

MEETING DATE 07/10/06

AGENDA ITEM A Joint City Council/Redevelopment Agency Public Hearing for Consideration of a Disposition and Development Agreement for the Sale of Property Located at 9300 Culver Boulevard to Rush Pacifica, LLC, Consideration of a Plan for Washington Boulevard's Realignment in Downtown, including a Street Name Change, Consideration of an Infrastructure Improvement Agreement with Rush Pacifica LLC for Construction of the Town Plaza Expansion and Realignment, and Consideration to Amend an Agreement with CBM Consulting for the Preparation of the Tentative Parcel Map for 9300 Culver Boulevard

ATTACHMENTS

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**SUMMARY REPORT PURSUANT TO
CALIFORNIA HEALTH AND SAFETY CODE Section 33433
ON A
Disposition and development Agreement
BY AND BETWEEN THE
Culver City Redevelopment Agency
AND
Rush Pacifica LLC**

The following Summary Report has been prepared pursuant to California Health and Safety Code Section 33433 (Section 33433). The report sets forth certain details of the proposed Disposition and Development Agreement (Parcel B DDA) between the Culver City Redevelopment Agency (Agency) and Rush Pacifica LLC (Rush Pacifica). The Parcel B DDA calls for the Agency to sell the 50,727 square foot parcel located at 9300 Culver Boulevard (Parcel B) to Rush Pacifica for the subsequent development of an office/retail project.

BACKGROUND STATEMENT

The Agency and OliverMcMillan Culver City LLC (OMCC) executed a Disposition and Development Agreement in September 1999 and a First Amendment to the DDA in March 2001 (Original Agreements). The Original Agreement required the Agency and OMCC to undertake the following activities:

1 Agency Activities

- a Convey approximately 104,410 square feet of real property composed of three separate parcels (Parcels A, B, and C) to OMCC.¹
- b Convey any streets or alleys within the parcels, excluding the public right-of-way on Culver, Washington and Ince Boulevards, to OMCC.
- c Fund 100% of the costs associated with constructing the movie theater component of the development. Convey the completed theater to the City of Culver City (City).
- d Develop, own and operate an 800-space public parking structure on the 54,020 square foot parcel identified as Parcel D.
- e Provide two perimeter public parking structures containing approximately 730 parking spaces to serve the development.

2 OMCC Activities

¹ The Theater portion of Parcel A was to be ground leased to OMCC; the balance of the land was to be sold to OMCC.

- a Construct up to 117 000 square feet of restaurant retail and office uses at OMCC s cost
- b Construct a 12-screen movie theater at the Agency s cost

In February 2002, the Agency and OliverMcMillan Culver City Theaters LLC (OMCCT), the successor in interest to OMCC, entered into a Second Amendment to the Original Agreements (Second Amendment) The primary purpose of the Second Amendment was to postpone the conveyance and development of Parcel B, which includes 50,727 square feet of land area

In compliance with Section 33433, Summary Reports were completed for the Original Agreements and the Second Amendment The following Summary Report identifies the salient modifications to the Original Agreements and Second Amendment that are included in the proposed Parcel B DDA

SECTION 33433 REPORT MODIFICATIONS

The Parcel B DDA calls for the Agency to convey Parcel B to Rush Pacifica for the subsequent development of an office and retail project Section 33433 requires the Agency to summarize the following components of the proposed property disposition transaction

- I Salient Points of the Parcel B DDA Summarizes the major responsibilities imposed on Rush Pacifica and the Agency by the Parcel B DDA
- II Cost of the Parcel B DDA to the Agency Quantifies the total cost to the Agency associated with implementing the Parcel B DDA
- III Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted under the Redevelopment Plan Identifies the value of Parcel B at the highest use permitted under the requirements imposed by Component Three of the Culver City Redevelopment Plan (Redevelopment Plan)
- IV Estimated Reuse Value of the Interests to be Conveyed Details the valuation estimate for Parcel B based on the required scope of development and the other conditions and covenants required by the Parcel B DDA
- V Consideration to be Received and Comparison with the Established Value Describes the compensation to be received by the Agency and explains any difference between the compensation to be received and the established value of Parcel B
- VI Blight Elimination Identifies the existing blighting conditions on Parcel B and explains how the Parcel B DDA will assist in alleviating the blighting influence

VII Conformance with the AB1290 Implementation Plan Describes how the Parcel B development will achieve goals identified in the Agency's adopted AB1290 Implementation Plan

As discussed previously, Summary Reports were prepared in support of the Original Agreements and the Second Amendment. As such, the following Summary Report focuses solely on the sections of the report that are impacted by the Parcel B DDA. The report sections that do not require modification are:

- 1 Blight Elimination and
- 2 Conformance with the AB1290 Implementation Plan

The sections that are re-evaluated in this Summary Report are:

- 3 Salient Points of the Parcel B DDA
- 4 The Cost of the Transaction to the Agency
- 5 Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted under the Redevelopment Plan
- 6 Estimated Reuse Value of the Interests to be Conveyed and
- 7 Consideration to be Received and Comparison with the Established Value

I SALIENT POINTS OF THE PARCEL B DDA

A Rush Pacifica Responsibilities

- 8 Rush Pacifica must acquire Parcel B from the Agency for \$5.94 million
- 9 Rush Pacifica must construct approximately 107,000 square feet of gross building area in the following mix of uses (Project):
 - a Approximately 73,000 square feet of office space and
 - b 34,000 square feet of retail and restaurant space

B Agency Responsibilities

- 10 The Agency must convey Parcel B to Rush Pacifica in an "as is" condition
- 11 The Agency must allow Rush Pacifica to use spaces in public parking structures to fulfill the parking requirements imposed on the Project by the City's Building Code

II COST OF THE PARCEL B DDA TO THE AGENCY

A Agency Costs

The Summary Reports that were prepared in support of the Original Agreements and the Second Amendment included estimates of the Agency costs associated with assembling Parcels A, B, C and D, the interest carrying costs incurred on assemblage expenditures, the costs to construct the public parking structure on Parcel D, and the infrastructure costs associated with the development. The only additional costs required to implement the Parcel B DDA are the interest costs incurred on the Parcel B assemblage costs between February 2002 and June 2006². These costs are estimated at \$2.64 million.

B Agency Revenues

The Summary Report prepared in support of the Original Agreements included estimates of the Agency revenues that would be generated by the development of Parcel A, B and C. However, the Summary Report prepared in support of the Second Amendment excluded the Agency revenues from Parcel B. The Agency revenues specifically related to the implementation of the Parcel B DDA are:

- 12. \$5.94 million in land sales proceeds and
- 13. The Project will generate property tax increment revenues through the termination of Component Three of the Culver City Redevelopment Project Area in 2025. These revenues are projected to total \$6.85 million in nominal terms, which translates into \$3.45 million in present value terms.

C Net Agency Revenue

The implementation of the Parcel B DDA generates the following net Agency revenues:

	Total	Present Value
Agency Costs	\$2,640,000	\$2,640,000
<u>Agency Revenues</u>		
Land Sales Proceeds	\$5,935,000	\$5,935,000
Property Tax Increment	6,646,000	3,451,000
Total Agency Revenue	\$12,581,000	\$9,386,000

² The Second Amendment was adopted in February 2002.

Net Agency Revenue	\$9 941 000	\$6 746 000
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As shown in the previous table, the implementation of the Parcel B DDA generates net revenue to the Agency. However, it is important to note that the implementing the balance of the development on Parcels A, C and D generated net Agency costs. The effective net Agency revenues/(costs) associated with implementing the two-phased development are

	Total	Present Value
Net Agency Cost – Parcels A, C and D	\$8 050 000	\$31 546 000
Net Agency Revenue – Parcel B	9 941 000	6 746 000
Net Agency Revenue/(Cost)	\$1 891 000	(\$24 800 000)

III ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 33433 requires the Agency to identify the value of the interests being conveyed at the highest and best use allowed by the requirements imposed by the Redevelopment Plan. The valuation must be based on the assumption that near-term development is required, but the valuation does not take into consideration any extraordinary use and/or quality restrictions being imposed on the development by the Agency.

The Agency engaged Lea Associates, Inc. to determine the fair market value of Parcel B at the highest and best use. In a report dated April 25, 2005, Lea Associates, Inc. set the value of the property at \$6.57 million, or \$130 per square foot of land area.

IV ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

The Parcel B DDA requires Rush Pacifica to develop Parcel B in conformance with the Final Environmental Impact Review conducted by the Culver City Planning Commission in 2002. No additional or extraordinary requirements are being imposed on the Project. As such, the fair reuse value of Parcel B is equal to the fair market value of the property at the highest use permitted under the Redevelopment Plan.

V CONSIDERATION TO BE RECEIVED AND COMPARISON WITH THE ESTABLISHED VALUE

The Parcel B DDA requires Rush Pacifica to purchase Parcel B for \$5.94 million, which is 9.7% less than the \$6.57 million appraised value of the property. Lea Associates, Inc. opined that there is a +/- 10% margin of error in the valuation estimate. Therefore, it can be concluded that

the disposition terms included in the Parcel B DDA provide fair compensation to the Agency for the interests being conveyed to Rush Pacifica

**SUMMARY REPORT PURSUANT TO
SECTION 33433
of the
CALIFORNIA HEALTH AND SAFETY CODE
on a
DISPOSITION AND DEVELOPMENT AGREEMENT
by and between the
CULVER CITY REDEVELOPMENT AGENCY
and
ddr OLIVER MCMillan lp**

The following Summary Report has been prepared pursuant to Section 33433 of the California Health and Safety Code. The report sets forth certain details of the proposed Disposition and Development Agreement (Agreement) between the Culver City Redevelopment Agency (Agency) and DDR OliverMcMillan LP (Developer).

The Agreement requires the Agency to convey approximately 104,410 square feet of real property, composed of three separate parcels that have been labeled Parcels A, B, & C, to the Developer. These parcels are collectively referred to as the "Site". The Site includes any streets or alleys within the parcels, which are to be vacated by the City of Culver City (City) pursuant to appropriate procedure³. A fourth parcel (Parcel D) totaling 54,020 square feet, which is contiguous to Parcel C and is owned by the Agency, is proposed to be developed with a public parking structure. Parcel D, more commonly referred to as the "Parking Structure Lot", will be improved with 800 space parking garage at the Agency's expense. The parking structure will be owned and maintained by the Agency over time.

The Agreement requires the Developer to construct a mixed-use development including a multi-screen theater complex, restaurants, retail and office uses (Project). In addition to the parking structure to be constructed on Parcel D, the Agency agrees to provide two perimeter public parking structures containing approximately 730 parking spaces. The two perimeter facilities, the proposed structure on Parcel D and other Downtown public parking supply total approximately 1,900 parking spaces.

This Summary Report is based upon information contained within the Agreement, and is organized into the following seven sections:

- I **Salient Points of the Agreement** This section includes a description of the Project, and the major responsibilities imposed on the Developer and the Agency by the Agreement.
- II **Cost of the Agreement to the Agency** This section details the total and net cost to the Agency associated with implementing the Agreement.

³ No portion of the adjacent public right of way (Culver Boulevard, Washington Boulevard and Ince Boulevard) will be vacated.

- III Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted Under the Redevelopment Plan** This section estimates the value of the interests to be conveyed determined at the highest use permitted under the existing zoning and the requirements imposed by Component Three of the Culver City Redevelopment Plan (Redevelopment Plan)
- IV Estimated Reuse Value of the Interests to be Conveyed** This section summarizes the valuation estimate for the Site based on the required use, and with the conditions and covenants required by the Agreement
- V Consideration Received and Comparison with Established Fair Reuse Value** This section describes the compensation to be received by the Agency, and explains any difference between the compensation to be received and the established fair reuse value of the Site
- VI Blight Elimination** This section describes the existing blighting conditions on the Site, and explains how the Agreement will assist in alleviating the blighting influence
- VII Conformance with the AB1290 Implementation Plan** This section describes how the Agreement achieves goals identified in the Agency's adopted AB1290 Implementation Plan

This report and the Agreement are to be made available for public inspection prior to the approval of the Agreement

SALIENT POINTS OF THE AGREEMENT

The Agreement requires the Developer to construct and operate a mixed-use development including a multi-screen theater complex, restaurants, retail and office uses. The Agreement also requires that the Developer make certain improvements to the portion of Ince Boulevard between Culver and Washington Boulevards, the adjoining public rights-of-way and the Town Park (Adjoining Area)

A Project Description

The Agreement requires the Project to consist of the following uses

- 1 A first-class multiplex theater of no more than 3,200 seats and a maximum of 16 screens
- 2 Full-service restaurants totaling approximately 25,900 square feet of gross building area (GBA), and food-service space totaling 11,555 square feet of GBA

- 3 An 8,500 square foot Trader Joe's market plus 2,025 square feet of ancillary retail space
- 4 Within the Site, or within 750 feet of the Site, there shall be approximately 2,000 square feet of commercial space designated for a local museum
- 5 A minimum of 30,000 square feet of office space shall be developed The office uses shall be entertainment related or other office uses comparable to those listed in the Sample of Office uses (Exhibit C to the Scope of Development)
- 6 The public parking structure to be developed by the Agency shall provide for a minimum of 800 parking spaces

Developer Responsibilities

The Agreement requires the Developer to complete the following activities

- 1 The Developer must make the following Site acquisition payments to the Agency
 - a Upon the execution of the Agreement, the Developer shall make a \$25,000 good faith deposit to the Agency
 - b The Developer shall purchase the Site for a cash payment of \$1,825,000 to be paid at the close of escrow ⁴
 - c The Developer shall make the following contingent additional payments to the Agency
 - 1 Restaurant Rent Participation – After the restaurant leases are executed, the Developer shall pay to the Agency 50% of the capitalized difference between the average annual pro forma rent projected over the initial lease terms and the actual average annual rent achieved for the restaurants
 - 11 Office Rent Participation – Upon full lease-up of the office space, the Developer shall pay to the Agency 50% of the capitalized difference between the average annual pro forma rent and the actual average annual office rent to be paid over the initial lease term, and,

⁴ The purchase price will be reduced on a dollar for dollar basis for any costs incurred by the Developer for the City's Sewer Facility Fee New Development Impact Fund fee and the cost to increase the capacity of any main public utility line serving the Site

- 111 Restaurant Percentage Rent Participation – The Developer shall pay to the Agency 50% of the capitalized value of the average annual percentage rents generated by the restaurants during the first five-years of operation
- 2 The Developer is required to make a \$200,000 contribution to the Neighborhood Traffic Mitigation Program (NTMP), and to traffic/pedestrian improvements required to serve the Project
- 3 The Developer shall pay half the cost for preparation, processing and recordation of the parcel map for the Site, the Parking Structure Lot and the Adjoining Area
- 4 Within the time frame established in the Schedule of Performance (Attachment No 3 to the Agreement) the Developer shall submit to the Agency evidence that the Developer has obtained the necessary financing for the development of the Site
- 5 The Developer shall prepare and submit the “Basic Concept/Schematic Drawings”, “Design Development Drawings” and “Final Construction Drawings” for review and approval by the Agency in accordance with the established Schedule of Performance (Attachment No 3 to the Agreement) The drawings shall include the Project and the public improvements including the treatment of the Ince Boulevard between Culver and Washington Boulevards, and the Adjoining Area
- 6 The Developer is responsible for completing all actions required to make the Site suitable for the Project, including any hazardous materials cleanup
- 7 The Developer shall make certain treatments to the portion of Ince Boulevard between Culver and Washington Boulevards, and the Adjoining Area

Agency Responsibilities

Under the Agreement, the Agency must complete the following activities

- 1 The Agency shall convey fee ownership in the Site to the Developer
- 2 The Agency shall provide the parking required to serve the Project To that end, the Agency must complete the following actions
 - a The Agency shall construct an 800 space parking garage on the Parking Structure Lot

- b The Agency shall provide approximately 1,100 additional public parking spaces within the area defined as the 'Parking Perimeter'
- 3 The Agency shall fund the following Project related costs
 - a Any traffic mitigation and pedestrian improvements costs in excess of the \$200,000 contribution to be paid by the Developer
 - b Any utility easement relocation costs
 - c The Agency must fund any costs associated with the City's Sewer Facility Fee, the New Development Impact Fee and the costs associated with increasing the Site's utility capacity
 - d One half the cost for preparation, processing and recordation of the parcel map for the Site, the Parking Structure Lot and the Adjoining Area
- 5 The Agency shall approve or disapprove of the plans, drawings and related documents for the Project within the established Schedule of Performance. However, the Agency shall not require changes that are inconsistent with the original Basic Concept/ Schematic Drawings
 - a The Agency shall ensure that the Scope of Development required by the Agreement complies with the Site's zoning
 - b The Agency shall request the City to vacate any streets or alleys within the boundaries of the Site

COST OF THE AGREEMENT TO THE AGENCY

Except as expressly provided in the Method of Financing (Attachment No 2 to the Agreement), the cost of developing the Site, the Adjoining Areas and all improvements thereon, shall be borne by the Developer

The Agency costs to implement the Agreement include out-of-pocket expenditures already incurred to acquire and assemble the Site, relocate tenants, demolish existing improvements, remediate hazardous materials, and prepare the Site for development. New costs to be incurred by the Agency include infrastructure improvement costs, all costs related to the Parking Structure on Parcel D, and a contingent liability related to utilities relocation

To defray the identified costs, the Agency will receive land sales proceeds from the Developer, a Developer contribution to the traffic mitigation costs and 100% of the net Property Tax Increment generated by the Project. In addition, the City will receive 100% of the local share of the sales tax revenues, business license tax revenues and utility user tax revenues, which are projected to produce substantial General Fund revenues over time

The net Agency costs are estimated as follows

Agency Costs	
Site Assemblage Costs ⁵	
Parcel A	\$575 000
Parcel B	7 406 000
Parcel C	875 000
Parcel D	2 775 000
Infrastructure/Traffic Mitigation Costs	630 000
Estimated Utility Relocation Cost	275 000
Parking Structure Design and Construction	10 000 000
Total Agency Cost	<u>\$22 536 000</u>
Agency Revenues	
Developer Land Payment	\$1 825 000
Developer Contribution to NTMP & Traffic/Pedestrian Imps	200 000
Present Value Property Tax Increment	3 220 000
Total Agency Revenue	<u>\$5 245 000</u>
Net Agency Cost	\$17 291 000

⁵ Includes interest payments on acquisition costs incurred from the acquisition date through the execution of this Agreement

As shown in the preceding table, the Agency costs total \$22.5 million. These costs are partially offset by the Developer payments and the present value of the Property Tax Increment to be received by the Agency. When the \$5.2 million in Agency revenues are deducted from the \$22.5 million in Agency cost, the net Agency cost is estimated at approximately \$17.3 million.

ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 33433 of the California Health and Safety Code requires the Agency to identify the value of the interests being conveyed at the highest and best use allowed by the Site's zoning and the requirements imposed by the Redevelopment Plan. The valuation must be based on the assumption that near-term development is required, but the valuation does not take into consideration any extraordinary use and/or quality restrictions being imposed on the development by the Agency.

The Agency obtained an appraisal of Parcels C and D as part of the condemnation process to acquire the property. Based on the appraisal, the Agency paid \$3.65 million for the 1.39-acre property, which equates to \$60.28 per square foot of land area. Subsequently, the Superior Court of the State of California issued a final judgment on the value of Parcels C and D which substantiated the Agency's acquisition price. Given that the three parcels that comprise the Site total 104,410 square feet, at a value of \$60.28 per square foot, the fair market value of the Site is estimated at \$6.29 million.

ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

In a report dated August 6, 1999, Keyser Marston Associates, Inc., the Agency's financial consultant, presented a reuse valuation analysis of the proposed development. Given both the restrictions required by the Agreement and the financial benefits associated with the Agency's Agreement to pay for proposed municipal fees, this analysis established the fair reuse value of the Site at \$1,825,000. This equates to \$17.50 per square foot of land area.

CONSIDERATION RECEIVED AND COMPARISON WITH THE FAIR REUSE VALUE

The Agreement requires the Developer to purchase the Site for \$1,825,000. This is equal to the fair reuse value established for the Site based on the scope of development required by the Agreement. Moreover, if the Project out-performs the pro forma projections, the Agency will receive additional payments in the forms of the Restaurant Rent Participation, the Office Rent Participation and the Restaurant Percentage Rent Participation. Thus, the total consideration to be received for the Site could potentially be greater than the established fair reuse value.

BLIGHT ELIMINATION

When the Washington-Culver Redevelopment Project No. 3 was adopted in 1975, specific problems (blighting conditions) were identified in the Report to City Council on the proposed

Redevelopment Plan These problems or blighting conditions that impacted the Site and Parking Structure Lot are listed below

- Age, obsolescence, deterioration, dilapidation of buildings in both the commercial and industrial areas which adversely impact nearby residential uses,
- The past subdivision and sale of lots which are irregularly shaped and inadequately sized for proper usefulness and development in the industrial areas,
- Lack of adequate streets, open space, and utilities in the industrial areas, and
- Improper and under-utilization of land which result in a stagnant and unproductive conditions in both the commercial and industrial areas

Parcel A consists of two lots, namely Lot 3 and Lot A The Culver City Parking Authority assembled Lot 3 in 1966 and the Agency purchased Lot A in 1976 Lot 3 was previously developed with a bowling alley and a billiards parlor To respond to a significant parking deficiency in the Downtown area, the Parking Authority demolished the bowling alley and billiards parlor and improved the site with a surface parking lot In 1994, the Agency constructed a street within Lot 3 to improve circulation to the abutting neighborhood At the time of the Agency's acquisition, Lot A was developed with a vacant gasoline station The tanks had been removed by ARCO and there were no plans to reuse the filling station The Agency razed the gas station and paved the lot to expand the City's public parking

Parcel B included 15 parcels owned by ten different entities These parcels were assembled over a 10-year period Many of the parcels were narrow and averaged 25 feet in width There were also multiple incompatible uses on Parcel B including an architect's office and a non-profit organization's office, auto sales, auto body and repair shops, a liquor store, a cafe, an artist studio, a gun shop and, residential units above the commercial uses Many of the parcels were too narrow by today's development standards, and some of the structures on Parcel B were constructed of unreinforced masonry Fire had severely damaged some of the structures and they were no longer fit for occupancy After the assemblage, Parcel B was reduced in area with the realignment of Washington Boulevard Parcel B now includes the site bounded by Culver, Ince, and Washington Boulevards

Parcels C and D were acquired by the Agency in 1998 via an eminent domain action Both parcels were under one ownership, and had previously been used as a new and used car dealership However, three years prior to the sale, the dealership had vacated the site and removed the majority of the equipment Today, the structures that remain on the site have little reuse potential

CONFORMANCE WITH THE AB1290 IMPLEMENTATION PLAN

The Agency adopted a single combined Implementation Plan for Redevelopment Projects No 1, 2 and 3 on December 5, 1994, and amended it on October 6, 1997. The Implementation Plan identifies several objectives and tasks to implement the goals for each of the project areas. The goals and objectives that will be achieved throughout the implementation of the Project are outlined below.

Goal 3 1	Eradicate blighting influences in Project No 3
Objective 3 1 a	Facilitate Private Investment in East Washington Commercial Area
Task	Design and construct streetscape improvements for the easterly portion of the Washington Boulevard, from Ince Boulevard to Fairfax Avenue
Response	The Project includes the streetscape treatment of Washington Boulevard from Ince Boulevard to Fairfax Avenue
Objective 3 1 d	Facilitate Private Investment in Downtown
Task	Design and construct a parking deck on the City lot on Cardiff Avenue in Downtown
Response	The Agreement requires that the Agency build perimeter-parking structures that will supplement the parking being provided by the Parking Structure Lot. One of these parking structures will be located on the Cardiff Avenue lot.
Task	Utilize Agency authority (prior to 1999) to acquire and assemble appropriate development sites for disposition and redevelopment.
Response	The Agency completed assembly of the Parking Structure Lot in 1998, which will be a critical component of the mixed-use entertainment/ retail development.

Goal 3 2	Return land to productive use through a coordinated program of new construction, rehabilitation, rehabilitation and supportive public improvements in Project No 3
Objective 3 2 c	Facilitate Appropriate Development of Vacant or Underutilized Sites in Project No 3
Task	Accomplish the reuse/redevelopment of Coast Media site, "Block C", and Parking Lot 3
Response	The objective is specific to and references the Project The entire Site is vacant and the structures on Parcel D are proposed for demolition The proposed mixed-use Project will not only utilize vacant land but will be a catalyst for redevelopment in the Downtown by drawing pedestrians to the area

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**SUMMARY REPORT PURSUANT TO
SECTION 33433
of the
CALIFORNIA HEALTH AND SAFETY CODE
on aN
Amendment to DISPOSITION AND DEVELOPMENT AGREEMENT
by and between the
CULVER CITY REDEVELOPMENT AGENCY
and
Oliver McMillan Culver City LLC,
A Delaware Limited liability Company**

The following Summary Report has been prepared pursuant to Section 33433 of the California Health and Safety Code. The report sets forth certain details of the proposed Amendment to Disposition and Development Agreement (Amended Agreement) between the Culver City Redevelopment Agency (Agency) and Oliver McMillan Culver City LLC, a Delaware limited liability (Developer). The Developer is the successor in interest to DDR OliverMcMillan Culver City LLC, a Delaware limited liability company (Original Developer).

BACKGROUND STATEMENT

The Agency and the Original Developer executed a Disposition and Development Agreement (DDA) on September 23, 1999. In compliance with California Health and Safety Code Section 33433, a Summary Report was completed on August 17, 1999 (1999 Summary Report).⁶ The executed DDA required the Agency and the Original Developer to undertake the following activities:

14 Agency Activities

- a Convey approximately 104,410 square feet of real property composed of three separate parcels that have been labeled Parcels A, B & C to the Developer.
- b Convey any streets or alleys within the parcels which are to be vacated by the City of Culver City (City) pursuant to appropriate procedure in the land area to be conveyed to the Original Developer.⁷
- c Develop an 800-space public parking structure on the 54,020 square foot parcel identified as Parcel D). The parking structure was to be owned and maintained by the Agency over time.

⁶ The 1999 Summary report is attached at the conclusion of this report for reference purposes.

⁷ No portion of the adjacent public right-of-way (Culver Boulevard, Washington Boulevard and Ince Boulevard) will be vacated.

- d Provide two perimeter public parking structures containing approximately 730 parking spaces

15 Original Developer Activities

- a Construct a mixed-use development including a multi-screen theater complex restaurants retail and office uses
- b Own and operate each component of the completed mixed-use development

The Amended Agreement alters the approved transaction in the following ways

- 1 Parcel A shall be divided into areas defined as the Restaurant Portions of Parcel A and the area defined as the Theater Portion of Parcel A
 - a The fee interest in the Restaurant Portions of Parcel A shall be conveyed to the Developer
 - b The Theater Portion of Parcel A shall be leased to the Developer
- 2 The Agency shall be responsible for funding 100% of the costs associated with constructing the movie theater component of the development Upon completion the movie theater building must be conveyed to the City of Culver City (City)
- 3 The financial terms of the movie theater transaction can be summarized as follows
 - a The construction costs funded by the Agency will be treated as a loan to be repaid from the theater s cash flow The loan will bear 6 5% compound interest
 - b The Agency is required to make a \$50 000 per year payment to the Developer to manage the movie theater
 - c The Agency will receive 75% of the net cash flow generated by the movie theater after the payment of approved operating expenses and debt service on the Agency loan
- 4 The scope of development is altered as follows
 - a The movie theater size is reduced from 3 200 seats in 16-screens to 1 700 seats in no more than 12-screens
 - b The Original Agreement required the development to include at least 30 000 square feet of office space and no more than 65 000 square feet of office space The Amended Agreement allows for up to 77 500 square feet of office space

- c The full-service restaurant space area is reduced from 25 900 to 21 500 square feet
- d The food service area is increased from 11 555 square feet to 18 000 square feet
- e The requirement to include 2 025 square feet of ancillary retail space is eliminated
- f The requirement for the Developer to designate 2 000 square feet of commercial space to a local museum is eliminated

This Summary Report is based upon the modifications contained within the Amended Agreement, and is organized into the following seven sections

- VIII **Salient Points of the Amended Agreement** This section describes the changes to the major responsibilities imposed on the Developer and the Agency by the Amended Agreement
- IX **Cost of the Amended Agreement to the Agency** This section details the total and net cost to the Agency associated with implementing the Amended Agreement
- X **Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted Under the Redevelopment Plan** The Amended Agreement calls for the fee interest in the Restaurant Portions of Parcel A plus 100% of Parcels B and C to be conveyed to the Developer The Amended Agreement also requires the Agency to lease the Theater Portion of Parcel A to the Developer This section summarizes the value of these interests (Development Site) determined at the highest use permitted under the existing zoning and the requirements imposed by Component Three of the Culver City Redevelopment Plan (Redevelopment Plan)
- XI **Estimated Reuse Value of the Interests to be Conveyed** This section summarizes the valuation estimate for the Development Site based on the required use, and with the conditions and covenants required by the Amended Agreement

XII Consideration Received and Comparison with Established Fair Reuse Value This section describes the compensation to be received by the Agency, and explains any difference between the compensation to be received and the established fair reuse value of the Development Site

XIII Blight Elimination This section describes the existing blighting conditions on the Development Site, and explains how the Amended Agreement will assist in alleviating the blighting influence

XIV Conformance with the AB1290 Implementation Plan This section describes how the Amended Agreement achieves goals identified in the Agency's adopted AB1290 Implementation Plan

This report and the Amended Agreement are to be made available for public inspection prior to the approval of the Amended Agreement

SALIENT POINTS OF THE AMENDED AGREEMENT

A Project Description

The Amended Agreement requires the Project to consist of the following uses

A first-class multiplex theater of no more than 1,700 seats and a maximum of 12-screens The completed movie theater will be owned by the City

Full-service restaurants totaling approximately 21 500 square feet of gross building area (GBA) and food-service space totaling 18 000 square feet of GBA

Retail commercial space totaling 8 500 square feet of GBA

Office space totaling 77 500 square feet

An 800-space public parking structure to be constructed and owned by the Agency

Developer Responsibilities

The Developer Responsibilities identified in the DDA remain unchanged in the Amended Agreement, with the following exceptions

The Developer is required to construct the movie theater component of the development subject to the financial participation outlined in the Agency Responsibilities section of this report

The DDA imposed Additional Contingent Compensation formulas for the office and restaurant components of the development. The contingent payment for the office is modified as follows:

The pro forma rent threshold is increased to \$31.75 per square foot of gross leasable area (GLA).⁸

The Agency share of the rent earned above the Pro Forma Office Adjusted NOI was reduced from 50% to 33%.

The DDA imposed a covenant that required the Developer to use the Development Site as described in the DDA until at least July 31, 2011. The Amended Agreement extends the operating covenant through November 30, 2013.

Agency Responsibilities

All the Agency Responsibilities identified in the DDA remain in place in the Amended Agreement. In addition, the following responsibilities are imposed on the Agency:

The Agency must fund the cost to construct the movie theater. These costs are capped at \$11.63 million.

The Agency must convey the completed movie theater to the City.

COST OF THE AMENDED AGREEMENT TO THE AGENCY

The Agency costs to implement the Amended Agreement include out-of-pocket expenditures already incurred to acquire and assemble the Development Site, relocate tenants, demolish existing improvements, remediate hazardous materials, and prepare the Development Site for development. New costs to be incurred by the Agency include the construction costs for the movie theater, all costs related to the Parking Structure on Parcel D, infrastructure costs and a contingent liability related to utilities relocation.

To defray the identified costs, the Agency will receive cash flow from the movie theater operation, land sales proceeds from the Developer, a Developer contribution to the traffic mitigation costs and 100% of the net Property Tax Increment generated by the Project. In addition, the City will receive 100% of the local share of the sales tax revenues, business license tax revenues and utility user tax revenues, which are projected to produce substantial General Fund revenues over time.

The net Agency costs are estimated as follows:

	Total	Present Value

⁸ In the DDA the threshold was based on a scale that fluctuated depending on how much office space was ultimately constructed.

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Agency Costs		
Movie Theater Construction Costs	\$11 630 000	\$11 630 000
Development Site Assemblage Costs ⁹		
Parcel A	635 000	635 000
Parcel B	8 184 000	8 184 000
Parcel C	967 000	967 000
Parcel D	3 066 000	3 066 000
Infrastructure/Traffic Mitigation Costs	630 000	630 000
Estimated Utility Relocation Cost	275 000	275 000
Parking Structure Design & Construction	18 961 000	18 961 000
Total Agency Cost	\$44 348 000	\$44 348 000
Agency Revenues		
Cash Flow From Movie Theater ¹⁰	\$26 937 000	\$7 642 000
Developer Land Payment	1 825 000	1 825 000
Developer Contribution to NTMP & Traffic/Pedestrian Imps	200 000	200 000
Property Tax Increment	7 336 000	3 135 000
Total Agency Revenue	\$36 298 000	\$12 802 000
Net Agency Cost	\$8 050 000	\$31 546 000

As shown in the preceding table, the Agency costs total \$44.3 million. These costs are partially offset by the projected cash flow from the movie theater operation, the Developer payments and

⁹ Includes interest payments on acquisition costs incurred from the acquisition date through the execution of the Amended Agreement

¹⁰ Based on the assumption that the theater sells 400 000 tickets per year

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the Property Tax Increment to be received by the Agency. In nominal terms, the Agency revenues total \$36.3 million, which results in net Agency costs of approximately \$8.0 million.

It is important to note that the cash flow from the movie theater and the Property Tax Increment revenues will be received by the Agency on an annual basis over the next 30-years and 24-years, respectively. When these revenue streams are discounted to their present values, the total revenues to be generated by the development are projected at \$12.8 million. This generates net Agency costs of \$31.5 million.

ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 33433 of the California Health and Safety Code requires the Agency to identify the value of the interests being conveyed at the highest and best use allowed by the Development Site's zoning and the requirements imposed by the Redevelopment Plan. The valuation must be based on the assumption that near-term development is required, but the valuation does not take into consideration any extraordinary use and/or quality restrictions being imposed on the development by the Agency.

The Agency obtained an appraisal of Parcels C and D as part of the condemnation process to acquire the property. Based on the appraisal, the Agency paid \$3.65 million for the 1.39-acre property, which equates to \$60.28 per square foot of land area. Subsequently, the Superior Court of the State of California issued a final judgment on the value of Parcels C and D which substantiated the Agency's acquisition price. Given that the three parcels that comprise the Development Site total 104,410 square feet, at a value of \$60.28 per square foot, the fair market value of the Development Site is estimated at \$6.29 million.

ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

In a report dated March 1999, Keyser Marston Associates, Inc., the Agency's financial consultant, presented a reuse valuation analysis of the proposed development. This analysis considered the restrictions required by the Amended Agreement, and the financial benefits associated with the Agency's agreement to construct the movie theater and the public parking structure, as well as to pay for a portion of the municipal fees associated with the development. Based on these factors, the fair reuse value of the Development Site was set at \$1.83 million.

CONSIDERATION RECEIVED AND COMPARISON WITH THE FAIR REUSE VALUE

The Amended Agreement requires the Developer to purchase the Development Site for \$1,825,000, which is approximately equal to the fair reuse value established for the Development Site based on the scope of development required by the Amended Agreement. Moreover, if the Project out-performs the pro forma projections, the Agency will receive Additional Contingent Compensation for the office and/or restaurant components of the development. Thus, the total consideration to be received for the Development Site may ultimately be greater than the established fair reuse value.

BLIGHT ELIMINATION

The 1999 Summary Report identifies the existing blighting conditions on the Development Site, and describes how the proposed development would alleviate these conditions. The scope of development mandated by the Amended Agreement will achieve the same blight elimination results as were anticipated by the originally proposed scope of development.

CONFORMANCE WITH THE AB1290 IMPLEMENTATION PLAN

The 1999 Summary Report described how the proposed development would fulfill goals and objectives defined in the Agency's adopted Implementation Plan for Redevelopment Projects No. 1, 2 and 3. The scope of development required by the Amended Agreement conforms with the goals and objectives identified in the 1999 Summary Report.

**SUMMARY REPORT PURSUANT TO
SECTIONs 33433 and 33679
OF the
CALIFORNIA HEALTH AND SAFETY CODE
ON The
Second Amendment to the Disposition and Development Second Amendment
BY AND among THE
Culver City Redevelopment AGENCY
city of culver city
AND
OliverMcMillan Culver City theaters LLC,
A califonia Limited Liability Company**

The following Summary Report has been prepared pursuant to Sections 33433 and 33679 of the California Health and Safety Code. The report sets forth certain details of the proposed Second Amendment to the Disposition and Development Second Amendment (Second Amendment) among the Culver City Redevelopment Agency (Agency), the City of Culver City (City) and OliverMcMillan Culver City Theaters LLC, a California limited liability company (Developer) (as successor-in-interest to OliverMcMillan Culver City LLC, a Delaware limited liability company (OMCC)).

BACKGROUND STATEMENT

The Agency and OMCC executed an Amendment to the executed Disposition and Development Agreement (First Amendment) in March 2001. In compliance with California Health and Safety Code Section 33433, a Summary report was completed on March 14, 2001. That Summary Report supplemented the report that was submitted in support of the original Disposition and Development Agreement (DDA) on September 23, 1999 between the Agency and DDR-OliverMcMillan Culver City LLC, a Delaware limited liability company (predecessor-in-interest to OMCC).

The Second Amendment modifies the DDA and the First Amendment by postponing the development of Parcel B, which includes 50,873 square feet of land area. The Second Amendment specifically limits the scope of development to Parcels A, C and D, which contain 127,033 square feet of land area. The Second Amendment requires the Agency and the Developer to undertake the following activities:

Agency/City Activities

- 16 Parcel A includes 53 544 square feet of land area This parcel shall be divided into areas defined as the Food Tenant/Retail Portion of Parcel A and the Theater Portions of Parcel A
 - a The fee interest in the Food Tenant/Retail Portion of Parcel A shall be conveyed by the Agency to the Developer The Food Tenant/Retail space shall total approximately 4 600 square feet of gross building area (GBA)
 - b The Theater Portions of Parcel A shall be leased by the City to the Developer The cinema shall consist of 12-screens and approximately 1 850 seats
- 17 The Agency shall convey Parcel C to the Developer to allow for the construction of an approximately 10 000 square foot Trader Joe s store This parcel contains 11 027 square feet of land area
- 18 The Agency shall convey any streets or alleys within the parcels which are to be vacated by the City pursuant to the appropriate procedure in the land area to be conveyed to the Developer ¹¹
- 19 The Agency shall be responsible for funding the construction of the 12-screen cinema component of the development That construction is being completed on behalf of the City on City-owned land
- 20 The Agency shall be required to provide parking in the following facilities to serve the development
 - a The Agency must construct an 800 space public parking structure on Parcel D This parcel includes 62 452 square feet of land area The parking structure will be owned and maintained by the Agency over time
 - b The Agency shall provide two perimeter public parking structures containing approximately 730 parking spaces
- 21 The Agency shall fund the following costs
 - a Any off-site improvement costs required by the development
 - b Any traffic mitigation and pedestrian improvements costs incurred as a result of the development

¹¹ No portion of the adjacent right of-way (Culver Boulevard Washington Boulevard and Ince Boulevard) will be vacated

- c Any utility easement relocation costs
- d Any costs associated with the City's Sewer Facility Fee, the New Development Impact Fee and the costs associated with increasing the Site's utility capacity

Developer Activities

- 22 The Developer shall construct the 12-screen cinema on the City's behalf
- 23 The Developer shall lease the completed cinema from the City over a 35 year term
- 24 The Developer shall construct the Trader Joe's store and the Food Tenant/retail space at the Developer's sole expense

This Summary Report is based upon information contained within the Second Amendment, and is organized into the following seven sections:

- VIII **Salient Points of the Second Amendment** **This section describes the major responsibilities imposed on the Developer, the City and the Agency by the Second Amendment**
- IX **Cost of the Second Amendment to the Agency** **This section details the total cost to the Agency associated with implementing the Second Amendment**
- X **Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted under the Redevelopment Plan** **The Second Amendment calls for Parcels A and C to be conveyed to the Developer. The fee interest will be conveyed for the Food Tenant/Retail Portion of Parcel A and for all of Parcel C. The Theater Portions of Parcel A will be leased over a 35 year term. These parcels total 64,581 square feet of land area, and are collectively referred to as the "Development Site". This section of the report summarizes the value of the Development Site at the highest use permitted under the requirements imposed by Component Three of the Culver City Redevelopment Plan (Redevelopment Plan)**
- XI **Estimated Reuse Value of the Interests to be Conveyed** **This section summarizes the valuation estimate for the Development Site based on the required scope of development, and the other conditions and covenants required by the Second Amendment**
- XII **Consideration Received and Comparison with the Established Value** **This section describes the compensation to be received by the Agency, and explains any difference between the compensation to be received and the established value of the Development Site**

- XIII Blight Elimination **This section describes the existing blighting conditions on the Site, and explains how the Second Amendment will assist in alleviating the blighting influence**
- XIV Conformance with the AB1290 Implementation Plan **This section describes how the Second Amendment achieves goals identified in the Agency's adopted AB1290 Implementation Plan**

This report and the Second Amendment are to be made available for public inspection prior to the approval of the Second Amendment

SALIENT POINTS OF THE SECOND AMENDMENT

The specific responsibilities imposed on the Developer and the Agency are summarized in the following sections of this report

Developer Responsibilities

- 25 The Developer is required to construct the cinema component of the development
- a The Developer must fund \$1 20 million of the cinema construction costs The Agency must repay this contribution in accordance with the parameters outlined in the Agency Responsibilities section of this report
 - b The Agency must fund up to \$12 49 million in cinema construction cost If the total cinema costs exceed \$13 69 million the Developer must fund 100% of the cost overruns The Developer is not entitled to any repayment for costs incurred in excess of the \$13 69 million cost threshold
- 26 The Developer must construct the Food Tenant/retail space and the Trader Joe's in accordance with the Scope of Development and Schedule of Performance attachments to Second Amendment
- 27 The Second Amendment imposes operating covenants on the private development components that run through November 30 2013

Agency Responsibilities

Under the Agreement, the Agency must complete the following activities

- 28 The Agency must fund the up to \$12 49 million of the cost associated with constructing the cinema The terms of this commitment can be described as follows
- a The Agency shall contribute approximately \$11 49 million to the cinema construction This contribution will be repaid from the revenues generated by the

cinema over a 30 year term. The outstanding balance of the Agency contribution will accrue interest at a 6.5% rate.

- b. The Agency shall contribute up to \$1.00 million in additional funding to the cinema construction as needed. This contribution will be repaid from the revenues generated by the cinema over an 11 year term. The outstanding balance of the Agency contribution will accrue interest at a 6.5% rate.

- 29. The Agency must repay the Developer's \$1.20 million contribution to the cinema construction costs. The Second Amendment requires the repayment to be structured as a fixed installment payment note that bears 12% interest and shall be repaid in monthly installments over an 11 year term. These payments are set at \$196,961 per year.
- 30. As cash flow is available from the cinema operations, the Agency must make Threshold Amount payments to the Developer on a monthly basis over a 10-year term. These payments are set at \$135,600 per year and are provided as compensation to the Developer for the time and effort expended by the Developer over the last six years in assisting the Agency and City with the redevelopment, revitalization and animation of the City's downtown. That compensation is also provided in recognition of changes in the market place which, at this time, have rendered it infeasible to develop Parcel B with uses acceptable to the Agency and community. As a result, the Developer and the Agency have agreed to postpone the economic benefits from development of Parcel B.

COST OF THE SECOND AMENDMENT TO THE AGENCY

The Agency costs to implement the DDA includes out-of-pocket expenditures already incurred to acquire and assemble the Development Site and Parcels B and D, to relocate tenants, demolish existing improvements, remediate hazardous materials and prepare the Development Site for development. To implement the Second Amendment, the Agency must incur the construction costs for the cinema, the costs to construct the parking structure on Parcel D, the cost to construct the necessary off-site improvement and infrastructure costs, the traffic mitigation and pedestrian improvements costs, the identified public permits and fees costs, and a contingent liability related to utilities relocation.

To defray the identified costs, the Agency will receive cash flow from the cinema operation and 100% of the net Property Tax Increment generated by the Project. In addition, the Agency is anticipated to receive land sales proceeds when Parcel B is subsequently sold for development. However, at this time neither the scope of development, nor the land sales price has been determined. As such, no land sales proceeds have been included in this analysis.

The net Agency costs are estimated as follows

<u>Agency Costs</u>	<u>Nominal</u>	<u>Present Value</u>
Cinema Construction Costs ¹²	\$12 489 000	\$12 489 000
Parking Structure Design and Construction	15 599 000	15 599 000
Land Assemblage Costs ¹³	13 666 000	13 666 000
Town Plaza Infrastructure ¹⁴	3 760 000	3 760 000
Total Agency Cost	\$45 514 000	\$45 514 000
<u>Agency Revenues</u>		
Cinema Cash Flow ¹⁵	\$44 544 000	\$10 237 000
Property Tax Increment ¹⁶	2 126 000	989 000
Total Agency Revenue	\$46 670 000	\$11 226 000
Net Agency Revenue/(Cost)	\$1 156 000	(\$34 288 000)

The Agency is funding the cinema construction costs based on the finding that the community has no other means of providing the costs for this construction

ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED DETERMINED AT THE HIGHEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

Section 33433 of the California Health and Safety Code requires the Agency to identify the value of the interests being conveyed at the highest and best use allowed by the Development Site's

¹² The Agency must also repay the Developer's \$1 20 million contribution to the cinema costs. This cost is anticipated to be derived directly from the cash flow generated by the cinema.

