6.4.1 Compliance with Disbursement Procedures. In no event shall any Deposit Amounts be disbursed by City to Parcel B Developer unless and until City shall have approved Parcel B Developer’s payment request therefore, together with any and all supporting documentation as required by the Public Improvement Agreements and Parcel B Developer and City shall have otherwise complied with the Disbursement Procedures established by the Development Contract (“**Disbursement Procedures**”). Each payment request from Parcel B Developer shall include as a separate line item the Actual Costs for the Culver Boulevard Access Improvements. The City Manager shall determine whether the payment request is consistent with and meets all applicable requirements of the terms and conditions of this Agreement and the Disbursement Procedures.

6.4.2 Credits. Notwithstanding any other provision of this Agreement, in calculating the Actual Modification Costs due and payable by TCS, TCS shall be entitled to the following credits against Total Costs:

- (i) with respect to the component of Total Costs up to and including \$5.5 million (“**Initial Share Amount**”), a credit against Total Costs equal to six percent (6%) of the Initial Share Amount due from time to time (“**Initial Credit**”);
- (ii) with respect to the component of Total Costs between \$5.5 million and \$6.25 million (“**Additional Share Amount**”), a credit against Total Costs equal to fifty percent (50%) of the Additional Share Amount due from time to time (“**Additional Credit**”);
- (iii) the TCS Credit and the Management Fee Credit, which shall be credited at the time of payment of the Initial Deposit.

In no event shall the Deposit Amounts be used to pay for amounts other than Actual Modification Costs.

6.4.3 Overall Limitation. Other than Actual Modification Costs, the indemnity set forth in Section 11.1, and the performance by TCS of its obligations under this Agreement, TCS shall not be responsible for, and Deposit Amounts shall not be used for, any other costs or expenses

of any Person, including those associated with the Public Improvement Agreements, the Parcel B Improvements or the Public Improvements.

6.5 **Effect of Failure to Commence Construction.** In the event that for any reason other than Default by the City or TCS under this Agreement, any of the following shall occur (with the date of each referred to as an “**Election Date**”):

(a) construction of the Culver Boulevard Access Improvements has not commenced on or before the fourth anniversary of the Effective Date; or

(b) the conveyance of Parcel B to the Parcel B Developer has not taken place upon the earlier of:

(i) the second anniversary of the Effective Date, as such date may be extended by the City only due to “Force Majeure delay” (as defined in the DDA) or if such extension is required by the express terms of the DDA, or

(ii) the fourth anniversary from the Effective Date, without extensions specified in clause (b)(i),

then at the election of TCS: (x) the City shall refund in full the Deposit Amounts paid by TCS and not then disbursed or incurred by the City for Actual Modification Costs to the Election Date, and in such event, this Agreement shall terminate and except with respect to payment by the City to TCS as aforesaid, compliance with the audit provisions of this Agreement if invoked by TCS, and payment due under any of the indemnity provisions of this Agreement for claims that have accrued to the date of termination, neither TCS nor City shall have further obligations or liabilities under this Agreement or (y) City shall exercise its step in rights under the Development Contract and shall proceed in accordance with Section 12.5 of this Agreement. The City shall provide prompt written notice to TCS in the event that an event occurs which would prompt a TCS election (as described in this section).

6.6 **Final Accounting and Payment for Culver Boulevard Access Improvements.** Promptly after Completion of the Culver Boulevard Access Improvements, the City shall provide to TCS a final accounting of the Actual Modification Costs incurred in Completing the Culver Boulevard Access Improvements and all other supporting documentation received and approved by the City in accordance with the Disbursement Procedures contained in the Reimbursement Agreements and/or Development Contract, as applicable, and setting forth the Final Costs together with the form of Final Actual Modification Costs Request attached as Exhibit “E” (“**Final Costs Request**”). TCS shall have sixty (60) Days from its receipt of the Final Costs Request to review the final accounting and by delivery of its response (“**Final Payment Response**”): (a) to accept such accounting (by execution and return of the City’s Final Costs Request), (b) to reject specific components of the Final Costs Request and/or underlying accounting provided by the City and request that the parties Meet and Confer with respect to the components specified in the Final Payment Response, or (c) to request that the City obtain an audit of the books and records of Parcel B Developer pursuant to the Public Improvement Agreements. In the event of an audit, the provisions of Section 6.7.4 shall apply. In the event of any dispute described by clause (b) above, the Parties shall promptly (i) Meet and Confer and (ii) make any adjustments and payments agreed

upon by City and TCS to the Final Costs amount. In the event that the Final Cost Request approved by TCS identifies any overpayment by TCS with respect to the Culver Boulevard Access Improvements, then City, within thirty (30) Days following TCS's delivery of its Final Payment Response, shall repay TCS in an amount equal to the difference between (x) the Final Cost of the Culver Boulevard Access Improvements as set forth in the Final Payment Response, and (y) the Deposit Amounts paid by TCS to the City; provided, however, that City may withhold from such reimbursement, amounts subject to dispute until resolution of such dispute and upon resolution thereof. In the event that the Final Cost Request approved by TCS identifies any underpayment by TCS with respect to the Culver Boulevard Access Improvements, then TCS, within thirty (30) Days following TCS's delivery of its Final Payment Response, shall pay the City an amount equal to the difference as an Additional Deposit; provided, however, that TCS may withhold from such Additional Deposit amounts subject to dispute until resolution of such dispute and upon resolution thereof. Following resolution of any dispute, the Party for which any overage is identified shall pay to the other Party the additional amounts owed within fifteen (15) Days following resolution of the dispute.

6.7 **Inspection of Books and Records; Audit.**

6.7.1 For a period of four (4) years following the later of (a) payment by TCS of sums payable by TCS under this Agreement or (b) Completion of the Public Improvements, the City shall, and shall cause the Parcel B Developer to maintain in a commercially reasonable form its books, records and related documents of all costs incurred in connection with the Public Parking Improvements, including the Culver Boulevard Access Improvements, and the Town Plaza Expansion Improvements and shall provide true and correct copies of all such books, records and/or related documents to the City promptly upon TCS's request, at the sole cost and expense of TCS. Such books, records and related documents shall be maintained by the City or by Parcel B Developer at their respective principal business offices. City shall promptly make any and all such records received by the City available to TCS upon TCS's request.

6.7.2 TCS may inspect and audit the City's books and to the extent obtained by the City pursuant to the terms of the DDA and the Development Contract, Parcel B Developer's books, records and related documents pertaining to costs incurred in connection with the Public Improvements ("**Records**"), at TCS's sole cost and expense, upon providing at least five (5) business days prior Notice to City. City shall cooperate with TCS, including by, at TCS request, conducting an audit of Parcel B Developer's Records, requesting and obtaining any and all books and records of Parcel B Developer available to the City under the Public Improvement Agreements and shall not assert any confidentiality privilege with respect thereto.

6.7.3 Promptly upon commencement of any audit or other analysis of the Records carried out by or on behalf of the City, the City shall notify TCS of such analysis or audit, and upon completion of same, the City shall promptly share with TCS the details and conclusions of the analysis and/or audit.

6.7.4 In the event that any audit undertaken by the City pursuant to the Public Improvement Agreements or any audit by TCS under this Agreement reveals any overpayment by the City (and thereby TCS) with respect to the Culver Boulevard Access Improvements, then City

shall repay to TCS the overpaid amount within thirty (30) Days following TCS's written demand therefor, except that to the extent the cause of the overcharge is based on overcharge from funds obtained by the Parcel B Developer and City is diligently enforcing its rights under the Development Contract to obtain such reimbursement for the overcharge, such payment shall be due within fifteen (15) Days from the date of receipt by the City from Parcel B Developer of reimbursement from the Parcel B Developer. In the event that any such audit reveals an underpayment by TCS, then TCS shall pay the additional amount owed to the City within thirty (30) Days following completion of the audit.

6.8 **Survival of Provisions.** The provisions of this Section 6 shall survive the termination of this Agreement.

7. MEET AND CONFER PROVISIONS

7.1 In the event that the City is obligated to Meet and Confer with TCS under this Agreement, the City shall provide not less than three (3) Business Days' notice to TCS specifying in reasonable detail, in writing, the nature of the matter requested by City to be considered by the Parties. Thereafter, the Parties shall meet telephonically or in person on one or more occasions to review the matter, which shall occur prior to the granting of any approval or waiver of any right of approval by the City under the Public Improvement Agreements, in order to confer and to seek to reach a resolution acceptable to each of TCS and City. The City shall reasonably and in good faith consider and address any concerns that TCS may have and shall to the extent commercially reasonable take into account such concerns, suggestions and alternatives that TCS may propose in formulating its response to Parcel B Developer. The intent is not merely to set forth each Party's arguments, but rather to put forth a good faith effort to negotiate and reach informal agreement with respect to the matter under consideration. The City shall not reject any commercially reasonable alternative proposed by TCS to avoid an increase in Actual Modification Costs without presenting such concept to Parcel B Developer in good faith for consideration. Notwithstanding the foregoing, the City and TCS shall cooperate reasonably and in good faith to attempt to avoid any material delay in the ability of Parcel B Developer to proceed with the Public Improvements pending resolution of the Meet and Confer process.

8. REPRESENTATIONS AND WARRANTIES

8.1 **Representation and Warranties of TCS.** TCS makes the following representations and warranties for the benefit of the City:

8.1.1 **Organization.** That it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to conduct business and is in good standing under the laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

8.1.2 **Authority.** That it has the power and authority to enter into this Agreement, and has taken all actions necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of TCS.

8.1.3 Binding Obligation. That this Agreement is a valid and binding obligation of TCS and is enforceable against TCS in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

8.1.4 No Legal Impediment. That it is not aware of any legal impediment that would make infeasible the City and Parcel B Developer's proceeding with and completing the construction of the Culver Boulevard Access Improvements.

8.2 **Representations and Warranties of the City.** The City makes the following representations and warranties for the benefit of TCS:

8.2.1 Authority. The City has the power and authority to enter into this Agreement and to acquire the City Parcel, and has taken all action necessary to cause this Agreement to be duly and validly executed and delivered on behalf of the City, to consummate the transactions contemplated by this Agreement and the Public Improvement Agreements.

8.2.2 Binding Agreement. This Agreement it is a valid and binding obligation of the City and is enforceable against the City in accordance with its terms

8.2.3 No Adverse Circumstances. There is no pending litigation, nor to the City's knowledge, no adverse conditions or circumstances, threatened litigation, governmental action, nor other condition which could prevent or materially impair (a) City's ability to acquire the City Property or (b) City and Parcel B Developer's ability to develop the Culver Boulevard Access Improvements on the City Property as contemplated by the terms of this Agreement.

8.2.4 No Legal Impediments. The City is not aware of any legal impediment that would make infeasible the City's proceeding with acquisition of the City Parcel and the Culver Boulevard Access Improvements and causing Parcel B Developer to Develop and Cause Construction of the Culver Boulevard Access Improvements or the execution and delivery of the Shared Use Agreement or the Back-Up Easement Agreement.

8.2.5 No Breach. Neither the execution nor delivery of this Agreement nor the Public Improvement Agreements nor the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement or the Public Improvement Agreements nor the consummation of the transactions contemplated hereby or thereby, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any Governmental Requirements to which City is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, agreement, lease or other agreements or instruments to which City is a party and which affect the Site, the Public Improvements or the transactions contemplated by this Agreement.

8.2.6 Ownership. The City Parcel is owned by the Successor Agency. Pursuant to the long range property management plan of the Successor Agency and as otherwise required by law, the City and Successor Agency have obtained all required approvals and consents to authorize the conveyance of the City Parcel by Successor Agency to the City and the acquisition by the City

of the City Parcel, including approval by their respective governing boards, and all approvals required pursuant to AB 26 x1as amended including by the oversight board having authority over the Successor Agency and by the State of California and, there is no condition, restriction or legal or other impediment to the conveyance of the Property by the Successor Agency to the City or the acquisition thereof by the City.

8.2.7 Title. Upon acquisition of the City Parcel by the City, the City Parcel, the Public Parking Improvements and Culver Boulevard Access Improvements will be solely owned by the City and except as set forth in that certain Preliminary Title Report dated March 9, 2015 issued by First American Title Company to the City with respect to the City Parcel: (a) the City is not party or subject to any instrument, document or agreement that would preclude the execution and delivery by the City of the Back-Up Easement Agreement to TCS or would limit or restrict the rights of TCS under this Agreement or the rights and easements to be granted by the City pursuant to the Shared Use Agreement and/or the Back-Up Easement Agreement and (b) to the best knowledge of the City, there are no agreements, covenants, conditions, restrictions, rights of third parties or encumbrances to title that would interfere with the Work or would, if rights thereunder are exercised, be capable of limiting or defeating the transactions described by this Agreement, the construction of the Culver Boulevard Access Improvements or the access easements and other rights proposed to be granted by the City to TCS under the Back-Up Easement Agreement or the Shared Use Agreement, as applicable.