¹³ Includes interest payments on acquisition costs incurred for Parcels A, B, C and D from the acquisition date through the execution of the Second Amendment.

¹⁴ Includes the Town Park renovation, utility relocation and civil engineering, a directional signage program, pedestrian and traffic optimization, the neighborhood traffic management program, marketing and public information, and parcel map costs.

¹⁵ Based on the assumption that the 575 000 tickets are sold annually. The revenues are projected over 35 years and are discounted to present value at a 10% rate.

¹⁶ The revenue is escalated at 2% annually over 22 years and discounted to present value at a 6% rate.

zoning and the requirements imposed by the Redevelopment Plan. The valuation must be based on the assumption that near-term development is required, but the valuation does not take into consideration any extraordinary use and/or quality restrictions being imposed on the development by the Agency.

The value of the Development Site was set in the Summary Report that was prepared in support of the original DDA. This valuation estimate was based on appraisals and judgments rendered by the Superior Court of the State of California as part of the condemnation process to acquire the Development Site. Based on this information, the value was set at \$60.28 per square foot of land area, or \$3.89 million for the 64,581 square foot Development Site.

ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

In a financial analysis dated February 27, 2001, Keyser Marston Associates, Inc., the Agency's financial consultant, determined the fair reuse value of the proposed development. This analysis considered the restrictions required by the Second Amendment, as well as the financial benefits associated with the Agency's agreement to construct the cinema and the public parking structure, and to pay for the infrastructure costs and a portion of the municipal fees associated with the development. Based on these factors, the fair reuse value of the Development Site was set at negative \$56,000.

CONSIDERATION RECEIVED AND COMPARISON WITH THE ESTABLISHED VALUE

The Second Amendment defines a specific scope of development, and postpones the development of Parcel B until market conditions can support a project that fulfills the Agency's goals and objectives. These requirements act to diminish the land value from the \$3.89 million supported at the highest use permitted by the Redevelopment Plan, to a negative amount.

The Second Amendment requires the Agency to convey the Development Site to the Developer at no cost. Comparatively, KMA has concluded that the reuse value supported by the Development Site is a negative number, and therefore it can be concluded that the Agency is receiving the fair market price for the interests being conveyed to the Developer.

BLIGHT ELIMINATION

The 1999 Summary Report identified the existing blighting conditions on the Development Site, and described how the proposed development would alleviate these conditions. The scope of development mandated by the Second Amendment, and the future development of Parcel B, will achieve the same blight elimination results as were anticipated by the originally proposed scope of development. Such elimination of blight will benefit the Project Area and provide a catalyst for economic development for the entire downtown area of the City.

CONFORMANCE WITH THE AB1290 IMPLEMENTATION PLAN

The 1999 Summary Report described how the proposed development would fulfill goals and objectives defined in the Agency's adopted Implementation Plan for Redevelopment Projects.

No 1, 2 and 3 The scope of development required by the Amended Agreement conforms with the goals and objectives identified in the 1999 Summary Report

NOTICE OF CITY COUNCIL / REDEVELOPMENT AGENCY PUBLIC HEARING TO CONSIDER APPROVAL OF STREET REALIGNMENT PLAN AND A STREET NAME CHANGE APPLICATION CONCERNING THE PROPOSED REALIGNMENT OF WASHINGTON BOULEVARD IN DOWNTOWN AND THE RENAMING OF THE RELOCATED STREET, AND CONSIDERATION BY THE CULVER CITY REDEVELOPMENT AGENCY OF THE APPROVAL OF THE SALE OF 9300 CULVER BOULEVARD, A PARCEL PURCHASED BY THE CULVER CITY REDEVELOPMENT AGENCY WITH TAX INCREMENT FUNDS TO RUSH PACIFICA LLC PURSUANT TO SECTION 33433 OF THE CALIFORNIA HEALTH AND SAFETY CODE, AND A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CULVER CITY REDEVELOPMENT AGENCY AND RUSH PACIFICA LLC

June 21 2006

Case Files Tentative Parcel Map No 66158 TPM P 2006029 and
Street Name Change, SNC P-2006030

Dear Interested Party

YOU ARE INVITED to learn more about and participate in the **July 10, 2006** joint City Council / Redevelopment Agency public hearing concerning the following

The Culver City Redevelopment Agency [the "Agency"] and Rush Pacifica LLC [the 'Developer' and the proposed purchaser of 9300 Culver Boulevard [Site] presently owned by the Agency] have developed plans and negotiated a pending Disposition and Development Agreement to convey the Site from the Agency to the Developer. The Agency has filed a Tentative Parcel Map (TPM) application and a Street Name Change (SNC) application regarding the realignment of Washington Boulevard from its current easterly terminus along Culver Boulevard [south of Main Street] and the Washington Boulevard / Ince Boulevard intersection to a new easterly terminus along Culver Boulevard and the Washington Boulevard intersection along the segment replacing Ince Boulevard between Washington Boulevard and Culver Boulevard [south of Canfield Avenue]. The above proposed project requires the following actions

- 1 Tentative Parcel Map No 66158, TPM P 2006029
Approval of the Street Realignment Plan as part of the plans to Realign Washington Boulevard and resubdivide Parcel 1 of Parcel Map No 25831 and the vacated former Washington Boulevard right of way into a two (2) lot subdivision with appropriate onsite and offsite public improvements and
- 2 Disposition and Development Agreement and 33433 Report
Approval of an agreement between the Developer and the Agency that outlines the terms and conditions in which the Site will be sold to the Developer and completion of report pursuant to section 33433 of the California Health and Safety Code

3 Street Name Change, SNC P 2006030

Rename the former segment of Ince Boulevard between Washington Boulevard and Culver Boulevard as Washington Boulevard

The project also includes but is not limited to improvements both offsite and onsite [i.e. new curb gutter sidewalk street lights street trees traffic signal system alterations street lane redesign and the vacation of a portion of public street and pedestrian / roadway easements]

The July 10 2006 public hearing will convene at 7 00 PM in the Mike Balkman Council Chambers at City Hall 9770 Culver Boulevard. The Council Chambers are accessible to disabled persons and public parking is available in the City Hall parking structure from Duquesne Avenue. City Hall is served by the Culver CityBus. If more information regarding the bus schedule is needed you may call (310) 253-6500. Other items may precede this item on the agenda.

The City Council / Redevelopment Agency shall consider the Planning Commission's Negative Declaration [ND] finding at their July 10 2006 public hearing. A copy of the approved ND Initial Study preliminary development and subdivision plans and related documents are available for public review at the Planning Division's public counter Second Floor at City Hall. A copy of the proposed Disposition and Development Agreement between the Agency and the Developer and a copy of the report pursuant to Section 33433 of the California Health and Safety Code is available for public review at the Redevelopment Division's public counter Third Floor at City Hall.

For more information on the tentative parcel map and street realignment to review related project documents or to submit written comments on these two (2) items please write or call Joseph Montoya AICP Associate Planner, Culver City Planning Division Post Office Box 507 Culver City California 90232 (310) 253-5736. For more information on the redevelopment actions to review related project documents or to submit written comments on the Disposition and Development Agreement or pending sale of the Site please write or call Joe Susca Redevelopment Project Manager Culver City Redevelopment Division Post Office Box 507 Culver City California 90232 (310) 253-5763. It is advisable to call either office prior to visiting City Hall to be certain that appropriate staff will be available. City Hall business hours are 7 30 AM to 5 30 PM Monday through Friday except alternate Fridays and holidays. City Hall shall be closed on Friday June 23 2006 Tuesday July 4 2006 and Friday July 7 2006.

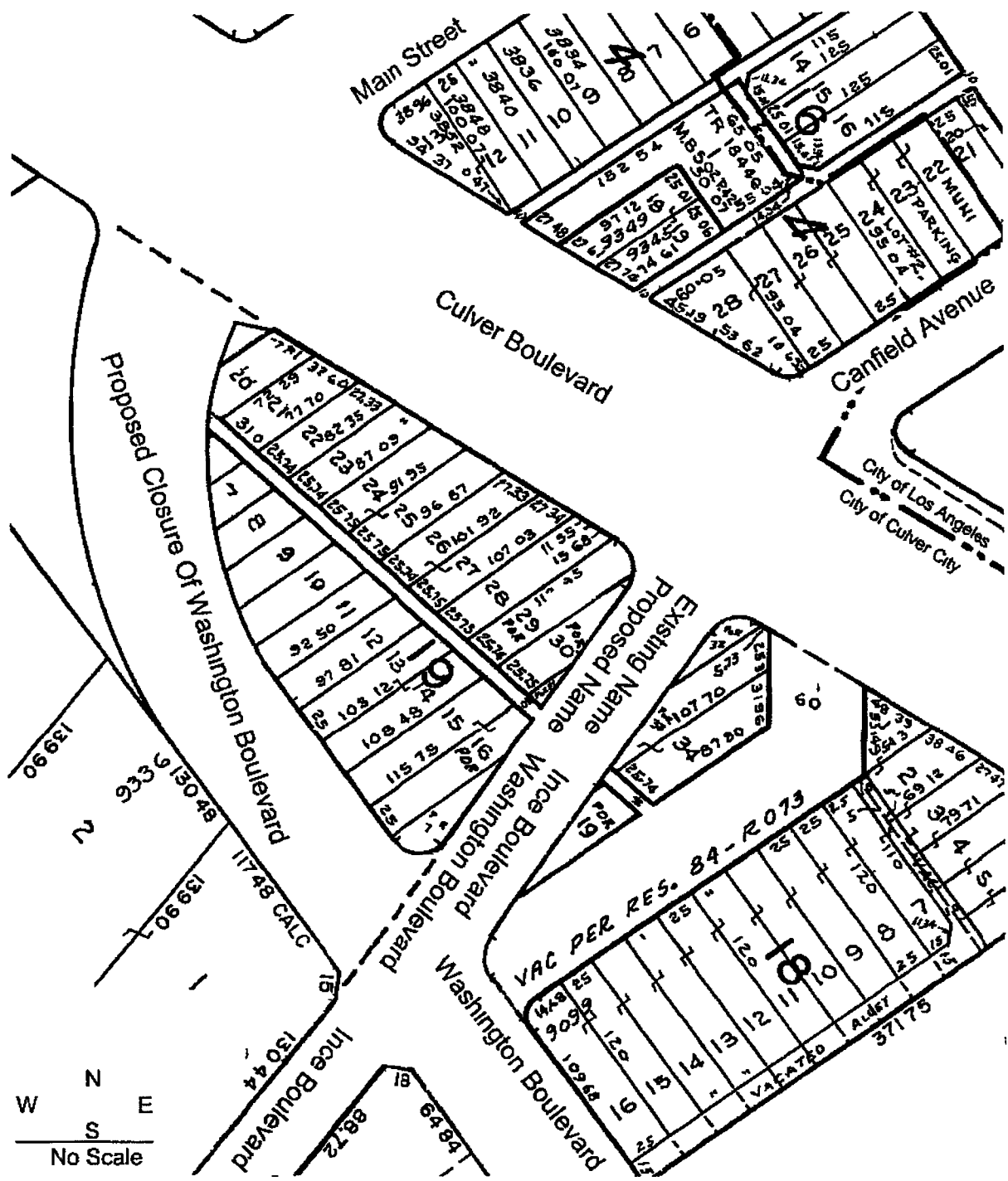
Sincerely

Ela Valladares
Deputy City Clerk
Secretary

Vida Floyd
On Behalf of Agency

EV/AP/JM/abn

Attachment Locality Map



Meeting Date 12/05/05		Item Number _____	
AGENDA ITEM Review the Conclusions of the Washington Boulevard Realignment Traffic Study and Consider Realigning Washington Boulevard in Downtown If the Realignment is Approved, Consider Awarding an Agreement with CBM Consulting to Recreate Parcel B, Consider Awarding an Agreement with LRM Landscape Architects to Design Town Plaza's Expansion, and Consider Amending the Exclusive Negotiations Agreement with Rush Pacifica LLC to Extend its Schedule			
Contact Person/Dept Joe Susca		Phone Number (310) 253-5763	
Fiscal Impact	Yes ☒ No ☐	General Fund	Yes ☐ No ☒
Public Hearing	☐	Action Item	☒
Attachments ☒			
Public Notification Notice of this agenda item was e-mailed to Rush Pacifica LLC the Downtown Business Association CBM Consulting Inc Paller-Roberts Engineering Inc LRM Landscape Architects and the Culver City Chamber of Commerce on 11/30/05 Tonight's meeting was verbally announced when the topic was discussed at the Advisory Committee on Redevelopment at their 11/3/05 meeting the Downtown Business Association at their 11/16/05 meeting, and at a neighborhood residential meeting held on 11/17/05 On 11/30/05 Katz Okitsu & Associates and the Master Notification List were notified by e mail			
Department Approval Susan Evans 11/23/05		Exec Director Approval	
City Controller Approval			

RECOMMENDATION

Staff recommends that the Culver City Redevelopment Agency (' Agency) review the conclusions contained in the downtown Washington Boulevard Realignment Traffic Study and consider proceeding with the realignment Staff also recommends that the existing agreement with Katz, Okitsu & Associates (\$33,200) be increased by \$8,000 as a result of work performed in excess of the original scope of work

In the event that the realignment is approved this evening, staff recommends that the Agency consider an agreement with CBM Consulting Inc in the amount of \$20,420 to create a new Parcel Map for 9300 Culver Boulevard, consider an agreement in the amount of \$140 000 with LRM Landscape Architects Ltd to design Town Plaza's expansion and consider amending the Exclusive Negotiation Agreement (" ENA ") with Rush Pacifica LLC to extend its schedule by five months

BACKGROUND

The Agency is negotiating with Rush Pacifica pursuant to an ENA for the redevelopment of 9300 Culver Boulevard ("Parcel B") in the center of Downtown Culver City. During review of preliminary development plans, the idea of realigning the portion of downtown Washington Boulevard between Parcel B and Town Plaza was discussed (the "Realignment"). It was suggested that the Realignment could improve downtown's pedestrian orientation and significantly increase the size of the existing Town Plaza.

Expanding Town Plaza as a result of the Realignment, in conjunction with removing the small parking lot that currently exists in the plaza, would create a pedestrian park that is larger than its existing size, joins the Parcel B island to the existing promenade, and eliminates the need to cross the street to gain access between the two areas. The community, downtown businesses and their patrons will benefit from not having to wait for traffic signals to move about in the plaza area to conduct business, catch a movie, shop, or grab a meal at one of the plaza establishments. The expanded plaza will also allow the City to hold larger community events not previously able to be held in the smaller plaza area, such as open air markets, art exhibitions, ceremonial events, musical and theatrical productions.

During the Agency meeting of September 6, 2005, the Agency approved entering into an agreement with Katz, Okitsu & Associates ("KOA") in the amount of \$33,200 to study the feasibility of the proposed Realignment. KOA's scope of work was later amended to include attendance at additional staff meetings and to participate in the testing and resulting analysis of the proposed Realignment, which is discussed later in this staff report. As a result, staff recommends amending the agreement with KOA to reflect an increase of \$8,000 for the additional scope of work.

The KOA scope of work included:

- Obtain turning movement volumes for the intersections along Culver Boulevard from Madison to Ince and at Washington Boulevard/Ince and Venice Boulevard/Culver and at Culver/Main Street and analyze the results.
- Study the existing traffic control system's effectiveness and make recommendations for its improvement as part of the Realignment.
- Study the feasibility of constructing roundabouts at Culver and Ince/Canfield and at Washington/Ince.
- Using the existing, (and anticipated) traffic volumes as a result of redeveloping Parcel B, study the feasibility of diverting Washington Boulevard traffic onto a widened Ince Boulevard.
- Participate in, monitor and analyze a test of the Realignment.*

*This task was not part of the original scope of work and resulted in the additional fees.

DISCUSSION

Traffic Study Conclusions

- During rush hour periods nearly all the intersections studied in the downtown area have a poor level of service for vehicular traffic flows
- The existing traffic control system could be more effective in increasing traffic flows if its programming were altered
- The creation of roundabouts at Culver and Ince/Canfield and at Washington/Ince are unfeasible since the size of these two intersections would not permit the creation of a two-lane roundabout without significant intrusion onto surrounding parcels to expand the intersections sizes
- In general the study concludes that the realignment of Washington Boulevard in downtown can be implemented as proposed without impact to traffic and circulation if the improvements recommended in the study are implemented

KOA's recommended improvements include reprogramming the traffic signals downtown to improve synchronization elimination of parking on the north side of Culver between Canfield and Cardiff (with exception of a few spaces directly in front of Pacfico's where the roadway is wider), and relocating the bus stop on the north side of Culver at Cardiff to one block east at Main to be shared with the existing Metro bus stop

KOA prepared a conceptual plan for the path of the Realignment that is attached to this staff report for your reference

Realignment Testing

Though no test is 100% accurate staff believes the Realignment test performed is an approximate reflection of what traffic movements would be like as a result of implementing the Realignment

The westbound test involved closing off westbound Washington Boulevard from Ince Boulevard to Main Street and rerouting the traffic up the existing Ince Boulevard roadway configuration

The eastbound test was performed to determine if reducing the existing two Culver Boulevard right-hand turn lanes into one (with a pedestrian island) could handle the same volume of traffic KOA indicated that if single right-hand turn lane is implemented, it could be designed to have a green arrow light approximately twice the amount of time as the existing double lanes currently do, thus permitting the same volume of traffic to travel through it as it does now Whether one or two lanes will be used for eastbound traffic turning movements

from Culver Boulevard onto a widened Ince Boulevard is the subject of continued tests and analysis and remains to be determined

A Realignment test was conducted by staff November 14-23, 2005 As part of the test, and as recommended in KOA's traffic study the downtown traffic signals were reprogrammed to optimize their synchronization from the west at Culver/Madison and to the east at Washington/Ince prior to commencement of the test Once the test commenced however further traffic signal programming was completed in the subsequent days to fine tune the synchronization

Travel Times

Staff performed daily floating car monitoring for two one-hour periods, including one hour between 7 00-9 30 AM and one hour between 4 00-6 30 PM The monitoring included a staff member keeping a log of the amount of time it took to travel from Duquesne/Culver to Robertson-Higuera/Washington and then from Robertson-Higuera/Washington back to Duquesne/Culver

As a control measure, eastbound and westbound travel times through downtown were logged prior to conducting the test The following table revealed the average time it took to travel the east and west bound portion of the segment prior to and during the test

	Westbound Before Test		Westbound During Test	
	AM	PM	AM	PM
Average Travel Time (Minutes Seconds)	3 27	3 05	2 58	2 46

	Eastbound Before Test		Eastbound During Test	
	AM	PM	AM	PM
Average Travel Time (Minutes Seconds)	3 11	3 27	1 63	3 33*

*Test included a single right-hand turn lane at Culver/Main

The shortened through times during the test are a result of the traffic signal reprogramming that improved downtown's synchronization, and are not a result of the temporary roadway alterations made to perform the test

Public Safety

The Fire Department has a standard of cover or response time standard, which was adopted by the City Their first arriving unit will be on scene five minutes or less 90% of the time With the increase in traffic throughout the City this standard is becoming harder and harder to maintain Currently, the Fire Department meets this criterion 91 22% of the time Any change in traffic flows

especially their major response routes will have an effect on this standard. The Fire Department is concerned with the increase of Westside traffic over the years, coupled with reducing access to the eastern portion of the City by eliminating one roadway, will likely result in slower response times to the eastern portion of the City.

The Fire Department's response time is tied to their successful ascertaining of both the accreditation status and their Class 1 status. Any negative change to this standard could jeopardize the Fire Department's Accreditation and/or Class 1 status.

During the test, the Fire Department did not have enough emergency responses through the area to determine the exact impact on the response time standard. However, it is felt by the Fire Department staff that the realignment would have a negative impact on response times. However, staff believes the impact of the Realignment can be mitigated with a dedicated center fire lane added to Ince Boulevard, between Culver Boulevard and Washington Boulevard. This lane would be used for emergency responses only. Also, the use of center dividers/median islands on Washington Boulevard between Main St and Ince Boulevard would have to be carefully considered.

During the test, the Police Department observed that it took a longer amount of time to make westbound turns as a result of the 90-degree turns located at Ince/Washington and Ince/Culver, and indicated that these sharp turns will increase the likelihood of accidents. To mitigate this impact, the Police Department recommends altering Ince Boulevard between Washington Boulevard and Culver Boulevard to create a more gently sloping roadway that more closely resembles the existing Washington Boulevard segment.

Emergency Access

To enhance public safety, the expanded town plaza will be equipped with soft curbs and electrically operated and remotely controlled bollards at Culver/Main and Ince/Washington that will be able to be lowered for access into the plaza area by public safety staff by their digital radios.

Bus Operations

With exception of the first day of the test, bus schedules remained unchanged during the test period. Bus operators noted that westbound turning movements at Washington/Ince and Ince/Culver were tighter as a result of the roadway reconfiguration, and it was difficult to maneuver around Trader Joes delivery trucks.

Realignment Test Conclusions

The test confirmed KOA's study conclusion that implementation of the Realignment is feasible and did not reveal any insurmountable issues that could not be addressed but the test did bring attention to some areas of concern that need to be mitigated as a result of the Realignment such as

- 1 The Trader Joes receiving area operations will need to be improved to avoid interrupting traffic flows Though it is not depicted on KOA's proposed realignment graphic staff is proposing that the east side of Ince Boulevard be widened to create both a separate receiving area for Trader Joes and the new K-ZO Japanese Restaurant, and construction of a storage area for Trader Joes to replace the existing one located on the Parcel B parking lot
- 2 To maintain existing traffic speeds and improve safety the Ince Boulevard block between Culver Boulevard and Washington Boulevard will need to be altered to become more gently sloped so turning movements will be less sharp and to improve visibility while making the turns
- 3 To preserve public safety operations a dedicated center fire/police lane should be created on Ince Boulevard between Culver Boulevard and Washington Boulevard as part of the Realignment construction

Public Works staff is compiling the final results of the test and its documentation will be added to the final version of the KOA traffic study report

Community Meetings

In addition to internal staff meetings and Economic Development Subcommittee meetings to discuss the Realignment feasibility and particulars, the following community meetings were also conducted

ACOR The Advisory Committee on Redevelopment ("ACOR") reviewed and discussed the proposed Realignment at their regularly scheduled meeting of November 3, 2005 The ACOR members warmly welcomed the expansion of town plaza as a result of the proposed Realignment but voiced concerns about the feasibility of reducing the existing two eastbound Culver Boulevard right-hand turn lanes into a single lane with an accompanying pedestrian island at Ince Another Committee Member expressed concern that westbound vehicle stacking on Washington Boulevard prior to arriving at Ince Boulevard which may result in making exiting the Ince Parking structure difficult during rush hour periods

DBA In observance of Thanksgiving week the Downtown Business Association (DBA) rescheduled their regular meeting to November 16 2005 and included the proposed Realignment as a discussion item The DBA members present at the meeting voiced their support for the Realignment and were excited to hear that the plaza may be expanded DBA members also supported the reprogramming of traffic signal timing that would result in more pedestrian friendly movement in downtown during non rush-hour periods, felt the plaza's

expansion would create a new center point for downtown's plaza and after some discussion the board members made a motion that was unanimously carried to support the Realignment in concept

Staff mentioned the elimination of the small parking lot that currently exists in Town Plaza to the DBA and also spoke to George Plato, Renato Romano, and Xing Hu of Culver Hotel all of whom voiced support for its elimination to expand the plaza area

Residential Neighborhood On November 4 2005 postcards were mailed to 934 residents of the adjacent neighborhoods, and letters mailed to 14 Neighborhood Traffic Management Plan committee members announcing a neighborhood meeting on November 17, 2005 to discuss the Realignment. One resident voiced strong support for the plaza's expansion and another voiced concerns regarding Trader Joes receiving operations storage areas, trash operations, and receiving hours of operation. Another resident voiced concerns about some of the business tenants from the properties in the plaza whose parking lot is accessible by Van Buren who ignore existing traffic controls. Another resident voiced concerns about pedestrian safety in crossing Washington Boulevard at Ince and the ability to continue to access the Ince parking structure from Washington in a safe manner. One resident indicated the failure of traffic engineers to accurately predict traffic patterns throughout West Los Angeles resulting in the poor traffic flows we now experience

New Parcel Map Creation

If the Realignment is approved, Parcel B's property line will need to be shifted south and westward to the center line of the existing Washington Boulevard segment between Ince Boulevard and Main Street. Among the goals of recreating Parcel B's boundaries will be to widen Ince to include additional traffic lanes to handle Washington Boulevard's traffic volumes to create a dedicated receiving area for Trader Joes a dedicated center fire lane and to more gently slope Ince Boulevard from Washington Boulevard to Culver Boulevard allowing faster travel times for motorists and reducing the sharpness of the turning movements

Parcel B Boundary Scope of Work

- Preparation of a Tentative Map for presentation at a Planning Commission meeting that includes all above ground fixtures, i.e., street lights fire hydrants, street trees, traffic signals, meter boxes, transformer pedestals, etc lot dimensions, new street alignments proposed dedications and vacations
- Once reviewed and the final version approved by the Planning Commission, prepare a Final Map to the standards of Culver City and the

Los Angeles County Department of Public Works Submit the final map to
Los Angeles County for technical review tax clearance and recording

On October 31, 2005 staff prepared and distributed a scope of work to recreate Parcel B as a result of the Realignment and sent it to CBM Consulting, Inc , Paller-Roberts Engineering Inc , and Bureau Veritas/Berryman & Henigar Two of three firms responded as follows

CBM Consulting, Inc , Gardena, CA	\$20,420
Paller-Roberts Engineering Inc , Culver City CA	\$21 000

Staff has had prior favorable experience with CBM Consulting Inc , and a result, if the Realignment is approved this evening staff recommends entering into an agreement with them for \$20,420 to recreate Parcel B Staff anticipates the work will take approximately six weeks to complete

Town Plaza Expansion

If the Realignment is approved this evening, the existing plaza will be increased in size to absorb the former parking lot near Culver Hotel and the existing western side of Washington Boulevard between Main Street and Ince Boulevard up to its center median island The eastern portion of median island of the existing roadway would become a part of Parcel B A rendering of the expansion area is depicted on a photograph and is attached to this staff report for your reference

Town Plaza was created when Washington Boulevard and Culver Boulevards were realigned in 1994 as part of the Downtown Streetscape Improvement Project To create a more animated plaza appreciated and more frequented by the public on January 7, 2002, the Agency approved entering into an agreement with Lawrence Reed Moline Ltd Landscape Architects (LRM') to completely redesign Town Plaza and to provide the necessary conceptual plans, schematic designs design development drawings and construction documents The total cost to perform the scope of work at that time was \$163 500

Staff has prepared a scope of work for designing the expansion of Town Plaza and asked LRM to respond with a proposal for its completion The scope of work includes attending all staff and community meetings, preparation of conceptual plans, site plans, elevations, perspective views, preparation of cost estimates for construction, presentation of plans at public meetings, and preparation of construction documents, plan check submittals and corrections and bid documents A copy of the scope of work is attached to this staff report for your reference

LRM responded with a proposal for \$140 000, and staff recommends entering into an agreement with them to perform the scope of work for the following reasons

- LRM's familiarity with the existing plaza will reduce costs as a new firm would be required to spend a number of hours becoming familiar with the existing plaza's design, materials, and construction history
- LRM will ensure the plaza's expansion design will maintain consistency continuity, and complement the existing plaza
- With the exception of cost of living increases, LRM staff's hourly rates for their services remain the same
- LRM has proven to be a very capable landscape architect and staff has had a prior, favorable experience working with them

Staff anticipates the scope of work will be completed within four months. Once completed, staff will provide a copy of the construction and bid documents to Rush Pacifica LLC who will build the expanded plaza on behalf of the Agency as a condition of Parcel B's sale to them.

Rush Pacifica ENA

If the Realignment is approved this evening, the tasks necessary to prepare for its implementation will take nearly four months to complete. The existing Rush Pacifica ENA expired on October 11, 2005 and as a result, staff is requesting that the ENA with Rush Pacifica be extended by five months. The new ENA schedule has been attached to this staff report for your reference.

Next Steps

If the Realignment is approved this evening and if Parcel B's boundaries are redrawn through a Final Map process, staff will enter into an agreement with a civil engineering firm to prepare the necessary construction and bid documents for the roadway alterations as a result of the Realignment. Copies of the construction and bid documents will be provided to Rush Pacifica LLC who in turn will bid the roadway (and plaza expansion) work out and construct it on behalf of the Agency.

If the Realignment is approved this evening, a General Plan Amendment to the Circulation Element will be prepared by staff reflecting the newly redesigned roadway for approval by the Planning Commission before being considered by the City Council.

If the Realignment is approved this evening, staff will continue to meet with the community, DBA public safety, Rush Pacifica LLC and their architects, traffic engineers and KOA to fine tune the Realignment plan and traffic mitigation.

measures to collectively determine the best and final design for implementation of the Realignment

FISCAL ANALYSIS

The construction costs for the Realignment roadway alterations and expansion of Town Plaza is estimated at \$2M. Sufficient Tax Exempt Bonds funds are available to perform the work.

Ongoing Maintenance

Upon filing a Notice of Completion (NOC) for an Agency funded public project the Agency is allowed to maintain the project for a period of two years. On December 7, 2004 a NOC was filed for the original Town Plaza's completion. Currently it cost the Agency \$81,000 annually for utility bills, steam cleaning, and landscape maintenance for the existing plaza, and on December 8, 2006 the City will inherit these maintenance costs.

The Realignment will result in reducing some Parks Maintenance Division crew time that is spent on maintaining the landscaping of the center median island of the existing Washington Boulevard segment, since a center median island will not be constructed on the widened Ince Boulevard.

The existing plaza's maintenance costs will be increased significantly as a result of expanding the plaza area. Upon conclusion of the second anniversary of completing the expansion construction (anticipated to be December 2009), the Agency funded annual maintenance costs will be absorbed by the City's Public Works and PRCS Departments.

ATTACHMENTS

- 1 KOA Traffic Study Report Executive Summary and Conclusions
- 2 Revised Schedule Exclusive Negotiations Agreement with Rush Pacifica
- 3 November 4, 2005 Neighborhood Meeting Notification Letter and Postcard
- 4 Graphic Proposed Downtown Washington Realignment
- 5 November 7, 2005 CBM Consulting Inc. Parcel B Recreate Proposal
- 6 November 8, 2005 LRM Landscape Architect Town Plaza Expansion Proposal Scope of Work, and Photograph of the Proposed Town Plaza Expansion

MOTION

That the Culver City Redevelopment Agency

- 1 Approve an amendment to the original \$33,200 agreement with Katz, Okitsu, & Associates to increase its amount by \$8,000 for work performed in excess of the original scope of work for the Washington Boulevard realignment traffic study and testing, and either,
- 2 Deny the proposed realignment of Washington Boulevard in downtown from Main Street to Ince Boulevard,

OR

- 3 Approve the proposed realignment of Washington Boulevard in downtown from Main Street to Ince Boulevard and direct staff to continue to study and refine how to best configure the necessary roadway alterations, and programming of the traffic signal systems as a result of the realignment,

AND

- 4 Approve an agreement with LRM Landscape Architects Ltd in the amount of \$140,000 for designing and preparing construction and bid documents for Town Plaza's expansion as a result of downtown Washington Boulevard's realignment,
- 5 Approve an agreement with CBM Consulting, Inc in the amount of \$20,420 for recreating Parcel B as a result of downtown Washington Boulevard's realignment,
- 6 Authorize the Assistant Executive Director to increase the LRM Landscape Architects Ltd or CBM Consulting Inc agreements by an amount not to exceed 15% of the original agreement, if deemed advisable
- 7 Approve an amendment to the Exclusive Negotiation Agreement with Rush Pacifica LLC for the proposed redevelopment of 9300 Culver Boulevard that extends its schedule by five months to allow for completion of the necessary tasks to implement the realignment of downtown Washington Boulevard,
- 8 Direct the Agency General Council to prepare the amended Rush Pacifica LLC Exclusive Negotiations Agreement, prepare the necessary LRM Ltd, CBM Consulting Inc and Katz, Okitsu & Associates agreements, and authorize the Assistant Executive Director or her designee to sign the agreements on behalf of the Agency, and
- 9 Authorize the Assistant Executive Director to administratively approve a Rush Pacifica LLC Exclusive Negotiations Agreement time extension of up to ninety days from the expiration date of the new schedule

DISPOSITION AND DEVELOPMENT AGREEMENT
(9300 Culver Blvd)
By and Between the
CULVER CITY REDEVELOPMENT AGENCY
and
RUSH PACIFICA, LLC

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DISPOSITION AND DEVELOPMENT AGREEMENT

(9300 Culver Blvd)

By and Between the

CULVER CITY REDEVELOPMENT AGENCY

and

RUSH PACIFICA, LLC

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**DISPOSITION AND DEVELOPMENT AGREEMENT
(PARCEL B)**

This **DISPOSITION AND DEVELOPMENT AGREEMENT (9300 Culver Blvd)** (this "Agreement"), dated for identification purposes only as of _____, 2006 (the "**Date of Agreement**"), is entered by and between the **CULVER CITY REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "**Agency**"), and **RUSH PACIFICA, LLC**, a California limited liability company (the "**Developer**")

RECITALS

The following recitals are a substantive part of this Agreement. All capitalized terms set forth in the recitals shall have the meanings ascribed to such terms in Section 101 hereof.

A The purpose of this Agreement is to effectuate the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq* (the "**Act**") by providing for the improvement and development of property with construction of an office and retail complex and to implement the Redevelopment Plan approved and adopted by the City Council of the City of Culver City on November 23, 1998 by Ordinance No. 98-015 and amended on January 12, 2004 (the "**Redevelopment Plan**")

B The Agency is a redevelopment agency duly established by action of the City Council of the City of Culver City and exercising governmental functions and powers pursuant to Chapter 2 of the Act and engaging in activities to improve areas within the Redevelopment Plan area.

C The Agency approved the Town Plaza/Screenland cinema, restaurant, retail and office project (the "**Town Plaza Project**") located at 9530 Washington Boulevard and 9300-9310 Culver Boulevard and referred to as Parcels A, B, and C. The Town Plaza Project was proposed to be a total of approximately 202,000 square feet of gross leaseable floor area. The Town Plaza Project was considered in a Final Supplemental Environmental Impact Report (FSEIR) which was certified by the Agency on May 3, 1999. The Town Plaza Project was approved as Site Plan Review SPR P-1999044 by Planning Commission Resolution No. 2000-P0003 on January 31, 2000. This approval was modified by Modification No. 1 approved on July 11, 2001, by Planning Commission Resolution No. 2001-P007, and further modified by Modification No. 2 that was approved by Planning Commission Resolution No. 2002-P001.

D Development on Parcels A and C of the Town Plaza Project has been completed and the development of Parcel B remains pending. The proposed development of the Parcel B portion of the Town Plaza Project consists of the construction of a high quality three (3) or four (4) story structure accommodating pedestrian oriented restaurant/retail uses on the ground floor and office space uses on the floors above, with parking and ample open space for outdoor congregating and dining, and appropriate streetscape (collectively, the "**Project**"). The Parcel B development approval totals 115,108 gross square feet of building area, consisting of approximately 36,900 square feet of restaurants/retail and approximately 78,208 square feet of office space. The entitlements for the Project remain effective. Plans consistent with the approved entitlements may be approved with no further discretionary approval.

E Agency owns Parcel B which consists of real property located in the 9300 block of Culver Boulevard, identified as Lots 6-17 and 20-30 of Block 19, Tract 2444 (referred to herein as the “Site”) The Site consists of approximately 50,727 square feet of unimproved property and is located at the northwest corner of Culver Boulevard and Washington Boulevard in the City of Culver City and is depicted as Parcel B on the Site Map (Attachment No 1 hereto) and more particularly described in the Legal Description (Attachment No 2 hereto)

F On November 15, 2004, the Parties entered into that certain Exclusive Negotiation Agreement (the “ENA”) with respect to the Site Developer desires to acquire the Site, and develop and improve the Site with the Project

G Agency also owns the parking facility located at 9099 Washington Boulevard Developer desires to acquire a license to use certain of the parking spaces located in the Agency owned parking facility to provide parking for the Project

H The Site is located within the geographical area of the Redevelopment Plan for the Culver City Redevelopment Project, Component Area 3 (the “Project Area”) The proposed Project complies with and furthers the goals and objectives of the Redevelopment Plan

I By this Agreement, and subject to the terms and conditions herein, (i) the Agency agrees to convey to Developer, and Developer agrees to purchase from Agency, the Site, (ii) the Developer agrees to complete the Project and record certain covenants and restrictions against the Site, and (iii) Developer and Agency agree to enter into the Parking License

J Agency’s disposition of the Site and Developer’s construction of the Project pursuant to the terms of this Agreement are in the vital and best interest of Agency, the City of Culver City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of Redevelopment Plan area has been undertaken

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Agency and Developer hereby agree as follows

100 DEFINITIONS

101 Definitions

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary

“Act” is defined in Recital A

“Agency” means the Culver City Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing separate and distinct from the City under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities

“Agency Documents” means, collectively, this Agreement, the Parking License, the Memorandum of Agreement, the Assignment of Plans, Reports and Data, the Assignment of Construction Contract, the Declaration, and any and all other agreements, amendments or modifications entered into by and between the Agency and Developer to effect the purposes of the foregoing

“Agency’s Conditions Precedent to Closing” is defined in Section 303 1

“Agreement” means this Disposition and Development Agreement between Agency and Developer, and the agreements required hereby and entered into concurrently herewith substantially in the forms of Attachment Nos 1 through 12 hereto (which are incorporated herein by this reference), each as may be amended from time to time by the mutual written consent of the Parties

“ALTA Policy” is defined in Section 307

“Assignment of Construction Contract” means an assignment signed by Developer and delivered to Agency substantially in the form of Attachment No 6

“Assignment of Plans, Reports and Data” means an assignment signed by Developer and delivered to Agency substantially in the form of Attachment No 10

“Assistant Executive Director” means the Assistant Executive Director of the Agency or the Assistant Executive Director’s designee

“Change of Control” means the issuance or transfer of ownership interests in Developer to any person or entity, when, as a result of such issuance or transfer, either (i) a new person or entity becomes the direct or indirect owner of more than fifty percent (50%) of the ownership interests of Developer, or (ii) a person or entity holding more than fifty percent (50%) of Developer no longer holds an ownership interest in Developer of more than fifty percent (50%) “Change of Control” shall exclude a transfer by a member of Developer of its ownership interest in Developer to (a) any other member of Developer, provided that such transfer does not increase or decrease the transferor’s or recipient’s ownership percentage in Developer to above or below fifty percent (50%), or (b) an inter vivos trust over which the transferring member exercises control and of which the transferring member is a beneficiary

“City” means the city of Culver City, a public body, corporate and politic

“Closing” is defined in Section 302 6

“CLTA Policy” is defined in Section 307

“Commitment Notice” is defined in Section 601 2

“Consent to Assignment” means a consent, executed by the General Contractor, substantially in the form of Exhibit B to Attachment No 6 hereto

“Construction Contract” is defined in Section 314(c)

“Construction Loan” is defined in Section 314(a)

“Construction Lender” means the Institutional Lender making the Construction Loan to Developer for construction of the Improvements and other costs of development of the Site

“Conveyance” is defined in Section 301 1

“Date of Agreement” is defined in the initial paragraph hereof

“Declaration” or “Declaration of Covenants, Conditions, and Restrictions” means, that certain Declaration of Covenants, Conditions, and Restrictions providing for, among other things, the obligation to construct the Project and the maintenance of the Project, which will be recorded against the Site upon the conveyance of the Site to Developer, substantially in the form attached hereto as Attachment No 7, as such Declaration may be amended from time to time

“Default” means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided therein following notice and opportunity to cure, as set forth in Section 701

“Deposit” means the refundable deposit for the purchase of the Site described in Section 301 2

“Developer” means Rush Pacifica, LLC, a California limited liability company, and any permitted assignees

“Developer’s Conditions Precedent to Closing” is defined in Section 303 2

“Developer’s Offer” is defined in Section 601 1

“Down Payment” means the down payment for the purchase of the Site described in Section 301 2

“Effective Date” means the date upon which this Agreement shall have been signed by Agency

“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

“Environmental Reports” means reports or assessments related to the environmental condition of the Site, including, without limitation, the following reports provided to Developer

- Report of Geotechnical Studies, Proposed Parking Structure between Washington and Culver Boulevards and Main Street, dated December 27, 1989
- Environmental Site Assessment dated February 18, 1997 prepared by CTE Environmental Services, Inc

“Escrow” means the escrow for the Conveyance to be established pursuant to Section 308 1

“Escrow Agent” means the escrow agent of the Escrow Company for the Conveyance as set forth in Section 302 1

“Escrow Company” means First American Title Company acting out of its Glendale, California office located at 520 North Central Avenue, Glendale, California, 91203 or such other escrow company as may be designated by the Assistant Executive Director

“Escrow Costs” is defined in Section 302 2

“Event of Default” is defined in Section 701

“Evidence of Financing” is defined in Section 314

“Final Purchase Price Payment” is defined in Section 301 3

“Final Map” means the map filed with the County of Los Angeles establishing the legal boundaries of the Site

“Force Majeure” is defined in Section 806

“General Contractor” is defined in Section 407

“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 Agency, the Developer or the Site

“Grant Deed” means the grant deed by which Agency will convey the Site to Developer substantially in the form attached as Attachment No 3

“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 that creates a risk of Hazardous Materials contamination of the Site in violation of Environmental Laws

"Improvements" means the improvements to be constructed by Developer upon the Site and all approvals and permits required for completion of the Improvements, all as more particularly described in the Scope of Development. The "Improvements" shall generally consist of a commercial development with a minimum building size of 115,108 gross square feet in four stories, with approximately 36,900 square feet of restaurants and retail shops on the street level and approximately 78,208 square feet of office space on the upper levels

"Institutional Lender" means any of the following institutions having assets or deposits in the aggregate of not less than Fifty Million Dollars (\$50,000,000): a California chartered bank, a bank created and operated under and pursuant to the laws of the United States of America, an "incorporated admitted insurer" (as that term is used in Section 1100.1 of the California Insurance Code), a "foreign (other state) bank" (as that term is defined in Section 1700(1) of the California Financial Code), a federal savings and loan association (Cal Fin Code Section 8600), a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code), a "foreign (other nation) bank" provided it is licensed to maintain an office in California, is licensed or otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code), a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code), a trust company, savings and loan association, insurance company, investment banker, college or university, pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof, a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange, or an investment fund, limited liability company or partnership with investors who themselves are Institutional Investors and who hold at least a 50% capital interest in such fund, limited liability company or partnership

"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), and (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

Any work performed pursuant to this Agreement that Developer determines is a public work (as defined in Labor Code Section 1720) (the "work") shall comply with the requirements of Labor Code Section 1770 *et seq* In all bid specifications for any public work, contracts and subcontracts for the work, 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 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, Developer is required to secure payment of compensation to its employees Developer shall include in every contract for the development of the Project (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

"Legal Description" means that certain legal description of the Site attached hereto as Attachment No 2

"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 attorneys' fees and costs, court costs, interest or defense costs, and expert witness fees), losses, damages (including, without limitation, penalties, fines and monetary sanctions), injuries, expenses, charges, penalties or costs of whatsoever character, nature and kind, including reasonable attorney's fees and costs incurred by the indemnified party 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

"Maintenance Standards" is defined in Section 502

"Memorandum of Agreement" means the memorandum of this Agreement to be filed against the Site in the records of the County Recorder of Los Angeles County substantially in the form of Attachment No 11

"Notice" shall mean a notice in the form prescribed by Section 801

"Outside Closing Date" means July 31, 2007 or such date as may be agreed to in writing signed by Agency and Developer. If no Event of Default has occurred hereunder and Agency approval of the Schematic Drawings has not occurred within sixty (60) days of the date of Developer's initial submittal of the Schematic Drawings to the Agency, Agency and Developer agree to meet and to reasonably and in good faith attempt to negotiate an extension of the Outside Closing Date.

"Parking License" means that certain license agreement to be entered into between Agency and Developer substantially in the form of Attachment No. 9.

"Party" means either Developer or Agency, **"Parties"** means both Developer and Agency.

"Permitted Transfer" means a Transfer to any person to whom a Transfer of this Agreement or the Site has been approved by the Agency in writing not to be unreasonably withheld or delayed or to whom the express provisions of Section 206.3 of this Agreement permit a Transfer to be made without Agency approval. A Permitted Transfer shall include any transfer of the membership interests of Developer, or of the membership interests in any entity which directly or indirectly controls Developer, by gift, bequest, inheritance or other estate planning process (such as transfer to a family-owned trust), provided that such action (a) does not result in a change in the identity of the managing member(s) of Developer, or any party which directly or indirectly controls Developer, or (b) does not otherwise result in a Change of Control.

"Project" is defined in Recital D and includes streetscape as approved by the Agency.

"Project Area" is defined in Recital H.

"Purchase Price" is defined in Section 301.1.

"Redevelopment Plan" is defined in Recital A.

"Release of Construction Covenants" means the document which evidences Developer's satisfactory completion of the construction of the Improvements in accordance with this Agreement, as set forth in Section 413, substantially in the form which is attached hereto as Attachment No. 6.

"Representatives" means the agents, employees, members, independent contractors, affiliates, principals, shareholders, officers, Assistant Executive Directors, 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 First Offer" means the right of first offer granted by Developer to Agency for purchase of the Site and the Improvements thereon at a price equal to the fair market value of the Site and Improvements at that time in accordance with Section 600

"Sale Period" is defined in Section 601 3

"Schedule of Performance" means that certain Schedule of Performance which is attached hereto as Attachment No 4, setting forth the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished by both Parties The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the Assistant Executive Director, and the Assistant Executive Director is authorized to make such revisions as the Assistant Executive Director deems reasonably necessary

"Schematic Drawings" means the schematic drawings for the Project

"Scope of Development" means that certain Scope of Development which is attached hereto as Attachment No 5

"Site" is defined in Recital E

"Site Map" means the map of the Site attached as Attachment No 1

"Survey" is defined in Section 306

"Title Company" is defined in Section 306

"Title Report" is defined in Section 306

"Transfer" means and includes any sale, transfer, assignment, subdivision, lease, sublease, license, franchise, conveyance, gift, hypothecation, mortgage, pledge or encumbrance, or refinancing, or the like (including those described in Section 414 1 but excluding any Permitted Transfer) of the Site or the Developer or any portion thereof or any interest therein or of this Agreement, to any person or entity Subsequent to the completion of construction of the Project, "Transfer" shall expressly exclude any lease or sublease on the second, third or fourth floors of the Project

102 Singular and Plural Terms

Any defined term used in the plural herein shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class

103 Accounting Principles

Any accounting term used and not specifically defined herein shall be construed in conformity with, and all financial data required to be submitted herein shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in

accordance with such other principles or methods as are reasonably acceptable to the Assistant Executive Director

104 References and Other Terms

Any reference to any document shall include such document both as originally executed and as it may from time to time be modified. References herein to Sections and Attachments shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include), without limitation."

105 Attachments Incorporated

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

200 SUBJECT OF AGREEMENT

201 Purpose of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the sale and development of the Site. This Agreement is entered into for the purpose of development of the Project on the Site pursuant to this Agreement. The fulfillment generally of the Agreement is in the vital and best interest of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of the applicable federal, state and local laws and requirements under which the Project has been undertaken and is being assisted.

202 The Redevelopment Plan

This Agreement is subject to the provisions of the Redevelopment Plan. The Redevelopment Plan is incorporated herein by this reference and made a part hereof as though fully set forth herein.

Any amendments to the Redevelopment Plan which change the uses or development permitted on the Site or otherwise change the restrictions or controls that apply to the Site shall require the written consent of the Developer. No other amendments of the Redevelopment Plan shall require the consent of Developer.

Agency hereby represents that the Redevelopment Plan is in full force and effect, that the Redevelopment Plan has not been amended other than as set forth above, that the statutory time within which to bring an action challenging the validity of the Redevelopment Plan has expired, and that Agency has no knowledge of any pending or threatened litigation against City or Agency challenging the validity of the Redevelopment Plan.

203 The Project Area

The Project Area is located in the City and is legally described in the Redevelopment Plan

204 The Site

The Site is comprised of approximately 50,747 square feet of land. A parking lot is currently located on the Site. The Site shall be conveyed to Developer "as is". The cost of any demolition of the improvements on the Site constituting the parking lot shall be the sole responsibility of Developer.

Subject to the restrictions on Transfer set forth in Section 206, Developer agrees that upon any Transfer of the Site or any portion thereof, the transferred portion of the Site shall be subject to all of the terms, provisions, covenants and conditions of this Agreement, any subdivision or parcel map approved for the Site, and all exceptions, reservations, liens, encumbrances, qualifications, covenants, conditions, restrictions, easements, rights of way, and any and all matters or conditions reflected on or arising out of any subdivision, zoning, land use or environmental approval or procedure of the City done in connection with the development of the Site contemplated by this Agreement.

205 Parties to the Agreement

205.1 The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

The principal office of the Agency is located at 9770 Culver Boulevard, Culver City, California 90232.

205.2 The Developer

The Developer is a California limited liability company in good standing under the laws of the state of California. The principal office of Developer is located at 12348 High Bluff Drive, Suite 210, San Diego, California 92130.

All of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer and any Permitted Transferee. Wherever the term "Developer" is used herein, such term shall mean and include any such Permitted Transferee.

206 Prohibition Against Transfer and Change in Management and Control of Developer

206 1 Prohibition

The qualifications and identities of Developer and its members are of particular concern to the City and the Agency. It is because of those unique qualifications and identities that the Agency has entered into this Agreement with the Developer and is imposing restrictions upon any Change of Control of the Developer and any Transfer which is not a Permitted Transfer until the Agency issues the Release of Construction Covenants. Developer represents that it is purchasing the Site for construction of the Project, and that it is not purchasing the Site for purposes of resale of to a third party prior to the completion of construction of the Project. Accordingly, Developer agrees not to sell the Site prior to the completion of construction of the Project. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers in the Site or under this Agreement except as expressly set forth herein.

Without the prior written approval of Agency, which approval may be granted or withheld in the discretion of Agency, but which approval shall not be unreasonably withheld or delayed, Developer shall not (i) Transfer all or any part of its interest in or rights under this Agreement or the Site other than a Permitted Transfer, or (ii) effect any Change of Control. Any Permitted Transfer shall require notice to, but not the consent of, Agency and City.

Notwithstanding the foregoing, if control or ownership of Developer must be changed in order to obtain financing to construct the Project, Agency shall grant or withhold its approval in its reasonable discretion provided that Jeffrey Rush, Ron Pickett and Hal Katersky or other employees of Developer reasonably approved by Agency remain the individuals exercising management control over the Project and the implementation of this Agreement and remain the Developer's primary contact with Agency.

Any Transfer or Change of Control in violation hereof will constitute a breach and entitle the Agency to use any remedy available to it at law or equity, including, but not limited to, the right to terminate this Agreement.

Subsequent to the issuance of the Release of Construction Covenants, the restrictions on a Change of Control set forth in this Section 206 shall terminate. Notwithstanding the foregoing, in the event Developer effects a Change of Control subsequent to the issuance of the Release of Construction Covenants, Developer shall first comply with the requirements of Section 600.

206 2 Change of Ownership, Restriction on Investments

If control or ownership of Developer must be changed in order for Developer to obtain debt or equity financing, then the Developer shall seek the prior written consent of Agency, not to be unreasonably withheld or delayed, for such Change of Control in accordance with this Section.

Developer agrees that during the term hereof, it shall not use the Property as collateral for any loan or other financial transaction other than a loan or financial transaction for which the proceeds therefrom are used for the construction of the Improvements or for operation or long term financing of the Project

206 3 Permitted Transfers

In addition to the transfers described in the definition of "Permitted Transfer" and a Transfer to any person or party to whom a Transfer of this Agreement has been approved by the Agency in writing, the following shall constitute "Permitted Transfers" hereunder

(a) The conveyance or dedication of any portion of the Site to the City, Agency or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements, and

(b) Subject to the requirements of Section 501, the rental or lease of retail, rental or office space in the Project upon completion of construction of the Improvements

In the event of a Transfer by Developer under subparagraphs (a) and (b), (inclusive), above not requiring Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give Notice to Agency of such Transfer

206 4 Request for Transfer or Change of Control, Approval

Except as specifically set forth herein, upon Developer's delivery of written Notice to Agency requesting such approval, Agency reserves sole and absolute discretion to approve or disapprove a request for Transfer or Change of Control made pursuant to this Section prior to the issuance of the Release of Construction Covenants Any such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Agency to evaluate the proposed assignee resulting from the Change of Control or Transfer as reasonably determined by Agency An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be submitted to Agency for all proposed Transfers No Transfer shall be effective nor shall Developer be relieved of liability hereunder unless and until the transferee assumes all of the obligations of Developer with regard to this Agreement and the Site, and delivers a signed assignment and assumption agreement in a form reasonably satisfactory to Agency

Within thirty (30) days after the receipt of Developer's written notice requesting Agency approval of Transfer or Change of Control pursuant to this Section, Agency shall either approve or disapprove such proposed Transfer or Change of Control or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval Upon receipt of such a response, Developer shall promptly furnish to Agency such further information as may be reasonably requested Developer agrees to promptly pay all of Agency's out-of-pocket costs, including reasonable attorneys' fees, incurred in connection with review and processing of any request for Transfer or Change of Control and/or consummation of such

Transfer or Change of Control and preparation of any documentation and/or agreements in connection therewith

207 Third Party Beneficiaries

Except for the City, which is expressly made a third party beneficiary hereof, this Agreement is made and entered into for the sole protection and benefit of the Agency, its successors and assigns, and Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereon or hereunder

208 Representations and Warranties

208 1 Agency's Representations

Agency represents and warrants to Developer as follows

(a) Authority Agency is a public body, corporate and politic, existing pursuant to the Community Redevelopment Law, which has been authorized to transact business pursuant to action of the City. The execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency

(b) No Conflict To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound

(c) No Agency Bankruptcy To the best of Agency's knowledge, Agency is not the subject of a bankruptcy proceeding

(d) Title At the Closing, Agency shall deliver title to the Site free of any right of any third party (except Developer) to possession of all or any part of the Site

(e) Litigation To the best of Agency's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign

(f) Governmental Compliance Agency has not received any notice from any governmental agency or authority alleging that the Site is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Agency following the Effective Date of this Agreement, Agency shall, within ten (10) days of receipt of such notice, notify Developer

Until the Closing, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to Developer

208 2 Developer's Representations

Developer represents and warrants to Agency as follows

(a) Organization Developer is a duly organized, validly existing limited liability company in good standing under the laws of the State of California and has the power and authority to own and lease property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Developer and setting forth the membership interests, control and management of Developer delivered to the Agency are true and correct (and true copies of the originals, if applicable) as of the Effective Date

(b) Authority Developer has the legal power, right and authority to execute, deliver and enter into this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement, and to perform and observe the terms and provisions of all of the above. The parties who have executed this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement are authorized to execute and deliver the same on behalf of the Developer and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered pursuant hereto, have been duly taken

(c) Valid and Binding Agreements This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will constitute when so executed and delivered, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms

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

(e) Litigation To the best of Developer's knowledge, no action, suit or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality to which the Developer is or may be made a party or to which any of its property is or may become subject, which has not been fully disclosed to the Agency which could materially adversely affect the ability of the Developer to carry out its obligations hereunder

(f) No Conflict Developer's execution and delivery of this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, and the performance of any provision, condition, covenant or other term hereof or thereof, do not or will not conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to

which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto

(g) No Developer Bankruptcy To the best of Developer's knowledge, no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, receivership or other proceedings are pending or threatened against the Developer or any parties affiliated with Developer, nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to Agency

300 DISPOSITION OF THE SITE

301 Sale and Purchase

301 1 Sale and Purchase of the Site, Purchase Price

Upon satisfaction of the Agency's Conditions Precedent to Closing and within the time frame set forth in the Schedule of Performance, Agency agrees to convey to Developer and Developer agrees to purchase from Agency (the "**Conveyance**") all of Agency's right, title and interest in and to the Site, for Five Million Nine Hundred Thirty Eight Thousand Six Hundred Eighty Six Dollars (\$5,938,686) (the "**Purchase Price**") Agency has determined that, based on the conditions imposed on Developer with respect to the construction of the Improvements, the reuse value of the Site equals the Purchase Price, accordingly, the consideration for the Conveyance shall be Developer's payment of the Purchase Price, Developer's promise to construct the Project, including the Improvements, and Developer's promise to be bound by the obligations, covenants and restrictions set forth herein

Upon Closing, the Agency shall convey all of Agency's interest in and to the Site to Developer by the Grant Deed, subject to the rights reserved therein Developer's acquisition of the Site and development of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement are in the best interests of the City and the welfare of its residents, and in accordance with the public purposes and provisions of the Redevelopment Law and other applicable federal, state, and local laws and requirements

The Purchase Price shall be paid by delivery of the Developer Down Payment, the Developer Deposit and the Final Purchase Price Payment

301 2 Developer Deposit and Down Payment

Developer shall deposit into Escrow, within the time set forth in the Schedule of Performance, One Hundred Thousand Dollars (\$100,000) in cash (the "**Deposit**") Within two (2) business days after Agency approval of the Schematic Drawings, Developer shall deposit into Escrow either cash or a letter of credit (issued in Agency's name and in such form and substance otherwise acceptable to Agency) in the amount of fifty percent (50%) of the Purchase Price less the Developer Deposit (the "**Down Payment**") If the Closing does not

occur, the Parties shall instruct the Escrow Agent to refund the Deposit and the Down Payment to Developer, with interest and less Developer's share of any escrow fees or costs, provided, however, that if the reason for the Closing not occurring is the result of a default hereunder, then the defaulting party shall be responsible for the payment of all escrow fees and costs for the non-defaulting party, and for the legal and architectural, engineering and other applicable consulting fees and costs incurred by the non-defaulting party to date in connection with its performance under this Agreement. Damages in the event of default hereunder shall be subject to the limitation on consequential damages set forth in Section 709.

301.3 Final Purchase Price Payment, Scheduled Close of Escrow

Within seventy two (72) hours of the scheduled Close of Escrow, Developer agrees to deposit into Escrow in cash such amount as is necessary to cause the total Developer deposits into Escrow to be equal to the Purchase Price plus Developer's share of Escrow fees and costs (the "**Final Purchase Price Payment**") Escrow shall be scheduled to close on such date as the Agency's Conditions to Closing and the Developer's Conditions to Closing are met. Escrow shall close no later than the Outside Closing Date, regardless of whether Agency's Conditions to Closing and the Developer's Conditions to Closing are met, or this Agreement shall terminate and be of no further force and effect.

302 Escrow

302.1 Escrow Instructions

The Agency and the Developer shall open an escrow for the sale and purchase of the Site (the "**Escrow**") with an escrow agent (the "**Escrow Agent**") acceptable to the Agency and the Developer within the times established therefor in the Schedule of Performance. This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Agency and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent is hereby empowered to act under this Agreement and upon indicating its acceptance of the provisions of this Section 302.1 in writing, delivered to the Agency and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

302.2 Costs of Escrow

The following fees, charges and costs ("**Escrow Costs**") shall be paid by the Developer:

(a) One half of the escrow fees attributable to the Conveyance of the Site,

(b) The premium for standard coverage title insurance policies, as required by Section 303.1(j) of this Agreement (Agency shall pay the cost of any extended coverage requested on its lender's title insurance policy),

(c) Notary fees,

(d) Ad valorem taxes, if any, upon the Site after conveyance, or ad valorem taxes, if any, upon this Agreement, or any rights thereunder, before or after the conveyance of title

The Agency shall pay

(i) Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement,

(ii) Any and all state, county, or city documentary stamps or transfer tax pertaining to the Agency's conveyance of the Site,

(iii) One half of the escrow fees attributable to the Conveyance of the Site

302 3 General Provisions Applicable to Escrow Agent

The following general provisions shall be applicable to the Escrow Agent

(a) All disbursements shall be made by check of the Escrow Agent. All funds received in the Escrow shall be deposited in a federally insured separate interest-earning escrow account with any bank doing business in the State of California and approved by Agency and Developer

(b) The Parties to the Escrow jointly and severally agree to pay all costs, damages, judgments and expenses, including reasonable attorneys' fees, suffered or incurred by the Escrow Agent in connection with, or arising out of the Escrow, including, but without limiting the generality of the foregoing, a suit in interpleader brought by the Escrow Agent. In the event that the Escrow Agent files a suit in interpleader, the Escrow Agent shall be fully released and discharged from all obligations imposed upon the Escrow Agent in the Escrow

(c) All prorations and/or adjustments called for in the Escrow shall be made on the basis of a thirty (30) day month unless the Escrow Agent is otherwise instructed in writing

(d) Any amendment to these escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment

(e) The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 302 1 to 302 7, inclusive, of this Agreement

302 4 Authority of Escrow Agent

The Escrow Agent is authorized to, and shall

(a) pay and charge Developer and Agency for any Escrow Costs payable under Section 302 2 hereof and pay and, if applicable, charge Developer for the cost of drawing the deed, recording fees, notary fees and any state, county or local documentary transfer fees,

(b) pay and charge Agency any amount necessary to place title in the condition necessary to satisfy Section 306 hereof,

(c) pay and charge Developer for the premium of the CLTA Policy and ALTA Policy as set forth in Section 307 hereof and, if applicable, pay and charge Developer for any upgrade of the Title Policy or Additional Endorsements to the Title Policy which are requested by Agency pursuant to Section 307 hereof,

(d) upon the written request of Agency, disburse funds from the Developer Down Payment to Agency to reimburse Agency for costs incurred in connection with the relocation of tenants from the Site prior to the Close of Escrow,

(e) when both Developer's Conditions Precedent to Closing and the Agency's Conditions Precedent to the Closing are satisfied or waived in writing by the Party for whom the condition was established, disburse funds to Agency and record and deliver to (i) Agency the Purchase Price (less Agency's share of Escrow fees and costs, if any), and the Developer Declaration, and (ii) Developer the Grant Deed, provided, however, that funds deposited as part of the Purchase Price shall not be disbursed by the Escrow to the Agency unless and until the Escrow Agent has recorded the Grant Deed, and delivered the Title Policy to Developer,

(f) insert appropriate amounts and the date of the Closing in documents deposited by the Parties in the Escrow,

(g) do such other actions as necessary to fulfill the Escrow Agent's obligations under this Agreement, including, if applicable, obtaining the Title Policy and recording any instrument delivered through Escrow if necessary and proper in the issuance of the Title Policy,

(h) within the discretion of the Escrow Agent, direct Developer and Agency to execute and deliver any instrument, affidavit or statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act or regulation promulgated thereunder Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor, a Certificate of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and/or a California Franchise Tax Board Form 590 or similar form to assure Developer that there exist no withholding requirements imposed by application of law as may be required by the Escrow Agent, on forms supplied by the Escrow Agent,

(i) prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms, including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms and/or withholding are provided for or required by law, and

(j) prepare and deliver to Developer and Agency for their review and approval prior to the Closing a settlement statement

302 5 Termination of Escrow

If the Escrow is not in a condition to close by the Outside Closing Date, as the same may be extended pursuant to this Agreement, then either Party which has fully performed under this Agreement may, in writing, demand the return of money, documents or property and terminate the Escrow and this Agreement. If either Party makes a written demand for the return of its money, documents or property, this Agreement shall not terminate until ten (10) days after the Escrow Agent shall have delivered copies of such demand to the other Party at the respective addresses set forth in Section 801 hereof. If any objections are raised by written Notice within such ten (10) day period, the Escrow Agent is authorized to hold all money, documents or property until instructed by a court of competent jurisdiction or by mutual written instructions of the Parties. If no such objections are timely made, the Escrow Agent shall immediately return the demanded money and/or documents, and the escrow cancellation charges shall be paid by the undemanding Party. Termination of the Escrow shall be without prejudice as to whatever legal rights, if any, either Party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible consistent with the terms of this Agreement. Nothing in this Section shall be construed to impair or affect the rights of Developer to specific performance.

302 6 Closing of Escrow

The Conveyance shall close within five (5) days of the date upon which the Developer's Conditions Precedent to Closing and the Agency's Conditions Precedent to Closing are satisfied, but not later than the Outside Closing Date. Regardless of whether the Developer's Conditions Precedent to Closing and the Agency's Conditions Precedent to Closing are satisfied, if the Closing does not occur on or before the Outside Closing Date, this Agreement shall terminate and be of no further force and effect. The Closing shall occur at the offices of the Escrow Company. "**Closing**" shall mean the time and day that the Grant Deed is recorded in the official records of the Los Angeles County Recorder.

Possession of the Site shall be delivered in "as is" condition to the Developer immediately following the Closing, except that limited access shall be permitted prior to Conveyance as permitted in Section 313 of this Agreement. Developer shall accept title and possession not later than the Outside Closing Date.

302 7 Closing Procedure

Upon receipt of written direction from both of the Parties to do so, Escrow Agent shall Close the Escrow as follows

(a) record the Grant Deed with instruction to the Los Angeles County Recorder to deliver the Grant Deed to Developer and conforming copies thereof to Developer,

(b) record the Developer Declaration with instruction to the Los Angeles County Recorder to deliver the Developer Declaration to Agency and a conforming copy to Developer,

(c) record the deed of trust securing the Construction Loan with instruction to the Los Angeles County Recorder to deliver the deed of trust to the Construction Lender and a conforming copy to Developer,

(d) deliver the Title Policy issued by the Title Company to Developer,

(e) deliver to Agency funds in an amount equal to the Purchase Price, less (i) any amounts previously disbursed to Agency from the Developer Down Payment, and (ii) prorations and charges applicable against Agency, including its share of the Escrow Costs and other costs set forth in Section 303 2 hereof, as evidenced by the settlement statement approved by the Parties,

(f) file any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements,

(g) deliver the FIRPTA Certificate, if any, to Developer, and

(h) forward to Developer and Agency a separate accounting of all funds received and disbursed for each Party and copies of all executed, recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon

303 Conditions Precedent to Conveyance

The obligation of Developer and Agency to instruct the Escrow Agent to effect the Closing is conditioned upon satisfaction of the terms and conditions designated in this Section. If the Closing does not occur by the Outside Closing Date this Agreement shall terminate and be of no further force and effect

303 1 Agency's Conditions

Agency's obligation to close Escrow and thereby effect the Conveyance is conditioned upon the satisfaction or written waiver by Agency of each and every one of the conditions precedent (a) through (l), inclusive, described below (the "**Agency's Conditions Precedent to Closing**"), which are solely for the benefit of Agency

(a) No Default Developer shall not be in default of any of its material obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects

(b) Execution of Documents Developer shall have executed and delivered into Escrow or to Agency all documents reasonably requested by Agency, including, without limitation, the Agency Documents

(c) Deposit of Funds Developer shall have deposited into Escrow the Developer Deposit, Developer Down Payment, the Final Purchase Price Payment and any such amounts necessary to pay any required costs of Closing and the Title Policy

(d) Evidence of Financing Developer shall have submitted to the Agency, and the Agency shall have approved, the Evidence of Financing in accordance with Section 314 hereof and the Schedule of Performance

(e) Plans Developer shall have submitted to the Agency, and the Agency shall have approved, the Schematic Drawings and other plans required by Section 402 of this Agreement for the development of the Site

(f) No Litigation No litigation shall be pending or threatened by any third parties which seeks to enjoin the Project or the transactions contemplated herein or to obtain damages in connection with this Agreement

(g) Insurance Developer shall have delivered to Agency the insurance certificates and endorsements required pursuant to Section 308 hereof

(h) Construction Loan The Construction Loan shall have been approved by Agency in accordance with this Agreement and the Construction Lender and Developer shall have executed the Construction Loan

(i) Construction Contract The Construction Contract shall have been approved by Agency in accordance with this Agreement and the General Contractor and Developer shall have executed the Construction Contract and delivered to Agency a copy of an effective contractor's performance bond

(j) Approvals Developer shall have submitted to the Agency, and the Agency shall have approved, all City approvals and entitlements required for the development of the Site, including, without limitation, the issuance of building permits and the completion of plan check by City Building and Safety Division

(k) Lot Line Adjustments Any lot line adjustments, parcel map adjustments or other changes to the legal boundaries of the Site required as a result of the realignment of Washington Boulevard shall have been completed by the City

(l) Recordation of Final Map The Final Map shall have been recorded in the official records of the County of Los Angeles

303 2 Developer's Conditions

Developer's obligation to close Escrow is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent (a)

through (g), inclusive, described below (the “**Developer’s Conditions Precedent to Closing**”), which are solely for the benefit of Developer

(a) No Default Agency shall not be in default of any of its obligations under the terms of this Agreement and all representations and warranties of Agency contained herein shall be true and correct in all material respects

(b) Execution of Documents Agency shall have executed and deposited into Escrow all documents to which it is a Party hereunder, including, without limitation, this Agreement and the Grant Deed

(c) Deposit of Funds Agency shall have deposited all funds required to be deposited by Agency hereunder

(d) Review and Approval of Title Developer shall have reviewed and approved the condition of title, as provided in Section 306

(e) Title Policy The Title Company shall, upon payment of the Title Company’s regularly scheduled premium, be irrevocably committed to issue the CLTA Policy upon the Closing, in accordance with Section 307

(f) No Litigation No litigation shall be pending or threatened by any third parties that seek to enjoin the Project or the transactions contemplated herein or to obtain damages in connection with this Agreement

(g) Final Map The Final Map shall have been recorded in the official records of the County of Los Angeles

304 Form of Deed

The Agency shall convey to the Developer title to the Site in the condition provided in Section 306 of this Agreement by delivery of the Grant Deed

305 Time For and Place of Delivery of Deed

The Agency shall deposit the Grant Deed with the Escrow Agent on or before the date established for Conveyance in the Schedule of Performance

306 Condition of Title

No later than thirty (30) calendar days prior to the date established for Conveyance in the Schedule of Performance, the parties shall have obtained from a title company selected by Agency and reasonably acceptable to Developer (the “**Title Company**”) a preliminary report of title dated no later than forty-five (45) calendar days from the date established for Conveyance in the Schedule of Performance, together with legible copies of all documents referenced as exceptions therein (“**Title Report**”) for the entire Site. Developer may, at its sole cost and expense, obtain a current survey of the Site (a “**Survey**”) Except for the items, if any, to which Developer reasonably objects in writing within ten (10) calendar days

following the later of its receipt of the Title Report or the Survey, if applicable, Developer will be deemed to have agreed (subject to the satisfaction of any non-title conditions precedent set forth herein) to take title to the Site subject to any and all liens, easements, encumbrances, and other matters pertaining to or affecting title to the Site that are reflected in the Title Report. In addition, title to the Site shall be subject to the Redevelopment Plan, easements and other matters of record approved by Developer pursuant to this Section.

Notwithstanding anything herein to the contrary, Agency shall be obligated to remove all monetary encumbrances against the Site excluding non-delinquent real property taxes and assessments. Nothing in this Agreement shall obligate Developer to proceed with the purchase of the Site in the event new liens or encumbrances on the Site arise through no fault of Developer after the date of the Title Report and/or the Survey and are not removed by the Agency, unless Developer so elects to proceed. Agency shall, promptly after receipt of written notice of any new liens or encumbrances on the Site which arose through no fault of Developer after the date of the Title Report and/or the Survey, provide Developer with written notice of Agency's election not to remove any such new liens or encumbrances. Except for any monetary encumbrances (excluding non-delinquent real property taxes and assessments), which shall be removed at or before Closing, Developer's failure to elect to proceed with the purchase of the Site subject to such disapproved or new matters within a ten (10) day period following receipt of Agency's written election not to remove shall be deemed an election to terminate this Agreement, and upon such termination, Developer shall have no further interest in the Site or any further rights against Agency. Except as otherwise expressly provided in this Agreement, Agency shall not intentionally create or permit the creation of any new exceptions to title following the Effective Date.

307 Title Insurance

Concurrently with recordation of the Grant Deed conveying title to the Site, the Title Company shall provide and deliver to Developer, at Developer's expense, a California Land Title Association Standard Coverage Policy Form of title insurance ("**CLTA Policy**") with a policy coverage limit in an amount equal to the Purchase Price insuring that the title to the entire Site is vested in Developer in the condition required by Section 306. Such title policy shall be subject to the Title Company's standard terms, conditions and exceptions and such other exceptions to title as are approved by Developer (including matters approved as provided above). The Title Company shall provide Agency with a copy of the CLTA Policy.

Notwithstanding anything above which is or appears to be to the contrary, Developer shall have the right to request issuance of an ALTA Extended Coverage Owner's Policy of title insurance ("**ALTA Policy**") in lieu of the CLTA Policy, or to seek any endorsements to the CLTA or ALTA Policy which it may desire. All incremental expense or cost which is attributable to issuance of any endorsement requested by Developer or which is attributable to issuance of an ALTA Policy rather than a CLTA Policy shall be the sole financial responsibility of Developer.

308 Insurance

308 1 General Requirements

At all times during the term of this Agreement until a Release of Construction Covenants is issued by the Agency, without limiting the indemnity provisions set forth herein, to the fullest extent permitted by law, Developer, at its sole cost, shall procure and maintain in full force and effect the following policies of insurance from a company or companies authorized to do business in the State of California or from a company or companies listed on the California list of Eligible Surplus Lines Insurers (http://www.sla-cal.org/carrier_info/lesli/) with a current rating from A M Best Company of A VIII or better

(a) General Liability Commercial general liability insurance which affords coverage at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form ISO CG 00 01 11 85 with minimum limits of not less than \$3,000,000 per occurrence

(b) Automobile Liability Commercial automobile liability insurance with coverage at least as broad as ISO CA 00 01 06 92 covering Symbol 1 ("Any Auto"), with minimum limits of \$1,000,000 combined single limits

(c) Worker's Compensation Workers' Compensation insurance, as required by the State of California, and Employer's Liability insurance, with a minimum limit of \$1,000,000 per accident or occupational illness for bodily injury or disease

(d) Property Insurance Fire and hazard "all risk" insurance covering 100% of the replacement cost of the Improvements (including offsite materials) in the event of fire, lightening, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to the danger of flood and earthquake (if commonly carried by similar projects in the region and available at reasonable rates))

Insurance policies held by the Agency on the Site (including, without limitation, those for fire or casualty) are not to be transferred, and the Agency will cancel its own policies effective upon the Closing

Subsequent to the issuance of a Release of Construction Covenants, Developer shall maintain such insurance coverage as is customary for a building of the same general size and use in a similar area within the Culver City area and/or Los Angeles County

308 2 Endorsements

The policy or policies of insurance required by Section 308 1(d), above, shall be endorsed as follows

(1) The policies shall include an executed endorsement, on a form provided by the City Attorney, showing Agency as an additional insured

(2) A waiver of subrogation stating that the insurer waives indemnification from Agency

(3) The policy or policies shall not be canceled or the coverage reduced until the first to occur of (a) a thirty (30)-day written notice of cancellation has been served upon the City Risk Manager and the Assistant Executive Director by registered or certified mail, or (b) the completion of construction of the Project

308 3 Deductible and Self-Insured Retention

In the event any of the insurance coverages required to be furnished by Developer have deductible or self-insured provisions, Developer shall fully protect the Agency and City in the same manner as those interests would have been protected had the policy not contained the deductible or self-insured provision. The deductible or self-insured amount shall be shown on any "evidence of insurance" provided to Agency, and Agency reserves the right to limit said amount and to review Developer's financial statements if the amount exceeds a level reasonably acceptable to the City Risk Manager. A deductible amount of not more than Five Thousand Dollars (\$5,000.00) shall be acceptable to the Agency.

308 4 Evidence of Insurance

Developer shall deliver said policy or policies of insurance or certified true copies thereof, or endorsement forms furnished by the City Risk Manager ("evidence of insurance") for approval as to sufficiency by the City Risk Manager and approval as to form by the City Attorney or Agency counsel, as appropriate, which approval or disapproval shall be given within ten (10) business days and shall not be unreasonably withheld or delayed. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. If Workers' Compensation Coverage is placed with the State Compensation Insurance Fund, a State Compensation Insurance Fund Certificate of coverage will be acceptable if endorsed in accordance with Section 308 2(b), above.

308 5 Failure to Maintain Coverage

Should Developer fail to maintain policies with the coverages and limits specified in Section 308 1 above, in full force and effect at all times, Agency shall have the right to suspend Developer's operations until Developer has fully complied with these provisions and furnished the required evidence of insurance. In the event that Developer's operations are suspended for failure to maintain acceptable insurance coverage, Developer shall not be entitled to an extension of time for completion of the work.

308 6 Insurance for Contractors and Subcontractors

All contractors and subcontractors shall be included as additional insureds under Developer's policies, or Developer shall be responsible for causing such contractors and subcontractors to purchase the appropriate insurance in compliance with the terms of this Section. All coverages and endorsements of coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. In addition, contractors and subcontractors

whose profession requires licensure, including, but not limited to architects and engineers, shall be required to maintain professional liability insurance, applicable to their respective professions, in an amount not less than \$1 million per claim, without environmental restrictions, for a period whose prior acts coverage shall be no later than the first date of this Agreement and whose extended reporting coverage period shall be at least three years from the time that all work under this Agreement is completed

309 Taxes and Assessments

Ad valorem taxes and easements, if any, on the Site or any parcel after conveyance, and ad valorem taxes upon this Agreement or any rights thereunder, if any levied, assessed or imposed before or after conveyance of title shall be paid by the Developer

310 Occupants of the Site

The Site shall be conveyed free of any possession or right of possession except that of Developer and easements of record which would not impede the development of the Site as set forth in this Agreement

311 Zoning of the Site

The zoning of the Site at the time of conveyance thereof shall permit development of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement

312 Condition of the Site, Release of Agency

The Agency expressly and specifically disclaims the making of any representations or warranties, express or implied, regarding the Site or matters affecting the Site, including (without limitation) the physical and environmental condition of the Site. The Agency shall, to the greatest extent legally allowable, assign to the Developer all rights, claims, actions and/or causes of action it may have against prior owners of the Site and tenants and/or anyone who has occupied the Site in connection with the environmental condition of the Site

Agency represents and warrants that it has delivered to Developer all Environmental Reports prepared by Agency on the Site and/or in Agency's possession with respect to the Site. Developer acknowledges and agrees that the Site is to be conveyed to, and accepted by, Developer, in its present condition, "AS IS," and Developer hereby assumes the risk (but only as between Developer and Agency) of adverse physical characteristics and conditions, including, but not limited to, the presence of Hazardous Materials. After taking title to the Site, the Developer shall be solely responsible for responding to and complying with any administrative notice, order, request or demand, or any third party claim or demand relating to potential or actual contamination of the Site

Upon the Closing, the physical and environmental condition, possession or title of the Site is and shall be delivered from Agency to Developer in an "as-is" condition, with no warranty expressed or implied by Agency, including without limitation, the presence of

Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder

Except for obligations of Agency set forth in this Agreement, upon the Closing, Developer hereby waives, releases and discharges forever Agency and its Representatives from all present and future Losses and Liabilities, present and future, arising out of or in any way connected with Agency's or Developer's use, maintenance, ownership or operation of the Site, except those arising out of the sole negligence or willful misconduct of Agency or its Representatives

Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows

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

Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code with respect to the matters described in this Section 312 Unless explicitly set forth elsewhere in this Agreement, Developer does not waive or relinquish any such rights and benefits it may have with respect to any other obligations of Agency set forth in this Agreement

Nothing contained in this Section 312 is intended to modify the indemnities contained in this Agreement

313 Preliminary Work by the Developer

Developer shall submit all permit applications, drawings and the Evidence of Financing and satisfy all other obligations and conditions of this Agreement to be satisfied prior to Conveyance within the times established therefore in the Schedule of Performance

Prior to the Conveyance Agency shall permit Developer to enter the Site for the purpose of soils testing, survey work and other predevelopment activities and shall use its best efforts to secure the right of entry to the Site on non-Agency owned property for representatives of Developer at all reasonable times for the same purpose The Agency agrees to provide, or cause to be provided, to Developer all data and information pertaining to the Site which is available to the Agency when requested by Developer Developer shall defend, indemnify, and hold Agency and City harmless for all Losses and Liabilities incurred by Agency or City arising out of any activity pursuant to this Section 313

314 Evidence of Financing

Within the time set forth therefore in the Schedule of Performance, Developer shall submit to the Agency evidence reasonably satisfactory to the Agency that the Developer has obtained sufficient equity capital and commitments for the financing necessary for the acquisition and development of the Site and repayment of the Construction Loan The Agency

shall approve or disapprove such Evidence of Financing within twenty (20) days of submission, with such approval not to be unreasonably withheld or delayed. Such evidence (collectively, the **"Evidence of Financing"**) shall include, at a minimum

(a) A construction budget and construction loan documents for construction of the Improvements from a lender reasonably acceptable to the Agency (including any amendments thereto, the **"Construction Loan"**) along with evidence reasonably satisfactory to the Assistant Executive Director that the lender intends to execute the same and provide an initial funding on or before the Closing. Any such Construction Loan shall provide for notice of default to Agency, the right to cure and such other terms as required by Section 406

(b) Evidence of such other loans or grants as may be required to pay (i) the amount of the Construction Contract for the Improvements, plus (ii) an amount equal to all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest, start up costs, Developer's overhead and administration, and other costs and expenses of developing and completing the Project

(c) A fixed price construction contract (including any amendments thereto, the **"Construction Contract"**) or other commitment acceptable to the Agency along with evidence reasonably satisfactory to the Assistant Executive Director that the contractor intends to execute the same and is ready, willing and able to construct the Improvements for the cost indicated therein subsequent to the Closing. Any such Construction Contract shall provide for notice of default to Agency, the right to cure and such other terms as required by Section 407

(d) A copy of the most recently prepared reviewed Annual Financial Statements (including the opinion of the Developer's accountant) for Developer, their managing members and parent company, if any, and a copy of Developer's most recent internally prepared, unaudited financial statements, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principals consistently applied

(e) Evidence of permanent financing or a commitment therefore in an amount sufficient to repay in full the Construction Loan upon completion of construction of the Improvements

(f) Such other documentation and financial information as may be requested by Agency with respect to Developer or otherwise with respect to the Conveyance and construction and operation of the Project

315 Intentionally Omitted

316 Intentionally Omitted

317 Real Estate Commissions

The Agency shall not be liable for any real estate commissions or brokerage fees which may arise in connection with the sale of the Site to Developer. The Agency represents that it has engaged no broker, agent, finder or third party in connection with this transaction

Developer hereby indemnifies Agency from and against any and all costs, claims and judgments arising out of or related to the services of any broker or finder in connection with the Site engaged by Developer, and Developer shall be solely responsible for any compensation that may be due such broker or finder

318 Demolition of the Site

Subsequent to the Closing, Developer shall demolish the parking lot on the Site. Developer shall perform all demolition and containment activities in accordance with Environmental Laws. Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials onto the Site or into the environment in connection with the use or development thereof in violation of applicable Governmental Requirements. Such precautions shall include complying with and causing all activities on the Site to comply with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to all procedures, requirements and restrictions imposed by Governmental Requirements pertaining to the disclosure, storage, use, removal and disposal of Hazardous Materials. Developer covenants that it shall not, except for customary materials used and applied in accordance with all Governmental Requirements and in the ordinary course of demolishing the Site, (i) deposit Hazardous Materials in, on or upon the Site, in violation of any applicable Governmental Requirements, nor (ii) permit the deposit of Hazardous Materials in, on or upon the Site in violation of any applicable Governmental Requirements.

319 Developer Responsibilities after Closing

After the Closing, it shall be Developer's responsibility to remedy any soil or geologic condition at its cost and to fulfill its obligations hereunder. Developer shall perform all preparation of the Site for construction of the Project in accordance with Environmental Laws. Developer shall be responsible for all Site preparation costs after the Closing. Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials onto the Site or into the environment in connection with the use or development thereof in violation of applicable Governmental Requirements. Such precautions shall include complying with and causing all activities on the Site to comply with all Governmental Requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to all procedures, requirements and restrictions imposed by Governmental Requirements pertaining to the disclosure, storage, use, removal and disposal of Hazardous Materials. Developer further covenants that it shall not, except for customary materials used and applied in accordance with all Governmental Requirements and in the ordinary course of completing, maintaining and operating the Improvements or customarily utilized by households for domestic purposes in accordance with all Governmental Requirements, (i) deposit Hazardous Materials in, on or upon the Site, in violation of any applicable Governmental Requirements, nor (ii) permit the deposit of Hazardous Materials in, on or upon the Site in violation of any applicable Governmental Requirements.

Prior to and during construction of the Project, Agency and Developer shall not engage in any Hazardous Materials Activity, except in strict compliance with all Environmental Laws, and shall comply with all Environmental Laws in connection with any activity on or about

the Site, including the construction and operation of the Project Developer shall maintain the Site and any Improvements thereon in good condition free from graffiti and from any accumulation of debris or waste materials Developer shall keep and maintain the Site in conformity with the Culver City Municipal Code and all other applicable Governmental Requirements

320 Required Disclosures after Closing

If, after Developer takes title to the Site, Developer discovers the presence of Hazardous Materials under or upon the Site in violation of applicable Governmental Requirements, or there is a release of Hazardous Materials on or from the Site, Developer shall provide to Agency a copy of any environmental permits, disclosures, applications, entitlements or inquiries relating to such Hazardous Materials, including any notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self reporting requirements and reports filed or applications made pursuant to any Governmental Requirements relating to Hazardous Materials and underground tanks including, specifically, without limitation, the following

- i All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirements,
- ii All notices of suspension of any environmental permits,
- iii All notices of violation from federal, state or local environmental authorities,
- iv All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions,
- v All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders,
- vi Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials and
- vii All complaints and other pleadings filed against Developer relating to Developer's storage, use, transportation, handling or disposal of Hazardous Materials on the Site

In the event any Hazardous Materials are discovered on the Site after the Date of Agreement in violation of applicable Governmental Requirements, or a release of Hazardous Materials into the environment occurs in violation of applicable Governmental Requirements, the Developer shall promptly and fully remediate such Hazardous Materials in accordance with all Governmental Requirements, and such remediation shall be at the Developer's sole cost and expense Upon request of the Agency, the Developer shall furnish to Agency a copy of any and all other environmental documents or inquiries relating to or affecting the Site from time to time during Developer's ownership or possession thereof

321 Taxes and Assessments

Subsequent to the Conveyance, Developer shall pay, when due, all taxes, assessments, and special taxes levied on the Site, in accordance with applicable Governmental Requirements. Developer agrees to make no appeal or challenge of an assessment of the fair market value of the Site for property tax purposes, except for a decrease in value challenge or challenge to an initial assessment of a newly completed or rehabilitated building, to the extent the value challenged is in excess of the actual costs of construction and land.

322 Agency Rights of Entry

If at any time Developer fails to maintain the Site in accordance with all applicable Governmental Requirements and such condition is not corrected (i) within forty eight (48) hours after written notice from the Agency for problems related to public health and safety, such as debris or waste material, (ii) within five (5) days after written notice from the Agency for graffiti and general maintenance, or (iii) thirty (30) days after written notice from the Agency with respect to landscaping and building improvements, then the Agency, in addition to whatever remedies it may have at law or at equity, shall have the right to enter upon the applicable portion of the Site and perform all acts and work necessary to protect, maintain, and preserve the Site and the Improvements and landscaped areas thereon, and to attach a lien upon the Site, or to assess the Site, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the Agency and/or costs of such cure, including a ten percent (10%) administrative charge, which amount shall be promptly paid by the Developer upon demand.

323 Indemnification

Following the Conveyance, Developer agrees to save, protect, defend, indemnify and hold harmless the Agency and the City, and their respective Representatives, from and against any and all Losses and Liabilities (including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, and remedial and response costs but excluding the extent to which such loss or liability arises from the active negligence or intentional misconduct of Agency or City) which may now or in the future be incurred or suffered by Agency and/or City, or their Representatives, by reason of, resulting from or arising in any manner whatsoever as a direct or indirect result of (i) the ownership (or possession) of all or any part of the Site for purposes of any Governmental Requirements regulating Hazardous Materials first discovered on the Site following the Conveyance, (ii) any act or omission on the part of Developer, or its Representatives, contractors or invitees with respect to the Site or construction of the Improvements thereon, (iii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Site of any Hazardous Materials first discovered on the Site following the Conveyance, (iv) any environmental or other condition of the Site first discovered following the Conveyance, and (v) any Losses and Liabilities incurred with respect to the Site under any Governmental Requirements relating to Hazardous Materials first discovered on the Site following the Conveyance. Developer's obligations under this Section 323 shall survive the issuance of the Release of Construction Covenants or any termination of this Agreement.

400 DEVELOPMENT OF THE SITE

401 Scope of Development, Schematic Drawings

401 1 Scope of Development

Developer shall be solely responsible for making the Site usable for the Project and appropriate for construction of the Improvements as a result of any Site conditions, including, but not limited to, flood zones, Alquist Priolo, and similar matters. Developer shall construct the Improvements in accordance with the Scope of Development, the Schedule of Performance and the plans, drawings and documents submitted by Developer and approved by Agency as set forth herein, which approval shall not be unreasonably withheld, conditioned or delayed. The entitlements for the Project remain effective. The Construction Contract entered into by Developer for the Improvements shall require construction of the Improvements in a manner consistent with the plans, drawings, and documents approved by Agency.

401 2 Schematic Drawings

Developer shall submit to Agency a complete set of Schematic Drawings for the Project by the date set forth in the Schedule of Performance. Agency shall approve or disapprove the Schematic Drawings within fifteen (15) business days of their submittal. Agency shall reasonably approve the Schematic Drawings provided that the Agency determines that such Schematic Drawings are in substantial conformance with the entitlements for the Project.