8.2.8 No Ownership by Parcel B Developer. Parcel B Developer does not and shall not have any ownership rights or exclusive interest in and to the City Parcel or the Culver Boulevard Access Improvements and the City may, at any time, allow and contract with any Person to use all or portions of such Public Parking Improvements including the Culver Boulevard Access Improvements and the City Parcel, which uses shall not require the consent or approval of Parcel B Developer at any time.

9. **SHARED USE AGREEMENT; BACK-UP EASEMENT AGREEMENT**

9.1 Purpose. The parties acknowledge and agree that, the City, TCS and Parcel B Developer are each intended to have access from their individual properties to and through the Culver Boulevard Access Improvements to the intersection of Culver/Main upon completion thereof for use as a means of ingress and egress to and from their respective properties.

9.2 Negotiation. The City and TCS each agrees to exercise reasonable and good faith efforts to diligently negotiate, process for approval, and execute a Shared Use Agreement for the shared use of and including a pedestrian and vehicular access easement in and through the Culver Boulevard Access Improvements (on terms substantially similar to those granted by the City in the Back-Up Easement Agreement) by and among the City, Parcel B Developer and TCS on terms acceptable to the Parties and Parcel B Developer (“**Shared Use Agreement**”) on or before the earlier of (a) June 1, 2016 or (b) the date of conveyance of Parcel B to the Parcel B Developer (the “**SUA Date**”). Upon approval by TCS, City and Parcel B Developer of a Shared Use Agreement it shall be recorded in the Official Records against the City Parcel, Parcel B and the portions of the TCS Parcel benefitting from or burdened by the Shared Use Agreement each as a covenant senior to any monetary lien and encumbrance (other than non-delinquent taxes and assessments).

9.3 **Recording of Back-Up Easement Agreement.** If TCS, City and/or Parcel B Developer fails to negotiate, approve and execute the Shared Use Agreement by the SUA Date, then except as otherwise set forth in Section 9.6, TCS shall have the right to unilaterally require that the Escrow Agent record the fully executed Back-Up Easement Agreement in the Official Records. In the event a Shared Use Agreement between and among TCS, the City and Parcel B Developer is later executed, the Back-Up Easement shall terminate upon the execution and recording thereof.

9.4 **Terms and Conditions.** The Shared Use Agreement will provide upon completion of the construction of the Culver Boulevard Access Improvements, perpetual easements to TCS and its employees, guests, contractors, visitors and other users across City right-of-way and through the Culver Boulevard Access Improvements immediately upon Completion thereof for (i) uses existing on the TCS Parcel as of the Effective Date and (ii) future uses at the TCS Parcel completed after the Effective Date (subject to applicable CEQA requirements) upon issuance by the City of entitlements for the TCS Parcel, with the City reserving its governmental capacity to approve or disapprove future entitlements for the TCS Parcel. The Shared Use Agreement shall contain provisions that: (a) provide for shared vehicular access on terms commonly included in such agreements for comparable developments in the Southern California area, including provisions which are commercially and operationally feasible for the parties, are consistent with access to the development to be constructed by TCS on the TCS Parcel through the knock-out panel upon the Completion of the Culver Boulevard Access Improvements, (b) provide for the relinquishment of the current surface vehicular access from Gate 1 of the TCS Parcel as set forth in this Agreement, (c) address any further modification or alteration of the improvements; (d) allocate in a commercially reasonable manner the costs of insurance, maintenance, repair, reconstruction and other like matters relating to the improvements, and (e) address the management and operation of the improvements and the allocation of the costs thereof.

9.5 **Restriction on Access.** The Shared Use Agreement may include a provision to restrict access to TCS during any period in which TCS failed to pay the Deposit Amounts when due in accordance with this Agreement.

9.6 **Back-Up Easement Agreement.** Concurrently with execution of this Agreement, City and TCS have executed and placed into escrow a form of two-party easement agreement that will provide a perpetual easement to TCS and its employees, guests, contractors, visitors and other users across City right-of-way and through the Culver Boulevard Access Improvements (“**Back-Up Easement Agreement**”). Prior to the execution thereof, the City and TCS shall confirm that all property across which TCS must pass is owned by City and City does not require consent of any third party to issue such easement. When authorized by this Agreement, the Back-Up Easement Agreement shall be recorded in the Official Records against the City Parcel and the portions of the TCS Parcel benefitting from or burdened thereby each as a covenant senior to any monetary lien and encumbrance (other than non-delinquent taxes and assessments). The City and TCS shall provide instructions to escrow holder to record the Back-Up Easement Agreement only if (i) the City, TCS and Parcel B Developer cannot, prior to the date scheduled for conveyance of Parcel B to the Parcel B Developer (as such date may be extended from time to time in accordance with the DDA), agree upon, execute and deliver the Shared Use Agreement and (ii) TCS has provided evidence to the Escrow Agent under the DDA that it has paid the Initial Deposit; provided that City shall not be obligated to enter into the Back-Up Easement if it can reasonably demonstrate that the

sole reason for the failure of the Shared Use Agreement is that TCS has not negotiated in good faith with respect thereto (which may be demonstrated by TCS's refusal to enter into negotiations or TCS's demand for manifestly commercially unreasonable terms in or as a condition to execution of the Shared Use Agreement or other matters related directly to the Shared Use Agreement Negotiations). The City agrees to reasonably consider a proposal by TCS to allocate maintenance costs for the Culver Boulevard Access Improvements based on actual utilization by users of the City, Parcel B Developer and TCS, respectively, of the Culver Boulevard Access Improvements, measured on an annual basis.

10. DUE DILIGENCE; RIGHT OF ENTRY AND INDEMNITY

10.1 **Right of Entry.** The City hereby grants to TCS for use by TCS and its employees, representatives, agents, contractors and consultants (collectively, the "**TCS Parties**"), a temporary and conditional right to enter upon, in and below the City Parcel ("**Right of Entry**") from and after the Effective Date and until the Determination Date, for the purpose of conducting a due diligence investigation and permitting TCS to evaluate the physical condition of the City Parcel, including without limitation, the physical condition of improvements, if any, located thereon, the placement of utilities, the suitability of soils and the presence of Hazardous Materials and other environmental condition of the City Parcel and for carrying out relevant and necessary environmental testing of the City Property. Prior and as a condition to entry onto the City Parcel, TCS shall: (a) furnish to the City evidence satisfactory to the City that TCS or its contractors have obtained comprehensive liability insurance in an amount of \$1 million dollars per occurrence and \$2 million in the aggregate for the purpose of protecting the City from claims or suits for, and damages to, property and injuries to persons, including accidental death which may be caused by any of the TCS' activities upon the City Parcel, whether such activities or performance thereof be by TCS or the TCS Parties, (b) give the City twenty-four (24) hours advance telephonic or written notice of any intended access which involves work on or may result in any impairment of the use of the City Parcel; (c) access the City Parcel in a safe manner; (d) conduct no invasive testing or boring without the written consent of the City; (e) allow no dangerous or hazardous condition created by TCS and/or the TCS Parties to continue beyond the completion of such access; (f) comply with all laws and obtain all permits required in connection with such access; (g) keep the Property free and clear of any and all liens of any kind caused by TCS or the TCS Parties, and (h) conduct inspections and testing, subject to the rights of any existing tenants or contractors doing work on the Property, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City's consent, which shall not be unreasonably withheld), and in accordance with reasonable terms and conditions established by the City and in connection therewith shall restore, to the extent practicable, the City Parcel to substantially the same condition as prior to such inspection and testing. The limited license granted herein is revocable by the City during the continuation of any breach of this Agreement by TCS and shall be automatically revoked and terminated, without further action of the City, upon the termination of this Agreement.

10.2 **Indemnification.** TCS hereby agrees to indemnify, defend, assume all liability for and hold harmless the City and its agents, employees, members, independent contractors, affiliates, principals, shareholders, officers, council members, board members, committee members, and planning and other commissioners, partners, attorneys, accountants, representatives, and staff, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, claims or injuries to persons (collectively "**Claims**") which may be caused by TCS's acts arising out of or in connection

with TCS's activities pursuant to this Right of Entry. TCS's indemnity given under this Section 10.2 shall apply whether such negligence or wrongful acts are by TCS or any TCS Party, and whether such Claims shall accrue or be discovered before or after the termination of this Agreement. The indemnity and other rights afforded the City by this Section 10 shall survive after the expiration of this Agreement. Notwithstanding the foregoing, TCS's indemnity shall not apply to the extent claims are caused by, arise out of, or in connection with, any negligent or intentional acts of the City or in connection with any Hazardous Materials existing on the City Parcel unless such Hazardous Materials condition is exacerbated by the activities of TCS or the TCS Parties in the exercise of the Right of Entry.

10.3 Notification of Matters Discovered by Others. The City shall promptly notify and Meet and Confer with TCS if the City has reason to believe, in its reasonable discretion, that any physical condition of the City Parcel (including without limitation, the presence of any utilities or Hazardous Materials upon the City Parcel), or title condition affecting the City Parcel (including without limitation, the existence of any utility easement affecting the City Parcel) known to or discovered by the City or the Parcel B Developer or their respective Representatives could either: (a) limit or restrict the ability of any Person to construct the Culver Boulevard Access Improvements in accordance with the Concept Culver Boulevard Access Improvements Design and/or the Plans; (b) have a material adverse effect upon TCS's rights under this Agreement, including by limiting or restricting the ability of the City to enter into and/or grant the easement and access rights proposed to be included in the Shared Use Agreement and/or the Back-Up Easement Agreement, or (c) cause or result in a Significant Increase in Actual Modification Costs to TCS or an increase in Total Costs over the Total Cost Cap.

11. INDEMNITY; RELEASE, DISCLAIMER AND EXCULPATION

11.1 Indemnity. TCS shall indemnify, defend and hold harmless the City and its Representatives (collectively, "**Indemnified Parties**") from and against any and all Losses and Liabilities incurred by the City arising from this Agreement, with respect to claims or actions brought or made by any Persons provided that the foregoing indemnity shall not apply with respect to (a) claims or actions brought by Parcel B Developer and its successors and assigns or any Person claiming by or through Parcel B Developer or its successors and assigns; (b) the design of Culver Boulevard Access Improvements or any other component of the Public Improvements, including the Plans or any other plans and specifications or related document with respect to the Public Improvements or any portion thereof; (c) the construction, installation or maintenance of the Work or any portion thereof; (d) the terms of any consultant or construction agreement, contract or subcontract; (e) the compliance or non-compliance of the Work or any Person performing the Work with Governmental Requirements, including Labor Regulations and Environmental Laws; (f) the Release, threatened release, storage, treatment, transportation or disposal of any Hazardous Materials on, under, in, from or to the Site or any other property or any Hazardous Material Activity; (g) any breach by the City of any of its representations, warranties, covenants or obligations set forth in this Agreement or (h) the willful misconduct or the extent of gross negligence of the Indemnified Parties. If TCS fails to defend any claim or action pursuant to its obligations hereunder, the City shall have the right, but not the obligation, to defend the same and charge all of the reasonable direct or incidental costs of such defense, to and recover the same from TCS. The City shall promptly notify TCS of any claim asserted against the Indemnified Parties

and within the scope of this Section. The Indemnified Parties shall tender their defense to TCS and assist TCS as may be reasonably requested, in such defense. The provisions of this Section shall not apply with respect to any matter addressed by the indemnity set forth in Section 10.2.