402 Design Review

Developer acknowledges and agrees that in reviewing and approving documents under this Section, Agency is acting as a legal entity separate and distinct from the City and that Agency's actions in this regard are separate and distinct from the City's conduct of its typical governmental functions and exercise of its police powers in its governmental capacity.

402 1 Review and Approval

Developer shall submit to Agency a complete set of design development drawings for the Project within sixty (60) days of Agency's approval of the Schematic Drawings. Agency shall have the right to approve the design development drawings for conformance with the Schematic Drawings, which approval shall not be unreasonably withheld or delayed, except that the proposed building materials and paint color scheme which shall be subject to approval at the Agency's reasonable discretion.

Developer shall submit to Agency a complete set of building permit/construction drawings for the Project within one hundred twenty (120) days of Agency's approval of the design development drawings. Agency shall have the right to approve, which approval shall not be unreasonably withheld or delayed, the building permit drawings for conformance with the Schematic Drawings and design development drawings.

402 2 Standards for Approval

Agency shall have the right to disapprove in its reasonable discretion any of the design development drawings if the same do not conform to the Schematic Drawings. Agency shall have the right to disapprove in its reasonable discretion any of the building permit drawings if the building permit drawings do not conform to the approved design development drawings. Agency shall grant or withhold such disapproval by delivery of written notice to Developer within fifteen (15) business days from delivery by Developer to Agency, which notice shall state in writing the reasons for disapproval and the suggested means to correct the disapproved matters. Developer, upon receipt of a disapproval based upon powers reserved by Agency hereunder, shall revise such portions and promptly resubmit the revised documents to Agency. Notwithstanding anything herein to the contrary, the Schedule of Performance may, upon the mutual agreement of the Parties, be extended for such time as is reasonable to permit Developer and Agency to resolve any Agency disapproval.

402 3 Consultation and Coordination

During the preparation of the basic concept drawings, design development drawings and building permit drawings, staff of Agency and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of the design development drawings and building permit drawings by Agency. The staff of Agency and Developer shall communicate and consult informally as frequently as is necessary to ensure that the final submittal of any documents to Agency can receive prompt and thorough consideration.

402 4 Revisions

Developer agrees not to make material changes to the exterior design of the Improvements without the prior written consent of the Agency once the Schematic Drawings, design drawing, plans and specifications, construction drawings and other items documenting the design of the Improvements are approved by the Agency prior to the Conveyance.

Thereafter, if Developer desires to propose any material revisions to the exterior design of the Improvements set forth in the Schematic Drawings, design drawing, plans and specifications, construction drawings and other items documenting the design of the Improvements, Developer shall submit such proposed changes to Agency and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions. Agency shall grant or withhold such disapproval (such approval not to be unreasonably withheld or delayed) by delivery of written notice to Developer within fifteen (15) business days from delivery by Developer to Agency of such revisions, which notice shall state in writing the reasons for disapproval and the suggested means to correct the disapproved matters. Developer, upon receipt of a disapproval based upon powers reserved by Agency hereunder, shall revise such portions and promptly resubmit the revised documents to Agency. Notwithstanding anything herein to the contrary, the Schedule of Performance may be extended for such time as is reasonable to permit Developer and Agency to resolve any Agency disapproval. At the sole discretion of Agency, if any change in the basic uses of the Site is proposed, then this Agreement is subject to renegotiation of all terms and conditions.

402 5 Defects in Plans

Agency shall not be responsible either to Developer or to third parties in any way for any defects in the basic concept drawings, the design development drawings or the building permit drawings, nor for any structural or other defects in any work done according to the approved basic concept drawings, design development drawings or building permit drawings. Developer hereby waives and releases any claim it may have against Agency or its officers, employees, agents, representatives and volunteers, for any monetary damages or compensation as a result of defects in the drawings, including without limitation the violation of any laws, and for defects in any work done according to the approved drawings. Developer 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

Developer hereby agrees to indemnify and hold harmless Agency, City and their respective Representatives for any Losses and Liabilities (including attorneys' fees and costs) incurred as a result of third party claims of defects in the Project plans, design or drawings, including without limitation the violation of any laws, and for defects in any structural or other work performed by or on behalf of Developer in designing or constructing the Project.

403 Permits

Before commencement of the construction of the Improvements or other work upon the Site, Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required for the construction of the Improvements by the City or any other governmental agency affected by such construction or work. Developer shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith: all permits and fees required by the City, the County of Los Angeles, and all other governmental agencies with jurisdiction over the Improvements and the Site. Notwithstanding the foregoing, Developer and Agency acknowledge and agree that City entitlements for the Project remain effective, and that Developer has agreed to construct the Improvements in accordance with such entitlements. Agency shall approve any plans consistent with the approved City entitlements in accordance with the terms and conditions of this Agreement.

Agency staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of any additional necessary permits, entitlements and approvals. However, the execution of this Agreement by Agency does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals required by Agency or the City.

404 Schedule of Performance

Developer shall submit all drawings, commence and substantially complete all construction of the Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefore in the Schedule of Performance

405 Cost of Construction

All of the cost of planning, designing, developing and constructing all of the Improvements in conformance with the approved drawings shall be borne by Developer

406 Construction Budget, Construction Loan

By the deadline specified in the Schedule of Performance, Developer shall submit to the Agency a draft Construction Loan. In connection with submission of the Construction Loan, Developer shall submit to and obtain Agency's written approval (which such approval shall not be unreasonably withheld or delayed) of a construction budget, showing the projected predevelopment and development costs of the Improvements and a sources and uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred and that any permanent financing shall be sufficient in amount to repay the Construction Loan. Agency shall approve or disapprove the Construction Loan with the time period set forth on the Schedule of Performance, which such approval shall not be unreasonably withheld or delayed.

The Construction Loan shall be consistent with the terms and provisions of this Agreement and shall provide, among other matters, that a copy of all change orders and construction draw requests must be provided to the Assistant Executive Director concurrently with their submittal to the Construction Lender. Prior to execution of any final Construction Loan documents by Developer, Developer shall secure the Agency's approval of the terms and conditions of those Construction Loan documents, which approval shall be limited to and only for the purpose of assuring compliance of the Construction Loan documents with the requirements of this Agreement and the Construction Contract. Agency shall approve or disapprove said Construction Loan documents (which such approval shall not be unreasonably withheld or delayed). Concurrent with any disapproval, Agency shall inform Developer in writing of the reasons for such disapproval.

The Construction Loan shall be made by an Institutional Lender and secured by Developer's interest in the Site and the Improvements to be constructed thereon and such other collateral and/or credit enhancement as needed. The Construction Loan documents shall include such other matters as reasonably requested by Agency, including, without limitation, the right to notice of default and the right (but not the obligation) to cure such default and assume Developer obligations and rights under the Construction Loan.

In no event shall the Construction Loan be cross defaulted with any other loan secured by any other property of Developer other than the Site. Developer shall draw upon and utilize the full amount of the Construction Loan only for financing the Project costs for the Site, and the Construction Loan shall be disbursed and applied in accordance with the approved construction budget, as it may be amended from time to time upon notice to the Agency.

Agency approval of the Construction Loan shall not constitute a waiver by Agency of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Loan. Agency shall not be obligated to close Escrow unless it has received written confirmation from the construction lender that the Construction Loan is in a position to be recorded concurrently therewith.

407 Construction Contract

By the deadline specified therefore in the Schedule of Performance and prior to the execution of any final contract, Developer agrees to deliver to Agency, for its review and approval, a fixed price or guaranteed maximum cost Construction Contract(s) for all of the Improvements, which Construction Contract shall obligate a reputable and financially responsible general contractor(s) ("**General Contractor**"), capable of being bonded and licensed in California and with experience in completing the type of Improvements contemplated by this Agreement, to commence and complete the construction of those Improvements in accordance with this Agreement and at the price stated therein.

Each Construction Contract shall give Agency the right, but not the obligation, to cure defaults thereunder and to assume Developer's obligations and rights under the contract, provided, that such right to cure and assume that contract shall be subject to the rights, if any, of Developer's Construction Lender with respect to such Construction Contract. In addition, each Construction Contract shall provide, among other matters, that all change orders and all construction draw requests must be provided to the Assistant Executive Director concurrently with their submittal to the Construction Lender. Further, each Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

Agency shall approve or disapprove said draft Construction Contract by the date set forth in the Schedule of Performance, which such approval shall not be unreasonably withheld or delayed. Agency approval of a Construction Contract shall not constitute a waiver by Agency of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract. Agency shall not be obligated to close Escrow until it has approved the Construction Contract and Developer and the General Contractor have signed the Construction Contract.

In the event of any disapproval of the draft Construction Contract, Agency shall, concurrently with delivery of the notice of such disapproval to Developer, inform Developer in writing of the reasons for disapproval and the required changes to the draft Construction Contract. Developer and General Contractor shall have twenty (20) days from receipt of any notice from the Agency specifying required changes ("**Construction Contract Disapproval Notice**"), within which to notify Agency that Developer agrees to negotiate with the General Contractor to make such changes or that Developer objects to any such requested changes. If Developer notifies Agency within said twenty (20) day period of its objections to any such requested changes, then the Agency and Developer shall meet at a mutually acceptable time to discuss their differences within fifteen (15) days after the Developer gives such notice. Following such meeting, Developer shall use commercially reasonable efforts to cause the General Contractor to revise the Construction Contract and resubmit it for approval to the Agency as required by this Agreement by the later of (i) fifteen (15) days after receipt of the Construction Contract Disapproval Notice, or (ii) fifteen (15) days after such meeting, unless the

nature of such changes requires a longer period of time, in which case Developer shall resubmit said revised Construction Contract as soon as possible, and, in any case, no later than thirty (30) days after receipt of the Construction Contract Disapproval Notice. Any such resubmissions shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission, and such resubmissions shall not extend any of the outside dates set forth in the Schedule of Performance. If, notwithstanding compliance with the above procedure, the Developer fails to provide Agency with a Construction Contract acceptable to the Agency within the time provided in the Schedule of Performance (or within such additional time as the Agency shall allow), then either party may thereafter elect to terminate this Agreement.

In connection with delivery of the Construction Contract, Developer shall furnish Agency with a contractor's performance bond in an amount not less than one hundred percent (100%) of the costs for the applicable Improvements and a payment bond guaranteeing contractor's completion of those Improvements free from liens of material men, contractors, subcontractors, mechanics, laborers, and other similar liens. Said bonds shall be issued by a responsible surety company, licensed to do business in California, and with a financial strength and credit rating reasonably acceptable to Agency and shall remain in effect until the entire costs for such Improvements shall have been paid in full. Any such bonds shall be in a form reasonably satisfactory to Agency legal counsel. In lieu of the payment and performance bonds, Developer or the general contractor may provide a letter of credit to Agency in the amount of not less than one hundred percent (100%) of the costs for the applicable Improvements, in a form and from an Institutional Lender approved by Agency, which approval shall not be unreasonably withheld.

408 Rights of Access

Prior to the issuance of the Release of Construction Covenants, for purposes of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purpose of ensuring compliance with this Agreement, including but not limited to, the inspection of the work being performed in the construction of the Improvements so long as Agency representatives comply with all safety rules and, at Developer's option, are escorted by a representative of Developer. Agency (or its Representatives) shall, except in emergency situations, notify Developer prior to exercising its rights pursuant to this Section. Agency shall indemnify, defend and hold harmless Developer for any Losses and Liabilities (including, without limitation, attorneys fees and costs) arising out of any of the foregoing inspection activities, except those arising out of the negligence or misconduct of the Developer or its employees, officers, agents or representatives.

409 Compliance with Laws

Developer shall carry out the design and construction of the Project in conformity with all applicable Governmental Requirements, including without limitation all Labor Laws, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Culver City Municipal Code, and all applicable disabled and handicapped access requirements (including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government

Code Section 11135, et seq , and the Unruh Civil Rights Act, Civil Code Section 51, et seq) The Agency makes no representation or warranty to Developer regarding the applicability of any Labor Laws to the Project

410 Nondiscrimination in Employment

Developer certifies and agrees that all persons employed or applying for employment by it and all general contractors, subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U S C Section 2000, et seq , the Federal Equal Pay Act of 1963, 29 U S C Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U S C Section 621, et seq , the Immigration Reform and Control Act of 1986, 8 U S C Section 1324b, et seq , 42 U S C Section 1981, the California Fair Employment and Housing Act, Cal Government Code Section 12900, et seq , the California Equal Pay Law, Cal Labor Code Section 1197 5, Cal Government Code Section 11135, the Americans with Disabilities Act, 42 U S C Section 12101, et seq , and all other antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended Developer shall allow representatives of Agency access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by Agency

411 Levies and Attachments on Site

Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time other than those levies or attachments imposed as a result of Agency activities Nothing herein shall be deemed to prohibit Developer from contesting the validity or amount of any levy or attachment nor to limit the remedies available to Developer with respect thereto

412 Financing of the Improvements

412 1 No Encumbrances Except Mortgages and Deeds of Trust

Mortgages and deeds of trust through an Institutional Lender for the purpose of securing loans of funds are to be used for (i) financing the acquisition, predevelopment or development of the Site, (ii) financing the construction of the Improvements (including architecture, engineering, legal, and related direct costs as well as indirect hard and soft costs such as real property taxes, insurance premiums, closing costs, loan carrying costs, costs of financing and overhead) on or in connection with the Site, or (iii) any other purposes necessary and appropriate in connection with the Project under this Agreement, and shall be permitted before issuance of the Release of Construction Covenants only with Agency's prior written approval in accordance with Section 206 Agency shall cooperate with Developer and will in good faith consider all reasonable requests by an Institutional Lender to modify this Agreement Any mortgage or deed of trust or other grant of a security interest in the Site shall constitute a Transfer for purposes of this Agreement The words "mortgage" and "trust deed"

solely as used in this Section 414 1 shall include sale and lease-back and other means of financing which involve the granting of a security interest

412 2 Holder Not Obligated to Construct Improvements

The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or any portion thereof, or to guarantee such construction or completion, nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

412 3 Default Notice to Mortgagee or Deed of Trust Holders, Right to Cure

With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever Agency may deliver any notice or demand to Developer with respect to any material breach or default by Developer in completion of construction of the Improvements, Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by its Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by Agency are concerned) have the right, at its option, within sixty (60) days after the expiration of all cure periods available to Developer but in no event longer than one hundred eighty (180) days after receipt of notice hereunder, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession of the Site or any portion thereof and such holder promptly commences and diligently prosecutes efforts to obtain possession with diligence through a receiver or otherwise, such holder shall have until sixty (60) days after obtaining possession to cure such default but in no event longer than three hundred sixty-five (365) days after receipt of notice hereunder. Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured within sixty (60) days, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence but in no event longer than three hundred sixty-five (365) days after receipt of notice hereunder, provided, further, such holder shall not be required to remedy or cure any non curable default of Developer (such as an unauthorized attempted assignment or the failure to meet a deadline).

Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Agency by written agreement reasonably satisfactory to Agency. The holder in that event shall only be liable or bound by Developer's obligations hereunder during the period that the holder is in possession of such portion of the Site in which the holder has an interest and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in such property and the improvements owned by it thereon. In addition, the holder, in that event, must agree to complete, in the manner provided in this Agreement, the

improvements to which the lien or title of such holder relates Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 413 of this Agreement, to a Release of Construction Covenants

It is understood that a holder shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such sixty (60) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default within three hundred sixty-five (365) days of receipt of notice hereunder All rights and obligations of a lender or holder pursuant to this Agreement shall also accrue to any purchaser, assignee or successor of a lender or holder upon acquisition of title to any portion of the Site by such purchaser, assignee or successor pursuant to a judicial or nonjudicial foreclosure or a deed in lieu of foreclosure, or pursuant to a conveyance from a holder by deed in lieu of foreclosure In the event of such conveyance to a purchaser, assignee or successor, then Agency agrees that it shall not unreasonably withhold, condition or delay its approval of further extensions of time for performance of Developer's obligations under this Agreement as appropriate but in no event for a period of time longer than three hundred sixty-five (365) days to permit such purchaser, assignee or successor to obtain possession of such property and enter into contracts for the construction of improvements to complete the development of such property

Breach of any of the covenants, conditions, restrictions, or reservations contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder and any owner of the Site or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise

No purported modification, amendment and/or termination of this Agreement affecting the rights of a holder shall be binding upon any holder holding a mortgage or deed of trust from and after the date of recordation of such mortgage or deed of trust unless and until the written consent of such holder is obtained

412 4 Failure of Holder to Complete Improvements

In any case where, sixty (60) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from Agency of a default by Developer in completion of construction of any of the Improvements under this Agreement, and such holder has not exercised the option to construct within the time period set forth in Section 414 3, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, Agency may, upon thirty (30) days prior written notice to holder, purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums and advances secured by the mortgage or deed of trust If the ownership of the Site or any part thereof has vested in the holder and if such holder has not exercised its right to assume the obligations hereunder and commence construction activities, Agency, if it so desires,

may purchase such ownership interest from the holder upon payment to the holder of an amount equal to the sum of the following

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less collection and application of rentals and other income received during foreclosure proceedings),

(b) All expenses with respect to foreclosure including reasonable attorneys' fees,

(c) The expenses, if any (inclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof (including without limitation, insurance premiums and real property taxes),

(d) The costs of any improvements made by such holder,

(e) An amount equivalent to the interest at the applicable rate (including, without limitation, interest at the default rate to the extent provided for in the applicable loan documents) that would have accrued on the aggregate of the amounts described in Section (a) from and after the time title became vested in holder and in Sections (b) through (d), inclusive, had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by Agency, and

(f) Any late payment fees and/or prepayment charges imposed by the lender pursuant to its loan documents and agreed to by Developer

412 5 Right of Agency to Cure Mortgage or Deed of Trust Default

In the event of a material, uncured mortgage or deed of trust default or breach by Developer prior to the issuance of the Release of Construction Covenants (unless Developer is contesting such default in good faith), Developer shall immediately deliver to Agency a copy of such mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct within the time periods set forth in Section 414 3, Agency shall have the right, but not the obligation, upon ten (10) days Notice to Developer, to cure the default. In such event, Agency shall be entitled to reimbursement from Developer of all proper direct and actual out-of-pocket costs and expenses incurred by Agency in curing such default. Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements, provided that any such lien shall be junior and subordinate to the mortgages, deeds of trust or any other security interests granted in accordance with this Section 414 5 and the Assistant Executive Director, as a condition to the imposition of its lien, shall execute subordinate agreements to the extent required by the holder of any such mortgage, deed of trust or other security interests.

413 Release of Construction Covenants

Within fifteen (15) days of receipt by Agency of Notice from Developer that the construction of the Improvements has been completed in conformity with this Agreement, Agency shall furnish Developer with the Release of Construction Covenants. Agency shall not

unreasonably withhold the Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any construction obligation under this Agreement.

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

Agency shall not unreasonably withhold a Release of Construction Covenants. If Agency refuses or fails to furnish the Release of Construction Covenants, after written request from Developer, Agency shall, within ten (10) days of written request therefore, provide Developer with a written statement of the reasons Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain Agency's opinion of the actions Developer must take to obtain the Release of Construction Covenants. If the reason for such refusal is confined to the immediate unavailability of specific items or materials or otherwise constitutes minor unfinished work for which a cost can be specified, Agency will issue its Release of Construction Covenants upon the posting of a bond or cash security by Developer with Agency in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other evidence reasonably satisfactory to Agency assuring Agency that Developer will pay for and complete the same. If the reason for such refusal includes other uncompleted obligations of Developer under this Agreement which can otherwise be provided for to the reasonable satisfaction of Agency, Agency will issue its Release of Construction Covenants upon Agency's approval of such measures as will reasonably satisfy Agency that such obligations will be completed. Even if Agency shall have failed to provide such written statement within such ten (10) day period, Developer shall not be deemed entitled to the Certificate of Compliance. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

414 Bodily Injury and Property Damage Indemnification

The Developer agrees to and shall defend, release, indemnify and hold harmless the Agency, City and their respective Representatives from and against any and all Losses and Liabilities arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur directly or indirectly as a result of or in connection with the acts of or on behalf of the Developer in connection with the development of the Site, the construction of the Improvements and operation of the Project, whether such damage shall occur or be discovered before or after termination of this Agreement.

This indemnification provision supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Developer under this Section shall survive the expiration or termination, for any reason, of this Agreement.

415 Indemnification

To the full extent permitted by law, Developer shall indemnify, defend and hold harmless the Agency, City, and their respective Representatives, from and against any and all Losses and Liabilities, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, to (i) Developer's compliance with or failure to comply with all applicable Governmental Requirements, including all applicable Labor Laws, (ii) defects in the design of the Project, including (without limitation) the violation of any Governmental Requirements, and for defects in any work done according to the Agency approved plans, or (iii) any breach of or any other performance or act or failure to perform or act pursuant to this Agreement by Developer, or by any individual or entity that Developer shall bear the legal liability thereof, including but not limited to, officers, agents, employees, contractors or subcontractors of Developer

Without affecting the rights of the Agency, the City, and their respective Representatives, under any provisions of this Agreement, Developer shall not be required to indemnify and hold harmless the Agency, the City, and their respective Representatives, for the percentage of liability attributable to the active negligence or intentional misconduct of Agency, the City, and their respective Representatives, provided such active negligence or intentional misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction

Developer agrees to be fully responsible to the Agency, the City, or their respective Representatives, and defend, indemnify and hold harmless such parties for any and all Losses and Liabilities resulting from any acts of each and every contractor or any other person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement

In the event that any claim or legal action is brought against the Developer and/or Agency pertaining to an act or failure of Developer to act for which Agency or City is indemnified hereunder or pertaining to the compliance of the construction, alteration, demolition, installation or repair of the Improvements with any Labor Laws, the Developer shall defend itself and, without cost to the Agency, defend, indemnify and hold the Agency harmless therefrom. Upon the Developer's failure to defend, indemnify and hold the Agency harmless from such claims, the Agency shall be entitled to recover from the Developer all of the Agency's costs and expenses incurred on account of such failure, including (but not limited to) reasonable attorneys' fees and costs. Each party shall promptly notify the other party of the filing of any such claim or action and cooperate with the defense thereof. The Developer shall not settle or compromise the defense of such claim or action on behalf of the Agency, or permit a default judgment to be taken against the Agency, without the prior written approval of the Agency, which shall not unreasonably be withheld.

Failure of the Agency, the City, or their respective Representatives to monitor compliance with these requirements imposes no additional obligations on the Agency, the City, or their respective Representatives and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend the Agency, the City, or their respective representatives as set forth herein is binding on the successors, assigns or heirs of Developer and shall survive the expiration or termination of this Agreement or this Section 417.

500 COVENANTS AND RESTRICTIONS

501 Covenant Regarding Specific Uses

Developer shall use the Site to construct the Project. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to all applicable provisions of the Redevelopment Plan, the Culver City Municipal Code and any other applicable Governmental Requirements.

In facilitating the purchase of the Site and the construction of the Project, the Agency's goal is to activate the downtown area by increasing the number of retail and restaurant tenants. Prior to entering into any binding agreement for the lease of the first floor of the Project with any retail or restaurant tenant, Developer agrees that Agency shall have the right to review and approve all restaurant and retail tenants in accordance with the procedures set forth below. Developer further agrees to use commercially reasonable diligent efforts to locate and enter into leases with unique, high end and high quality tenants.

In furtherance of the foregoing, on May 8, 2006, Developer entered into an agreement for eight (8) months with a broker selected by the Agency, Lee & Associates, to secure retail tenants for the Project. As a result of the advice of such broker, Developer and Agency agree that, from and after the Effective Date, Developer shall use commercially reasonable best efforts to enter into letters of intent with potential tenants for the first floor, with leases to one third of the ground floor, or approximately twelve thousand (12,000) square feet, consisting of restaurant tenants and two thirds of the ground floor, or approximately twenty four thousand (24,000) square feet, consisting of retail tenants. Developer shall utilize the broker to locate retail tenants. All retail tenants shall be subject to the approval of both Agency and Developer. Developer shall not withhold approval of a retail tenant except for reasonable credit or similar financial concerns. Developer shall have regular meetings with Agency staff to discuss the progress of interested tenants for the ground floor, and to obtain the Agency's review and approval of such tenants prior to entering into a letter of intent or lease with any tenant.

For purposes hereof, a retail tenant shall mean any tenant which will not be using the leased space for restaurant purposes. A restaurant tenant shall mean a tenant leasing the space for sit-down food and/or coffee service purposes reasonably acceptable to Agency. Developer agrees that at least one restaurant will provide outdoor dining service in the open space area facing the newly expanded Town Plaza Project, and at least two (2) restaurants in the aggregate must occupy at least nine thousand (9,000) square feet of the first floor of the Project.

On September 1, 2006, the initial percentages will be adjusted to reflect an update of Lee & Associates efforts to attain desirable retail tenants. A new percentage mix will be adopted at that time that is mutually negotiated between the parties. Such new tenant mix percentage shall be documented in a writing signed by the parties.

If, by January 15, 2007, despite the commercially reasonable diligent efforts of Lee & Associates, Lee & Associates are unsuccessful in leasing the first floor to retail tenants in accordance with the percentage requirements set forth above, then the Developer shall no longer be required to meet such requirements as to retail tenants. Instead, the retail percentage required

by this Agreement shall adjust to the percentage of first floor space for which letters of intent or leases have been entered into by retail tenants as of January 15, 2007. Thereafter, the Agency shall either permit Developer to lease the remaining unleased space to a tenant without meeting the tenant mix percentages set as of the Effective Date. Notwithstanding the foregoing, Agency shall have the right, but not the obligation, to, not later than January 31, 2007, enter into a letter of intent or lease with Developer for some or all of the unleased retail square footage at a rate of Three Dollars (\$3.00) per square foot triple net for a period of time not less than twelve (12) months from the date of issuance of a Certificate of Occupancy for the first floor of the Project, without any allowance for tenant improvements.

In addition, during the seven (7) years immediately following the completion of construction, if one or more initial tenants vacate the square footage leased by them, Developer shall use commercially reasonable diligent efforts to meet the tenant mix percentages established on January 15, 2007 pursuant to this section when leasing such space to new tenants. Developer agrees that it shall use commercially reasonable best efforts to locate and enter into leases with tenants that are unique, high quality, and high end. Developer agrees that if one or both of the initial tenants of the two largest restaurant spaces vacate their respective properties, Developer shall not be permitted to subdivide the larger restaurant spaces into smaller spaces without the prior written consent of the Agency.

Further, upon Developer's receipt, during such seven (7) year period, of written notice from any tenant using the first floor that the tenant intends to vacate its space, (a) Developer shall provide the Agency with written notice of the intent to vacate within fifteen (15) days of Developer becoming aware thereof, (b) Agency shall not be obligated to make any payments in connection with such termination, including, without limitation, any payment for lost rent, replacement tenant improvements allowances, broker fees, or any other similar amounts, (c) Developer agrees to work with Agency to search for an appropriate replacement tenant for six (6) months after notice of the vacancy is provided to Agency, and (d) Developer agrees to notify Agency of a proposed replacement tenant. Upon such notification, Agency shall have twenty (20) days to approve or disapprove the proposed tenant. If, after six (6) months of commercially reasonable diligent efforts to locate a retail or restaurant tenant, as appropriate, acceptable to the Agency and to the Developer, no letter of intent with such a tenant has been entered into, the Developer shall be permitted to lease to a tenant of its choice.

After such date as is seven (7) years after the certificate of occupancy is issued by the City for the Project, Developer will no longer be obligated to meet the Agency approval and tenant mix percentage requirements of this Section if any vacancy occurs on the first floor of the Project. Notwithstanding the foregoing, Developer agrees to provide written notice to Agency with fifteen (15) days of Developer's receipt of notice of such vacancy. Upon Agency's request, Developer agrees to meet with the Agency. At such meeting, Agency shall have the right, but not the obligation, to provide tenant prospects to Developer, and to define the Agency's priorities as to an appropriate replacement tenant. Agency shall also have the right to require Developer to provide status reports regarding its efforts to locate such a tenant. Upon identification of a proposed replacement tenant, Developer shall notify the Agency. Agency shall have twenty (20) days to comment on the proposed replacement tenant.

502 Covenants Regarding Maintenance

Developer shall maintain the Site and all Improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan and with all applicable provisions of the Culver City Municipal Code. Developer shall maintain the Improvements and landscaping on the Site in accordance with the "Maintenance Standards," as hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other common area of the Improvements on the Site. To accomplish the maintenance, Developer shall contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Developer and its maintenance staff, contractors or subcontractors shall covenant to comply with the following standards (the "**Maintenance Standards**")

(a) The Site shall be maintained in conformance and in compliance with the approved building permit drawings, and reasonable maintenance standards for similar, neighboring structures, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline. The Site shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable developments.

(b) Landscape maintenance shall include, but not be limited to watering/irrigation, fertilization, mowing, edging, trimming of grass, tree and shrub pruning, trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage, replacement, as needed, of all plant materials, control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas, and staking for support of trees.

(c) Clean up maintenance shall include, but not be limited to maintenance of all sidewalks, paths and other paved areas in clean and weed free condition, maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly, removal of all trash, litter and other debris from improvements and landscaping prior to mowing, clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Agency agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards specified herein and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency, unless such deficiency cannot be reasonably corrected, remedied or cured within such period, in which case, such period shall be extended for such time as is necessary to accomplish the same provided that Developer is diligently pursuing such correction, remedy or cure. If the written notification states the problem is urgent relating to the public health and

safety of the City or Agency, then Developer shall have forty-eight (48) hours to commence curing the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards specified herein, Agency shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such out of pocket third party costs incurred by Agency.

503 Covenants Regarding Redevelopment Plan, Nondiscrimination

Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof that Developer, and its successors and assignees, shall devote the Site to the uses specified in the Redevelopment Plan, the Developer Declaration, and this Agreement for the periods of time specified therein. The foregoing covenants shall run with the land.

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any part thereof, including without limitation the Units, nor shall Developer itself or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

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

(a) In deeds "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or

through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased ”

(c) In contracts “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises ”

504 Effect of Violation of this Section

Agency is the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Site or in the Project Agency shall have the right, if this Agreement or any covenants herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and any covenants may be entitled The covenants contained in this Section shall remain in effect as follows

(a) The covenants pertaining to the tenant mix, Agency approval rights and general use and operation of the Site, as set forth in Section 501, shall remain in effect for the term of the Redevelopment Plan

(b) The covenants pertaining to maintenance of the Site and all improvements thereon, as set forth in Section 502, shall remain in effect for the term of the Redevelopment Plan

(c) The covenants against discrimination, as set forth in Section 503, shall remain in effect in perpetuity

600 RIGHT OF FIRST OFFER

601 Right of First Offer

If Developer desires to sell or otherwise transfer the Site and the Improvements thereon constituting the Project to a third party for consideration, Developer shall first comply with the procedures set forth in this Section 600 Nothing in this Section 600 shall relieve Developer from its obligation to comply with Section 206 hereof

601 1 Developer's Offer

Developer shall first offer ("**Developer's Offer**") to sell the Site and the Improvements thereon to Agency. The Developer's Offer shall be in writing and delivered to the Assistant Executive Director by courier or overnight delivery or by certified first class mail, return receipt requested, and shall specify the purchase price (which shall be the fair market value of the Site and the Improvements), the basis for determination of the purchase price (including a copy of any appraisal) and the terms and conditions of the Developer's Offer.

601 2 Commitment Notice

Agency shall have sixty (60) days after receipt of Developer's Offer to agree to purchase the Site and the Improvements thereon at the price and on such terms contained in Developer's Offer or such other terms as may be agreed to by the Parties by delivering written notice of such agreement to Developer (the "**Commitment Notice**"). Agency and Developer shall use commercially reasonable best efforts to consummate the purchase of the Site by Agency within sixty (60) days after the date of its Commitment Notice and neither Party shall unreasonably delay or prevent the closing of escrow. Purchase of the Site by the Agency shall not be binding upon the Agency until approval by the Agency board at an open and agenda meeting.

601 3 Sale by Developer

Agency's failure to timely deliver the Commitment Notice within ninety (90) days after receipt of Developer's Offer shall be deemed a one-time waiver of its right of first offer with respect to the Site and the Improvements thereon. Developer shall be permitted, for a period of one (1) year beginning on the date that is the earlier of (a) ninety (90) days after delivery to Agency of Developer's Offer, or (b) the date on which Agency provides written notice to Developer that Agency will not exercise such right to purchase the Improvements (the "**Sale Period**"), to sell the Site and the Improvements thereon to a third party at a price that is not lower than ninety-five percent (95%) of the Developer's Offer price, and on terms that are not materially more favorable than those proposed to Agency in Developer's Offer.

601 4 Failure to Complete Transaction

If (a) Agency decides not to purchase the Site and the Improvements thereon in accordance with this Section 600 and Developer fails to consummate the sale or other transfer of the Site and the Improvements thereon to a third party as set forth in Section 601 3 above within the Sale Period, or (b) Agency fails to consummate its purchase of the Site and the Improvements thereon within the ninety (90) day period described in Section 601 2 above (unless a longer period is agreed to by the Parties), then Developer may not sell or transfer the Improvements to a third party without again complying with the procedures set forth in this Section 600, and the remaining provisions of this Section 600 shall remain in effect.

601 5 Mechanics of Transfer Upon Agency Exercise of the Developer Offer

Agency and Developer agree to use good faith in the execution of the Right of First Offer and further agree to execute such other documents as are reasonably

necessary or helpful in implementing and completing the Agency exercise of the Right of First Offer To the extent possible, and unless otherwise agreed in writing by the Parties, the following procedures shall apply with regard to the purchase

(a) Payment of the Purchase Price The purchase price for the Site and the Improvements thereon shall be payable in full at the Right of First Offer closing The payment of the purchase price shall be reduced by the assumption by the Agency of any loans secured by any mortgages or other liens recorded against the Site, provided that the mortgage or lien holder has agreed that conveyance of the Project to Agency pursuant to the exercise of the Right of First Offer does not result in an acceleration of any debt secured by such mortgage or lien

(b) Title Insurance, Survey Agency shall be responsible for obtaining and paying for any policy of title insurance desired by Agency and Agency shall be responsible for any survey desired by Agency

(c) Transfer of Real Property The Developer shall convey and transfer title to the Site and the Improvements by a recordable grant deed acceptable to Agency

(d) Personal Property All personal property constituting the Site and the Improvements thereon shall be conveyed by a bill of sale to Agency at closing

(e) Closing Costs All customary real estate transfer closing costs incurred in connection with the conveyance of the Site to Agency pursuant to the exercise of the Right of First Offer shall be paid for by Agency

(f) Closing Date, Possession The closing of the sale of the Site pursuant to the exercise of the Right of First Offer shall occur no later than ninety (90) days after Agency accepts the Right of First Offer (or such later date as may be agreed to by the Parties) As used in this Section 600, references to "a closing," or "the closing," shall mean the closing of the purchase and sale pursuant to the Right of First Offer, as evidenced by the recordation of grant deed as to the Site and the Improvements thereon in the Official Records of Los Angeles County Agency shall be entitled to possession of the Site upon the closing, subject to rights of tenants in possession

601 6 Environmental and Other Due Diligence

During the period commencing upon the exercise of the Right of First Offer and ending upon the closing, Developer shall cooperate with and permit Agency to access the Site during regular business hours and upon reasonable notice for the purpose of obtaining data and conducting any surveys and tests requested by Agency, including, without limitation, an inspection of the improvements on the Site and the environmental condition of the Site Any surveys and tests conducted on the Site by Agency's Representatives shall be done at the sole expense of Agency

602 Right to Cancel Exercise of Right of First Offer

In the event that Agency finds, in its sole discretion, that the title of the Site cannot be conveyed in an acceptable manner or that the Site or improvements thereon contain defects or Hazardous Material contamination of a nature unacceptable to Agency, then Agency shall have the right to cancel its exercise of the Right of First Offer. Agency shall provide Developer with written notice of such cancellation prior to the closing.

603 Right of First Offer in Memorandum of Agreement

Developer and Agency agree to cause a Memorandum of Agreement to be recorded against the Site to include specific reference to the foregoing Right of First Offer. The terms of this Section 600 shall survive any termination of this Agreement.

700 DEFAULTS, REMEDIES AND TERMINATION

701 Defaults - General

Subject to the extensions of time set forth in Section 806, failure or delay by either Party to perform any term or provision of this Agreement constitutes a "**Default**" under this Agreement.

In addition, each of the following shall constitute a Default of Developer hereunder:

(a) Developer materially fails to comply with any provision contained in the Agency Documents, or

(b) The occurrence of any default under any of the Construction Loan documents or other loan documents secured by an interest in the Site prior to the completion of construction following the expiration of any applicable notice or cure period set forth therein, or

(c) Construction of the Improvements is abandoned, or, subject to the provisions of Section 806, any element of the Improvements is not completed within the time allocated for it in the Schedule of Performance or the Improvements are not completed by the date set forth therefore in the Schedule of Performance, or

(d) Construction of the Improvements is halted prior to completion for any period of twenty (20) consecutive days for any cause which is not described in Section 806, or

(e) A court of competent jurisdiction enters an order enjoining construction of the Improvements, or such a court or an authorized governmental agency orders that leasing of the Improvements be suspended or halted, or any required approval, license or permit is withdrawn or suspended, and the order, withdrawal or suspension remains in effect for a period of thirty (30) days, or

(f) Developer is in default, after the expiration of any applicable notice or cure periods, under the architecture contract, any engineering contract, the Construction Contract

or any other contract for or pertaining to the construction of the Improvements, and, as a result thereof, construction of the Project ceases for three (3) months, or

(g) Any surety obligated for any Improvements is called upon to perform its obligations, or

(h) Developer (i) is unable to pay their respective debts as they become due, or files of a petition in bankruptcy (or otherwise commences bankruptcy or a similar proceeding), or (ii) has filed by or against either of them or any other guarantor of Developer, 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

The injured Party shall give written Notice of Default to the Party in default, specifying the default complained of by the injured Party. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured Party may not institute proceedings against the Party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default.

If the Default is not cured or commenced to be cured and thereafter diligently pursued to completion by the defaulting Party within thirty (30) days after service of the Notice of Default, such failure shall constitute an **"Event of Default"** under this Agreement and the defaulting Party will be liable to the other Party for any damages caused by the Default and other relief as is afforded by applicable Governmental Requirements. An Event of Default shall also result hereunder upon the occurrence of any failure or delay of performance under any other agreement secured by the Site (including, without limitation, the Construction Loan) and such delay or failure to perform is not remedied within the cure period set forth in the appropriate governing agreement.

This Agreement may be terminated by the nondefaulting party upon an Event of Default, and, in addition, the nondefaulting party may exercise any other rights and remedies to which it may be entitled under the law.

702 Institution of Legal Actions

In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, or to recover damages for any Event of Default, or to obtain any other 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, in an appropriate Municipal Court in that County, or in the Federal District Court in the Central District of California.

703 Termination by Developer Prior to Conveyance

In the event that Developer is not in Default and prior to the Closing

(a) Agency does not (or demonstrably cannot) deliver title to any portion of the Site pursuant to the Grant Deed in the manner and condition set forth herein on or before the Outside Closing Date, or

(b) Agency is in Default and has failed to cure the Default within thirty (30) days after receipt of Notice of Default, or

(c) one or more of Developer's Conditions Precedent to Closing is not satisfied on or before the Outside Closing Date,

then this Agreement may, at Developer's option, be terminated by Notice to Agency. From the date of the Notice of termination of this Agreement by Developer to Agency and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties. Upon such termination by Developer, all monies or documents deposited by any Party into Escrow shall be returned to the Party making such deposit. If this Agreement is terminated due to Default of Agency, Agency shall pay all escrow cancellation costs. If this Agreement is terminated for any other reason, the Parties shall each pay one-half of the escrow cancellation costs.

704 Termination by the Agency Prior to Conveyance

In the event that Agency is not in Default and prior to the Closing

(a) Developer does not accept title to any portion of the Site pursuant to the Grant Deed in the manner and condition set forth herein on or before the Outside Closing Date, or

(b) Developer is in Default and has failed to cure the Default within thirty (30) days after receipt of Notice of Default, or

(c) one or more of Agency's Conditions Precedent to Closing is not satisfied on or before the Outside Closing Date, or

(d) Developer assigns or Transfers or attempts to assign or Transfer this Agreement (or any rights herein), or sells, Transfers, conveys, assigns, or leases the whole or any part of the Site (or any portion thereof) or of the Improvements to be constructed thereon, except for a Permitted Transfer, or undergoes a Change of Control in violation of this Agreement, and after the Agency delivers a written demand to the Developer to void, cancel, rescind and terminate such Transfer or Change of Control within thirty (30) days after the date of receipt of such demand, such Transfer or Change of Control is not voided, cancelled, rescinded and terminated within said thirty (30) day period, or

(e) Developer fails to submit to the Agency in accordance with the Schedule of Performance the Schematic Drawings and/or the final drawings and related documents as required by Sections 402 and 403 of this Agreement or the Evidence of Financing as required by Section 314 of this Agreement, and after Agency delivers a written demand to the Developer to cure such failure within thirty (30) days after the receipt of such demand and such failure is not cured within said thirty (30) day period,

then this Agreement may, at Agency's option, be terminated by Notice to Developer. From the date of the Notice of termination of this Agreement by Agency to Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties. Upon such termination by Agency, all monies or documents deposited by any Party into Escrow shall be returned to the Party making such deposit. If the Agreement is terminated due to Default of Developer, Developer shall pay all escrow cancellation costs. If this Agreement is terminated for any other reason, the Parties shall each pay one-half of the escrow cancellation costs.

705 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

706 Acceptance of Service of Process

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

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

707 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.

708 Damages

If either the Developer or the Agency defaults with regard to any of the provisions of this Agreement, the non-defaulting Party shall serve written Notice of such Default upon defaulting party. If the Default is not cured or commenced to be cured and thereafter diligently pursued to completion by the defaulting party within thirty (30) days after service of the Notice of Default, the defaulting party shall be liable to the other party for any damages caused by such Default.

709 Consequential Damages

Without limiting the generality of the foregoing, Developer and Agency shall not in any event be entitled to, and Developer and Agency hereby waive, any right to seek consequential damages of any kind or nature from Developer, Agency or City, as applicable, arising out of or in connection with this Agreement, and in connection with such waiver Developer and Agency are familiar with and hereby waive the provision of Section 1542 of the California Civil Code which provides as follows

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

710 Specific Performance

If either the Developer or the Agency defaults under any of the provisions of this Agreement, the non-defaulting party shall serve written Notice of such Default upon the defaulting party. If the Default is not commenced to be cured by the defaulting Party within thirty (30) days of service of the Notice of Default, and thereafter diligently pursued to completion, the non-defaulting Party at its option may institute an action for specific performance of the terms of this Agreement.

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.

711 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.

712 Attorneys' Fees

In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees and costs.

As used in this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" means the reasonable fees and expenses of counsel to the Parties hereto (including, without limitation, in-house or other counsel employed by Agency or Developer) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law

clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to enforcement of judgments, appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

713 Right of Reverter

The Agency shall have the additional right, at its option, to re-enter and take possession of the Site conveyed by the Agency to the Developer, with all improvements thereon, and re-vest in the Agency the estate theretofore conveyed to the Developer if, after Conveyance of title and prior to recordation of the Release of Construction Covenants, the Developer (or its successors in interest)

(a) Fails to proceed with the construction of Improvements as required by this Agreement for a period of three (3) months, plus any extension as may be granted pursuant to Section 806 of this Agreement, after written notice thereof from the Agency

(b) Abandons or substantially suspends construction of improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency

(c) Transfers or suffers any involuntary Transfer of the Site, or any part thereof, in violation of this Agreement

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

(i) Any mortgage, deed or trust or other security instrument permitted by this Agreement

(ii) Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments

The Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right, as set forth in this Section 713 subject to the foregoing provisions

Upon issuance of a Release of Construction Covenants for the Improvements to be constructed on any applicable portion of the Site, the Agency's right to re-enter, terminate and re-vest as to such portion of the Site shall terminate, and the Agency shall only be entitled to re-enter, terminate and re-vest with respect to the other parcels within the Site for which no Release of Construction Covenants has been issued

Upon the re-vesting in the Agency of title to the Site as provided in this Section 713, the Agency shall, pursuant to its responsibilities under State law, use its best efforts to resell the Site or part thereof as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of

making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan Upon such resale of the Site, the proceeds thereof shall be applied

(x) First, to reimburse the Agency on its own behalf or on behalf of the City for all reasonable and necessary costs and expenses incurred by the Agency, including but not limited to, salaries of personnel employed or utilized in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such management), all taxes, assessments and water and sewer charges with respect to the Site or part thereof (or, in the event the Site is exempt from taxation or assessment or such charges during the period of ownership to such taxes, assessments or charges (as determined by the City assessing official) as would have been payable if the Site were not so exempt), any payments made or necessary to be made to discharge to prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees, any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site or part thereof, and any amounts otherwise owing the Agency by the Developer and its successor or transferee, and

(y) Second, to reimburse the Developer, its successor or transferee up to the amount equal to (1) the sum of the purchase price paid to the Agency by the Developer for the Site, (2) the costs incurred for the development of the site and for the improvements existing on the Site at the time of the re-entry and repossession, less (3) any gains or income withdrawn or made by the Developer from the Site or the improvements thereon

(z) Finally, any balance remaining after such reimbursements shall be retained by the Agency as its property

To the extent that the rights established in this Section involves a forfeiture, the rights of the Agency hereunder must be strictly interpreted in favor of the Agency, the party for whose benefit the right of reverter is created The right of reverter and other rights established in this Section are to be interpreted in light of the fact that the Agency will convey the Site to the Developer for development of the Project as set forth herein and not for speculation

800 GENERAL PROVISIONS

801 Notices, Demands and Communications Between the Parties

Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows

To Agency Culver City Redevelopment Agency
Attn Susan Evans, Assistant Executive Director
9770 Culver Boulevard
Culver City, California 90232-0507

Copy to Leibold, McClendon & Mann, P C
Attn Barbara Zeid Leibold, Esq
23422 Mill Creek Drive, Suite 105
Laguna Hills, California 92653

To Developer Rush Pacifica, LLC
Attn Jeffrey L Rush
12348 High Bluff Drive, Suite 210
San Diego, California 92130

Copy to Evan Mead Stone, Esq
12348 High Bluff Drive, Suite 210
San Diego, California 92130

Any Notice shall be deemed received as of the date of courier service delivery or shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail

802 Subordination of Indebtedness of Agency and City

Any indebtedness of the Agency and the City to the Developer created by this Agreement is subordinate to any pledge of tax increments to the bondholders of any tax increment bonds which have been or may hereafter be issued by the Agency and/or the City. The Parties hereby agree to execute any and all ancillary documents as may reasonably be requested by any bondholder or other purchaser of bonds, notes or other forms of indebtedness of the Agency entitled to receive the tax increment revenues for the repayment of any other indebtedness of the Agency for which the tax increment revenues have been or may hereafter be pledged.