11.2 **Release.** City acknowledges that TCS has no responsibility for design or construction of the Public Improvements, including the Culver Boulevard Access Improvements, the Concept Culver Boulevard Access Improvements Design, the Final Culver Boulevard Access Improvements Design, the Plans and/or for the Work or for compliance with Governmental Requirements, including Labor Regulations, with respect to same. Accordingly, City hereby waives and releases any and all claims, Losses and Liabilities it may have against TCS or its owners, partners, members, officers, employees, agents, representatives and volunteers, for Losses and Liabilities or monetary claims with respect to (a) the design or construction of the Public Improvements, including the Culver Boulevard Access Improvements, the Concept Culver Boulevard Access Improvements Design, the Final Culver Boulevard Access Improvements Design, the Plans and/or for the Work, which waiver and release shall include any Losses and Liabilities arising from defects or errors in the Plans, including the violation of any Governmental Requirements, and for defects or errors in the Work whether or not performed in accordance with the approved Plans, (b) compliance or non-compliance of the Work or any Person performing the Work with Governmental Requirements, including Labor Regulations, and/or (c) the Release, threatened release, storage, treatment, transportation or disposal of any Hazardous Materials in connection with the Work on, under, in, from or to the Site or any other property City makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

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

Initials of City

11.3 **Disclaimer; Exculpation.** By execution of this Agreement, TCS neither undertakes nor assumes nor will have any responsibility or duty to the City, Parcel B Developer, the Contractor, any Subcontractor any other Parcel B Developer contractor or consultant, or any third party to review, inspect, supervise, pass judgment upon or inform any Person of any matter in connection with the design, development or construction of the Culver Boulevard Access Improvements or the Work, whether regarding the quality, adequacy or suitability of the Plans or the Work. With respect to the Plans and all improvement plans in connection with the Work, TCS hereby each disclaims all responsibility therefor, including any duty to the City or any other Person to review or inspect any matter in connection with the design, development or construction of such Work including regarding the quality, adequacy or suitability of improvement plans, any labor, service, equipment or material furnished for development of the Work, any Person furnishing same, or otherwise. The review by TCS of any design submittals shall not constitute the assumption of any

responsibility by, or impose any liability upon, TCS as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of City or Parcel B Developer.

11.4 **Disclaimer of Liability for Compliance with Labor Requirements.** TCS and City acknowledges and agrees that the construction Work shall be carried out in accordance with all Labor Laws, the California Government Code and the California Public Contract Code relating to public works projects of cities (“**Labor Requirements**”) and the budgets and contracts under the Development Contract, and accordingly, amounts due under this Agreement from TCS shall be developed in compliance with Labor Requirements. Notwithstanding the foregoing, the City acknowledges and agrees that TCS is solely contributing funds, has no responsibility to or rights with respect to payment of Contractors or Subcontractors or any other Person and shall have no liability to City or any other Person with respect to any failure of City, Parcel B Developer, any Contractor or Subcontractor or other Person to comply with Labor Requirements in the design or construction of the Public Improvements or the Completion of the Work or otherwise. Notwithstanding any other provision of this Agreement, in no event shall TCS be required to pay, or the Deposit Amounts be used to pay back wages, fines, penalties or other costs or expenses incurred due to failure of City, Parcel B Developer or any Contractor or Subcontractor or any other Person to comply with Labor Requirements.

11.5 **Survival.** The provisions of this Section 11 shall survive the termination of this Agreement.

12. **OTHER AGREEMENTS OF THE PARTIES**

12.1 **Public Benefits.** The Parties acknowledge that substantial public benefits will be created by TCS’s funding of the Culver Boulevard Access Improvements as described in this Agreement, which comprise public improvements that will be funded by TCS but owned by the City, together with TCS’s agreement to forfeit vehicular access rights on the former Washington right-of-way. These benefits include but are not limited to: (i) relief of traffic congestion on Washington/Ince including by creating additional capacity for ingress and egress from Parcel B and the TCS Parcel (“**Additional Capacity Trips**”); (ii) creating expanded public areas on the City Parcel adjacent to the Town Plaza Expansion Improvements; and (iii) optimizing pedestrian use and connectivity between the Town Plaza, the Culver City Downtown business community and the National/Washington Metro Rail Station. As consideration for the funding of the Culver Boulevard Access Improvements project and the provision of such benefits to the City, the City hereby agree to cooperate with TCS and to take all steps desirable or reasonably necessary to achieve the following:

12.1.1 **Benefits.** To the extent permitted by applicable law and in accordance with the procedures required by applicable law, the (a) payment of Actual Modification Costs by TCS as set forth in this Agreement, (b) creation of the Additional Capacity Trips as a result of the Culver Boulevard Access Improvements construction, and (c) creation of an area for additional plaza improvements through removal of the existing Gate 1 vehicular exit from the TCS Parcel, shall each be considered by the City as potential public benefits if any future entitlements for TCS shall require a Statement of Overriding Considerations and as mitigation for any future TCS project approvals.

12.1.2 EIFD. The City will work with TCS in a good faith effort to create an Enhanced Infrastructure Financing District (EIFD) pursuant to SB 628 to finance public infrastructure improvements and other facilities within and/or surrounding the TCS Parcel.

12.1.3 Fair Share Contribution by Other Persons. In the event the City approves third-party projects that require covenant parking in the City parking structure, then the City shall cooperate with TCS in seeking third party reimbursement of a fair share of the Actual Modification Costs paid by TCS and shall provide for a Fair Share Agreement.

12.1.4 Traffic Analysis. The Fehr & Peers Technical Report, dated August 3, 2015 shall be included in the administrative record for approval of this Agreement.

12.1.5 Reimbursement for Public Improvements. The City shall explore, as part of future analysis of development impacts and funding for same, how and whether development impact fees collected by the City, including pursuant to Chapter 15.06 of the Culver City Municipal Code, may be utilized by the City to reimburse developers for public infrastructure improvements previously made or proposed to be made. In the event that the City adopts such a policy and/or ordinance, the City will consider taking into account TCS's expenditures for design and construction of the Culver Boulevard Access Improvements and its reduction in traffic circulation impacts at Washington/Ince in determining whether to reimburse TCS for development impact fees paid by TCS from time to time for future development on the TCS Parcel.

12.2 **Public Parking**. In consideration for the public benefits described in Section 12.1, the City agrees to work with TCS in good faith in their efforts to entitle, design and construct a connection from TCS's existing underground parking garage to provide vehicle access to and through the Culver Boulevard Access Improvements for ingress and egress to the new Culver/Main exit. Upon completion of this connection, TCS will make available for public use during City peak use times (defined herein as weekends, as well as weekday evening between 7 pm and 2 am) those parking spaces that are unreserved and unoccupied by its customers and tenants subject to the following: (a) the Culver Boulevard Access Improvements shall have been completed in accordance with the requirements of this Agreement, and (b) TCS shall be entitled to charge for such parking spaces at rates consistent with market rates for the area, as reasonably determined by TCS, and with no obligation to participate in validation programs. The Parties acknowledge and agree that the availability levels of surplus parking are subject to change based upon TCS's customer and tenant use including special events, production shoots and other occasional situations and TCS reserves the right to charge for such parking spaces at rates consistent with market rates for the area, as reasonably determined by TCS in consultation with the City and with no obligation to participate in validation programs. The public's use will be subject to the future Shared Use Agreement and/or Back-Up Easement Agreement, as applicable, as well as any general operating and security conditions consistent with studio policies that may exist now or in the future.