803 Conflicts of Interest

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

804 Warranty Against Payment of Consideration for Agreement

The Developer 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.

805 Nonliability of Agency Officials and Employees

No member, official or employee of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement

806 Enforced Delay, Extension of Times of Performance

Failure by either Party to perform shall not be deemed a default hereunder and times for performance shall be extended as provided herein where delays are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor or supplier, acts of the other party, acts of failure to act of any public or governmental agency or entity (other than that acts or failure to act of the Agency or the City shall not excuse performance by the Agency) or similar causes beyond the control and without the fault of the Party claiming an extension of time to perform (collectively, a "**Force Majeure**" delay), provided, however, that the Party claiming the existence of a Force Majeure delay and an extension of its obligation to perform shall notify the other Party in writing of the nature of the matter causing the delay within thirty (30) days from the occurrence thereof

The lack of funding to complete the development of the Site shall not constitute grounds of Force Majeure delay pursuant to this Section 806 Developer expressly assumes the risk of real estate market conditions, construction costs, interest rates, and other similar general economic circumstances that may make funding and/or construction of the Project difficult, more expensive, or infeasible, whether or not such events or causes are foreseeable as of the date of this Agreement Developer acknowledges and agrees that the provisions of this Section 806 shall not operate to excuse Developer from prompt payment of Purchase Price or other monies when due

The extension of time to perform shall commence to run from the time of the commencement of the cause and shall continue only for the period of the Force Majeure delay, provided, however, in no event shall performance be excused pursuant to this Section 806 for any Force Majeure delay for a cumulative period of more than twelve (12) months If said Force Majeure delay extends for more than twelve (12) months, either Party may terminate this Agreement upon fifteen (15) days written notice to the other Party

Notwithstanding the foregoing, Developer shall be entitled to an extension of its obligation to complete development of the Project on the Site for up to six (6) additional months (for a total of up to eighteen (18) consecutive months, but provided that any extension shall only be for the period of the Force Majeure delay if the period of such delay is less than six (6) months) if Developer demonstrates to the reasonable satisfaction of the Agency that solely as a result of a Force Majeure event, conditions are such that no commercially reasonable person or entity exercising timely and consistent commercially reasonable best efforts could obtain financing or complete construction of the Project Developer shall notify Agency in writing of

its intention to seek such additional six (6) month period (including a description of the Force Majeure event causing such conditions and Developer's efforts to complete the development of the Project in spite of such conditions) not later than thirty (30) days prior to the expiration of the twelve (12) month period specified above. Agency shall notify Developer of its approval or disapproval of such additional six (6) month period within ten (10) days of the receipt of Developer's notice.

Times of performance under this Agreement may also be extended in writing by mutual agreement of the Agency and the Developer.

807 Plans and Data

If this Agreement is terminated by Developer pursuant to Section 703, the Agency shall have the right, but not the obligation, to purchase from Developer all plans, drawings, studies and related documents concerning the Project within Developer's possession and control, without representation or warranty. The purchase price for all or any part of such materials shall be their cost to Developer.

If this Agreement is terminated by the Agency pursuant to Section 704, then, pursuant to the exercise of Agency's rights under the Assignment of Plans, Reports and Data, Developer shall deliver to Agency any and all plans, drawings, studies and related documents concerning the Project within Developer's possession and control, without representation or warranty. Upon delivery to the Agency, the Agency shall have the right to use such materials as it deems necessary and appropriate to fulfill the purposes of this Agreement without obligation to Developer.

808 Approval by Agency and Developer

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 Agency or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld 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 thirty (30) days of receipt unless expressly provided to the contrary herein.

809 Relationship Between Agency and Developer

The Parties agree that the Developer, in the performance of this Agreement, shall act as and be an independent contractor and shall not act in the capacity of an agent, employee or partner of the Agency or of the City. It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Developer agrees to indemnify, hold harmless and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and the Developer with respect to the development, operation, maintenance or

management of the Project on the Site, the improvements developed thereon by Developer, or the sale of the Units by Developer to third party purchasers

810 Real Estate Brokerage Commission

Agency and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part

811 Computation of Time

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time

812 Legal Advice

Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have, they have received independent legal advice from their respective legal counsel as to the matter set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise

813 Time of Essence

Time is expressly made of the essence with respect to the performance by the Agency and the Developer of each and every obligation and condition of this Agreement

814 Disclosure Authorization

By executing this Agreement, Developer hereby authorizes, consents and agrees to the disclosure to the Agency by any public or private entity of any information or data deemed necessary by Agency in order to implement the provisions of this Agreement including, but not limited to, the Purchase Price

815 Administration

This Agreement shall be administered by the Executive Director or Assistant Executive Director following approval of this Agreement by the Agency. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the Agency, the Executive Director or Assistant Executive Director is authorized to act on behalf of the Agency unless specifically provided otherwise or the context should require otherwise. The Executive Director or Assistant Executive Director shall have the authority to issue interpretations, waive

provisions and enter into amendments of this Agreement on behalf of the Agency so long as such actions do not substantially change the uses or development permitted for the Project, or add to the costs of the Agency as specified herein or as agreed to by the Agency Board. Notwithstanding the foregoing, the Executive Director or Assistant Executive Director may in his or her sole and absolute discretion refer any matter to the Agency Board for action, direction or approval.

816 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. To the extent that any lender to, or equity investor in the Project requires modifications to this Agreement or any attachment hereto, the City and Agency agree to make such modification within a reasonable time on the condition that such modification does not materially change the rights and obligations of the Parties as set forth herein.

817 Ground Breaking and Grand Openings

To insure proper protocol and recognition of the Agency Board and City Council, the Developer shall cooperate with Agency/ City staff in the organization of any Project-related ground breaking, grand openings or any other such inaugural events/ceremonies sponsored by the Developer and celebrating the development which is the subject of this Agreement providing Agency/City staff with at least three (3) weeks written prior notice of any such event.

818 Estoppel Letters

Each party shall, upon the reasonable request of the other, issue estoppel letters indicating the absence of any default of the requesting party, if such be the case, and the effectiveness of this Agreement, if such be the case.

819 Counterparts

This Agreement may be signed in counterparts each of which shall be deemed to be an original.

820 Entire Agreement, Waivers and Amendments

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes sixty five (65) pages, one signature page and Attachment Nos 1 through 12, and any agreements entered into by the Parties substantially in the form of Attachment Nos 1 through 12, which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereto.

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

821 Time for Acceptance of Agreement by Agency

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized and executed by the Agency within forty five (45) days after date of signature by the Developer or this Agreement shall be void, except to the extent that the Agency and Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement by Agency The date of this Agreement shall be the date when the Agreement shall have been signed by the Agency

[Signatures On Next Page]

IN WITNESS WHEREOF, the Agency and Developer have signed this Agreement

"DEVELOPER"

RUSH PACIFICA, LLC, a California limited liability company

Date _____

By _____
Jeffrey L. Rush, Manager

"AGENCY"

CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic

Date _____

By _____
Susan Evans, Assistant Executive Director

ATTEST

Agency Secretary

APPROVED AS TO FORM

LEIBOLD, McCLENDON & MANN, P C

By _____
Barbara Zeid Leibold, Special Counsel

ATTACHMENT NO 1

SITE MAP

[See Attached]

ATTACHMENT NO 2
LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of Culver City, County of Los Angeles, State of California, described as follows

PARCEL 1, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN OF PARCEL MAP NO 25831, FILED IN BOOK 308 PAGES 92 TO 94 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

EXCEPT THEREFROM ONE HALF OF ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, OR THAT MAY BE PRODUCED THEREIN, AS RESERVED BY GRACE POIX, ET AL, IN DEED RECORDED JUNE 30, 1950 AS INSTRUMENT NO 1720 IN BOOK 33548 PAGE 208, OFFICIAL RECORDS

ALSO EXCEPT THEREFROM ALL OIL GAS AND MINERAL SUBSTANCES, TOGETHER WITH THE RIGHT TO EXPLORE FOR, AND EXTRACT SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF ANY WELL, HOLE, SHAFT OR OTHER MEANS OF EXTRACTING SUCH SUBSTANCES SHALL NOT BE LOCATED WITHIN THE WASHINGTON-CULVER REDEVELOPMENT PROJECT NO 3, AS RECORDED ON NOVEMBER 26, 1975 AS INSTRUMENT NO 4313 OF LOS ANGELES COUNTY RECORDS, STATE OF CALIFORNIA AND SHALL NOT PENETRATE ANY PART OF OR PORTION OF SAID PROJECT AREA WITHIN 500 FEET OF THE SURFACE THEREOF

ALSO EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY, BUT WITHOUT ANY RIGHT TO PENETRATE, USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF, AS RESERVED IN DEED RECORDED OCTOBER 12, 1979 AS INSTRUMENT NO 79 1142453

ALSO EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY, BUT WITHOUT ANY RIGHT TO PENETRATE, USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF, AS RESERVED BY ALICE R SKOOG AND WILLIAM ARTHUR SKOOG, AS CO-TRUSTEES OF THE ESTATE OF JOHN L SKOOG, DECEASED IN DEED RECORDED JULY 30, 1980 AS INSTRUMENT NO 80-723166

ALSO EXCEPTING AND RESERVING UNTO GRANTOR ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY, BUT WITHOUT ANY RIGHT TO PENETRATE, USE OR DISTURB THE SURFACE OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED IN DEED RECORDED AUGUST 20, 1980 AS INSTRUMENT NO 80-799836, OFFICIAL RECORDS

ALSO EXCEPTING AND RESERVING UNTO GRANTOR ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY, BUT WITHOUT ANY RIGHT TO PENETRATE, USE OR DISTURB THE SURFACE OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF, AS RESERVED IN DEED RECORDED OCTOBER 31, 1980 AS INSTRUMENT NO 80-1090011, OFFICIAL RECORDS

ALSO EXCEPTING AND RESERVING UNTO GRANTOR ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY, BUT WITHOUT ANY RIGHT TO PENETRATE, USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF, AS RESERVED BY

First American Title Insurance Company

HELEN GRIFFIN FORKE STANLEY MOCK ROBERT HEINEKEN IN DEED RECORDED DECEMBER 11 1981 AS INSTRUMENT NO 81 1217854 OFFICIAL RECORDS

ALSO EXCEPTING AND RESERVING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED IN DEED RECORDED JANUARY 8 1982 AS INSTRUMENT NO 82 15621 OFFICIAL RECORDS

ALSO EXCEPT ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE, USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF BY DEED RECORDED FEBRUARY 11 1982 AS INSTRUMENT NO 82 155496 OFFICIAL RECORDS

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY WM J MURPHY RECORDED JANUARY 25 1984 AS INSTRUMENT NO 84 96507

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE THEREOF AS RESERVED BY BILL MURPHY BUICK INC A CALIFORNIA CORPORATION IN DEED RECORDED JANUARY 25 1984 AS INSTRUMENT NO 84-96508

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY ON ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED BY ROBERT F HEINECKEN AND STANLEY J MOCK IN DEED RECORDED APRIL 6 1984 AS INSTRUMENT NO 84-416556

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT AND RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY MAHENDRA LAL NANCY LAL NITENDRA PRASAD AND FAISUN N PRASAD IN DEED RECORDED DECEMBER 26 1984 AS INSTRUMENT NO 84-1500255

ALSO EXCEPTING THEREFROM ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF THE SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED IN THE DEED RECORDED JANUARY 24 1986 AS INSTRUMENT NO 86-98190 OFFICIAL RECORDS

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF THE SAID PROPERTY OR ANY PORTION OF THE SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY FRANCISCO ALONSO AND MODESTA ALONSO BY DEED RECORDED JUNE 23 1986 AS INSTRUMENT NO 86 778647

ALSO EXCEPT ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF THE SAID PROPERTY OR ANY PORTION OF SAID PROPERTY

First American Title Insurance Company

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WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY FRANCISCO ALONSO IN DEED
RECORDED JULY 11 1989 AS INSTRUMENT NO 891097116 OFFICIAL RECORDS

APN 4206-029 930

First American Title Insurance Company

ATTACHMENT NO 3

GRANT DEED RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO)

Culver City Redevelopment Agency)
9770 Culver Boulevard)
Culver City, California 90232-0507)
Attn Susan Evans, Assistant Executive Director)

(Space above for Recorder's Use Only)
(Exempt from Recording Fee per Govt Code § 6103)

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The **CULVER CITY REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), acting to carry out the Redevelopment Plan ("Redevelopment Plan") for the Culver City Redevelopment Project, Component Area 3 (the "Project Area"), under the Community Redevelopment Law of California, hereby grants to **RUSH PACIFICA, LLC**, a California limited liability company (the "Developer"), the real property hereinafter referred to as the "Property," described in Exhibit "A" attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described therein

1 Conveyance in Accordance With Redevelopment Plan, Disposition and Development Agreement The Property is conveyed in accordance with and subject to the Redevelopment Plan and the Disposition and Development Agreement entered into between the Agency and the Developer (the "DDA"), a copy of which is on file with the Agency at its offices as a public record and which is incorporated herein by reference

2 Permitted Uses The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that upon the date of this Grant Deed and during construction through completion of development and thereafter, the Developer shall devote the Property to the uses specified in the Redevelopment Plan and this Grant Deed for the periods of time specified therein All uses conducted on the Property, including, without limitation, all activities undertaken by the Developer pursuant to the DDA, shall conform to the DDA, the Redevelopment Plan and all applicable provisions of the City Municipal Code The foregoing covenants shall run with the land

3 Restrictions on Transfer The Developer further agrees as follows

a For the period commencing upon the date of this Grant Deed, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under the DDA or this Grant Deed, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of

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the Property without the prior written approval of the Agency or as otherwise permitted pursuant to the DDA

b The Developer shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, or any other form of conveyance required for financing of the construction of the improvements on the Property, and any other expenditures necessary and appropriate to develop the Property pursuant to the DDA

All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Developer and the permitted successors and assigns of the Developer Whenever the term "Developer" is used in this Grant Deed, such term shall include any other successors and assigns as herein provided

4 Nondiscrimination The Developer herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Developer itself or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed The foregoing covenants shall run with the land

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

(a) In deeds "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed The foregoing covenants shall run with the land "

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

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee

himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased ”

(c) **In contracts** “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises ”

5 Reserved

6 Violations Do Not Impair Liens No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by the DDA, provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise

7 Covenants Run With Land All covenants contained in this Grant Deed shall be covenants running with the land All of the Developer’s obligations hereunder except as provided hereunder shall terminate and shall become null and void upon the expiration of the Redevelopment Plan Every covenant contained in this Grant Deed against discrimination contained in paragraph 4 of this Grant Deed shall remain in effect in perpetuity

8 Covenants For Benefit of Agency All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate The Agency, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach

9 Revisions to Grant Deed Both Agency, its successors and assigns, and the Developer and the successors and assigns of the Developer in and to all or any part of the fee title to the Property shall have the right with the mutual consent of the Developer to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property However, the Developer is obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed The covenants contained in this Grant Deed, without regard to technical classification, shall not benefit or be enforceable by any owner

of any other real property within or outside the Project Area, or any person or entity having any interest in any other such realty. No amendment to the Redevelopment Plan shall require the consent of the Developer.

10 Right of Reverter The Agency shall have the right, at its option, to re-enter and take possession of the Property conveyed by the Agency to the Developer, with all improvements thereon, and revert in the Agency the estate theretofore conveyed to the Developer if, after Conveyance of title and prior to recordation of the Release of Construction Covenants, the Developer (or its successors in interest)

(a) Fails to proceed with the construction of Improvements as required by the DDA for a period of three (3) months, plus any extension as may be granted pursuant to Section 806 of the DDA, after written notice thereof from the Agency

(b) Abandons or substantially suspends construction of improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency

(c) Transfers or suffers any involuntary Transfer of the Property, or any part thereof, or effects a Change of Control in violation of the DDA

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

(i) Any mortgage, deed or trust or other security instrument permitted by the DDA

(ii) Any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments

Upon issuance of a Release of Construction Covenants for the Improvements to be constructed on any applicable portion of the Property, the Agency's right to reenter, terminate and revert as to such portion of the Property shall terminate, and the Agency shall only be entitled to reenter, terminate and revert with respect to the other parcels within the Property for which no Release of Construction Covenants has been issued

Upon the revesting in the Agency of title to the Property as provided herein, the Agency shall, pursuant to its responsibilities under State law, use its best efforts to resell the Property or part thereof as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Property or part thereof in the Redevelopment Plan. Upon such resale of the Property, the proceeds thereof shall be applied

(x) First, to reimburse the Agency on its own behalf or on behalf of the City for all reasonable and necessary costs and expenses incurred by the Agency, including but not limited to, salaries of personnel employed or utilized in connection with the recapture, management and resale of the Property or part thereof (but less any income derived by the Agency from the

Property or part thereof in connection with such management), all taxes, assessments and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership to such taxes, assessments or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt), any payments made or necessary to be made to discharge to prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees, any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Property or party thereof, and any amounts otherwise owing the Agency by the Developer and its successor or transferee, and

(y) Second, to reimburse the Developer, its successor or transferee up to the amount equal to (1) the sum of the purchase price paid to the Agency by the Developer for the Property, (2) the costs incurred for the development of the Property and for the improvements existing on the site at the time of the re-entry and repossession, less (3) any gains or income withdrawn or made by the Developer from the Property or the improvements thereon

(z) Finally, any balance remaining after such reimbursements shall be retained by the Agency as its property

To the extent that the rights established herein involve a forfeiture, the rights of the Agency hereunder must be strictly interpreted in favor of the Agency, the party for whose benefit the right of reverter is created. The right of reverter and other rights established herein are to be interpreted in light of the fact that the Agency will convey the Property to the Developer for development of the Project as set forth herein and not for speculation

[Signatures On Next Page]

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of the date set forth below

AGENCY

**CULVER CITY REDEVELOPMENT
AGENCY**, a public body, corporate and politic

_____, 2006

By _____
Susan Evans, Assistant Executive Director

APPROVED AS TO FORM

LEIBOLD, McCLENDON & MANN, P C

Barbara Zeid Leibold, Special Counsel

APPROVED AS TO FORM

Agency Secretary

EXHIBIT "A"

LEGAL DESCRIPTION

Order Number NCS 219486 LA1

Page Number 6

LEGAL DESCRIPTION

Real property in the City of Culver City County of Los Angeles State of California described as follows

PARCEL 1 IN THE CITY OF CULVER CITY COUNTY OF LOS ANGELES STATE OF CALIFORNIA AS SHOWN OF PARCEL MAP NO 25831 FILED IN BOOK 308 PAGES 92 TO 94 INCLUSIVE OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

EXCEPT THEREFROM ONE HALF OF ALL OIL GAS MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND OR THAT MAY BE PRODUCED THEREIN AS RESERVED BY GRACE POIX ET AL, IN DEED RECORDED JUNE 30 1950 AS INSTRUMENT NO 1720 IN BOOK 33548 PAGE 208 OFFICIAL RECORDS

ALSO EXCEPT THEREFROM ALL OIL GAS AND MINERAL SUBSTANCES TOGETHER WITH THE RIGHT TO EXPLORE FOR AND EXTRACT SUCH SUBSTANCES PROVIDED THAT THE SURFACE OPENING OF ANY WELL HOLE SHAFT OR OTHER MEANS OF EXTRACTING SUCH SUBSTANCES SHALL NOT BE LOCATED WITHIN THE WASHINGTON-CULVER REDEVELOPMENT PROJECT NO 3 AS RECORDED ON NOVEMBER 26 1975 AS INSTRUMENT NO 4313 OF LOS ANGELES COUNTY RECORDS STATE OF CALIFORNIA AND SHALL NOT PENETRATE ANY PART OF OR PORTION OF SAID PROJECT AREA WITHIN 500 FEET OF THE SURFACE THEREOF

ALSO EXCEPT THEREFROM ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED IN DEED RECORDED OCTOBER 12 1979 AS INSTRUMENT NO 79 1142453

ALSO EXCEPT ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY ALICE R SKOOG AND WILLIAM ARTHUR SKOOG AS CO TRUSTEES OF THE ESTATE OF JOHN L SKOOG DECEASED IN DEED RECORDED JULY 30 1980 AS INSTRUMENT NO 80-723166

ALSO EXCEPTING AND RESERVING UNTO GRANTOR ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED IN DEED RECORDED AUGUST 20 1980 AS INSTRUMENT NO 80 799836 OFFICIAL RECORDS

ALSO EXCEPTING AND RESERVING UNTO GRANTOR ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED IN DEED RECORDED OCTOBER 31 1980 AS INSTRUMENT NO 80 1090011 OFFICIAL RECORDS

ALSO EXCEPTING AND RESERVING UNTO GRANTOR ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY

First American Title Insurance Company

HELEN GRIFFIN FORKE STANLEY MOCK ROBERT HEINEKEN IN DEED RECORDED DECEMBER 11 1981 AS INSTRUMENT NO 81 1217854 OFFICIAL RECORDS

ALSO EXCEPTING AND RESERVING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED IN DEED RECORDED JANUARY 8 1982 AS INSTRUMENT NO 82 15621 OFFICIAL RECORDS

ALSO EXCEPT ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF BY DEED RECORDED FEBRUARY 11 1982 AS INSTRUMENT NO 82 155496 OFFICIAL RECORDS

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY WM J MURPHY RECORDED JANUARY 25 1984 AS INSTRUMENT NO 84 96507

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE THEREOF AS RESERVED BY BILL MURPHY BUICK INC A CALIFORNIA CORPORATION IN DEED RECORDED JANUARY 25 1984 AS INSTRUMENT NO 84-96508

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY ON ANY PORTION OF SAID PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AS RESERVED BY ROBERT F HEINECKEN AND STANLEY J MOCK IN DEED RECORDED APRIL 6 1984 AS INSTRUMENT NO 84-416556

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE REAL PROPERTY BUT WITHOUT AND RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY MAHENDRA LAL NANCY LAL NITENDRA PRASAD AND FAISUN N PRASAD IN DEED RECORDED DECEMBER 26 1984 AS INSTRUMENT NO 84 1500255

ALSO EXCEPTING THEREFROM ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF SAID PROPERTY OR ANY PORTION OF THE SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED IN THE DEED RECORDED JANUARY 24 1986 AS INSTRUMENT NO 86 98190 OFFICIAL RECORDS

ALSO EXCEPTING ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF THE SAID PROPERTY OR ANY PORTION OF THE SAID PROPERTY WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY FRANCISCO ALONSO AND MODESTA ALONSO BY DEED RECORDED JUNE 23 1986 AS INSTRUMENT NO 86 778647

ALSO EXCEPT ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER ALL OF THE ABOVE DESCRIBED REAL PROPERTY BUT WITHOUT ANY RIGHT TO PENETRATE USE OR DISTURB THE SURFACE OF THE SAID PROPERTY OR ANY PORTION OF SAID PROPERTY

First American Title Insurance Company

Order Number NCS 219486-LA1
Page Number 8

WITHIN 500 FEET OF THE SURFACE THEREOF AS RESERVED BY FRANCISCO ALONSO IN DEED
RECORDED JULY 11 1989 AS INSTRUMENT NO 891097116 OFFICIAL RECORDS

APN 4206 029 930

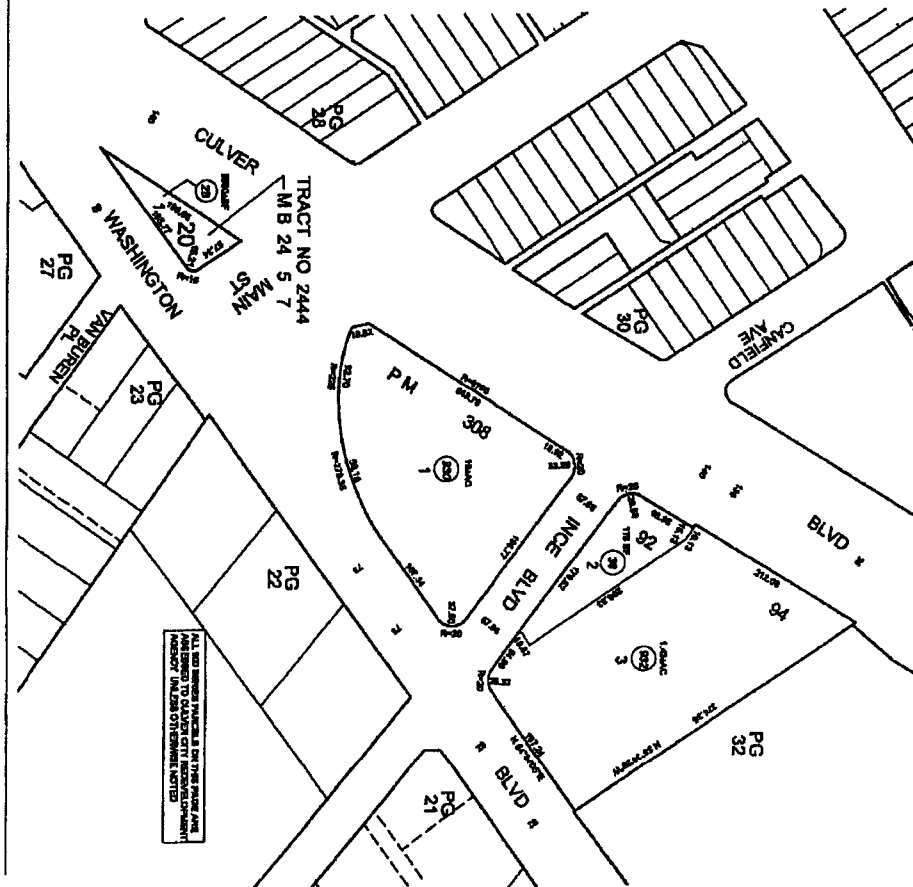
First American Title Insurance Company

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2003



WINDING AND
REVERSE
SCALE FOR



FEB 1 9 2003

ATTACHMENT NO 4

SCHEDULE OF PERFORMANCE

- | | |
|---|---|
| 1 <u>Entitlements</u>
Developer shall obtain all necessary entitlements to construct the Project, including a site plan, parcel map and any other items determined to be necessary by the City | Project has already been entitled, provided that the Schematic Drawings and other submittal are in substantial conformance with the existing entitlements |
| 2 <u>Execution by Developer</u> | Not later than June 21, 2006 |
| 3 <u>City Council/Agency Consideration of DDA</u>
City and Agency hold joint public hearing to consider DDA authorized, executed and delivered to Developer by Agency | Within 45 days after submittal by Developer of executed DDA and legally required notice of joint public hearing, expected to be July 10, 2006, <u>provided that</u> Developer executes DDA on or prior to June 21, 2006 |
| 4 <u>Execution of Agreement by Agency (the Effective Date)</u> | Within 15 days after approval by City and Agency at noticed public hearing, expected to be July 11, 2006, <u>provided that</u> the DDA is approved by the City Council/Agency Board on July 10, 2006 |
| 5 <u>Opening of Escrow for Transfer of Property</u> | Not later than 5 business days after the Effective Date |
| 6 <u>Developer Deposits in Escrow the Deposit</u> | Concurrently with the opening of Escrow |
| 7 <u>Agency Deposits into Escrow the Grant Deed</u> | Within 15 days of the opening of Escrow |
| 8 <u>Parties Order Title Report for Property</u> | Within 30 days of the opening of Escrow, and in no event later than the date set forth in Section 306 of the DDA |
| 9 <u>Developer submits Schematic Drawings to Agency</u> | Not later than September 30, 2006 |

- | | | |
|----|--|--|
| 10 | <u>Agency determines if the Schematic Drawings are in substantial conformance with the existing entitlements</u> | Within 15 business days of receipt thereof |
| 11 | <u>Developer deposits into Escrow the Down Payment</u> | Within 2 business days of Agency notice of approval of Schematic Drawings |
| 12 | <u>Developer submits design development drawings to Agency per DDA Section 402 1</u> | Within 60 days from Agency approval of Schematic Drawings |
| 13 | <u>Agency approval or disapproval design development per DDA Section 402 2</u> | Within 15 business days of submittal by Developer |
| 14 | <u>Developer submits construction drawings and building permit drawings to Agency per DDA Section 402 1</u> | Within 120 days of Agency approval of design development drawings |
| 15 | <u>Agency approval or disapproval of construction drawings and building permit drawings per DDA Section 402 2</u> | Within 15 business days of submittal by Developer |
| 16 | <u>Submission of Evidence of Financing pursuant to Section 314 of the DDA</u> Includes draft Construction Loan, Construction Contract, construction budget and other financial information | Within 30 days of Agency approval of construction development and building permit drawings, but not less than 30 days prior to scheduled close of Escrow |
| 17 | <u>Approval of Evidence of Financing and Construction Loan</u>
The Assistant Executive Director shall approve, conditionally approve or disapprove draft Construction Loan, draft Construction Contract and other evidence of financing | Within 20 business days of submittal by Developer |
| 18 | <u>Parties Approve Title Report for Property pursuant to Section 306 of the DDA</u> | Within 10 days of the receipt of the Title Report and at least 15 days prior to the close of escrow |

- | | |
|--|---|
| 19 <u>Submission – First Floor Tenant Mix</u>
Developer shall submit the final tenant mix for the leasing of the first floor to the Agency | No later than January 31, 2007 |
| 20 <u>Obtain all necessary City approvals for construction</u>
Developer shall have obtained all City approvals, entitlements and permits required for the development of the Site, including, without limitation, the completion of plan check by City Building and Safety Division and the issuance of building permits | Prior to close of escrow |
| 21 <u>Deposit of Final Purchase Price Payment</u> Developer shall deposit the Final Purchase Price Payment into Escrow | Within seventy-two (72) hours prior to the scheduled close of Escrow |
| 22 <u>Close of Escrow for Transfer of Property</u> Title to Property is conveyed to Developer | Satisfaction of the Developer and Agency Conditions Precedent, but in no event later than July 31, 2007 (the “ <u>Outside Closing Date</u> ”) |
| 23 <u>Commence Construction</u>
Developer shall commence the construction of the Project | No later than 15 days after the close of Escrow |
| 24 <u>Continue Construction</u> | See attached construction schedule |
| 25 <u>Completion of Construction</u>
Developer shall complete construction of the Project | Within 18 months from the commencement of construction |
| 26 <u>Final Inspection</u>
Agency shall conduct a final inspection of the completed construction of the Project | Within 10 days of written notice of completion by Developer |
| 27 <u>Release of Construction Covenants</u>
Agency shall issue a Release of Construction Covenants | Upon satisfactory completion of the Project in accordance with the Agreement and conditions set forth in Section 415 of the DDA, within 15 business days of receipt written request |

from Developer (as such date may be
extended under the terms of Section 413
of the DDA)

ATTACHMENT NO 5

SCOPE OF DEVELOPMENT

Developer shall construct on Parcel B, as reconfigured and set forth in the Site Plan, a high quality three (3) or four (4) story structure accommodating pedestrian oriented restaurant/retail uses on the ground floor and office space uses on the floors above, with ample open space for outdoor congregating and dining, and appropriate streetscape (collectively, the **"Project"**)

The Project designed and constructed by Developer shall be consistent with the approved entitlements set forth in Site Plan Review SPR P-1999044, approved by Planning Commission Resolution No 2000-P0003 on January 31, 2000, as modified by Modification No 1, approved on July 11, 2001, by Planning Commission Resolution No 2001-P007, and further modified by Modification No 2, approved by Planning Commission Resolution No 2002-P001. The Developer shall design and construct the Project in accordance with the Parcel B development approval, which approves improvements which total 115,108 gross square feet of building area, consisting of approximately 36,900 square feet of restaurants/retail and approximately 78,208 square feet of office space.

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06/1406

for discussion purposes only

ATTACHMENT NO 6

RELEASE OF CONSTRUCTION COVENANTS

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

Culver City Redevelopment Agency)
9770 Culver Boulevard)
Culver City, California 90232-0507)
Attn Susan Evans, Assistant Executive Director)
)

(Space Above for Recorder's Use Only)
(Exempt from Recording Fees per Govt Code § 6103)

RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS ("Release") is hereby made as of this ____ day of _____, 200_, by the **CULVER CITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the "Agency") in favor of **RUSH PACIFICA, LLC**, a California limited liability company (the "Developer")

RECITALS

A The Agency and the Developer entered into that certain Disposition and Development Agreement dated for identification purposes only as of _____, 2006 (the "Agreement")

B Pursuant to the Agreement, the Agency and the Developer entered into that certain Declaration of Covenants, Conditions and Restrictions dated _____, 2006. The Agreement provides for the completion of certain improvements (the "Project") to certain real property (the "Site") situated in Culver City, California, and more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Declaration of Covenants, Conditions and Restrictions.

C As required in the Agreement and the Declaration of Covenants, Conditions and Restrictions, the Agency shall furnish the Developer with a Release of Construction Covenants upon completion of the Project, which Certificate shall be in such form as to permit it to be recorded in the Los Angeles County Recorder's Office.

D The Agency has conclusively determined that the construction of the Project on the Site as required by the Agreement and the Declaration of Covenants, Conditions and Restrictions has been satisfactorily completed.

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NOW, THEREFORE, Agency hereby certifies as follows

1 As provided in the Declaration of Covenants, Conditions and Restrictions, the Agency does hereby certify that the construction of the Project on the Site has been fully and satisfactorily performed and completed in accordance with the Agreement and the Declaration of Covenants, Conditions and Restrictions

2 After the recordation of this Release, any person or entity then owning or thereafter purchasing, or otherwise acquiring any interest in the Site will not (because of such ownership, purchase, or acquisition) incur any obligation or liability under the Agreement, or the Declaration of Covenants, Conditions and Restrictions, to construct the Project, however, such party shall be bound by any and all of the covenants, conditions, and restrictions concerning the use, maintenance and operation of the Site which survive the recordation of this Release

3 This Release is not a notice of completion as referred to in Section 3093 of the California Civil Code

IN WITNESS WHEREOF, the Agency has executed this Release as of the date set forth above

AGENCY

**CULVER CITY REDEVELOPMENT
AGENCY**, a public body, corporate and
politic

By _____
Susan Evans, Assistant Executive
Director

ATTEST

Agency Secretary

APPROVED AS TO FORM

LEIBOLD, MCCLENDON & MANN, P C

By _____
Barbara Zeid Leibold,
Special Counsel

EXHIBIT "A"

LEGAL DESCRIPTION

[to be inserted]

State of California)
) ss
County of _____)

On _____, _____, before me,

(name title of officer e g Jane Doe
Notary Public) personally appeared

(name(s) of signer(s))

- ☐ personally known to me CORC
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity/ies, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which person(s) acted, executed the instrument

Witness my hand and official seal

(Signature of Notary)

Capacity claimed by signer *(This section is OPTIONAL)*

- ☐ Individual
☐ Corporate Officer(s)
☐ Partner(s)
☐ General ☐ Limited
☐ Attorney-in-fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other

Signer is representing

(name of person(s) or entity(ies))

Attention Notary Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document

THIS CERTIFICATE Title or Type of Document

MUST BE ATTACHED _____

TO THE DOCUMENT Number of Pages _____ Date of Document

DESCRIBED AT RIGHT Signer(s) Other than Named Above

State of California)
) ss
County of _____)

On _____, _____, before me,

(name title of officer e g Jane Doe Notary
Public) personally appeared _____
(name(s) of signer(s))

- ☐ personally known to me CORC
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity/ies, and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which person(s)
acted, executed the instrument

Witness my hand and official seal

(Signature of Notary)

Capacity claimed by signer (This section is OPTIONAL)

- ☐ Individual
☐ Corporate Officer(s)
☐ Partner(s)
☐ General ☐ Limited
☐ Attorney-in-fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other

Signer is representing

(name of person(s) or entity(ies))

Attention Notary Although the information requested below is OPTIONAL, it could prevent
fraudulent attachment of this certificate to an unauthorized document

THIS CERTIFICATE

Title or Type of Document

MUST BE ATTACHED

TO THE DOCUMENT

Number of Pages _____ Date of Document

DESCRIBED AT RIGHT

Signer(s) Other than Named Above

ATTACHMENT NO 7

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO)
Culver City Redevelopment Agency)
9770 Culver Boulevard)
Culver City, California 90232-0507)
Attn Susan Evans, Assistant Executive Director)

(Space Above for Recorder s Use Only)
(Exempt from Recording Fees per Govt Code §6103)

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS
(DEVELOPER)

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS
(DEVELOPER) (this “Declaration”) is made as of ___ day of _____, 2006
(“Effective Date”) by and between RUSH PACIFICA, LLC, a California limited liability
company (together with its permitted successors and assigns, the “Developer”) and the
CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic (the
“Agency”)

RECITALS

A WHEREAS, prior to or concurrently with the execution of this Declaration,
Developer and the Agency have entered into that certain Development and Disposition
Agreement (the “Agreement”) which requires the Agency to sell and the Developer to buy that
certain real property which is legally described in Exhibit “A” attached hereto and incorporated
herein (the “Site”) All terms not defined herein shall have the meaning set forth in the
Agreement The Agreement is a public record on file at the offices of the Agency

B WHEREAS, the purpose of the Agreement is to enable the Developer to purchase
and thereafter develop the Site in furtherance of the California Community Redevelopment Law,
Health and Safety Code Section 33000, et seq, by providing for the improvement and
development of the Site with construction of an office and retail complex Furthermore, the
Agreement fosters the Agency’s implementation of the Redevelopment Plan approved and
adopted by the City Council of the City of Culver City on November 23, 1998 by Ordinance No
98-015 and amended on January 12, 2004 (the “Redevelopment Plan”)

C WHEREAS, pursuant to the Agreement, the Developer has agreed to construct a
three (3) or four (4) story structure accommodating pedestrian oriented restaurant/retail uses on
the ground floor, which floor will consume approximately 36,900 square feet, and office space

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uses on the floors above, consisting of approximately 78,208 square feet, with ample space for outdoor congregating and dining, and appropriate streetscape (collectively, the "Project")

D WHEREAS, the purpose of the Agreement is to effectuate the California Redevelopment Law and construction of the Site is necessary to achieve this purpose

DECLARATION AND AGREEMENT

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Parties hereto agree and covenant as follows

ARTICLE I **GENERAL DUTIES OF DEVELOPER**

1 **Covenant to Construct, Leasing Covenants** Developer shall use the Site to construct the Project in accordance with the Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to all applicable provisions of the Redevelopment Plan, the Culver City Municipal Code and any other applicable Governmental Requirements. No demolition or construction activities shall be undertaken on the Site without a valid building permit issued in accordance with the requirements of the Culver City Municipal Code. Developer shall be relieved of such covenant and agreement to construct the Project upon the recordation of the Release of Construction Covenants.

In facilitating the purchase of the Site and the construction of the Project, the Agency's goal is to activate the downtown area by increasing the number of retail and restaurant tenants. Prior to entering into any binding agreement for the lease of the first floor of the Project with any retail or restaurant tenant, Developer agrees that Agency shall have the right to review and approve all restaurant and retail tenants in accordance with the procedures set forth below. Developer further agrees to use commercially reasonable diligent efforts to locate and enter into leases with unique, high end and high quality tenants.

In furtherance of the foregoing, on May 8, 2006, Developer entered into an agreement for eight (8) months with a broker selected by the Agency, Lee & Associates, to secure retail tenants for the Project. As a result of the advice of such broker, Developer and Agency agree that, from and after the Effective Date of the Agreement, Developer shall use commercially reasonable best efforts to enter into letters of intent with potential tenants for the first floor, with leases to one third of the ground floor, or approximately twelve thousand (12,000) square feet, consisting of restaurant tenants and two thirds of the ground floor, or approximately twenty four thousand (24,000) square feet, consisting of retail tenants. Developer shall utilize the broker to locate retail tenants. All retail tenants shall be subject to the approval of both Agency and Developer. Developer shall not withhold approval of a retail tenant except for reasonable credit or similar financial concerns. Developer shall have regular meetings with Agency staff to discuss the progress of interested tenants for the ground floor, and to obtain the Agency's review and approval of such tenants prior to entering into a letter of intent or lease with any tenant.

For purposes hereof, a retail tenant shall mean any tenant which will not be using the leased space for restaurant purposes. A restaurant tenant shall mean a tenant leasing the space for sit-down food and/or coffee service purposes reasonably acceptable to Agency. Developer agrees that at least one restaurant will provide outdoor dining service in the open space area facing the newly expanded Town Plaza Project, and at least two (2) restaurants in the aggregate must occupy at least nine thousand (9,000) square feet of the first floor of the Project.

On September 1, 2006, the initial percentages will be adjusted to reflect an update of Lee & Associates efforts to attain desirable retail tenants. A new percentage mix will be adopted at that time that is mutually negotiated between the parties. Such new tenant mix percentage shall be documented in a writing signed by the parties.

If, by January 15, 2007, despite the commercially reasonable diligent efforts of Lee & Associates, Lee & Associates is unsuccessful in leasing the first floor to retail tenants in accordance with the percentage requirements set forth above, then the Developer shall no longer be required to meet such requirements as to retail tenants. Instead, the retail percentage required by this section shall adjust to the percentage of first floor space for which letters of intent or leases have been entered into by retail tenants as of January 15, 2007. Thereafter, the Agency shall either permit Developer to lease the remaining unleased space to a tenant without meeting the tenant mix percentages set as of the Effective Date of the Agreement. Notwithstanding the foregoing, Agency shall have the right, but not the obligation, to, not later than January 31, 2007, enter into a letter of intent or lease with Developer for some or all of the unleased retail square footage at a rate of Three Dollars (\$3.00) per square foot triple net for a period of time not less than twelve (12) months from the date of issuance of a Certificate of Occupancy for the first floor of the Project, without any allowance for tenant improvements.

In addition, during the seven (7) years immediately following the completion of construction, if one or more initial tenants vacate the square footage leased by them, Developer shall use commercially reasonable diligent efforts to meet the tenant mix percentages established on January 15, 2007 pursuant to this section when leasing such space to new tenants. Developer agrees that it shall use commercially reasonable best efforts to locate and enter into leases with tenants that are unique, high quality, and high end. Developer agrees that if one or both of the initial tenants of the two largest restaurant spaces vacate their respective properties, Developer shall not be permitted to subdivide the larger restaurant spaces into smaller spaces without the prior written consent of the Agency.

Further, upon Developer's receipt, during such seven (7) year period, of written notice from any tenant using the first floor that the tenant intends to vacate its space, (a) Developer shall provide the Agency with written notice of the intent to vacate within fifteen (15) days of Developer becoming aware thereof, (b) Agency shall not be obligated to make any payments in connection with such termination, including, without limitation, any payment for lost rent, replacement tenant improvements allowances, broker fees, or any other similar amounts, (c) Developer agrees to work with Agency to search for an appropriate replacement tenant for six (6) months after notice of the vacancy is provided to Agency, and (d) Developer agrees to notify Agency of a proposed replacement tenant. Upon such notification, Agency shall have twenty (20) days to approve or disapprove the proposed tenant. If, after six (6) months of

commercially reasonable diligent efforts to locate a retail or restaurant tenant, as appropriate, acceptable to the Agency and to the Developer, no letter of intent with such a tenant has been entered into, the Developer shall be permitted to lease to a tenant of its choice

After such date as is seven (7) years after the certificate of occupancy is issued by the City for the Project, Developer will no longer be obligated to meet the Agency approval and tenant mix percentage requirements of this Section if any vacancy occurs on the first floor of the Project. Notwithstanding the foregoing, Developer agrees to provide written notice to Agency with fifteen (15) days of Developer's receipt of notice of such vacancy. Upon Agency's request, Developer agrees to meet with the Agency. At such meeting, Agency shall have the right, but not the obligation, to provide tenant prospects to Developer, and to define the Agency's priorities as to an appropriate replacement tenant. Agency shall also have the right to require Developer to provide status reports regarding its efforts to locate such a tenant. Upon identification of a proposed replacement tenant, Developer shall notify the Agency. Agency shall have twenty (20) days to comment on the proposed replacement tenant.

2 **Maintenance** Developer shall maintain the Site and all Improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan and with all applicable provisions of the Culver City Municipal Code. Developer shall maintain the Improvements and landscaping on the Site in accordance with the "Maintenance Standards," as hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other common area of the Improvements on the Site. To accomplish the maintenance, Developer shall contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

The Developer and its maintenance staff, contractors or subcontractors shall covenant to comply with the following standards (the "Maintenance Standards")

(a) The Site shall be maintained in conformance and in compliance with the approved building permit drawings, and reasonable maintenance standards for similar, neighboring structures, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblane. The Site shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable developments.

(b) Landscape maintenance shall include, but not be limited to watering/irrigation, fertilization, mowing, edging, trimming of grass, tree and shrub pruning, trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage, replacement, as needed, of all plant materials, control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas, and staking for support of trees.

(c) Clean up maintenance shall include, but not be limited to maintenance of all sidewalks, paths and other paved areas in clean and weed free condition, maintenance of all

such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly, removal of all trash, litter and other debris from improvements and landscaping prior to mowing, clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers

Agency agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards specified herein and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency, unless such deficiency cannot be reasonably corrected, remedied or cured within such period, in which case, such period shall be extended for such time as is necessary to accomplish the same provided that Developer is diligently pursuing such correction, remedy or cure. If the written notification states the problem is urgent relating to the public health and safety of the City or Agency, then Developer shall have forty eight (48) hours to commence curing the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards specified herein, Agency shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such out of pocket third party costs incurred by Agency.

3 No Hazardous Materials Activity Developer shall not engage in any Hazardous Materials Activity in violation of Environmental Laws and shall comply with all Governmental Requirements in connection with the development and operation of the Project.

In addition, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site in violation of Environmental Laws. Such precautions shall include compliance with all Governmental Regulations with respect to any Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards with respect to the disclosure, storage, use, removal and disposal of Hazardous Materials. Notwithstanding the foregoing, this Declaration shall not prohibit the use of such products in quantities as are customarily used in the construction, maintenance, rehabilitation or management of residential developments or associated buildings and grounds, or used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project including without limitation alcohol, aspirin, tobacco and saccharine.

4 Covenant of Non-Discrimination Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof that Developer, and its successors and assignees, shall devote the Site to the uses specified in the Redevelopment Plan, this Declaration, and the Agreement for the periods of time specified therein. The foregoing covenants shall run with the land.

(a) **Non-Discrimination** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or

group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any part thereof nor shall Developer itself or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

(b) Non-Discrimination Clauses Developer shall refrain from restricting the rental, sale or lease of the Site or any part thereof, on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) **In deeds** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(iii) **In contracts** "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

ARTICLE II

ENFORCEMENT

4 **Term of Covenants** The nondiscrimination covenants set forth in Section 3 above, shall run in perpetuity. The construction covenants set forth in Section 1 shall run with the Site until such time that the Agency causes to be filed in the Los Angeles County Recorder's Office a Release of Construction Covenants on the Project. The remainder of the covenants, conditions and restrictions set forth herein shall run with the Site until the expiration of the Redevelopment Plan.

5 **Remedies** Breach of the covenants contained in this Declaration may be enjoined, abated or remedied by any appropriate legal proceeding.

6 **Rights of the Agency** As a party to this Declaration, the Agency is entitled to the following rights:

a The Agency has the right, but not the obligation, to enforce all of the provisions of this Declaration.

b Any amendment to the Declaration shall require the written consent of the Agency.

c This Declaration does not in any way infringe on the right or duties of the City of Culver City to enforce any of the provisions of the City of Culver City Municipal Code including, but not limited to, the abatement of dangerous buildings.

7 **Cumulative Remedies** The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

8 **Failure to Enforce** The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

ARTICLE III

GENERAL PROVISIONS

9 **Severability** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in all force and effect.

10 **Construction** The provisions of this Declaration shall be liberally construed for the purpose of developing and maintaining the Project in accordance with this Declaration and the Agreement. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

11 **Amendments** This Declaration may be amended only by the written agreement of Developer and the Agency

12 **Notices** Any notice permitted or required to be delivered as provided herein from one party to another shall be in writing and may be delivered either personally or by first-class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States Mail, postage prepaid. Notices shall be sent to the following addresses

If to Agency Culver City Redevelopment Agency
 Attention: Susan Evans, Assistant Executive Director
 9770 Culver Boulevard
 Culver City, California 90232-0507

Copy to Leibold, McClendon & Mann, P C
 Attention: Barbara Zeid Leibold, Esq
 23422 Mill Creek Drive, Suite 105
 Laguna Hills, California 92653

To Developer Rush Pacifica, LLC
 Attention: Jeffrey L. Rush
 12348 High Bluff Drive, Suite 210
 San Diego, California 92130

Copy to Evan Mead Stone, Esq
 12348 High Bluff Drive, Suite 210
 San Diego, California 92130

Such addresses may be changed from time to time by notice in writing, which shall be made by certified mail to the other party in accordance with this Section 12. Any Notice shall be deemed received as of the date of delivery.

13 **Recordation** The Parties shall cause this Declaration to be recorded in the Official Records of Los Angeles County, California

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Agency and Developer have executed this Declaration as of the date set forth above

**CULVER CITY REDEVELOPMENT
AGENCY**, a public body, corporate and politic

By _____
Susan Evans, its Assistant Executive
Director

APPROVED AS TO FORM

LEIBOLD, McCLENDON & MANN, P C

Barbara Zeid Leibold, Special Counsel

APPROVED AS TO FORM

Agency Secretary

RUSH PACIFICA, LLC, a California limited
liability company

By _____
Jeffrey L Rush, Manager

EXHIBIT "A"
LEGAL DESCRIPTION OF SITE

[to be inserted]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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

WITNESS my hand and official seal

Signature of Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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

WITNESS my hand and official seal

Signature of Notary Public

[SEAL]

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ATTACHMENT NO 8

ASSIGNMENT OF CONSTRUCTION CONTRACTS

For Valuable Consideration, receipt of which is hereby acknowledged, **RUSH PACIFICA, LLC**, a California limited liability company ("Developer"), as additional security for its obligations under that certain Disposition and Development Agreement (Parcel B) (the "Agreement"), dated as of _____, 2006 to which Developer and **CULVER CITY REDEVELOPMENT AGENCY**, a public body, corporate and politic ("Agency") are parties, hereby assigns to Agency all of Developer's rights and interest, but not its obligations, in, under and to a construction contract between Developer and _____, a California corporation ("Contractor"), dated _____, upon the following terms and conditions. Each capitalized term used herein and not otherwise defined herein shall have the meaning given to such term in the Agreement.

A Developer is the owner of the real property described in Exhibit "A" attached hereto (the "Property") on which Developer intends to construct the Improvements defined and described in the Agreement.

B Pursuant to the Agreement, Agency has agreed to convey the Property to Developer. As a requirement of the Agreement and in order to protect its right in the event the Property reverts to the Agency, Agency has required that Developer execute and deliver this Assignment of Construction Contracts (the "Assignment") to Agency as security for the performance of Developer's obligations under the Agreement.

NOW THEREFORE, Developer hereby agrees as follows:

1 Developer hereby assigns, conveys and transfers to Agency, as security for Developer's obligations under the Agreement, all of Developer's right, title, interest, privilege, benefit and remedies in, to and under the following:

(a) the construction contract and any other agreements with Contractor listed in Exhibit "B" attached hereto (collectively, the "Construction Contract"),

(b) all other agreements now or hereafter entered into by Developer with Contractor in connection with construction of or on the Property, and

(c) any and all present and future amendments, modifications, supplements, change orders and addenda to any of the items described in clauses (a) and (b) above.

A complete copy of each document listed on Exhibit "B" shall be provided to Agency concurrently with delivery of this Assignment. Each of the agreements described above in this Section 1 is referred to herein as an "Agreement".

2 (a) Developer agrees to obtain and deliver to Agency, concurrently with its delivery of this Assignment, a Consent to Assignment substantially in the form of Exhibit "C" hereto ("Consent") from Contractor.

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(b) This Assignment and the Consent hereto do not relieve Developer of its obligations under the Construction Contract. Agency does not hereby assume any of Developer's obligations or duties concerning any Construction Contract, including without limitation, any obligation to pay for the work done pursuant thereto.

3 Upon the occurrence of an Event of Default by Developer under the Agreement resulting in Agency's exercise of its right of reverter under Section 713 of the Agreement, Agency may, at its option, upon written notice to the appropriate Contractor, exercise any or all of the rights and remedies granted to Developer under the Construction Contract as if Agency had been an original party to such Construction Contract. Agency may elect to assume some or all of the obligations of Developer under the Construction Contract by giving notice to that effect to the Contractor, provided, however, that Agency shall not be responsible for any default, liability, or obligation of Developer under the Construction Contract occurring prior to the time Agency gives such notice to the Contractor, and Agency shall thereafter be responsible only to the extent expressly set forth in said notice.

4 Developer hereby irrevocably constitutes and appoints Agency as its attorney-in-fact, which power is coupled with an interest, so that Agency shall have the right upon the exercise of its right of reverter to demand, receive and enforce Developer's rights with respect to the Construction Contract, to give appropriate receipts, releases and satisfactions for and on behalf of Developer, and to do any and all acts in the name of Developer or in the name of Agency with the same force and effect as Developer could have done.

5 Developer hereby represents and warrants to Agency that, except for any assignment required by Developer's construction lender for the Project, Developer has not made any previous assignment of the Construction Contract, and Developer agrees not to assign, sell, pledge, transfer or otherwise encumber its interest in the Agreements so long as this Assignment is in effect. Developer represents and warrants that the copy of the Construction Contract provided by Developer to Agency shall be the complete and entire agreement between the parties thereto. Developer agrees not to modify the Construction Contract without Agency's written consent, except to the extent otherwise permitted in the Agreement.

6 If any provision of this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of the other provisions of this Assignment or of the Agreement. This Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought.

7 Developer shall indemnify and hold harmless Agency against any liabilities, claims, costs or expenses, including reasonable attorneys' fees (including the market value of services of in-house counsel), incurred by Agency as a result of this Assignment or Agency's exercise of its rights hereunder. The indemnity contained in this section shall not extend to any actions, suits, claims, demands, liabilities, losses, damages, obligations, costs or expenses caused as a result of Agency's gross negligence or willful misconduct.

8 This Assignment shall be binding upon Developer and Developer's successors, legal representatives and assigns, and shall inure to the benefit of Agency, its successors and assigns, including any purchaser upon foreclosure of the deed of trust securing any loan contemplated by the Agreement, any receiver in possession of the property described therein, and any corporation formed by or on behalf of Agency which assumes Agency's rights and obligations under the Agreement

9 Upon the due recordation of a Release of Construction Covenants in accordance with the Agreement, this Assignment shall automatically terminate

10 This Assignment shall be governed by and construed in accordance with the laws of the State of California

[Signatures On Next Page]

IN WITNESS WHEREOF, Developer has caused this Assignment to be executed as of the date first set forth above

DEVELOPER

RUSH PACIFICA, LLC, a California limited liability company

By

Jeffrey L Rush, Manager

EXHIBIT "A"
DESCRIPTION OF THE LAND

[to be inserted]

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EXHIBIT "B"

LIST OF CONSTRUCTION CONTRACTS

[to be inserted]

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EXHIBIT "C"

FORM
OF CONSENT TO ASSIGNMENT OF CONSTRUCTION CONTRACTS

The undersigned hereby consents to that certain Assignment of Construction Contracts (the "Assignment") dated as of even date herewith, executed by **RUSH PACIFICA, LLC**, a California limited liability company ("Developer") for the benefit of **CULVER CITY REDEVELOPMENT AGENCY**, a California public body, corporate and politic ("Agency"), and agrees to perform pursuant to the terms and conditions of the undersigned's Agreement with Developer (the "Agreement") described in Exhibit "B" attached to said Assignment. If requested by Agency in the exercise of its rights under the Assignment, the undersigned shall continue to perform its obligations under its Agreement for which the undersigned shall be compensated in accordance with its Agreement. The undersigned agrees that, upon request by Agency, the undersigned shall provide a complete list of all of its subcontractors in connection with work for or on the Property and shall cooperate to provide and permit access to Agency or its agents for inspection of the Property and the work in process. The undersigned also agrees that, in the event of a breach by Developer of any of the terms and conditions of said Agreement, the undersigned will give prompt written notice of such breach to Agency at Agency's address set forth below. Agency shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default, provided, however, that neither the Assignment nor this Consent shall require Agency to cure said default, but Agency shall, in its sole discretion, have the option to do so. The undersigned acknowledges that Agency is relying on this Consent and the assurances herein in conveying the Property to Developer and this Consent shall also be for the benefit of and bind any assignee or successors of Agency and the undersigned. All capitalized terms used in this Consent shall have the same meaning as in the Assignment. The Agreement between Developer and the undersigned is in full force and effect as of the date hereof.

Dated as of _____, 20__

Contractor's Address _____,
a _____

By _____
Name _____
Title _____

Agency's Address
Culver City Redevelopment Agency
Attn: Susan Evans, Asst. Exec. Director
9770 Culver Boulevard
Culver City, California 90232-0507

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ATTACHMENT NO 9

PARKING LICENSE

PARKING LICENSE

THIS PARKING LICENSE (this "License"), dated as of _____, 2006, is made and entered into by and between **RUSH PACIFICA, LLC**, a California limited liability company ("Developer" or "Licensee"), and the **CULVER CITY REDEVELOPMENT AGENCY**, a public body, corporate and politic ("Agency" or "Licensor") Licensee and Licensor are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties"

RECITALS

The following recitals and all Exhibits to this License are substantive parts of this License

A Agency is a redevelopment agency duly established by action of the City Council of the City of Culver City and exercising governmental functions and powers pursuant to Chapter 2 of California Community Redevelopment Law (California Health & Safety Code § 33000, *et seq*, the "Community Redevelopment Law")

B Agency owns the Ince Parking Structure (the "Parking Facility") located at 9099 Washington Boulevard and two other parking structures located at 3844 Cardiff Avenue and 3846 Watseka Avenue, known as "Cardiff" and "Watseka," respectively

C Licensee is a California limited liability company who, concurrently herewith, is entering into a Disposition and Development Agreement (Parcel B) (the "Agreement") with Agency to purchase the real property located in the 9300 block of Culver Boulevard, in the City of Culver City, identified as Lots 6-17 and 20-30 of Block 19, Tract 2444 (the "Site") and to construct a four (4) story structure accommodating restaurants and retail shops on the ground floor and office space above (the "Project") on the Site

D Agency desires to grant to Licensee, and Licensee desires to acquire from Agency, a license to use three hundred seventeen (317) parking spaces located in the Parking Facility to provide parking for the Project

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor hereby grants to Licensee the license and other rights set forth herein in accordance with the terms and conditions of this License

1 License Effective upon the recordation of a Release of Construction Covenants (as defined in the Agreement) for the Project (the "Effective Date"), Licensor hereby grants to Licensee a non-exclusive license (the "License") to access and use three hundred seventeen (317) parking spaces (the "Licensed Spaces") The Licensed Spaces will consist of eighty eight (88) spaces on floors one and two of the Parking Facility (the "Customer Spaces"), twenty seven (27) spaces on the fourth floor of the Parking Facility, one hundred thirty two (132) spaces on the fifth floor of the Parking Facility, and seventy (70) spaces to be initially located in Cardiff (the "Floating Spaces") The Licensed Spaces are licensed for use by the tenants of the Project, subject to the terms and conditions set forth herein Licensor will further grant Licensee

exclusive, controlled access to the one hundred thirty two (132) spaces on the fifth floor of the Parking Facility Monday through Friday, 6 00 AM to 6 00 PM The foregoing License includes such additional rights as are reasonably necessary and incidental to Licensee's use and enjoyment of the Licensed Spaces, including, but not limited to, the right to ingress and egress through the Parking Facility

Agency and Licensee agree and acknowledge that the first and second floors of the Parking Facility, including access to the Customer Spaces, shall remain open for use by the general public Notwithstanding the foregoing, Agency agrees (i) to use commercially reasonable efforts not to over-allocate the guest parking areas on the first and second floors of the Parking Facility, and (ii) other than the right of the general public to access the first and second floors of the Parking Facility, not to grant any other party rights to use of the Customer Spaces If guest parking on the first and second floors of the Parking Facility is determined by an independent parking study analysis to be inadequate over time, the Agency, at its sole discretion, may relocate all or a portion of the Customer Spaces to either Watseka or Cardiff

2 License Fee, Failure to Pay License Fee Upon commencement of the Term of this License, the monthly parking license fee (the "License Fee") shall be (i) for the Floating Spaces, an amount equal to the market rate for five (5) day or seven (7) day per week parking, as applicable, charged for parking by the Agency and/or City at lots throughout the City, as adjusted by the Licenser from time to time, plus (ii) for the remaining Licensed Spaces, an amount equal to the total of Sixty Dollars (\$60 00) per Licensed Space entitled to be used five days per week, Monday through Friday, plus Eighty Dollars (\$80 00) per Licensed Space entitled to be used seven days per week during the operating hours outlined in the Parking Rules (as defined in Section 9) Licenser may change the Parking Facility's operating hours, Parking Rules, and/or License Fee at any time upon thirty (30) days written notice to Licensee, however, any such change must be commercially reasonable

The License Fee shall be due and payable by Licensee to Agency on the first day of each month If the License Fee is not received by Licenser by the tenth (10th) day of any calendar month, Licenser shall deliver a written late notice (a "Late Notice") to Licensee in accordance with Section 24 hereof notifying Licensee that this License will be suspended if payment of any past due License Fees and Late Fees (as hereinafter defined) are not received within ten (10) days of the date of delivery of the Late Notice Upon such date as is ten (10) days after the date of delivery of the Late Notice, if payment of the License Fee and Late Fee have not been received, Licenser may deactivate all parking access cards issued by Licensee and may cause the access control arm to be raised on the fourth and fifth floors of the Parking Facility As a result thereof, Licensee will not be entitled to exclusive use of the spaces on the fourth and fifth floors of the Parking Facility, nor will parties in possession of parking access cards issued by Licensee be permitted to use the Licensed Spaces without paying the daily fee charged to other patrons of the Parking Facility

A late fee equal to ten percent (10%) of the total License Fee (the "Late Fee") shall be paid if the License Fee is not received by the Licenser on or before the tenth (10th) day of any calendar month Late Fees shall include an additional ten percent (10%) of the total License Fee for each additional month payment of the License Fee is past due For example, if a License Fee payment is due April 1, and such payment is not made until May 15, the total Late Fee for the April 1 fee shall be equal to twenty percent (20%) of the License Fee due April 1 In

addition, if the May 1 License Fee is also not paid in such example until May 15, a ten percent (10%) Late Fee on the May 1 payment shall be due in addition to the Late Fees on the April 1 payment

If all past due License Fees and Late Fee are not received by Licensor within fifteen (15) days after the date of delivery of a Late Notice, Agency may deliver a written termination notice (a "Termination Notice") in accordance with Section 24 hereof notifying Licensee that if any past due License Fees and Late Fees are not received by Licensor within thirty (30) days of the date of delivery of the Termination Notice, then the License granted hereunder shall automatically and permanently terminate and be of no further force and effect

3 Administration

A Upon the commencement of the Term, and from time to time thereafter, after receipt of the appropriate parking card deposit fees, Licensor shall provide Licensee with parking access cards for the Licensed Spaces. Any deposits for parking cards shall be refunded by Licensor to Licensee upon return of the parking card or cards. Licensee (and any party utilizing a parking space pursuant to this License) shall be subject to the lost card fees, citations, and violation penalty fees outlined in the Parking Rules.

B Licensee shall be in charge of allocating the cards to tenants of the Project in a fair and reasonable manner and issuing the cards along with a copy of the Parking Rules to the users of the Licensed Spaces.

C Licensee shall not charge any user of the Licensed Spaces more than a commercially reasonable fee for use of the Licensed Spaces.

D Licensee shall not be permitted to issue parking access cards to any party or individual other than the Project's tenants.

E The Customer Spaces shall be reserved for customer parking only. Licensor shall install signs stating "Customer Parking Only" on floors one and two of the Parking Facility. No time limit shall be imposed on the second floor Customer Spaces. Licensor shall install and maintain software in connection with the access control arms to these floors to prevent monthly parkers from using the Customer Spaces.

F Licensee agrees and acknowledges that sixty (60) spaces (which such sixty (60) spaces are not included in the eighty eight (88) spaces constituting the Customer Spaces) limited to use for forty five (45) minutes will remain on floors one and two of the Parking Facility, which such spaces are not "Licensed Spaces" or "Customer Spaces" subject to this License.

G Licensee may install and maintain, at its sole expense, an access control arm on the fourth and fifth floors of the Parking Facility. The access control arm shall remain in the "up" position on weeknights and weekends. Licensee shall provide Licensor with such tools, codes and other information for Licensor to be able to control the access control arm in the event of an uncured default by

Licensee, and, under such circumstances, Licensor shall have the right to modify the access control arm such that it cannot be lowered by Licensee

H Upon five (5) days notice to Licensee, the Floating Spaces may, at the Agency's discretion, be relocated to the Parking Facility, Cardiff or Watseka

4 Term, Option to Extend The initial term of this License shall be five (5) years from the Effective Date (the "Initial Term") The Initial Term, and any extension(s) thereof, shall be referred to herein as the "Term" The Term of this License shall renew at Agency's reasonable discretion for successive periods of five (5) additional years (each, an "Extension Term") for a maximum total term of thirty (30) years from the Effective Date (the "Maximum Term") unless terminated upon at least sixty (60) days written notice prior to the end of the Initial Term and/or any Extension Term Agency shall have the right to terminate this License for cause (i.e., a default by Licensee not cured within any applicable grace period) Upon expiration of the Maximum Term (or any applicable First Option Term or Second Option Term, as hereinafter defined) or earlier termination of this License, the License granted herein to use the Licensed Spaces shall terminate and be of no further force and effect

Agency hereby grants Licensee an option to extend this License for up to an additional thirty (30) year term (the "First Option Maximum Term"), or such shorter term as requested by Licensee or required by federal income tax or other laws (in five (5) year renewable increments as set forth in the previous paragraph) (the "First Option Term"), at a License Fee equal to the fair market value of the Licensed Spaces as of the date of commencement of the first five (5) year increment of the First Option Term, or such lower rate as required by federal income tax or other laws Except for the term and the License Fee, the terms and conditions of this License shall apply to the First Option Term, unless otherwise agreed to in a writing signed by Licensor and Licensee Provided that no event of default is continuing and that this License remains in full force and effect, the option shall be exercisable by Licensee upon written notice to Agency from and after such date as is six (6) months prior to the expiration of the Maximum Term, but no later than such date as is one (1) month prior to the expiration of the Maximum Term

Provided that no event of default is continuing and that this License remains in full force and effect, Agency hereby grants Licensee an option to extend this License for up to an additional thirty (30) year term from the date of the expiration of the First Option Maximum Term (the "Second Option Maximum Term"), or such shorter term as requested by Licensee or required by federal income tax or other laws (in five (5) year renewable increments as set forth in the first paragraph of this section) (the "Second Option Term"), at a License Fee equal to the fair market value of the Licensed Spaces as of the date of commencement of the Second Option Term, or such lower rate as required by federal income tax or other laws Except for the term and the License Fee, the terms and conditions of this License shall apply to the Second Option Term, unless otherwise agreed to in a writing signed by Licensor and Licensee Provided that no event of default is continuing and that the License granted herein remains in full force and effect, the option for the Second Option Term shall be exercisable by Licensee upon written notice to Agency from and after such date as is six (6) months prior to the expiration of the First Option Maximum Term, but no later than such date as is one (1) month prior to the expiration of the First Option Maximum Term

Upon any expiration or termination of this License, the License and the options granted herein shall terminate and be of no further force and effect. Upon any termination of this License, Licensee agrees to promptly pay to Agency all License Fees and Late Fees due through such date as the Licensee ceases to utilize the Licensed Spaces.

5 Condition of Licensed Area-No Licensee Alterations Licensee shall be deemed to have (a) inspected the Parking Facility and (b) accepted the Licensed Spaces "as is" with no representation or warranty by Licensor as to the condition of the Parking Facility and/or the Licensed Spaces. The Licensee shall not materially alter, add to or in any material way change or make alterations or installations to the Parking Facility and/or the Licensed Spaces without the prior written consent of Licensor, which may be given or withheld at Licensor's sole discretion.

6 Termination, Obligation to Provide Replacement Parking Provided that this License is still in full force and effect and no breach or default by Licensee has occurred and is continuing hereunder, Licensor shall, upon a termination of this License by Licensor, make available to Licensee the Licensed Spaces at an alternative location within the same number of walking feet from the Site as the number of walking feet between the Parking Facility to the Site. Subject to the requirement of this paragraph to provide alternative parking, Agency reserves the right to terminate this License and change the use of or demolish the Parking Facility if it so chooses during any term of this License.

Agency shall be permitted to terminate this License without being subject to the requirement to provide alternative parking as set forth in the immediately preceding paragraph (i) if the Project experiences a change of use (for example and without limitation, if the Project is remodeled into condominiums), (ii) in the event of an uncured payment default by Licensee provided that Agency has delivered the notices required by and in accordance with Section 2, or (iii) under certain circumstances as set forth in Sections 10 and 13.

Upon any expiration or termination of this License, the License and the options granted herein shall terminate and be of no further force and effect. Upon any termination of this License, Licensee agrees to promptly pay to Agency all License Fees and Late Fees due through such date as the Licensee ceases to utilize the Licensed Spaces.

7 Conduct Licensee shall keep the Licensed Spaces in good, clean and safe condition and observe all Governmental Regulations (as defined in the Agreement). Licensor shall provide services to the Licensed Spaces in a manner and practice similar to that provided to other parking areas within the Parking Facility, including operational staffing, maintenance, lighting and security.

8 Rules and Regulations Licensee shall use commercially reasonable efforts to cause the parties utilizing the Licensed Spaces to abide by the parking rules and regulations attached hereto as Exhibit A, as such rules and regulations may be amended in a commercially reasonable manner from time to time by Licensor (collectively, the "Parking Rules") If Licensee or a user of a Licensed Space pursuant to this License commits, permits or allows any of the prohibited activities described in the Parking Rules then in effect, then Licensor shall have the right, without notice, in addition to such other rights and remedies that it may have, to terminate the parking card related to such user, and to remove or tow away the vehicle involved.

and charge the cost to Licensee, which cost shall be immediately payable upon demand by Licensor

9 Maintenance Licensor shall have the right to temporarily relocate the Licensed Spaces for maintenance purposes to a different location within the Parking Facility so long as Licensor provides alternative parking for the number of Licensed Spaces paid for by Licensee for the period of the temporary relocation. If the maintenance work being performed prevents the Licensor from relocating all or a portion of the Licensed Spaces within the Parking Facility, Licensor shall use commercially reasonable best efforts to find alternative nearby parking during the time the temporary maintenance activities are being performed. When commercially feasible, Licensor shall give Licensee not less than ten (10) days written notice, except in emergency situations

10 Parking Facility Damage

A Damage which prevents any substantial use of the Licensed Spaces If at any time during the Term, the Parking Facility experiences damage that prevents Licensee from making substantial use of the Licensed Spaces, Licensor may, at Licensor's option, either (i) repair such damage as soon as reasonably possible at Licensor's expense, in which event this License shall continue in full force and effect, or (ii) give written notice to Licensee within thirty (30) days after the date of the occurrence of such damage of Licensor's intention to modify or terminate this License as of the date of the occurrence of such damage, in which event this License shall be modified or terminated effective of the date of the occurrence of such damage

B Total destruction If at any time during the term of this License there is damage which destroys the Parking Facility, Licensor may at Licensor's option either (i) repair such damage or destruction as soon as reasonably possible at Licensor's expense (to the extent the required materials are readily available through usual commercial channels) to its condition existing at the time of the damage, and this License shall continue in full force and effect, or (ii) give written notice to Licensee within thirty (30) days after the date of occurrence of such damage of Licensor's intention to cancel and terminate this License, in which case this License shall terminate as of the date of occurrence of such damage

C Damage near end of Term If at any time during the last twelve (12) months of the Term there is substantial damage to the Licensed Spaces or Parking Facility, Licensor may at Licensor's option cancel and terminate this License as of the date of occurrence of such damage by giving written notice to Licensee of Licensor's election to do so within thirty (30) days after the date of occurrence of such damage

D Obligation to Replace or Rebuild Notwithstanding the foregoing subparagraphs A, B, and C, and provided that (i) prior to such damage to the Parking Facility, no termination of this License has occurred and no breach or default by Licensee has occurred and is continuing hereunder, (ii) the damage to the Parking Facility results from an event specific to the Parking Facility (as opposed to a catastrophic event also affecting other buildings in the Culver City

area, such as an earthquake, tsunami or act of terrorism affecting buildings in addition to the Parking Facility), and (iii) the destruction of the Parking Facility is not accompanied by an event which also results in the cessation of occupation of the Project, Licensor shall, at its option, upon any termination of this License pursuant to this Section 10, either (a) rebuild the Parking Facility as soon as is reasonably possible, or (b) make available to Licensee three hundred seventeen (317) parking spaces at one or more alternative locations within the "Downtown District" For purposes hereof, the Downtown District shall have the boundaries set forth in Exhibit B hereto

11 Assignment Licensee shall not have the right to sell, assign or otherwise transfer this License to its successor in interest, if any, to the Project, without the prior written approval of the Agency Other than the provision of parking cards to tenants of the Project to use the Licensed Spaces in accordance with this License, Licensee shall not sell, assign, mortgage, pledge or in any manner transfer this License or any interest herein, nor sublet or sublicense all or any part of the Licensed Spaces, by operation of law or otherwise, without Licensor's prior written approval, which approval may be withheld in Licensor's sole and absolute discretion The Agency shall have the right to sell, assign or otherwise transfer this License to the City of Culver City

12 Indemnification For purposes of this License, "Claims" means any and all liabilities, actions, proceedings, losses, damages, costs, expenses (including, without limitation, all attorneys' fees and litigation expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, including, without limitation, third party claim and death of or injury to any person or damage to any property

Licensee shall pay, defend (with counsel reasonably acceptable to Agency), indemnify and hold harmless Agency and the City of Culver City, and their respective officers, employees, agents, and representatives, from and against any and all Claims based upon, arising from or connected in any manner with (a) Licensee's or its employees, tenants, agents, contractors, subtenants, licensees, invitees, customers or representatives use of the Licensed Spaces, (b) the violation by the Licensee or its employees, tenants, agents, contractors, subtenants, licensees, invitees, customers or representatives of the Parking Rules, or (c) the breach or default in performance by Licensee of any obligation, covenant, representation or warranty contained in this License

Agency shall pay, defend (with counsel reasonably acceptable to Licensee), indemnify and hold harmless Licensee, its officers, employees, agents, and representatives, from and against any and all Claims based upon, arising from or connected in any manner with (a) the violation by Agency or City, or their agents, contractors, or employees of any Governmental Regulations or Parking Rules in connection with the performance of its obligations under this License, (b) any negligence or reckless or intentional misconduct of the Agency or its agents, contractors, or employees in connection with this License, (c) the Agency or City's use of the Parking Facility, or (d) the breach or default in performance by Agency of any obligation, covenant, representation or warranty contained in this License

If any action or proceeding should be brought against either Party based upon any such Claim and if the indemnified Party, upon notice from the indemnifying Party, shall cause

such action or proceeding to be defended at the indemnifying Party's expense by counsel reasonably satisfactory to the indemnifying Party, without any disclaimer of liability by indemnified Party in connection with such Claim, the indemnified Party shall not be required to indemnify the indemnifying Party for reasonable attorney's fees and expenses in connection with such action or proceeding. The agreement of indemnification set forth in this Section 13 shall not extend to Claims arising prior to the Effective Date. The obligations of the Parties under this Section 13 shall commence to accrue on the Effective Date and shall survive any termination of this License.

13 Default, Remedies In the event of any default by a Party under this License that is not cured within twenty (20) days of written notice to the defaulting Party, the Party claiming a default shall have all rights and remedies provided by law or in equity, including the right and collect all damages directly and indirectly caused by the default (provided, however, that the Party claiming a default shall have no right to consequential damages, as set forth in Section 15 below) and the right to enforce specific performance of this License.

In the event that the default is a breach of Developer's payment obligation under Section 2, Agency shall have the right to terminate and revoke the License, provided, however, with respect to all other Developer defaults, the Agency shall have the right to terminate and revoke the License only if there is sufficient parking available to meet the requirements of the City's Municipal Code.

14 Limitation on Damages Without limiting the generality of the foregoing Section 14, neither Party hereto shall be entitled to, and each Party hereto waives, any right to seek consequential damages of any kind or nature from the other Party arising out of or in connection with this License and in connection with such waiver each Party is familiar with and hereby waives the provision of Section 1542 of the California Civil Code which provides as follows:

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

15 Attorneys' Fees Should either Party institute any action or proceeding at law or in equity to enforce any provision of this License, or for damages by reason of an alleged breach of any provision of this License, or otherwise in connection with this License, the prevailing Party shall be entitled to recover from the losing Party reasonable attorneys' fees and costs, including (but not limited to) fees for experts for services rendered to the prevailing Party in such action or proceeding.

16 Severability The invalidity or illegality of any provision shall not affect the remainder of this License and all remaining provisions shall, notwithstanding any such invalidity or illegality, continue in full force and effect.

17 Successors Subject to the provisions of this License on assignment, each and all of the covenants and conditions of this License shall be binding on and shall inure to the benefit of the Parties and their respective heirs, successors, executors, administrators, assigns, and personal representatives.

18 **Waiver** The waiver by either Party of any term, covenant, or condition contained in this License shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition

19 **General Provisions** This License shall become valid and effective only when executed by the Licensee as well as the Licensor This License supersedes all prior discussions and agreements of the Parties relating to the subject matter of this License This License may be modified only by a written instrument executed by both Parties Neither Party shall, by the execution of this License, in any way or for any purpose, become a partner or a member of a joint enterprise, with the other As set forth herein, the word "including" shall mean "including without limitation "

20 **Counterparts** This License may be executed by the Parties hereto in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement

21 **Governing Law and Venue** This License shall be governed by, and construed and interpreted in accordance with, the laws of the state of California In the event that either Party institutes an action at law or equity to cure, correct or remedy any default under this License, such legal actions shall, to the extent permitted by law, be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that County, or in the Federal District Court in the Central District of California

22 **No Interest or Estate** Other than the License granted herein, Licensee agrees that it does not and shall not claim at any time any interest or estate of any kind or extent in the Licensed Spaces or the Parking Facility by virtue of this License, the License granted hereby, or Licensee's use hereunder

23 **Administration** The Assistant Executive Director of the Agency is authorized to act on behalf of the Agency with respect to all actions to be undertaken by the Agency under this License

24 **Notice** Unless otherwise specified in this License, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service or personal delivery which provides evidence of delivery Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows

To Agency	Culver City Redevelopment Agency Attn Susan Evans, Assistant Executive Director 9770 Culver Boulevard Culver City, California 90232-0507
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Copy to	Leibold, McClendon & Mann, P C Attn Barbara Zeid Leibold, Esq 23422 Mill Creek Drive, Suite 105 Laguna Hills, California 92653
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To Developer

Rush Pacifica, LLC
Attn Jeffrey L Rush
12348 High Bluff Drive, Suite 210
San Diego, California 92130

Copy to

Evan Mead Stone, Esq
12348 High Bluff Drive, Suite 210
San Diego, California 92130

[Licensee's Lender]

Any Notice shall be deemed received as of the date of courier service delivery or shall be deemed received on the date delivered if delivered by registered or certified mail, return receipt requested

[Signatures on Next Page]

IN WITNESS WHEREOF, Agency and Developer have signed this License as of the date set forth above

“DEVELOPER”

RUSH PACIFICA, LLC, a California limited liability company

By _____
Jeffrey L Rush, Manager

“AGENCY”

CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic

By _____
Susan Evans, Assistant Executive Director

ATTEST

Agency Secretary

APPROVED AS TO FORM

LEIBOLD, McCLENDON & MANN, P C

By _____
Barbara Zeid Leibold Special Counsel

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EXHIBIT A

Parking Rules and Regulations

The following are the parking policies for Redevelopment Agency owned and/or operated parking facilities. The parking facilities are available to businesses within Culver City and/or those businesses within the boundaries of the Culver City Revitalization Corporation.

900 PARKING FACILITY

INCE PARKING STRUCTURE

9099 Washington Boulevard

Hours of Operation	Monday – Thursday	8 a m – 2 a m
	Friday & Saturday	8 a m – 3 a m
	Sunday	10 a m – 1 a m

Outside these hours, the structure is closed to non-cardholders.

1000 POLICIES

Monthly Parking

The following policies are in place and are relevant to all parking facilities.

- 1 Monthly Rates*
 - \$60 – per person (Monday-Friday)
 - \$80 – per person (7 days per week)
- 2 Parking spaces are made available per person, not per space.
- 3 For the parking structures, access cards are issued for entrance and exit to the structures.
- 4 Vehicle storage is prohibited and subject to citation and/or towing of vehicle.
- 5 Subletting is prohibited and may cause the revocation of parking privileges.
- 6 Residential and overnight parking is prohibited.
- 7 Car repair and/or service is not allowed.
- 8 Agency may require the removal of any vehicles found to be leaking oil, subject to written notice and opportunity to cure.
- 9 Only 'Head In' parking allowed.
- 10 The following fees apply:
 - A replacement fee of \$25 is charged for the replacement of a lost or damaged access card.

- A late payment fee of \$5 will be charged if payment is not received by the 5th day of the month Access to the structure will be denied until payment is received
 - For those who park in the parking structures a fee of \$5 will be charged for each instance a monthly parker does not park in the designated employee parking area
 - For those who park in the parking structures, if found to be parked in the customer parking area the vehicle will be cited
- 11 Turn around" parking (i.e. parking in the structure for the 2 hour free period and exiting and reentering the structure for a subsequent 2 hour free period) is prohibited Individuals identified as turn around drivers will be required to pay the daily maximum rate
 - 12 Parking space users shall comply with all governmental laws ordinances and resolutions

(1) Daily Parking for Project Guests and Patrons

- 1 First two hours free Additional two hours free with validation \$1 00 per hour thereafter up to a maximum of \$8 00
- 2 Validation stickers are provided to Culver City business owners at \$ 50 per sticker Validation stickers are to be provided to customers only and are not valid for employees or students Validation stickers used by employees or students to exit the structure will not be honored Businesses that do not have offices within Culver City who desire validation stickers for their customers may purchase them at a cost of \$1 per sticker The validations are provided in books of 100 stickers
- 3 Maximum rate charged for lost ticket
- 4 Vehicles with handicapped identification must pay to park
- 5 Free parking for veterans parking vehicles with specific license plates issued to Medal of Honor recipients Legion of Valor recipients, Purple Heart recipients, Pearl Harbor Survivors, and Former Prisoners of War This policy applies to vehicle license plates of such type from all states

ATTACHMENT NO 10

ASSIGNMENT OF PLANS, REPORTS AND DATA

FOR VALUE RECEIVED, **RUSH PACIFICA, LLC**, a California limited liability company ("Developer"), does hereby assign, pledge, transfer and set over to the **CULVER CITY REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), all of its rights, title and interest in and to the following (collectively, the "Plans, Reports and Data") any and all plans, drawings, studies, reports and related documents concerning the Site, and all amendments, modifications, supplements, general conditions and addenda thereto, including, without limitation, Environmental Reports, all architectural and engineering plans, any architect's agreement entered into hereafter ("Architect's Agreement") by and between Developer and any architect engaged to perform services with respect to the Site ("Architect") and those certain plans and specifications referred to therein, and all amendments, modifications, supplements, general conditions and addenda thereto (collectively, "Architectural Plans") prepared by Architect for the account of Developer in connection with the development of certain real property located in the City of Culver City, County of Los Angeles, State of California more particularly described on Exhibit "A" attached hereto (the "Property") The Plans, Reports and Data, including, without limitation, the Architect's Agreement and the Architectural Plans, are hereby assigned as consideration for the Agency's execution of that certain Disposition and Development Agreement (9300 Culver Boulevard) dated for identification purposes only as of _____, 2006 entered into between Developer and the Agency (the "Agreement") All capitalized terms not defined herein shall have the meaning set forth in the Agreement For purposes hereof, "Environmental Reports" means any "Phase I" and/or "Phase II" investigations of the Property, and all final reports and test results (not including drafts) provided by Developer's environmental consultant

Upon the occurrence and during the continuance of a default under the Agreement, the Agency shall have the right, but not the obligation, at any time, in its own name or in the name of Developer, or otherwise, to take such action as the Agency may at any time or from time to time determine to be necessary or desirable in order to cure any default by Developer under the Architect's Agreement, including, without limitation, the protection of Developer's rights with respect to the Architectural Plans or to protect the rights of Developer thereunder The Agency shall not incur any liability if any action taken by the Agency or on its behalf in good faith, pursuant to the foregoing sentence, shall prove to be, in whole or in part inadequate or invalid, and Developer hereby indemnifies and agrees to hold the Agency harmless from and against any and all loss, claim, demand, cost, liability, damage or expense, including, without limitation, attorneys' fees and expenses in connection with any such action or actions Developer agrees to have each Architect engaged to perform services in connection with the Site execute a Consent in the form attached hereto

Until the Property is purchased by Developer, upon a termination of the Agreement, the Agency may exercise its rights hereunder and take possession of and title to the Plans, Reports and Data Developer shall deliver possession of and title to the Plans, Reports and Data to the Agency within forty-eight (48) hours of the Agency's request

Developer and Architect, by executing the Consent to this assignment, agree that the Agency does not assume any of Developer's obligations or duties concerning the Architect's Agreement and the Architectural Plans, including, but not limited to, the obligation to pay for the preparation of the Architect's Agreement and the Architectural Plans, until and unless the Agency shall exercise its rights hereunder

Developer hereby represents and warrants to the Agency that no previous assignment of its interest in the Plans, Reports and Data, including, without limitation, the Architect's Agreement and the Architectural Plans, has been made, and Developer agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Plans, Reports and Data, including, without limitation, the Architect's Agreement and the Architectural Plans, so long as this Assignment is in effect

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Developer and the Agency

IN WITNESS WHEREOF, Developer has caused this Assignment of Plans, Reports and Data to be executed as of _____, 2006

DEVELOPER

RUSH PACIFICA, LLC, a California limited liability company

By _____
Jeffrey L. Rush, Manager

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CONSENT

The undersigned has prepared or will prepare the Architectural Plans, and hereby consents to the above Assignment. The undersigned also agrees that in the event of a breach by Developer of any of the terms and conditions of the Architect's Agreement or any other agreement entered into with the undersigned in connection with the Architectural Plans, that so long as Developer's interest in the Plans is assigned to the Agency it will give written notice to the Agency of such breach. The Agency shall have sixty (60) days from the receipt of such notice of default to remedy or cure said default, however, nothing herein shall require the Agency to cure said default, but only gives it the option to do so.

The undersigned also agrees that in the event of default by Developer under any of the documents or instruments entered into in connection with said Agreement, the undersigned, at the Agency's request, shall continue performance under the Architect's Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Architect's Agreement for all services rendered on the Agency's behalf.

Dated _____

ARCHITECT

By _____

Name _____

Title _____

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

[to be inserted]

ATTACHMENT NO 11

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO)
Culver City Redevelopment Agency)
9770 Culver Boulevard)
Culver City, California 90232-0507)
Attn Susan Evans, Assistant Executive Director)

(Space Above for Recorder's Use Only)
(Exempt from Recording Fees per Govt Code § 6103)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Memorandum"), dated for purposes of identification only as of this ____ day of _____, 2006, is entered by and between the CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency") and RUSH PACIFICA, LLC, a California limited liability company (the "Developer")

Section 1 Disposition and Development Agreement Agency and Developer have executed a Disposition and Development Agreement dated for identification purposes as of _____, 2006 (the "Agreement"), which provides for the acquisition of certain real property located in the City of Culver City, County of Los Angeles, State of California, more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Site") Copies of the Agreement are available for public inspection and copying as a public record in the office of the Agency Secretary All of the terms, conditions, provisions and covenants set forth in the Agreement are incorporated in this Memorandum by reference as though fully set forth herein at length, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement

Section 2 Purpose of Memorandum This Memorandum is prepared for recordation purposes only and in no way modifies the terms, conditions, provisions and covenants set forth in the Agreement The inclusion of the following provisions shall not limit the incorporation of the Agreement, but is merely for convenience In the event of any inconsistency between the terms, conditions, provisions and covenants set forth in the Agreement and this Memorandum, the terms, conditions, provisions and covenants set forth in the Agreement shall prevail The purpose of this Memorandum is to give notice to third parties of the existence of the Agreement and the Right of First Offer granted by Developer to Agency in the Agreement

Section 3 Right Of First Offer Pursuant to the Agreement, the Developer has granted Agency a Right of First Offer to purchase the Site If Developer desires to sell or otherwise transfer the Site and the Improvements thereon constituting the Project to a third party

for consideration, Developer shall first comply with the procedures set forth in Section 600 of the Agreement. Such procedures are reiterated here in this Section 3. In the event of any inconsistency between the terms, conditions, provisions and covenants set forth in the Agreement and this Memorandum, the terms, conditions, provisions and covenants set forth in the Agreement shall prevail. Nothing in this Section 3 shall relieve Developer from its obligation to comply with the provisions of Section 206 of the Agreement which prohibit certain Transfer and Change in Control of the Developer.