12.3 **Entitlements**. Nothing in this Agreement shall relieve TCS from its obligation to comply with all City conditions of approval for any entitlements for construction and development received after the Effective Date.

12.4 **Relinquishment of Vehicular Access Rights**. Subject to the last sentence of this Section 12.4, TCS to agree to relinquish surface vehicle access rights (other than any emergency

vehicular access rights that may be required by the City or any other governmental entity) to Gate 1, effective upon the close of escrow for the Parcel B property, provided that the Back-Up Easement or Shared Use Agreement has then been recorded. Following such relinquishment, pedestrian access from the TCS parking facilities now existing or constructed in the future to Gate 1 shall be at grade consistent with plans and permits approved by the City. Notwithstanding the foregoing, in the event that construction of the Culver Boulevard Access Improvements has not commenced by the date that is three (3) years following the Effective Date of this Agreement, the vehicular access rights of TCS shall be deemed restored.

12.5 **City Step In Rights.**

12.5.1 **Exercise of Step In Rights.** Provided that no TCS Event of Default is then occurring, the City shall, if and only if requested by TCS in writing, promptly exercise its step in rights under the Public Improvement Agreements in order to Develop and Cause the Construction and/or Completion of the Culver Boulevard Access Improvements in the event that any one of the following shall occur: (a) the City declares an Event of Default under or terminates any one or more of the Public Improvement Agreements, including the Development Contract and the City is permitted to exercise step in rights under the terms of [Section 2.10] of the Development Contract or otherwise; (b) Parcel B Developer elects, pursuant to [Section 2.1(g)] of the Development Contract or as otherwise permitted by the Public Improvement Agreements, not to carry out the construction of the Culver Boulevard Access Improvements; (c) the obligation of Parcel B Developer to construct the Culver Boulevard Access Improvements terminates under the terms of the Public Improvement Agreements or (d) TCS shall elect pursuant to Section 6.5 that the City exercise its step in rights.

12.5.2 **Meet and Confer.** In connection with its exercise of step in rights, the City shall Meet and Confer with TCS and shall either retain TCS to supervise the construction and Completion of the Culver Boulevard Access Improvements on behalf of the City upon terms reasonably acceptable to City and TCS or, if the same can be timely undertaken in a more cost effective manner, the City may retain a licensed contractor qualified to perform the work. In consideration for supervision of any such construction undertaken by TCS, the City shall pay TCS a management fee incurred by TCS for the Work in an amount not less than the Management Fee otherwise due and payable to Parcel B Developer under the terms of the Public Improvement Agreements.

13. **REMEDIES; TERMINATION; DAMAGES**

13.1 **Defaults - General; Notice of Default; Event of Default**

13.1.1 The following shall constitute a “**Default**” under this Agreement:

(a) the failure by either Party to timely perform any term or provision of this Agreement.

(b) a Party (i) knows or should reasonably know that is unable to pay its respective debts as they become due, or files a petition in bankruptcy (or otherwise commences bankruptcy or a similar proceeding under any federal or state bankruptcy or

insolvency law), or (ii) has filed by or against it, under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, a petition in bankruptcy or other commencement of a bankruptcy or similar proceeding or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of such Party and such petition, proceeding or action is not dismissed within ninety (90) Days after filing.

(c) the breach by a Party of any material covenant made by such Party in this Agreement.

(d) a Party's representation or warranty set forth herein shall prove to have been false or misleading in any material respect when made or deemed made.

13.1.2 Prior to exercising any right or remedy because of a Default and as a condition thereto, the Party not in Default shall give written Notice of default ("**Notice of Default**") to the Party in Default, specifying the Default complained of by the injured Party. Failure or delay in giving such Notice of Default shall not constitute a waiver of any Default, nor shall it change the time of Default.

13.1.3 If as to non-monetary defaults, the Default is not cured or commenced to be cured and thereafter diligently pursued to completion by the Party in Default within thirty (30) Days after service of the Notice of Default, and if as to monetary defaults, the Default is not cured by the Party in Default within fifteen (15) Days after service of the Notice of Default, such failure shall constitute an "**Event of Default**" under this Agreement.

13.1.4 Any holder of a mortgage or deed of trust granted by TCS and secured by the TCS Parcel shall, upon written notice to the City, have a right to receive notices delivered to TCS by City pursuant to this Section and shall have the right, at its option, within the time periods provided to TCS herein, to cure a monetary default or with respect to any non-monetary default to commence to cure or remedy such default within the time specified in Section 13.1.3 and thereafter to pursue with due diligence the cure or remedy of any such Default.

13.1.5 Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the Party not in Default may not institute proceedings against the Party in Default until the expiration of the cure period provided herein with respect to such Default.

13.2 **Institution of Legal Actions**

In addition to any other rights or remedies available at law or in equity as a result of an Event of Default, either Party may institute legal action to cure, correct or remedy any Event of Default, or to recover damages, subject to the limitations set forth in this Agreement, for any Event of Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. To the extent permitted by law, such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, or in the Federal District Court in the Central District of California.

13.3 **Mutual Termination.** This Agreement may also be terminated by the mutual, written consent of the City and TCS.

13.4 **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party. In addition to any other rights or remedies available at law or in equity as a result of a Default, either Party may institute legal action to cure, correct or remedy any Default, or to recover damages, subject to the limitations set forth in this Agreement, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement.

13.5 **Damages.** Upon the occurrence of an Event of Default, the Party in Default shall be liable to the other Party for any damages caused by such Event of Default. However, neither Party shall have any right to indirect, expectation, anticipated profit, consequential, exemplary, punitive or special damages against the other under any provision of this Agreement or arising from or related to any Event of Default, and each Party hereby waives the right to claim the same against the other.

13.6 **Specific Performance.**

13.6.1 Upon the occurrence of an Event of Default, the Party not in Default at its option (and not as an election of remedies) may institute an action for specific performance of the terms of this Agreement.

13.6.2 The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity.

13.7 **Inaction Not a Waiver of Default.** Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies at any time.

14. **NOTICES, DEMANDS AND OTHER COMMUNICATIONS BETWEEN THE PARTIES**

(a) All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery, overnight delivery, or by U.S. Mail. All written notices or correspondence sent pursuant to this paragraph will be deemed given to a party on whichever date occurs first; the date of personal delivery; the next business day following deposit with an overnight mail carrier; the third day following deposit in the U.S. Mail, when sent by “first class mail.” For purposes of this section, a general business day on which the Culver City City Hall is closed shall not constitute a business day.

Notices shall be addressed as follows:

To City: City of Culver City
Attn: Sol Blumenfeld, Community Development Director

9770 Culver Boulevard
Culver City, CA 90232-0507

With a copy to: City of Culver City
Attn: Carol Schwab, City Attorney
9770 Culver Boulevard
Culver City, CA 90232-0507

And with a copy to: Kane, Ballmer & Berkman, Special Counsel
Attn: Kendall D. Levan, Esq.
515 S. Figueroa Street, Suite 780
Los Angeles, CA 90071

If to TCS: The Culver Studios Owner LLC
c/o Hackman Capital Partners, LLC
Attn: Michael Hackman
11111 Santa Monica Boulevard, Suite 1100
Los Angeles, CA 90025

With a copy to: Armbruster Goldsmith & Delvac LLP
Attn: Amy Freilich
12100 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90025

15. GENERAL PROVISIONS

15.1 **Governing Law.** This Agreement shall be governed by the laws of the State of California.

15.2 **Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Parties and their permitted successors and assigns. Neither this Agreement nor the duties and obligations of City hereunder may be assigned by City to any Person without the prior written consent of TCS in its sole discretion. TCS shall have the right to assign this Agreement and the duties and obligations of TCS hereunder without consent of the City provided that such assignment shall be permitted only in connection with a sale of all or a portion of the TCS Parcel and in such event only to the assignee of TCS with respect to such interest. The agreements and covenants included herein shall be binding on and inure to the benefit of the permitted assigns and successors-in-interest of the Parties hereto.

15.3 **Conflicts of Interest.** No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor shall such member, official or employee participate in any decision relating to this Agreement which is prohibited by law.

15.4 **Warranty Against Payment of Consideration for Agreement.** TCS warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration

for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

15.5 **Approvals by City and TCS.** Approvals required of the Parties shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City or TCS to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld, conditioned or delayed. In the event that a Party declines to approve any contract, document, plan, proposal, specification, drawing or other matter, such denial shall be in writing and shall include the reasons for such denial. The Party considering the request for such approval shall use commercially reasonable efforts to respond to such request for approval within ten (10) Days of receipt unless a different period for response is expressly provided herein.

15.6 **Titles, Captions and Exhibits.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. The defined terms in this Agreement apply equally to the singular and plural forms thereof. The words “include”, “includes” and “including” are deemed to be followed by the phrase “without limitation.” Unless otherwise indicated, references in this Agreement to sections, paragraphs, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Agreement and all exhibits referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

15.7 **Interpretation.** This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each Party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

15.8 **Amendment of Agreement.** This Agreement may be amended only by an instrument in writing executed and delivered by the City and TCS.

15.9 **Severability.** If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

15.10 **Attorneys’ Fees.** In the event of a dispute between the Parties with respect to the terms or conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys’ fees as established by the judge or arbitrator presiding over such dispute.

15.11 **Legal Advice.** Each Party represents and warrants to the other Party the following: it has carefully read this Agreement, and in signing this Agreement, it does so with full knowledge of any right which it may have; it has received independent legal advice from its respective legal counsel as to the matter set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, it has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of

the other Party or its respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

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

15.13 **Mutual Cooperation.** Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement.

15.14 **Lender Protection Provisions.** To the extent that any lender to or equity investor of TCS requires modifications to this Agreement or any attachment hereto, the City agrees to reasonably consider such modifications. The City hereby acknowledges TCS's right to collaterally assign this Agreement and TCS's rights hereunder to such a lender.

15.15 **Non-Liability of City Officials and Employees.** No member, official or employee of the City shall be personally liable to TCS, or any successor in interest or assignee, in the event of any Event of Default by the City or for any amount which may become due to TCS or successor in interest or assignee on any obligation under the terms of this Agreement.

15.16 **Administration by Designated Representatives.**

15.16.1 Ryan Smith shall be the designated TCS representative for purposes of administering TCS's obligations under this Agreement, and shall be the contact point for the City for coordination with TCS. TCS may designate a successor or replacement TCS representative at any time, and from time to time, upon written notice to the City. TCS reserves the right to designate an alternative TCS Representative upon prior written notice to City.

15.16.2 City Manager and/or designee shall be the designated City representative for purposes of administering the City's obligations under this Agreement, and shall be the contact point for the TCS for coordination with the City. City may designate a successor or replacement City representative at any time, and from time to time, upon written notice to the TCS. City reserves the right to designate an alternative City Representative with comparable experience and abilities upon prior written notice to TCS.

15.17 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

15.18 **Relationship Between City TCS and other Persons.** It is hereby acknowledged that the relationship between the City and TCS is not that of a partnership or joint venture and that the City and TCS shall not be deemed or construed for any purpose to be the agent of the other. Nothing contained in this Agreement shall create any contractual relationship between the City, TCS and Parcel B Developer, the Contractor or any Subcontractor, vendor, material supplier, laborer or any other Person retained by or through Parcel B Developer or retained by any of the foregoing, at any tier, or their respective officers, employees or agents.

15.19 **No Third Party Beneficiaries.** Except with respect to the express lender protection

provisions set forth in this Agreement for the benefit of TCS's lenders, this Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and TCS its permitted successors and assigns, and no other Person shall have any right of action hereon or hereunder.

15.20 **Entire Agreement.** This Agreement, including the Exhibits attached hereto constitutes the entire agreement between the City and TCS with respect to the subject matter hereof.