301 Developer's Offer

If Developer desires to sell or otherwise transfer the Site and the Improvements thereon constituting the Project to a third party for consideration, Developer shall first offer ("Developer's Offer") to sell the Site and the Improvements thereon to Agency. The Developer's Offer shall be in writing and delivered to the Assistant Executive Director of the Culver City Redevelopment Agency by courier or overnight delivery or by certified first class mail, return receipt requested, and shall specify the purchase price, the basis for determination of the purchase price (which shall be fair market value and shall include a copy of any appraisal) and the terms and conditions of the Developer's Offer.

302 Commitment Notice

Agency shall have sixty (60) days after receipt of Developer's Offer to agree to purchase the Site and the Improvements thereon at the price and on such terms contained in Developer's Offer or such other terms as may be agreed to by the Parties by delivering written notice of such agreement to Developer (the "Commitment Notice"). Agency and Developer shall use commercially reasonable best efforts to consummate the purchase of the Site by Agency within sixty (60) days after the date of its Commitment Notice and neither Party shall unreasonably delay or prevent the closing of escrow. Purchase of the Site by the Agency shall not bind the Agency until approval by the Agency board at an open and agendaized meeting.

303 Sale by Developer

Agency's failure to timely deliver the Commitment Notice within ninety (90) days after receipt of Developer's Offer shall be deemed a one-time waiver of its right of first offer with respect to the Site and the Improvements thereon. Developer shall be permitted, for a period of one (1) year beginning on the date that is the earlier of (a) ninety (90) days after delivery to Agency of Developer's Offer, or (b) the date on which Agency provides written notice to Developer that Agency will not exercise such right to purchase the Improvements (the "Sale Period"), to sell the Site and the Improvements thereon to a third party at a price that is not lower than ninety-five percent (95%) of the Developer's Offer price, and on terms that are not materially more favorable than those proposed to Agency in Developer's Offer.

304 Failure to Complete Transaction

If (a) Agency decides not to purchase the Site and the Improvements thereon in accordance with this Section 3 and Developer fails to consummate the sale or other transfer of the Site and the Improvements thereon to a third party as set forth in Section 303 above within the Sale Period, or (b) Agency fails to consummate its purchase of the Site and the Improvements thereon within the ninety (90) day period described in Section 302 above (unless a longer period is agreed to by the Parties), then Developer may not sell or transfer the Improvements to a third party without again complying with the procedures set forth in this Section 3, and the remaining provisions of this Section 3 shall remain in effect

305 Mechanics of Transfer Upon Agency Exercise of the Developer Offer

Agency and Developer agree to use good faith in the execution of the Right of First Offer and further agree to execute such other documents as are reasonably necessary or helpful in implementing and completing the Agency exercise of the Right of First Offer To the extent possible, and unless otherwise agreed in writing by the Parties, the following procedures shall apply with regard to the purchase

(a) Payment of the Purchase Price The purchase price for the Site and the Improvements thereon shall be payable in full at the Right of First Offer closing The payment of the purchase price shall be reduced by the assumption by the Agency of any loans secured by any mortgages or other liens recorded against the Site, provided that the mortgage or lien holder has agreed that conveyance of the Project to Agency pursuant to the exercise of the Right of First Offer does not result in an acceleration of any debt secured by such mortgage or lien

(b) Title Insurance, Survey Agency shall be responsible for obtaining and paying for any policy of title insurance desired by Agency and Agency shall be responsible for any survey desired by Agency

(c) Transfer of Real Property The Developer shall convey and transfer title to the Site and the Improvements by a recordable grant deed acceptable to Agency

(d) Personal Property All personal property constituting the Site and the Improvements thereon shall be conveyed by a bill of sale to Agency at closing

(e) Closing Costs All customary real estate transfer closing costs incurred in connection with the conveyance of the Site to Agency pursuant to the exercise of the Right of First Offer shall be paid for by Agency

(f) Closing Date, Possession The closing of the sale of the Site pursuant to the exercise of the Right of First Offer shall occur no later than ninety (90) days after Agency accepts the Right of First Offer (or such later date as may be agreed to by the

Parties) As used in this Section 3, references to "a closing," or "the closing," shall mean the closing of the purchase and sale pursuant to the Right of First Offer, as evidenced by the recordation of grant deed as to the Site and the Improvements thereon in the Official Records of Los Angeles County. Agency shall be entitled to possession of the Site upon the closing, subject to rights of tenants in possession.

306 Environmental and Other Due Diligence

During the period commencing upon the exercise of the Right of First Offer and ending upon the closing, Developer shall cooperate with and permit Agency to access the Site during regular business hours and upon reasonable notice for the purpose of obtaining data and conducting any surveys and tests requested by Agency, including, without limitation, an inspection of the improvements on the Site and the environmental condition of the Site. Any surveys and tests conducted on the Site by Agency's Representatives shall be done at the sole expense of Agency.

307 Right to Cancel Exercise of Right of First Offer

In the event that Agency finds, in its sole discretion, that the title of the Site cannot be conveyed in an acceptable manner or that the Site or improvements thereon contain defects or Hazardous Material contamination of a nature unacceptable to Agency, then Agency shall have the right to cancel its exercise of the Right of First Offer. Agency shall provide Developer with written notice of such cancellation prior to the closing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Agency and Developer have executed this Memorandum as of the date set forth above

AGENCY

CULVER CITY REDEVELOPMENT
AGENCY, a public body, corporate and politic

By _____
Susan Evans, Assistant Executive Director

ATTEST

Agency Secretary

APPROVED AS TO FORM

LEIBOLD, McCLENDON & MANN, P C

Barbara Zeid Leibold, Special Counsel

DEVELOPER

RUSH PACIFICA, LLC , a California limited liability company

By _____
Its Member

By **Pacific Medical Buildings, L P** a
_____ limited partnership
Its Manager

By **PMB, Inc** , a _____
corporation, its _____

By _____
President

By _____
Vice President

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EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

[to be inserted]

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State of California)
County of _____) SS

On _____, before me, _____
personally appeared _____

NAME(S) OF SIGNER(S)

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

Witness my hand and official seal

SIGNATURE OF NOTARY

OPTIONAL

Although the data below is OPTIONAL it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

Capacity claimed by signer	Description of Attached Document
☐ Individual	
☐ Corporate Officer(s)	
☐ Partner(s)	Title or Type of Document
☐ General ☐ Limited	
☐ Attorney-in-fact	Number of Pages
☐ Trustee(s)	
☐ Guardian/Conservator	
☐ Other	Date of Document
Signer is representing	

Name of Person(s) or Entity(ies)	Signer(s) Other Than Named Above

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ATTACHMENT NO 12

**LICENSE TO ENTER SITE FOR PURPOSES OF ENVIRONMENTAL TESTING
RIGHT OF ENTRY AGREEMENT (DUE DILIGENCE)**

THIS **RIGHT OF ENTRY AGREEMENT (DUE DILIGENCE)** (this "Agreement") dated as of _____, 20__ (the "Date of Agreement"), is entered by and among the **CULVER CITY REDEVELOPMENT AGENCY** ("Agency"), a public body, corporate and politic, and **RUSH PACIFICA, LLC**, a California limited liability company ("Developer")

RECITALS

A Agency owns and desires to sell certain real property located in the 9300 block of Culver Boulevard, in Culver City, California, 90066, generally identified as Lots 6-17 and 20-30 of Block 19, Tract 2444, and more particularly described in Exhibit "A" (the "Property")

B Developer desires to enter the Property for the purpose of conducting environmental testing of the Property prior to acquisition of said Property, and Agency desires to accommodate Developer's desire to commence such actions by granting a right of entry as provided herein

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

Section 1 Right of Entry Provided that all of the terms and conditions of Section 2 of this Agreement are fully satisfied, Agency hereby grants to Developer and its agents and contractors, a temporary and conditional right to enter upon, in and below the Property (the "Right of Entry") for a continuous period of five (5) months from the Date of Agreement, for the purpose of surveying the Site for purposes of designing the Project and for carrying out relevant and necessary environmental testing of the Property in accordance with the work plan attached hereto as Exhibit "B"

Section 2 Conditions to Entry Prior to Developer entering the Property, the following conditions must be satisfied

- (a) Developer shall give Agency two (2) weeks written notice prior to each act of entering the Property and conducting investigation and testing of the Property
- (b) Developer shall furnish to Agency evidence satisfactory to Agency that Developer or its contractors have obtained comprehensive liability insurance in an amount as is approved by Agency for the purpose of protecting Agency from claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees

and costs), which may be caused by any of Developer's activities under this Agreement whether such activities or performance thereof be by Developer or anyone directly or indirectly employed or contracted with by Developer and whether such damage shall accrue or be discovered before or after the termination of this Agreement

- (b) Developer or its contractors must have submitted to Agency, and Agency shall have reasonably approved, a work plan setting forth the actions needed to carry out the environmental testing to be performed on the Property pursuant to this Agreement

Section 3 Liens With regard to actions performed on the Property under this Agreement, Developer shall not permit to be placed against the Property, or any part thereof, any design professional's, mechanic's, materialmen's, contractor's, or subcontractor's liens (collectively, "Liens") Developer shall indemnify, defend and hold harmless Agency from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens Agency reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Property, or any portion thereof, or on the improvements on the Property, any notices of non-responsibility or other notice as may be desirable to protect Agency against liability In addition to, and not as a limitation of Agency's other rights and remedies under this Agreement, should Developer fail, within ten (10) days of written request from Agency, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless Agency from and against any loss, damage, injury, liability or claim arising out of a Lien, then Agency, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to Agency by Developer upon written demand

Section 4 Minimal Interference, Restoration of Property Developer shall take all reasonable measures to minimize interference with the use of the Property by Agency and any party permitted by Agency to use the Property Developer shall promptly repair and restore any damage caused by its entry to the Property and any environmental testing or other activity performed by Developer on the Property

Section 5 Compliance With Laws/Permits Developer shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees, including, but not limited to, all environmental laws Without limiting the generality of the foregoing, Developer, at its sole cost and expense, shall obtain any and all permits which may be required by any environmental law or other law for any activities Developer desires to conduct or have conducted pursuant to this Agreement Agency shall provide reasonable assistance to Developer in obtaining such permits In the event Developer or its agents or employees discover any substance on the Property, Developer shall immediately notify or cause notice to be given to Agency

Section 6 Indemnification Developer hereby agrees to indemnify, defend, assume all liability for and hold harmless Agency from all actions, claims, suits, penalties, obligations, liabilities, damages to property, claims or injuries to persons (collectively "Claims") which may

be caused by Developer's negligence or wrongful acts arising out of or in connection with Developer's activities pursuant to this Agreement. Developer's indemnity given under this Section 6 shall apply whether such negligence or wrongful acts are by Developer or anyone directly or indirectly employed or under contract with Developer, and whether such Claims shall accrue or be discovered before or after the termination of this Agreement. The indemnity and other rights afforded Agency by this Section 6 shall survive after the expiration of this Agreement. Notwithstanding the foregoing, Developer'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 Developer.

Section 7 Inspection Agency and its representatives, employees, agents or independent contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Developer's compliance with the terms and conditions of this Agreement, and to conduct environmental testing and remediation upon receipt of the notice required pursuant to Section 4 hereof.

Section 8 No Real Property Interest It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to Developer.

Section 9 Notices All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Agreement shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows:

To Agency	Culver City Redevelopment Agency Attention: Susan Evans 9770 Culver Boulevard Culver City, California 90232-0507
Copy to	Leibold, McClendon & Mann, P C Attention: Barbara Zeid Leibold, Esq 23422 Mill Creek Drive, Suite 105 Laguna Hills, California 92653
To Developer	Rush Pacifica, LLC Attention: Jeffrey L. Rush 12347 High Bluff Drive, Suite 210 San Diego, California 92130
Copy to	Evan Mead Stone, Esq 12348 High Bluff Drive, Suite 210 San Diego, California 92310

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail

Section 10 Governing Law This Agreement shall be governed by the laws of the State of California

Section 11 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

Section 12 Amendment of Agreement, Merger No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Developer and Agency This Agreement merges all negotiations, stipulations and provisions relating to the subject matter of this Agreement which preceded or may accompany the execution of this Agreement

Section 13 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

Section 14 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

[Signatures On Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Right of Entry Agreement as of the date first written above

DEVELOPER

RUSH PACIFICA, LLC , a California limited liability company

By _____
Jeffrey L. Rush, Manager

AGENCY

THE CULVER CITY REDEVELOPMENT AGENCY, a public body corporate and politic

By _____
Susan Evans, Assistant Executive Director

ATTEST

Agency Secretary

APPROVED AS TO FORM

LEIBOLD, MCCLENDON & MANN, P C ,

Barbara Zeid Leibold, Special Counsel

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EXHIBIT "A"

LEGAL DESCRIPTION

[to be inserted]

EXHIBIT “B”

WORK PLAN

[to be inserted]

INFRASTRUCTURE IMPROVEMENT AGREEMENT

This **INFRASTRUCTURE IMPROVEMENT AGREEMENT** (this Agreement) is dated for identification purposes as of _____, 2006 by and between the **CULVER CITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the Agency) and **RUSH PACIFICA LLC** a California limited liability company (the Developer)

RECITALS

The following recitals are a substantive part of this Agreement All capitalized terms set forth in the recitals shall have the meanings ascribed to such terms in Section 10

A The purpose of this Agreement is to effectuate the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq* (the "Act") by providing for the improvement and development of property with construction of the realignment of Washington Boulevard and expansion of the Town Plaza Project (as hereinafter defined) and to implement the Redevelopment Plan approved and adopted by the City Council of the City of Culver City on November 23, 1998 by Ordinance No 98-015 and amended on January 12, 2004 (the "Redevelopment Plan")

B The Agency is a redevelopment agency duly established by action of the City Council of the City of Culver City and exercising governmental functions and powers pursuant to Chapter 2 of the Act and engaging in activities to improve areas within the Redevelopment Plan area

C The Agency approved the Town Plaza/Screenland cinema, restaurant, retail and office project (the "Town Plaza Expansion Project") located at 9530 Washington Boulevard and 9300-9310 Culver Boulevard and referred to as Parcels A, B, and C The Town Plaza Project was proposed to be a total of approximately 202,000 square feet of gross leaseable floor area The Town Plaza Project was considered in a Final Supplemental Environmental Impact Report (FSEIR) which was certified by the Agency on May 3, 1999 The Town Plaza Project was approved as Site Plan Review SPR P-1999044 by Planning Commission Resolution No 2000-P0003 on January 31, 2000 This approval was modified by Modification No 1, approved on July 11, 2001 by Planning Commission Resolution No 2001-P007 and further modified by Modification No 2 that was approved by Planning Commission Resolution No 2002-P001

D Development on Parcels A and C of the Town Plaza Project has been completed and the development of Parcel B remains pending The Parcel B portion of the Town Plaza Project has not been completed but is anticipated to consist of a three (3) or four (4) story structure accommodating restaurant and retail uses on the ground floor and office uses on the floors above In order to facilitate the redevelopment of Parcel B and the completion of the Town Plaza Expansion Project, Washington Boulevard will require realignment and the Town Plaza Expansion Project will require an expansion from what was originally contemplated (collectively, the "Project") At a meeting of the Board of the Agency on December 5, 2005, the Agency passed a motion approving the Project As the result of this approval, subsequently a Street Name Change, Amendment to the Circulation Element of the General Plan, and the redrawing of Parcel B's boundaries through a Tentative/Final Map process were reviewed and approved, or were recommended to be approved, by the Planning Commission on April 12

2006, and where required, these items were subsequently approved by the City Council of the City of Culver City on April 10, 2006

E City owns the street which constitutes Washington Boulevard between Ince Boulevard and the intersection of Culver Boulevard at Main Street in the City of Culver City (referred to herein as "Washington Boulevard") Washington Boulevard is depicted as Washington Boulevard on the Site Map (Attachment No 1 hereto) and more particularly described in the Washington Boulevard Legal Description (Attachment No 2 hereto)

F City owns the area which constitutes the expansion of the Town Plaza Project and is located on its northwestern most boundary of Main Street and Culver Boulevard and its most southeastern boundary of Ince Boulevard and the former Washington Boulevard in the City of Culver City (referred to herein as the "Expansion") The Expansion area consists of approximately 35,000 square feet of property and is depicted on the Site Map (Attachment No 1 hereto) and more particularly described in the Expansion Legal Description (Attachment No 3 hereto)

G Agency has had, or will have, prepared the design, construction documents, bid documents, cost estimates, and other criteria for the construction of the Expansion by LRM Landscape Architects Ltd ("LRM") Developer will hire, at Agency's expense, a civil engineering firm to prepare the construction and bid documents for the realignment of Washington Boulevard The realignment of Washington Boulevard shall be constructed in accordance with the scope of development attached as Attachment No 4 hereto (the "Realignment Scope of Development") The Expansion shall be constructed in accordance with the scope of development attached as Attachment No 4 hereto (the "Expansion Scope of Development") The Realignment Scope of Development and the Expansion Scope of Development shall be collectively referred to herein as the "Scope of Development" The construction of the improvements constituting the Project (including, without limitation, all permits and approvals required in connection therewith) as detailed in the Scope of Development shall collectively be referred to herein as the "Improvements"

H The site of the proposed Improvements is located within the redevelopment project area established by the Redevelopment Plan for the Culver City Redevelopment Project, Component Area 3 (the Project Area) The proposed Improvements comply with and further the goals and objectives of the Redevelopment Plan

I By this Agreement, and subject to the terms and conditions herein, (i) the Developer agrees to hire a civil engineering firm to prepare final drawings and bid documents, perform public bidding for the construction of the Improvements, and to contract with a contractor for the construction of the Improvements and manage such construction as set forth herein, and (ii) the Agency agrees to pay the costs of all work, including construction, and pay a management fee to Developer as specifically set forth herein

J Agency's payment of the cost of the Improvements (including third party costs as set forth herein) and Developer's management of the construction of the Improvements pursuant to the terms of this Agreement are in the vital and best interest of the Agency, the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and

provisions of applicable state and local laws and requirements under which implementation of Redevelopment Plan has been undertaken

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged the Developer and the Agency hereby agree as follows

10 DEFINITIONS

Capitalized terms used herein and not otherwise defined shall have the meanings set forth below

“Act” is defined in Recital A

“Agency Payment” means each payment to be made by the Agency according to the terms set forth in Section 3.3 to (i) the construction contractor(s) for construction of the Improvements (ii) the Developer for its management fee and (iii) other third party contractors for preapproved costs incurred by Developer in connection with the performance of its obligations hereunder

“Assistant Executive Director” means the Assistant Executive Director of the Culver City Redevelopment Agency or her or his designee

“Bid Package” means generally all bid notices bid plans and specifications bid contract documents and related documents for construction of the Improvements which the Agency shall prepare and the Developer shall use to solicit bids from general contractors and/or which any general contractor of Developer shall use to solicit bids from subcontractors

“City” means the City of Culver City a California municipal corporation

“Completion Date” means the date of issuance of a Certificate of Completion for the Improvements by the City

“Construction Manager” collectively means those individuals assigned to oversee construction of the Improvements Developer shall act as the Construction Manager for the construction of the Improvements

“Default” is defined in Section 5.1

“Effective Date” means the date upon which this Agreement shall have been signed by the Agency

“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

“Expansion” is defined in Recital F

“Expansion Scope of Development” is defined in Recital H

“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 Agency and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Improvements

“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 area on which the Improvements are to be constructed or surrounding property or any other use of or operation on the area on which the Improvements are to be constructed or the surrounding property that creates a risk of Hazardous Materials contamination of the area on which the Improvements are to be constructed

"Improvements" are defined in Section 2 1

"Indemnified Parties" means the City and the Agency and their respective boards officers employees agents and contractors (excluding the Developer)

"Insurance Requirements" means the Insurance Requirements set forth in Section 4 2

"Party" means either Agency or Developer **"Parties"** means Agency and Developer

"Prevailing Wage Acknowledgement" means an acknowledgement to be signed by Developer substantially in the form set forth in Attachment No 7

"Prevailing Wage Clause" means and refers to (a) the overtime provisions as applicable of the Contract Work Hours and Safety Standards Act (40 U S C 327 332) and (b) Labor Code § 1720 *et seq* including without limitation the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code §§ 1776 and 1812 and employment of apprentices in accordance with Labor Code § 1777 5 For purposes of this Prevailing Wage Clause and compliance herewith whenever the word contractor is used it shall mean and include as applicable Developer any general contractor employed by Developer other contractor(s) and subcontractor(s) The particular text to be utilized in (a) any and all contracts of any contractor doing work covered by the sections of the law cited in this Prevailing Wage Clause entered into on or after the Effective Date and (b) notices to contractors doing work covered by the sections of the law cited in this Prevailing Wage Clause pursuant to contracts entered into prior to the Effective Date shall be in substantially the form of the following as reasonably determined by the Agency and shall be executed by the applicable contractor under penalty of perjury

(i) Contractor shall carry out the construction of the Improvements in conformance with all applicable laws including all applicable federal and state labor standards which such standards shall include without limitation (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 construction of the Improvements (b) the overtime provisions as applicable of the Contract Work Hours and Safety Standards Act (40 U S C 327 332) and (c) Labor Code § 1720 *et seq* including without limitation the payment of prevailing wage and maintenance of payroll records in accordance with Labor Code §§ 1776 and 1812 and employment of apprentices in accordance with Labor Code § 1777 5

(ii) Contractor further agrees that all public work (as defined in Labor Code § 1720) performed pursuant to this Agreement (the work) shall comply with the requirements of Labor Code § 1770 *et seq* In all bid specifications contracts and subcontracts for the work contractor (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 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 § 1775 and the payroll record keeping requirements of Labor Code § 1776.

(iii) The provisions of Labor Code §§ 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 § 1810, eight (8) hours labor constitutes a legal day's work. In accordance with the provisions of Labor Code § 3700, contractor is required to secure payment of compensation to its employees. Contractor shall include in every contract for the construction of some or all of the Improvements: (a) a statement that in accordance with the provisions of Labor Code § 3700, the contractor will be required to secure the payment of compensation to its employees; and (b) copies of Labor Code §§ 1771, 1775, 1776, 1777.5, 1813 and 1815.

(iv) Within ten (10) calendar days after the request of the Developer, contractor shall provide to the Developer payroll information related to the construction of the Improvements certified by an officer of contractor to be true and correct. In addition, contractor shall require its contractors and subcontractors to provide such certified payroll information within ten (10) calendar days of any request by the Developer.

(v) Contractor shall indemnify and hold the Developer and the Agency harmless from and against any and all claims, damages, demands, causes of action, obligations, liabilities, costs and expenses including reasonable attorneys' fees that may be asserted against or incurred by Developer or the Agency with respect to or in any way arising from contractor's compliance with or failure to comply with all applicable laws including all applicable federal and state labor standards including without limitation the requirements of Labor Code § 1720 and the Davis Bacon Act.

"Project" is defined in Recital D.

"Project Area" is defined in Recital I.

"Realignment Scope of Development" is defined in Recital H.

"Redevelopment Plan" is defined in Recital A.

"Retention" is defined in Section 3.3.

"Schedule of Performance" means the Schedule of Performance attached as Attachment No. 8 hereto.

"Scope of Development" is defined in Recital H.

"Site Map" means the map illustrating the location of the Improvements attached as Attachment No. 1.

"Terms and Conditions Applicable to the Improvements" are set forth in Attachment No. 3.

"Transfer" means and includes any transfer, assignment, subdivision, lease, sublease, license, franchise, gift, or other conveyance of Developer or any portion thereof or any interest therein or of this Agreement, to any person or entity.

"Town Plaza Project" is defined in Recital C.

"Washington Boulevard" is defined in Recital E.

2 0 CONSTRUCTION OF IMPROVEMENTS

2 1 Construction of Improvements and Management

In consideration of Agency's payment of a fee to Developer and in accordance with this Agreement the Scope of Development the Schedule of Performance and the Terms and Conditions Applicable to the Construction of the Improvements Developer agrees to (i) hire a civil engineering firm to prepare the construction and bid documents for the realignment of Washington Boulevard (ii) conduct public bidding for the contract(s) for the construction of the Improvements (iii) negotiate and enter into a construction contract(s) for the construction of the Improvements and (iv) supervise and manage the construction of the Improvements In connection with its supervision and management of the construction of the Improvements Developer shall use its best efforts to insure that the Improvements are constructed in accordance with the construction contract(s) and the other documents and terms and conditions hereof applicable thereto

Agency agrees and acknowledges that provided such costs are preapproved by Agency the third party costs incurred by Developer in connection with the foregoing shall be the financial responsibility of the Agency Agency shall not bear the costs of Developer's in house staff used to perform the Developer's obligations hereunder

2 2 Public Works Contract

The Developer acknowledges and agrees that the construction and completion of the Improvements constitutes a public work under applicable California law and Developer agrees to abide by all applicable Governmental Requirements and City policies applicable to public works projects including but not limited to competitive bidding statutes and the payment of prevailing wage rates Prior to commencement of construction of the Improvements Developer shall have submitted to the Agency and Construction Manager and the Agency and Construction Manager shall have approved the proposed contractor and subcontractor bidding procedures in accordance with the Terms and Conditions Applicable to the Improvements which such approval shall not be unreasonably withheld or delayed Developer shall advertise for and obtain bids for construction of the Improvements utilizing the Bid Package provided by the City

2 3 Completion of the Improvements

The Developer shall cause the construction and completion of the Improvements to be undertaken in accordance with the Terms and Conditions Applicable to the Construction of the Improvements The Improvements shall be completed no later than the date specified therefore in the Schedule of Performance

2 4 Construction Contracts

Prior to execution of any construction contract Developer shall have submitted to the Agency and the Construction Manager and the Agency and the Construction Manager shall have approved the proposed contractor and/or subcontractor and the form of the contract to be entered into with the contractor and/or subcontractors which such approval shall not be unreasonably withheld or delayed Each construction contract shall provide that all change orders must be approved in advance by the Agency Agency shall respond to change orders within ten business (10) days of its receipt thereof Further each construction contract shall set forth a reasonably detailed schedule for completion of each stage of construction Such contracts shall comply with the requirements of this Agreement including without limitation the Scope of Development Schedule of Performance and the Terms and Conditions Applicable to the Improvements All such contracts shall be entered into with a duly licensed and insured contractor or subcontractor Each contractor and subcontractor shall be required to comply with all applicable Insurance Requirements and Developer shall obtain evidence of such compliance prior to execution of any contract and provide such evidence to Agency upon its request Developer shall include or cause to be included a Prevailing Wage Clause in all contracts or subcontracts for construction of the Improvements Developer agrees to obtain a prevailing wage determination from the California Department of Industrial Relations prior to commencement of construction of the Improvements Developer shall cause each general contractor and subcontractor to sign a Prevailing Wage Acknowledgment Developer and Agency may require any contractor to indemnify Agency and Developer for any liabilities incurred by Agency or Developer as a result of contractor's breach of the contract negligence failure to comply with applicable laws and similar actions

2 5 Permits and Approvals

Developer shall secure (or cause to be secured) any and all permits or approvals which may be required by the City the Agency or any other governmental agency required for the construction of the Improvements. It is understood that it is the Developer's obligation to timely submit to the City and/or Agency all necessary plans and documents to obtain all required permits.

2 6 Insurance

Developer shall take out and maintain at Agency's expense such insurance for construction of the Improvements as specified in Section 4.2. Upon request by the Agency, Developer shall provide Agency with satisfactory evidence of such insurance.

2 7 Rights of Access

For purposes of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Project during normal construction hours for the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the Improvements so long as (i) Agency representatives comply with all safety rules and (ii) Agency permits upon the request of Developer, representatives of the Developer to accompany the representatives of Agency gaining such access. Agency representatives shall, except in emergency situations, notify the Developer one full business day prior to exercising its rights pursuant to this Section. In the event of an emergency, Agency representatives may immediately enter upon the Project.

2 8 Supervision of Construction

The Parties acknowledge and agree that Agency has hired LRM to act as Construction Manager to oversee the construction of the Expansion. In connection therewith, Developer agrees to provide LRM and all other parties acting as Construction Manager for the Improvements with reasonable notice of and invite them to all ongoing regular and any specially held Developer, contractor and subcontractor meetings related to construction of the Improvements. Construction Manager shall have the right, but not the obligation, to attend such meetings.

2 9 Site Preparation, Compliance with Environmental Laws

Developer shall cause the construction contractors to perform all preparation of the site for construction of the Project in accordance with Environmental Laws. Agency shall be responsible for all site preparation costs. Developer shall take or cause to be taken all reasonably necessary precautions to prevent the release of any Hazardous Materials onto the site or into the environment in connection with the use or development thereof in violation of applicable Governmental Requirements. Such precautions shall include complying with and causing all activities on the site to comply with all Governmental Requirements with respect to Hazardous Materials. In addition, the Developer shall install or shall cause to be installed and utilize such equipment and implement and adhere to all procedures, requirements and restrictions imposed by Governmental Requirements pertaining to the disclosure, storage, use, removal and disposal of Hazardous Materials. Developer further covenants that it and its contractors shall not, except for customary materials used and applied in accordance with all Governmental Requirements and in the ordinary course of completing, maintaining and operating the Improvements or customarily utilized by households for domestic purposes in accordance with all Governmental Requirements, (i) deposit Hazardous Materials in, on or upon the Project in violation of any applicable Governmental Requirements, nor (ii) permit the deposit of Hazardous Materials in, on or upon the Project in violation of any applicable Governmental Requirements.

Developer shall not enter into any construction contract unless such contract states that, prior to and during construction of the Project, the contractor shall not engage in any Hazardous Materials Activity, except in strict compliance with all Environmental Laws, and shall comply with all Environmental Laws in connection with any activity on or about the site, including the construction of the Improvements. Such contractor shall require the contractor to maintain the site upon which any Improvements are to be constructed in good condition, free from graffiti and from any accumulation of debris or waste materials. Such contractors shall require the contractor to keep and maintain the site in conformity with the Culver City Municipal Code and all other applicable Governmental Requirements. During the performance of its construction management obligations hereunder, Developer agrees to

supervise the contractor's compliance with this section and use its best efforts to cause any contractor to comply herewith

3 0 REIMBURSEMENT TO THE DEVELOPER

3 1 Prevailing Wage Acknowledgement

Prior to Agency becoming obligated to pay under any contract for the Improvements Developer shall have delivered to the Agency Prevailing Wage Acknowledgement(s) signed by the Developer and all contractors and subcontractors and Developer and its contractors shall have demonstrated to Agency's reasonable satisfaction continuing compliance with the requirements regarding prevailing wages and other laws set forth in Section 4 3 hereof and all applicable Governmental Requirements including without limitation all applicable labor laws

3 2 Agency Payment

In consideration of Developer's management of the construction of the Improvements as provided herein Agency agrees to pay Developer a fee of three percent (3%) of the cost of construction of the Improvements in accordance with the terms and conditions set forth herein. Provided that Agency has preapproved such expenses Agency shall pay to any third party the cost of expenses incurred by Developer in connection with the performance of its obligations hereunder such as the cost of insurance obtained pursuant to Section 4 2 and the cost of any bid documentation. Provided that Agency has approved the contract in accordance with Section 2 4 Agency shall pay third party contractors for the costs of construction alteration demolition installation and repair of the Improvements (within the definition of such terms as used in Labor Code § 1720(c)(2))

3 3 Payment

Developer shall cause to be submitted to Agency once each month invoices checks and such other requests for payment for costs incurred for the construction of the Improvements pursuant to contracts previously approved by the Agency and a written calculation of three percent (3%) of that amount to reimburse Developer for its administrative and overhead fees. Developer shall pre approve all third party invoices submitted to Agency for payment. Agency shall pay the Developer its fee and pay any approved invoice for construction of the Improvements less a retention of ten percent (10%) (Retention) of the amount of the payment request. Agency shall pay Developer's invoices within thirty (30) days of Agency's receipt thereof. All payments shall be made by Agency check and payment shall be delivered to the address set forth in Section 7 0 of this Agreement or in the applicable contract for construction of the Improvements

Upon satisfactory completion of the Improvements as reasonably determined by the Agency and the delivery by Developer to the Agency of a complete release of all mechanics' and materialmen's liens or receipts in full for all labor materials and equipment related to the Improvements for which a lien could be filed or a bond reasonably satisfactory to the Agency to indemnify the Agency against such liens the Agency shall pay the Retention thirty five (35) days after a Notice of Completion has been filed with the County of Los Angeles

3 4 No Acceleration

It is acknowledged by the parties that any payments by the Agency provided for herein may only be paid in those periods in which the Developer is not in Default after any applicable notice and an opportunity to cure. Therefore the failure of the Agency to make any payments during any period of Default shall not cause the acceleration of any future payments by the Agency to the Developer

3 5 Inspection of Books and Records

The Agency or its designee is hereby granted the right at the Agency's sole cost and expense and at all reasonable times during regular business hours after not less than seventy two (72) hours prior notice to inspect the books and records and other related documents of the Developer pertaining to the satisfaction of its obligations hereunder as reasonably necessary for purposes of enforcing the provisions of this Agreement. Such books records and related documents shall be maintained by the Developer at its principal business offices. Such

inspection shall be limited to not more than one time during any calendar quarter and shall be conducted in such a manner as to minimize interference with the day to day operation of the Developer business

4 0 INDEMNITY, INSURANCE AND APPLICABLE LAWS

4 1 Indemnity

To the fullest extent permitted by law Developer shall indemnify defend and hold harmless the Indemnified Parties from and against any liability (including without limitation liability for claims suits actions arbitration proceedings administrative proceedings regulatory proceedings losses expenses or cost of any kind whether actual alleged or threatened including attorneys fees and costs court costs interest or defense costs and including expert witness fees) and for any damages to property or injuries to persons including personal injury and accidental death which may be caused by any of the Developer s activities under this Agreement whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement where the same arise out of are a consequence of or are in any way attributable to in whole or in part to (i) Developer s compliance with or failure to comply with all applicable Governmental Requirements including (without limitation) all applicable federal and state labor standards (ii) defects in the construction of the Project including (without limitation) the violation of any Governmental Requirements and for defects in any work done even if done according to the Agency approved plans (iii) the breach of any term or condition of this Agreement or (iv) any other performance or act or failure to perform or act pursuant to this Agreement by Developer or by any individual or entity that Developer shall bear the legal liability therefore including (but not limited to) officers agents employees and construction project managers of Developer

Without affecting the rights of the Indemnified Parties under any provisions of this Agreement Developer shall not be required to indemnify and hold harmless the Indemnified Parties for liability attributable to the negligence or intentional misconduct of Indemnified Parties provided such negligence or intentional misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction In instances where Indemnified Parties are shown to have been negligent or to have acted with intentional misconduct and where Indemnified Parties negligence or intentional misconduct accounts for only a percentage of the liability involved the obligation of Developer will be for that entire portion or percentage of liability not attributable to the negligence or intentional misconduct of Indemnified Parties

Developer agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section identifying the Indemnified Parties as named indemnitees from each and every contractor or any other person or entity involved by for with or on behalf of Developer in the performance of this Agreement Such indemnity agreements may also identify the Developer as a named indemnitee Such indemnity agreements may be separate agreements or at Developer s discretion may consist of indemnification provisions included in Developer s contract with such third party which such provisions shall identify the Indemnified Parties as named indemnitees In the event Developer fails to obtain such indemnity obligations from others as required here Developer agrees to be fully responsible to Agency for all acts of each and every contractor or any other person or entity involved by for with or on behalf of Developer in the performance of this Agreement according to the terms of this Section

The Indemnified Parties have no obligation to monitor compliance with these requirements Failure of Indemnified Parties to monitor compliance with these requirements imposes no obligations on Indemnified Parties and will in no way act as a waiver of any rights hereunder This obligation to indemnify and defend Indemnified Parties as set forth here is binding on the successors assigns or heirs of Developer and shall survive the expiration or termination of this Agreement or this Section

Agency shall notify Developer of any claim pursuant to this Section (a Claim) shall tender its defense to Developer and assist Developer as may be reasonably requested in such defense Upon such notification and tender Developer shall have independent duties to defend (at its cost) such Claim and to indemnify the Indemnified Parties except to the extent that such injury death or damage is determined by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of the Indemnified Parties Payment of a Claim shall not be a condition precedent to an Indemnified Party s right to defense and indemnity

4 2 Insurance

4 2 1 General Requirements Developer and Agency agree and acknowledge that it is the intent of the parties that Developer obtain insurance to insure Developer s obligations and actions hereunder including without limitation Developer s indemnification obligations as set forth in the previous section Developer agrees that it is Developer s responsibility and obligation and not Agency s to obtain such insurance and determine that such insurance adequately insures Developer for its indemnification and other obligations hereunder The Agency makes no representation or warranty to Developer regarding the sufficiency of the insurance required hereunder for such purpose Agency agrees to pay the cost of any insurance obtained by Developer including insurance required by this section

At all times during the term of this Agreement without limiting the indemnity provisions set forth herein to the fullest extent permitted by law Developer at Agency s expense shall procure and maintain in full force and effect at a minimum the following policies of insurance insuring the Developer for its obligations hereunder from a company or companies authorized to do business in the State of California or from a company or companies listed on the California list of Eligible Surplus Lines Insurers (http://www.sla.cal.org/carrier_info/lesli/) with a current rating from A M Best Company of A VIII or better

(a) General Liability Commercial general liability insurance which affords coverage at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage form ISO CG 00 01 11 85 with minimum limits of not less than \$3 000 000 per occurrence

(b) Automobile Liability Commercial automobile liability insurance with coverage at least as broad as ISO CA 00 01 06 92 covering Symbol 1 (Any Auto) with minimum limits of \$1 000 000 combined single limits

(c) Worker s Compensation Workers Compensation insurance as required by the State of California and Employer s Liability insurance with a minimum limit of \$1 000 000 per accident or occupational illness for bodily injury or disease

(d) All Risk Insurance Fire and hazard all risk insurance covering 100% of the replacement cost of the Improvements (including offsite materials) in the event of fire lightening windstorm vandalism malicious mischief and all other risks normally covered by all risk coverage policies in the area where the Improvements are located (including loss by flood if the site is in an area designated as subject to the danger of flood and earthquake (if commonly carried by similar projects in the region and available at reasonable rates))

4 2 2 Endorsements

(a) The policy or policies of insurance required by Subsections (a) and (b) above shall be endorsed as follows

(1) The Agency and City while acting within the scope of their authority shall be named additional insureds such insurance is to be primary and not contributing with any other insurance or self insurance maintained by said additional insureds For Section 4 2 1(a) the additional insured endorsement shall be equivalent in coverage scope to ISO CG 20 10 11 85

(2) In the event of one insured whether named or additional incurring liability to any other of the insured whether named or additional the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured except that the limits of insurance shall not be increased thereby

(3) The same shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation (or ten (10) days for nonpayment of premium only) has been served upon the Agency and the City Risk Manager by registered or certified mail

(4) Such insurance is primary and any other insurance deductible retention or self insurance maintained by the indemnified parties shall not contribute with such primary insurance

(5) Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the insureds added by this endorsement

(b) The policy or policies of insurance required by Section 4 2 1(d) above shall be endorsed as follows

(1) The policies shall include an executed endorsement on a form provided by the City Attorney showing Agency as an additional insured

(2) A waiver of subrogation stating that the insurer waives indemnification from Agency A waiver of subrogation shall also apply to Subsections 4 2 1(a) and (c)

(3) The policy or policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City Risk Manager and the Executive Director by registered or certified mail

4 2 3 Deductible and Self Insured Retention In the event any of the insurance coverages required to be furnished by Developer have deductible or self insured provisions Developer shall fully protect the Agency and City in the same manner as those interests would have been protected had the policy not contained the deductible or self insured provision The deductible or self insured amount shall be shown on any evidence of insurance provided to Agency and Agency reserves the right to limit said amount and to review Developer s financial statements if the amount exceeds a level reasonably acceptable to the City Risk Manager A deductible amount of not more than Five Thousand Dollars (\$5 000 00) shall be acceptable to the Agency

4 2 4 Evidence of Insurance Developer shall deliver said policy or policies of insurance or certified true copies thereof or endorsement forms furnished by the City Risk Manager (evidence of insurance) for approval as to sufficiency by the City Risk Manager and approval as to form by the City Attorney or Agency counsel as appropriate which approval shall not be unreasonably withheld or delayed The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf If Workers Compensation Coverage is placed with the State Compensation Insurance Fund a State Compensation Insurance Fund Certificate of coverage will be acceptable if endorsed in accordance with Section 4 2 2(b) above

4 2 5 Failure to Maintain Coverage Should Developer fail to maintain policies with the coverages and limits specified in Section 4 2 1 above in full force and effect at all times Agency shall have the right to withhold any payment due Developer or to suspend Developer s operations until Developer has fully complied with these provisions and furnished the required evidence of insurance In the event that Developer s operations are suspended for failure to maintain acceptable insurance coverage Developer shall not be entitled to an extension of time for completion of the Improvements

4 2 6 Insurance for Contractors and Subcontractors All contractors and subcontractors for the construction of the Improvements shall be included as additional insureds under Developer s policies or Developer shall be responsible for causing such contractors and subcontractors to purchase the appropriate insurance in compliance with the terms of this Section All coverages and endorsements of coverages for contractors and subcontractors shall be subject to all of the requirements stated herein In addition contractors and subcontractors whose profession requires licensure including but not limited to architects and engineers shall be required to maintain professional liability insurance applicable to their respective professions in an amount not less than \$1 million per claim without environmental restrictions for a period whose prior acts coverage shall be no later than the first date of this Agreement and whose extended reporting coverage period shall be at least three years from the time that all work under this Agreement is completed

4 3 Prevailing Wage and Other Labor Requirements

Developer shall carry out and/or cause any contractors and subcontractors to carry out the construction of the Improvements in conformance with all applicable laws including any applicable federal and state labor standards which such standards shall include, without limitation (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) and (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

Developer further agrees that any work performed pursuant to this Agreement is a public work (as defined in Labor Code Section 1720) (the "work") and shall comply with the requirements of Labor Code Section 1770 *et seq*. In all bid specifications for any public work contracts and subcontracts for the work, 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 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, Developer is required to secure payment of compensation to its employees. Developer shall include in every contract for the development of the Project: (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.

From time to time during the term of this Agreement, upon the request of Agency, Developer shall certify to the Agency that it is in compliance with all applicable labor laws. The Agency makes no representation or warranty to Developer regarding the applicability of any labor laws to the Project. In the event that any claim or legal action is brought against the Developer and/or Agency pertaining to the compliance of the construction, alteration, demolition, installation or repair of the Improvements with any labor laws, the Developer shall defend itself and, without cost to the Agency, defend, indemnify and hold the Agency harmless therefrom. Developer may require any contractor to indemnify the Developer for its obligations pursuant to this section. Upon the Developer's failure to defend, indemnify and hold the Agency harmless from such claims, the Agency shall be entitled to recover from the Developer all of the Agency's costs and expenses incurred on account of such failure, including (but not limited to) reasonable attorneys' fees and costs. Each party shall promptly notify the other party of the filing of any such claim or action and cooperate with the defense thereof. The Developer shall not settle or compromise the defense of such claim or action on behalf of the Agency, or permit a default judgment to be taken against the Agency, without the prior written approval of the Agency, which shall not unreasonably be withheld. Developer shall allow representatives of Agency access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by Agency.

4.4 Nondiscrimination in Employment

Developer certifies and agrees that all persons employed or applying for employment by it and all general contractors, subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, sexual orientation, childbirth or related medical condition, medical

condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U S C Section 2000, et seq , the Federal Equal Pay Act of 1963, 29 U S C Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U S C Section 621, et seq , the Immigration Reform and Control Act of 1986, 8 U S C Section 1324b, et seq , 42 U S C Section 1981, the California Fair Employment and Housing Act, Cal Government Code Section 12900, et seq , the California Equal Pay Law, Cal Labor Code Section 1197.5, Cal Government Code Section 11135, the Americans with Disabilities Act, 42 U S C Section 12101, et seq , and all other antidiscrimination laws and regulations of the City, the United States of America and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of Agency access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by Agency.