[Signature Page Follows]

[Signature Page to Payment Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

“CITY”

CITY OF CULVER CITY
a charter city of the State of California

Dated: _____

By: _____
John M. Nachbar
City Manager

APPROVED AS TO CONTENT:

By: _____
Sol Blumenfeld
Community Development Director

ATTEST:

By: _____
Martin R. Cole, City Clerk

APPROVED AS TO FORM:

By: _____
Carol Schwab, City Attorney

“TCS”

THE CULVER STUDIOS OWNER LLC
a Delaware limited liability company

By: _____
Name:
Title:

:

EXHIBIT “A-1”

CITY PARCEL

Exhibit “A-1”

TO BE UPDATED

EXHIBIT “A-2”

PARCEL B

Exhibit “A-2”

TO BE UPDATED

EXHIBIT “B”

TCS PARCEL

Exhibit “B”

TO BE UPDATED

EXHIBIT “C”

**CONCEPTUAL CULVER BOULEVARD
ACCESS IMPROVEMENTS DESIGN**

Exhibit “C”

EXHIBIT “D”
FORM OF ADDITIONAL DEPOSIT REQUEST

To: The Culver Studios Owner LLC (“TCS”)
 From: City of Culver City
 Project: Culver Boulevard Access Improvements

Re: Culver Boulevard Access Improvements Additional Deposit Request No. _____
 (“**Request**”)

This Additional Deposit Request for \$_____ is made on _____, 201__ pursuant to Section _____ of that certain Payment and Performance Agreement between the City of Culver City and TCS dated _____ (the “**Agreement**”) with respect to the Culver Boulevard Access Improvements. Initially capitalized terms shall have the meanings set forth in the Agreement.

As to this Request, the City represents and certifies the following:

1. The amount(s) specified in this Request accurately represent Actual Modification Costs the City will incur for the Work and shall be utilized by the City solely for payment for the design and construction of the Culver Boulevard Access Improvements. Copies of applicable invoices and other documents evidencing the total amount expended, incurred or due are attached to this Payment Request including an explanation of why the increase is required, and backup documentation for same.
2. Neither the City nor, to the best of the City’s knowledge, the Parcel B Developer is in default under any of the Public Improvement Agreements and all due and payable bills with respect to the Work have been paid or are included in the amount requested in this Request.
3. The City agrees to pay all due and payable bills with respect to, and solely with respect to, the Work in accordance with the Public Improvement Agreements and specifically excluding any Management Fees and the TCS Credit.
4. To the best of the City’s actual knowledge, all Work to date has been performed in accordance with the Plans except as expressly approved by the City after compliance with the Meet and Confer provisions of the Agreement.
5. Except as specifically set forth on Schedule 1 to this Request, there have been no changes in the Work or the Budget set forth on Exhibit “F” to the Agreement and no extra Work, labor or materials has been ordered or contracted for, except as expressly approved by the City following the Meet and Confer provisions of this Agreement, if applicable.
6. All conditions to the payment of the amounts specified in this Request as required by the Agreement have been fulfilled.

{Signed and Dated by Authorized Signatory for City of Culver City}

Exhibit “D”

EXHIBIT E

ACCEPTANCE OF FINAL ACTUAL MODIFICATION COSTS

[to be added]

Exhibit "E"

Exhibit "F"
Total Cost Budget

ATTACHMENT 5

DRAFT Estimate of costs to add ramp on Culver Blvd:
Prepared by Combined Properties on December 4, 2015

	<u>Description</u>	<u>Cost</u>	<u>Footnote</u>
Hard Costs	Bernard's estimate for Option #3	\$ 3,689,854	
	Placeholder for utility relocation costs	\$ 500,000	1
	Estimate for landscaping / streetscape	n/a	2
	Estimate for offsite costs	\$ 250,000	3
	Subtotal - Hard Costs	\$ 4,439,854	
Soft Costs	Architectural	\$ 191,095	4
	Structural	\$ 37,000	
	MEP	\$ 42,800	
	Civil	\$ 28,300	
	Lighting	\$ 11,500	
	Signage/Wayfinding	\$ 10,000	
	Waterproofing	\$ 1,125	
	Shoring	\$ 8,000	
	Geotechnical (placeholder)	\$ 5,000	
	Parking	\$ 10,000	
	Landscaping - concept studies	\$ 14,000	
	Landscaping - CDs	\$ 50,500	
	Special inspections at 1.2% of hard costs	\$ 44,278	
	Plan check Fees	not included	5
	Subtotal - Soft Costs	\$ 453,598	
Other Costs	10% owner's contingency on hard cost	\$ 443,985	6
	10% contingency on soft cost	\$ 45,360	
	4% management fee on hard and soft costs	\$ 195,738	
	Estimate of additional insurance costs and bond	\$ 75,000	7
	Subtotal - Other Costs	\$ 760,083	
Ramp Credit	Credit from the City	\$ (290,000)	
	Credit from Combined/Hudson	\$ (290,000)	
Mgmt Fee Credit	Credit from Combined/Hudson	\$ (195,738)	8
Total		\$ 4,877,797	

- 1 This is a place holder which can not be refined until utility companies complete their engineering. The attached underground utility plan from PSOMAS indicates that there is a 12" water line, concrete encased ATT fiber lines, City fiber lines and (2) Edison electrical main lines that must be relocated to accommodate new ramp.
- 2 This is a rough order of magnitude for installing a canopy/trellis above the stage, additional landscaping around the stage, and any other aesthetic features on/around the stage itself to diminish the visual impact the ramp has on the town plaza.
NOTE - This cost has been removed from the Ramp Budget and the City is paying for these features.
- 3 This is a rough order of magnitude for offsite costs associated with the modifications that will be required at the Culver intersection adjacent to the new ramp. We anticipate having to relocate street lights, modify existing cross walks, shorten median on Culver Blvd, incorporate left turn lane for westbound traffic on Culver Blvd to turn south into the ramp, below grade car sensor modifications, curb and gutter work and asphalt demolition and repair.
- 4 The soft cost for architectural fees (as well as all other consultant fees) are based upon a three package deliverable: the first package includes the Parcel B building & the garage, and the second package includes the Town Plaza, and the third package is the Ramp.
- 5 We have not included City plan check/ permit fees here as the City has not told us how they will process the package containing the ramp.
- 6 10% owners contingency carried on top of 10% contractor's contingency in the Bernard's estimate.
- 7 \$75,000 estimate is based on 0.75% bonding estimate on hard costs plus additional costs for a GL and other policies.
- 8 This credit is equal to the management fee (capped at \$205,000).

General Notes:

No payment required for the 19 missing parking spaces. Combined/Hudson is absorbing this expense.

Note that these are only conceptual estimates. They reflect the best information we have as of now, but they are likely to evolve as the project progresses.

Exhibit "F"