4.5 Compliance with Section 33422.1 of the Act

To the greatest extent feasible, Developer shall provide, and shall require its contractors and their subcontractors to provide, opportunities to the lower income residents of the Project Area for training and employment arising in connection with the construction of the Improvements. In addition and to the greatest extent feasible, Developer shall award, and shall require its contractors and subcontractors to award, contracts for work to be performed in connection with construction of the Improvements to residents of the City, to business concerns which are located in or owned in substantial part by residents of the City and to persons displaced, if any, as a result of the development of the Project. Upon the request of Agency, Developer shall deliver to Agency a written report setting forth its compliance with the requirements of this Section.

5.0 REPRESENTATIONS AND WARRANTIES

5.1 Agency's Representations

Agency represents and warrants to Developer as follows:

(a) Authority Agency is a public body corporate and politic existing pursuant to the Community Redevelopment Law which has been authorized to transact business pursuant to action of the City. The execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(b) No Conflict To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract agreement or order to which Agency is a party or by which it is bound.

(c) No Agency Bankruptcy Agency is not the subject of a bankruptcy proceeding.

(d) Litigation To the best of Agency's knowledge, there are no actions, suits, material claims, legal proceedings or any other proceedings affecting the Site or any portion thereof at law or in equity before any court or governmental agency, domestic or foreign.

(e) Governmental Compliance To the best of Agency's knowledge Agency has not received any notice from any governmental agency or authority alleging that the Project is currently in violation of any law ordinance rule regulation or requirement applicable to its use and operation. If any such notice or notices are received by Agency following the Effective Date of this Agreement Agency shall within ten (10) days of receipt of such notice notify Developer.

Until the completion of the Improvements Agency shall upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true immediately give written notice of such fact or condition to Developer.

5.2 Developer's Representations

Developer represents and warrants to Agency as follows:

(a) Organization Developer is a duly organized validly existing limited liability company in good standing under the laws of the State of California and has the power and authority to own and lease property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Developer and setting forth the membership interests control and management of Developer delivered to the Agency are true and correct (and true copies of the originals if applicable) as of the Effective Date.

(b) Authority Developer has the legal power right and authority to execute deliver and enter into this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out give effect to and consummate the transactions contemplated by this Agreement and to perform and observe the terms and provisions of all of the above. The parties who have executed this Agreement and all other documents or instruments executed and delivered or to be executed and delivered pursuant to this Agreement are authorized to execute and deliver the same on behalf of the Developer and all actions required under Developer's organizational documents and applicable governing law for the authorization execution delivery and performance of this Agreement and all other documents or instruments executed and delivered or to be executed and delivered pursuant hereto have been duly taken.

(c) Valid and Binding Agreements This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or if not yet executed or delivered will constitute when so executed and delivered legal valid and binding obligations of Developer enforceable against it in accordance with their respective terms.

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

(e) Litigation No action suit or proceedings are pending or threatened before any governmental department commission board bureau agency or instrumentality to which the Developer is or may be made a party or to which any of its property is or may become subject which has not been fully disclosed to the Agency which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(f) No Conflict Developer's execution and delivery of this Agreement and any other documents or instruments executed and delivered or to be executed or delivered pursuant to this Agreement and the performance of any provision condition covenant or other term hereof or thereof do not or will not conflict with or result in a breach of any statute rule or regulation or any judgment decree or order of any court board commission or agency whatsoever binding on Developer or any provision of the organizational documents of Developer or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party or will result in the creation or imposition of any lien upon any assets or property of Developer other than liens established pursuant hereto.

(g) No Developer Bankruptcy No attachments execution proceedings assignments for the benefit of creditors insolvency bankruptcy reorganization receivership or other proceedings are pending or threatened against the Developer or any parties affiliated with Developer nor are any of such proceedings contemplated by Developer or any parties affiliated with Developer.

Until the completion of the construction of the Improvements Developer shall upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true immediately give written notice of such fact or condition to Agency

6 0 DEFAULTS, REMEDIES AND TERMINATION

6 1 Defaults – General ←

Failure or delay by either Party to perform or comply with any term or provision of this Agreement constitutes a “Default” under this Agreement

In addition, each of the following shall constitute a Default of Developer hereunder

(a) The occurrence of any default under any of the construction contracts or subcontracts entered into for construction of the Improvements following the expiration of any applicable notice or cure period set forth therein, or

(c) Construction of the Improvements is abandoned, or, subject to any *force majeure* provisions contained in the applicable construction contract, any element of the Improvements is not completed within the time allocated for it in the Schedule of Performance or the Improvements are not completed by the date set forth therefore in the Schedule of Performance, or

(d) Construction of the Improvements is halted prior to completion for any period of thirty (30) consecutive days for any cause which is not described in any *force majeure* provisions contained in the applicable construction contract, or

(e) A court of competent jurisdiction enters an order enjoining construction of the Improvements, or such a court or an authorized governmental agency orders that construction of the Improvements be suspended or halted, or any required approval, license or permit is withdrawn or suspended, and the order, withdrawal or suspension remains in effect for a period of thirty (30) days, or

(f) There exists a default, after the expiration of any applicable notice or cure periods, architecture contract, engineering contract, any construction contract or any other contract for or pertaining to the construction of the Improvements, or

(g) Any surety obligated for any Improvements is called upon to perform its obligations, or

(h) Developer (i) is unable to pay their respective debts as they become due, or files of a petition in bankruptcy (or otherwise commences bankruptcy or a similar proceeding), or (ii) has filed by or against either of them or any other guarantor of Developer, 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

The injured Party shall give written Notice of Default to the Party in default, specifying the default complained of by the injured Party Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured Party

may not institute proceedings against the Party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any Default, nor shall it change the time of Default.

If the Default is not cured or commenced to be cured and thereafter diligently pursued to completion by the defaulting Party within thirty (30) calendar days after service of the Notice of Default, such failure shall constitute an "Event of Default" under this Agreement and the defaulting Party will be liable to the other Party for any damages caused by the Default and other relief as is afforded by applicable Governmental Requirements.

This Agreement may be terminated by the nondefaulting party upon an Event of Default and exercise any other rights and remedies to which it may be entitled under the law.

Developer shall be entitled to require indemnification from any contractor for any default of contractor resulting in Developer incurring any liability to Agency pursuant to this Agreement.

6.2 Institution of Legal Actions

In addition to any other rights or remedies, either Party may institute legal action to cure, correct or remedy any Default, or to recover damages for any Event of Default, or to obtain any other 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, in an appropriate Municipal Court in that County, or in the Federal District Court in the Central District of California.

6.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

6.4 Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Assistant Executive Director of the Agency or in such other manner as may be provided by law.

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

6.5 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.

6 6 Damages

If either the Developer or the Agency defaults with regard to any of the provisions of this Agreement, the non-defaulting Party shall serve written Notice of such Default upon defaulting party. If the Default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the Notice of Default, the defaulting party shall be liable to the other party for any damages caused by such Default.

6 7 Consequential Damages

Without limiting the generality of the foregoing, neither Agency nor Developer shall in any event be entitled to, and each hereby waives, any right to seek consequential damages of any kind or nature from the other arising out of or in connection with this Agreement, and in connection with such waiver each is familiar with and hereby waives the provision of Section 1542 of the California Civil Code which provides as follows:

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

6 8 Specific Performance

If either the Developer or the Agency defaults under any of the provisions of this Agreement, the non-defaulting party shall serve written Notice of such Default upon the defaulting party. If the Default is not commenced to be cured by the defaulting Party within thirty (30) days of service of the Notice of Default, the non-defaulting Party at its option may institute an action for specific performance of the terms of this Agreement.

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.

6 9 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.

6 10 Attorneys' Fees

In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees and costs.

As used in this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the Parties hereto (including, without limitation, in-house or other counsel employed by Agency) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to enforcement of judgments, appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

7.0 ASSIGNMENT, SUCCESSORS AND ASSIGNS

7.1 Prohibition Against Change in Management and Control of Developer

The qualifications and identities of Developer and its members are of particular concern to the City and the Agency. It is because of those unique qualifications and identities that the Agency has entered into this Agreement with the Developer and is imposing restrictions upon any Change of Control of the Developer and any Transfer of this Agreement. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Without the prior written approval of Agency, which approval may be granted or withheld in the sole and absolute discretion of Agency, until completion of the construction of the Improvements hereunder (in such a manner as reasonably approved by Agency), Developer shall not (i) Transfer all or any part of its interest in or rights under this Agreement, or (ii) effect any Transfer or change in the membership interests, control or management of Developer (collectively a Change of Control).

Notwithstanding the foregoing, if control or ownership of Developer must be changed in order to obtain financing, Agency shall grant or withhold its approval in its reasonable discretion provided that Jeffrey Rush, Ron Pickett, and Hal Katersky or other employees of Developer reasonably approved by Agency remain the individuals exercising management control over the Project and the implementation of this Agreement and remain the Developer's primary contact with Agency.

Any Transfer or Change of Control in violation hereof will constitute a breach and entitle the Agency to use any remedy available to it at law or equity.

7.2 Change of Ownership

If control or ownership of Developer must be changed in order for Developer to obtain debt or equity financing, then the Developer shall seek the prior written consent of Agency for such Change of Control in accordance with this Section.

7.3 Request for Transfer or Change of Control, Approval

Except as specifically set forth herein, upon Developer's delivery of written Notice to Agency requesting such approval, Agency reserves sole and absolute discretion to approve or disapprove a request for Transfer or Change of Control made pursuant to this Section. Any such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Agency to evaluate the proposed assignee resulting from the Change of Control or Transfer as reasonably determined by Agency. An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be submitted to Agency for all proposed Transfers. No Transfer shall be effective nor shall Developer be relieved of liability hereunder unless and until the transferee assumes all of the

9 2 Conflicts of Interest

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

9 3 Relationship Between the Agency and Developer

It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other In performing this Agreement Developer is an independent contractor Accordingly except as expressly provided herein or in the Attachments hereto Developer shall have no rights powers duties or obligations with respect to the Improvements The Developer agrees to indemnify hold harmless and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and the Developer with respect to the construction of the Improvements

9 4 Agency Approvals and Actions

Whenever a reference is made herein to an action or approval to be undertaken by the Agency the Assistant Executive Director is authorized to act on behalf of the Agency unless specifically provided otherwise or the context should require otherwise

9 5 Counterparts

This Agreement may be signed in multiple counterparts which when signed by all parties shall constitute a binding agreement

9 6 Integration

This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement All prior or contemporaneous agreements understandings representations and statements oral or written are merged in this Agreement and shall be of no further force or effect Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material This Agreement includes pages 1 through 28 and Attachments Nos 1 through 8 which together constitute the entire understanding and agreement of the parties notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof

9 7 Titles and Captions

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 Reference to section numbers are to sections in this Agreement unless expressly stated otherwise

9 8 Interpretation

As used in this Agreement masculine feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates The word including shall be construed as if followed by the words without limitation This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as though prepared jointly by both parties

9 9 Modifications

Any alteration change or modification of or to this Agreement in order to become effective shall be made in writing and executed by the authorized representatives of the Agency and the Developer

9 10 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

9 11 Computation of Time

The time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day unless the last day is a holiday or Saturday or Sunday and then that day is also excluded The term holiday shall mean all holidays as specified in § 6700 and 6701 of the California Government Code If any act is to be done by a particular time during a day that time shall be Pacific Time Zone time When day or days are referred to herein unless explicitly stated as a business day day or days shall mean calendar days

9 12 Legal Advice

Each Party represents and warrants to the other the following they have carefully read this Agreement and in signing this Agreement they do so with full knowledge of any right which they may have they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement and they have freely signed this Agreement without any reliance upon any agreement promise statement or representation by or on behalf of the other party or their respective agents employees or attorneys except as specifically set forth in this Agreement and without duress or coercion whether economic or otherwise

9 13 Time of Essence

Time is expressly made of the essence with respect to the performance by the Agency and the Developer of each and every obligation and condition of this Agreement

9 14 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 including but not limited to releases or additional agreements

9 15 Non Liability of Officials and Employees of the Agency and the Developer

No member official or employee of the Agency shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Agency or for any amount which may become due to the Developer or its successors or for any obligations under the terms of this Agreement

9 16 Enforced Delay, Extension of Times of Performance

Performance by either Party hereunder shall not be deemed to be in Default and all performance and other dates specified in this Agreement shall be extended where delays or Defaults are due to war insurrection strikes lockouts riots floods earthquakes fires casualties acts of God acts of the public enemy epidemics quarantine restrictions freight embargoes lack of transportation governmental restrictions or priority unusually severe weather inability to secure necessary labor materials or tools acts or omissions of the other party acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency) Notwithstanding anything to the contrary in this Agreement an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause

9 17 Third Party Beneficiaries

Except for the City which is expressly made a third party beneficiary hereof this Agreement is made and entered into for the sole protection and benefit of the Agency its successors and assigns and Developer its permitted successors and assigns and no other person or persons shall have any right of action hereon or hereunder

[Signatures on Next Page]

IN WITNESS WHEREOF the Agency and Developer have signed this Agreement as of the date set forth above

DEVELOPER

RUSH PACIFICA, LLC a California limited liability company

By _____
Jeffrey L. Rush Manager

AGENCY

CULVER CITY REDEVELOPMENT AGENCY a public body corporate and politic

By _____
Susan Evans Assistant Executive Director

ATTEST

Agency Secretary

APPROVED AS TO FORM

LEIBOLD McCLENDON & MANN P C

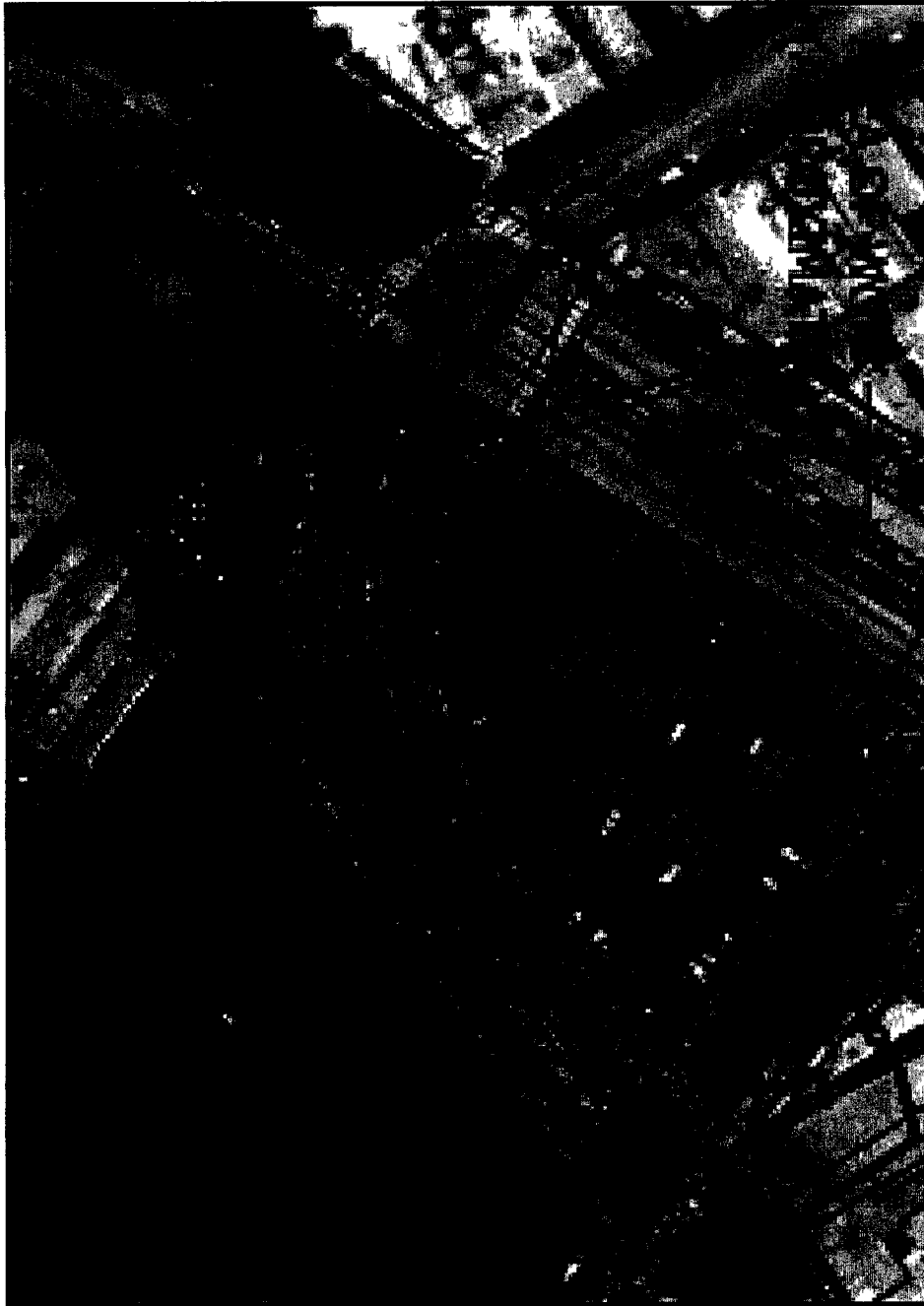
By _____
Barbara Zeid Leibold Special Counsel

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ATTACHMENT NO 1

SITE MAP

Expansion Scope of Development (Town Plaza Expansion Area) (Not to scale and intended solely for purposes of general reference to the area and not meant to be exact in any manner)



h22

ATTACHMENT NO 2

WASHINGTON BOULEVARD LEGAL DESCRIPTION

[Attached]

[To come]

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ATTACHMENT NO 3
EXPANSION LEGAL DESCRIPTION

[Attached]

[To come]

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ATTACHMENT NO 4
REALIGNMENT SCOPE OF DEVELOPMENT

[Attached]

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REQUEST FOR PROPOSAL

ENGINEERING DESIGN SERVICES

for

***WASHINGTON BOULEVARD REALIGNMENT
PROJECT***

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NOTE The following Scope of Work may be altered in a minor fashion by the City's Public Works Director/City Engineer

SECTION 1

PROJECT DESCRIPTION AND LOCATION

Rush Pacifica LLC (Developer) will be entering into an Infrastructure Improvement Agreement (IIA) with The Culver City Redevelopment Agency (Agency) to construct certain street improvements. These improvements are located along Ince and Culver Boulevards between Washington Boulevard and Main Street. The work consists of widening approximately 300 linear feet of roadway with asphaltic concrete and PCC curb, gutter and sidewalk along the above mentioned limits. The work also includes the demolition of all street improvements along the one block portion of Washington Boulevard from Ince Boulevard to Culver Boulevard/Main Street. A portion of this one block area will then become a part of 9300 Culver Boulevard's parcel and the other portion will become an expanded town plaza area.

As a result of Washington Boulevard's realignment in downtown, The Agency has also entered into an agreement with LRM Landscape Architects to prepare conceptual plans, design documents and construction documents for bidding the expansion of the existing Town Plaza, which is immediately adjacent to this scope of work as a result of the realignment. LRM's scope of work assumes that the existing Washington Boulevard segment between Main/Culver and Ince will have been demolished along with the small parking lot immediately adjacent to it. The Developer has announced its intention to construct below grade subterranean parking and a below grade roadway connecting the private parcels as well. The at-grade surface level of this subterranean work will comprise portions of the expanded town plaza area. The Developer will be constructing these improvements pursuant to a construction contract that assumes the work is a public work, subject to all applicable rules and regulations that apply to a public works project.

The Developer requires civil engineering design services of a licensed civil engineer (Consultant) to produce a full bid package that the Developer will use to obtain a construction contractor.

The scope of work also includes but is not limited to the following:

- a. Consultant shall prepare a topographic survey and map of the project area as defined in the Washington Realignment Plan prepared by CBM Consultants.
- b. Consultant shall coordinate with all utility companies with facilities within the project area to ensure appropriate treatment of existing utility facilities.
- c. Consultant shall prepare complete roadway plans and specifications and bid forms for the new roadway alignment including preparation of all necessary construction documents for bidding to general contractors including:
 - A Demolition Plan for existing roadway and other street improvements.
 - A plan for traffic and street signs, pavement striping, relocation of existing and installation of new facilities.
 - Plans for modifications to the existing traffic control equipment in the downtown area along Culver Boulevard between Culver/Canfield to Culver/Duquesne inclusive as well as Ince/Washington. Prepare a specific plan to alter existing traffic control and striping installation as a result of the realignment at the Ince/Washington, Culver/Main and Ince/Culver intersections including preparation of signal timing charts (to LADOT ATSAC Standards for 170 Type Controller) and loop placement specifications. Such modifications to the traffic controls shall be done to the satisfaction of the City's Engineering Division.
 - Obtain all necessary permits from the City.
- d. Consultant shall participate in meetings with City and Agency staff and the Developer (up to three meetings) to review the draft documents the Consultant has prepared for comment and alteration.

- e Consultant shall prepare a cost estimate and timeline for the preparation of Plans and Specifications (not to exceed six weeks)

SECTION 2

SCOPE OF SERVICES

The Consultant shall conduct all engineering and administrative tasks necessary to complete this project including a pavement deflection test along the project limits This includes utility clearances topographical survey final design plans construction specifications quantity and cost estimates

The Consultant shall provide the following items in the format stated for each submittal

- All drawings shall be prepared on 24 x 36 sheets Plan and profile base sheets shall be prepared at not greater than 1"=20' horizontal scale and 1"=2' vertical scale All plans shall be prepared and delivered in hardcopy and AutoCAD 2000 or AutoDesk Map 4 (or later version) electronic format
- Prepare technical specifications incorporate City standard specifications as provided by the City and provide standard plans and details for construction Revise and supplement the document as needed
- Submit a separate set of plans to all the utility companies that may be affected by the proposed improvements for their review and comment Perform all necessary research to establish precise location of all utilities and utility easements
- Submit plans and specifications for City review and comment and alter them as needed
- Submit one (1) hard copy print out of final specifications to the City on 8½ x 11 paper In addition provide a digital copy in Microsoft Word 2000 (or later version) electronic format
- Prepare and submit quantity and cost estimates
- Submit Final Construction Plans in digital format AutoCAD 2000 (or later version) and one (1) set in mylar (4 mil) wet stamped and signed by a California Licensed Civil Engineer and a wet stamped and signed topographical sheet by the supervising Californian Land Surveyor The project survey shall tie into at least one City GPS point
- Transfer all red marks from As-Builts submitted by the contractor to the Final Record Drawings and prepare for submittal to the City wet stamped and signed on mylar

Proposing firms are expected to use this Scope of Services as a guide only The Consultant shall identify all the engineering tasks required to design the project and shall bear all liability including financial to correct any errors or omissions in their design during construction

TASK I – PRELIMINARY DESIGN STAGE

- 1 Attend preliminary design meeting(s) with the City and other coordination meetings with other Agency personnel if applicable
- 2 Review all documents available at the Culver City Public Works Department/Engineering Division necessary to complete the work
- 3 Prepare and mail letter on City letterhead to each utility company doing business in the City Request plans for any existing improvements prior rights information and if required a preliminary cost estimate and schedule from each company for any required relocation Provide utility coordination throughout the design stage The Consultant is responsible to mail the letters via certified mail
- 4 Perform a design survey under the supervision of a California Licensed Land Surveyor (or Civil Engineer with a pre-1982 license) with elevations based upon the City's GPS Bench Mark

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According to the information obtained in Tasks 2 & 3 above it may be necessary to verify the depth of existing utilities or substructures In addition identify and set ties for all survey monuments to be disturbed by construction

- 5 Prepare and submit preliminary cost estimates and plans (50% completion level) Submit an outline of the construction specifications
- 6 Prepare and submit cost estimates and plans (90% completion) incorporating City utility and other comments from the previous submittal Submit a complete set of the construction specifications
- 7 Conduct kick-off and progress meetings with the City Staff
- 8 Prepare the necessary plans that may include Traffic Control Striping Construction Phasing Plan and Local Storm Water Pollution Prevention Plan

TASK II – FINAL DESIGN STAGE

- 1 Prepare final construction cost estimate and plans (100% completion level) incorporating comments from the City other affected agencies and utility companies
- 2 Upon City approval of the plans and specifications provide final construction drawings in digital format and one (1) set of mylars (4 mil) wet stamped and signed by a California Licensed Civil Engineer in charge wet stamped and signed topographic sheet by the supervising California Licensed Land Surveyor (or Civil Engineer with a pre-1982 license)

TASK III – BID STAGE SERVICES

- 1 Respond in writing to the City project manager to address all written requests for clarification received from prospective bidders during the bid period performed by the Developer on behalf of the Agency
- 2 Attend pre-bid meeting
- 3 Prepare and issue addenda as necessary

SECTION 3

SERVICES / INFORMATION PROVIDED BY THE CITY

The City will provide the following items and/or services when applicable

- Area of Work plan (Attached to this RFP)
- Washington Realignment Plan from CBM Consultants in cooperation with Katz Okitsu & Associates (Attached to this RFP)
- Utility easement map of the area (Available upon request)
- Title report for project area (Available upon request)
- City Sewer and Storm Drain information surveys (including any GIS data) geotechnical data traffic data drawings and other data on file with the City Consultant may be required to copy plans files and other data (Available upon request)
- A digital copy of the City's standard specifications and provisions (MS Word 2000) (Available upon request)
- A digital copy of the City's Standard Title block with Vicinity Map blank plan and blank profile sheet (AutoCAD 2000) (Available upon request)

SECTION 4

REQUIRED INFORMATION TO BE SUBMITTED BY PROPOSER

- A Project Team Provide an organizational chart of pertinent staff proposed. Indicate the project staff's specific knowledge and experience in sewer design and preparation of construction plans and specifications for municipal projects. More specifically include any experience related to past projects of similar scope as the one described herein. Also indicate past experience this team has working together.
- B Provide a fee-based proposal to provide the services. The fee should be broken down at a minimum as follows:
 - 1) The number and classification of personnel required
 - 2) The number of anticipated hours
 - 3) The hourly rates for all employee classifications that may be billed to this project
 - 4) A not-to-exceed contract amount
 - 5) The cost of blue printing and printing of materials submitted to the City and others for review, mileage, telephone services, mailing/delivery, and incidental costs associated with the preparation of the plans and specifications shall be included in the cost proposed for other tasks.
- C Describe the Recommended Scope of Services to be performed that clearly displays an understanding of the project using as a basis the Scope of Services outlined in the RFP. In addition, provide a detailed explanation of your team's approach to designing the project. Include any other tasks your team will perform that may not be listed in the Scope of Services.
- D Any changes in the scope of work resulting in a contract increase or decrease in fee shall be approved by the Public Works Director in writing prior to commencement of actual change in work. No fee adjustment will be allowed unless said prior approval is authorized exclusively in writing without exception.
- E Provide the anticipated project schedule based on commencing the design project on ____ XX 2006.
- F Attend a mandatory Pre Submittal Meeting to be held on ____ XX 2006 in the offices of the City Public Works Department at City Hall.

METHOD OF SELECTION

The Developer will evaluate the Proposals taking the following into consideration:

- A Ability to perform the required services competently and expeditiously
- B Responsiveness to this RFP and the completeness of the information provided
- C The proposed Project Team's specific knowledge and experience in sewer design and preparation of construction plans and specifications for municipal projects. Also their past experience working together as a team on similar municipal projects.
- D Proposed fee

The proposed fee is not intended to be the governing factor in the selection process but it will be a consideration.

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ATTACHMENT NO 5
EXPANSION SCOPE OF DEVELOPMENT

[Attached]

ATTACHMENT NO 6

TERMS AND CONDITIONS APPLICABLE TO THE CONSTRUCTION OF THE IMPROVEMENTS

Design Phase

The Realignment Scope of Development and the Expansion Scope of Development constitute the design for the Project and shall be used by Developer in obtaining all bids

Bidding Phase

Bidding Documents The Agency shall prepare all documents constituting the bid package for the Expansion and shall provide them to the Developer. Developer shall hire a civil engineering firm reasonably acceptable to Agency at Agency expense to prepare the bid package for the realignment of Washington Boulevard. Developer shall obtain Agency's approval of the bid package for the realignment of Washington Boulevard prior to using it to solicit bids. The bid package (bid notices, bid plans and specifications, bid contract documents, etc.) shall contain all of those provisions required by state law for public works projects, including (but not limited to) all applicable provisions of the California Public Contracts Code and Labor Code Sections 1776, 1777.5 and 1777.7 and shall adhere to Greenbook standard specifications and procedures. The Developer shall not release the Notice Inviting Bids until the complete bid package has been reviewed and approved by the Agency in consultation with the Agency's Attorney and the City Engineer. The Agency shall provide the Developer with copies of all scopes of work, plans and specifications to be utilized in connection with undertaking the Improvements and as to the kind and quality of materials and equipment to be used therefor. Unless otherwise noted, the bidding documents and process shall conform to the following minimum requirements:

- 1 The Developer shall advertise for bids and open all bids in accordance with all Governmental Requirements
- 2 The bidding documents shall require the bidder/contractor to provide the following bonds:
 - a Bid Bond 10% of the amount of the bid
- 3 The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in the amount of at least \$3,000,000 prior to the award of the contract and evidence of compliance with the insurance requirements set forth in Section 4.2 of this Agreement
- 4 The bidding documents shall provide for monthly progress payments to the contractor
- 5 The contractor shall be required to deliver a prevailing wage acknowledgement and shall be required to pay prevailing wages. Any subcontractor for subcontracts entered into by the contractor shall also be required to deliver a prevailing wage acknowledgement and shall be required to pay prevailing wages
- 6 The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened
- 7 The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid and are not eligible for public finance unless previously approved by the Agency
- 8 Developer shall keep a log of all persons obtaining bidding documents and their mailing address
- 9 Addenda shall be mailed by first class mail to all bidding document holders and the Assistant Executive Director
- 10 Submitted bids shall be in sealed envelopes

- 11 Bids shall not be accepted after the stated time for submission
- 12 Bid opening shall be conducted by the Developer at the Developer s place of business or other site mutually acceptable to the Developer and Assistant Executive Director
- 13 Sealed bids shall be opened and read aloud immediately following the submission time An Agency representative shall be invited to attend the bid opening
- 14 Conditioned bids unless the bid proposal lists them for all to bid on shall not be accepted
- 15 The arithmetic of the two lowest bid proposals received shall immediately be checked for errors
- 16 A tabulation of all bids received shall be provided to the Assistant Executive Director
- 17 Award shall be made to the lowest responsible bidder within a reasonable period of time subject to the approval of the Agency If the Developer determines that a lowest bidder is non responsible the Developer shall communicate such determination to the Agency Any determination to award the contract(s) to any person other than the lowest bidder shall be made by the Agency in accordance with state law
- 18 A preconstruction meeting shall be held with the contractor prior to beginning the work An Agency and/or City representative shall be invited to attend the meeting
- 19 The Notice to Proceed shall be issued within a reasonable period of time following the contract execution

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Construction Phase

- A The Assistant Executive Director shall be provided a copy of the construction schedule
- B Developer shall require the contractor to conduct regular construction status meetings to which the Construction Manager shall be invited
- C Any additional costs incurred for the benefit of the Developer such as accelerating the construction schedule shall not be eligible for public financing unless previously approved by the Agency
- D Any additional construction costs incurred due solely to delays caused by the Developer shall not be eligible for public financing
- E All contracts and construction related records shall be available to the Agency as and when required for the final determination of eligible costs for the public financing
- F The Developer agrees to undertake the superintendence of the construction of the Improvements by employing the services of one or more construction project managers. The Developer shall be responsible for coordinating all aspects of construction of the Improvements in cooperation with LRM who will act as Construction Manager on behalf of the Agency for the Expansion. The Construction Project Manager shall furnish efficient business administration and superintendence of the construction of the Improvements so as to cause an adequate number and amount of subcontractors, workmen and materials to be furnished by the successful bidder(s) and shall continuously monitor the work performed to verify that it is being carried out in an expeditious and proper manner. The Construction Project Manager hired by Developer shall coordinate all aspects of the construction of the Improvements with the Construction Manager acting on behalf of the Agency. The Developer shall provide the Agency with the names of all subcontractors for each portion of the construction of the Improvements. All construction of the Improvements shall be in accordance with the plans and specifications as will be set forth in the bid package(s) for the Improvements and such change orders thereto as the Agency may from time to time authorize. The Developer shall comply with and give notices required by all laws, ordinances, rules, regulations and lawful orders of public authorities having jurisdiction over construction of the Improvements.

Construction Schedule

Developer shall use its best efforts to cause the construction of the Improvements to be commenced and completed no later than the times set forth therefor in the bid package(s) for the Improvements. Developer may request in writing setting forth the reason therefore that the Assistant Executive Director extend those times and the Assistant Executive Director shall not unreasonably withhold condition or delay its consent for such extensions. Moreover, the Assistant Executive Director shall grant extensions necessitated due to delays caused by the following: (i) adverse weather conditions; (ii) war, riot or labor disputes; (iii) fire or other casualty; (iv) judicial orders; (v) inability to procure or general shortage of labor or materials in the normal channels of trade; (vi) causes beyond the Developer's reasonable control, whether similar or dissimilar to the foregoing; financial inability excepted; (vii) acts of the Agency; and (viii) changes in the plans requested by the Agency after the Agency has given its approval of the final plans (provided however there shall be no extension of the deadline if the changes in the plans are requested by the Developer or were caused by errors made by the Developer) (collectively Unavoidable Delays) and the extension shall be for a period at least equivalent to the period of such Unavoidable Delays.

Stop Notices

The Developer shall include in each construction contract a provision authorizing the Developer to withhold payments otherwise due to such contractor for work on the Improvements in the event that stop notices are filed with the Agency or the City. In the event that a stop notice which is valid on its face is timely filed with the Agency, the Agency will promptly notify the Developer. In the event that any apparently valid stop notices are on file with the Agency when the Developer requests a payment and/or renders its final account to the Agency, the Agency shall withhold from the amount owed to the Developer under this Agreement a sum equal to 125% of the amount claimed in each stop notice until the Developer provides the Assistant Executive Director proof of payment.

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and unconditional release conditional release and payment expiration by operation of law or disposition pursuant to court order of such stop notice

Bonds

The Developer shall obtain and maintain or require each contractor or subcontractor to obtain and maintain faithful performance and labor and material bonds in a form reasonably approved by the Agency each with a responsible corporate surety doing business within the state of California in amounts equal to 100% of the estimated cost to construct the contractor's or subcontractor's portion of the Improvements for the faithful performance bond and 100% of the estimated cost to construct the contractor's or subcontractor's portion of the Improvements for the labor and material bond. The faithful performance and labor and material bonds shall be released ninety (90) days after the Developer or contractor records a Notice of Completion pursuant to Civil Code Section 3093.

Workers Compensation

The Developer shall require contractor(s) and subcontractor(s) to comply with all of the provisions of the Workers Compensation Insurance and Safety in Employment Laws of the State of California including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all similar state federal or local laws applicable and shall indemnify and hold harmless the Agency from and against all claims liabilities expenses damages suits actions proceedings and judgments of every nature and description including reasonable attorney's fees presented brought or recovered against the Agency or their officers employees and agents for or on account of any liability under any of said laws which may be incurred by reason of any work performed under this Agreement by the Developer or on behalf of the Developer.

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Contract(s), Warranty

Developer shall include in its agreement(s) with contractor(s) the following provision

Contractor(s) WARRANTS to Developer and to the Culver City Redevelopment Agency that all materials used in the work and all labor performed are and will be in conformity with the Scope of Development Contractor(s) shall at its own expense make any and all repairs and replacements that shall become necessary as the result of any failure of the work to conform to the aforementioned Scope of Development This obligation shall survive the termination of this Agreement

Correction of Work

Developer shall promptly correct work reasonably rejected by the Agency as failing to conform to the Scope of Development for the Improvements whether observed before during or after completion of the work and the Developer shall correct any construction defects found within a period of one year from the date the Agency pays the Reimbursement to the Developer in its entirety to be not in accordance with the requirements of the plans and specifications for the Improvements Nothing contained herein shall be construed to establish a period of limitation with respect to other obligations of which the Developer might have under this Agreement Establishment of the time period of one year as herein described relates only to the specific obligation of the Developer to correct the construction and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Developer's liability with respect to the Developer's obligations hereunder other than specifically to correct the work The obligations set forth in this Section shall survive any expiration or termination of this Agreement

ATTACHMENT NO 7
PREVAILING WAGE ACKNOWLEDGEMENT

[Attached]

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PREVAILING WAGE ACKNOWLEDGMENT

The undersigned shall carry out the construction of the Improvements on the subject property depicted on the attached Scope of Development in Culver City California in conformance with all applicable laws including all applicable federal and state labor standards

1 **Prevailing Wage Standards** In particular the undersigned shall comply with all applicable laws including without limitation (a) the overtime provisions as applicable of the Contract Work Hours and Safety Standards Act (40 U S C 327 332) and (b) 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 The construction project contemplated herein is a public work as defined in Labor Code Section 1720 to which Labor Code Section 1771 applies The undersigned shall cause the construction of the project to be performed as a public work

The undersigned further agrees that all public work (as defined in Labor Code Section 1720) performed pursuant to that certain Infrastructure Improvement Agreement dated _____ 2006 between the undersigned and the Culver City Redevelopment Agency (Agency) (the work) shall comply with the requirements of Labor Code Section 1770 *et seq* In all bid specifications contracts and subcontracts for the work the undersigned (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 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 the undersigned is required to secure payment of compensation to its employees The undersigned shall include in every contract for the development of the Project (a) a statement that in accordance with the provisions of Labor Code Section 3700 the undersigned 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

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2 **Books and Records** The undersigned shall maintain full and detailed books, records and accounts and exercise such controls as may be necessary to demonstrate its compliance with the requirements of the prevailing wage laws. For purposes of confirming such compliance, Agency's authorized representatives shall be afforded access to, and shall have the right to audit, the undersigned's records, books, correspondence, receipts, subcontracts, memoranda and other data relating to such requirements, and the undersigned shall preserve such documents for a period of five (5) years after completion of construction.

5 **Benefit** The undersigned expressly acknowledges and agrees that Agency would not have entered into the Infrastructure Improvement Agreement but for the undersigned's compliance herewith.

Dated _____

(Signature)

(Print Name/Company/Title)

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ATTACHMENT NO 8
SCHEDULE OF PERFORMANCE

- | | |
|--|--|
| 1 <u>Scope of Work Preparation</u> | Within four weeks of executing this IIA |
| Work with Agency to prepare final scope of work to hire a civil engineering firm to prepare the necessary construction and bid documents to complete the Realignment Scope of Work | |
| 2 <u>Bidding</u> | Within ten weeks of executing this IIA |
| Bid review responses and award an agreement with a civil engineering firm to prepare the necessary construction and bid documents for the Realignment Scope of Work | |
| 3 <u>Engineering Firm</u> | Completion of all construction and bid documents within eight weeks of being awarded an agreement to perform the work |
| Hire an engineering firm to prepare the necessary construction and bid documents for the Realignment Scope of Work | |
| 4 <u>General Contractor Bid</u> | Immediately upon completion of the preparation of the necessary construction and bid documents for the Realignment Scope of Work |
| Combine the bid documents for both the Realignment Scope of Work and the Expansion Scope of Work prepared by LRM and bid the construction out together | |
| 5 <u>General Contractor Award</u> | Within six weeks of bidding out the combined work |
| Execute an agreement with a General Contractor to construct the Improvements | |
| 6 <u>Commence Construction</u> | Within 15 days upon receipt of approved construction permits by the City |
| Developer shall commence the construction of the Project | |
| 7 <u>Completion of Construction</u> | Within 18 months from the commencement of construction and in accordance with the attached construction schedule but in any event not later than (24 months) |
| Developer shall complete construction of the Project | |
| 8 <u>Final Inspection</u> | Within 10 days of written notice of completion by Developer |
| Agency shall conduct a final inspection of the Project | |

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- 9 Release of Construction Covenants
Agency shall issue a Release of
Construction Covenants Upon satisfactory completion of the Project in
accordance with this Agreement and written
request by Developer
- 10 Final Payment for Improvements
35 Days upon such date as Temporary Certificate
of Occupancy is issued by the City

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RESOLUTION NO 2006-A-_____

A RESOLUTION OF THE CULVER CITY
REDEVELOPMENT AGENCY APPROVING THAT
CERTAIN DISPOSITION AND DEVELOPMENT
AGREEMENT BY AND BETWEEN THE CULVER CITY
REDEVELOPMENT AGENCY AND RUSH PACIFICA
LLC

WHEREAS, the Culver City Redevelopment Agency ("Agency") is engaged in
activities necessary to execute and implement the Redevelopment Plan for Component
Area No 3 of the Culver City Redevelopment Project ("the Project Area"), and

WHEREAS in order to implement the Redevelopment Plan for the Project
Area, the Agency proposes to sell Parcel B (the "Property") which consists of real property
located in the 9300 block of Culver Boulevard, identified as Lots 6-17 and 20-30 of Block
19 Tract 2444 pursuant to the terms and provisions of a certain Disposition and
Development Agreement ('Agreement') by and between the Agency and Rush Pacifica,
LLC ("Developer") and

WHEREAS the proposed Agreement contains all the provisions, terms
conditions and obligations required by state and local law, and

WHEREAS the Agency has prepared, and the City Council has reviewed
and considered a summary report setting forth the cost of the Agreement to the Agency
including the sale of the Property to the Developer and has made said summary report
available for public inspection in accordance with Section 33433 of the California
Community Redevelopment Law (Health and Safety Code Sections 33000 *et seq*) and

1 WHEREAS pursuant to provisions of the California Community
2 Redevelopment Law the Agency and the City Council have noticed and held a duly
3 noticed joint public hearing on the proposed Agreement, and

4 WHEREAS, in accordance with the California Environmental Quality Act
5 (California Public Resources Code Section 21000 et seq "CEQA") the State CEQA
6 Guidelines (Title 14 California Code of Regulations Section 15000 et seq), and
7 procedures adopted by the City and the Agency relating to environmental evaluation of
8 public and private projects, the Agency certified a Final Supplemental Environmental
9 Impact Report on May 3 1999 which identifies and analyzes the potential environmental
10 impacts associated with the proposed development and
11

12 WHEREAS, the City Council has considered all terms and conditions of the
13 proposed Agreement, and has determined that the sale of the Property pursuant to the
14 proposed Agreement is in the best interests of the City and in accord with the public
15 purposes and provisions of applicable state and local laws
16

17 NOW THEREFORE THE CULVER CITY REDEVELOPMENT AGENCY
18 DOES HEREBY RESOLVE AND DETERMINE AS FOLLOWS

19 1 The Agency hereby finds and determines that the sale of the Property
20 pursuant to the Agreement between the Agency and Developer will assist in the
21 elimination of blight and is necessary to effectuate the purposes of the Redevelopment
22 Plan for the reasons set forth in the summary report
23

24 2 The Agency hereby finds and determines that the consideration to be
25 paid by the Developer in accordance with the terms and conditions of the Agreement is not
26 less than the fair market value of the Property
27
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3 The Agency hereby finds and determines that sale of the Property, in accordance with the terms and provisions of the Agreement complies with the Implementation Plan adopted for this Redevelopment Project Area pursuant to Section 33490 of the California Health and Safety Code

4 The Agency hereby finds and determines that the Final Supplemental Environmental Impact Report certified by the Agency on May 3, 1999 satisfies the requirements under CEQA and that no additional environmental analysis is required in connection with the proposed sale and development of the Property

5 The Agency hereby authorizes the Assistant Executive Director or her designee to execute the Agreement and all agreements in the form of the attachments thereto, issue interpretations, waive provisions, enter into amendments on behalf of the Agency, and to sign all such other documents and instruments necessary to implement and carry out the Agreement on behalf of the Agency in such form as is reasonably acceptable to the Assistant Executive Director

6 The Agency Secretary shall certify to the passage and adoption of this resolution and the same shall thereupon take effect and be in force

APPROVED AND ADOPTED this _____ day of _____ 2006

Steven J Rose, Chair,
Culver City Redevelopment Agency

ATTEST

Vida Floyd, Secretary
Culver City Redevelopment Agency

APPROVED AS TO FORM

Agency Counsel

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RESOLUTION NO 2006-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY CALIFORNIA, APPROVING THE ADOPTION OF A PLAN FOR THE REALIGNMENT OF WASHINGTON BOULEVARD BETWEEN CULVER BOULEVARD AND INCE BOULEVARD ADOPTION OF A STREET NAME CHANGE AND APPROVAL OF A TENTATIVE PARCEL MAP FOR 9300 CULVER BOULEVARD AS A RESULT OF IMPLEMENTING THE REALIGNMENT OF WASHINGTON BOULEVARD DOWNTOWN, AND THE SALE OF 9300 CULVER BOULEVARD BY THE CULVER CITY REDEVELOPMENT AGENCY PURSUANT TO THAT CERTAIN DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CULVER CITY REDEVELOPMENT AGENCY AND RUSH PACIFICA, LLC

WHEREAS, the Culver City Redevelopment Agency (Agency) is engaged in activities necessary to execute and implement the Redevelopment Plan for Component Area No 3 of the Culver City Redevelopment Project ("the Project Area"), and

WHEREAS on January 12, 2006, the Agency, as owner of the property at 9300 Culver Boulevard (the "Property") which is bounded by Culver Boulevard on the north, Ince Boulevard on the east and the curved portion of Washington Boulevard (between the intersection with Culver Boulevard / Main Street and the intersection with Ince Boulevard) on the south and west filed an application to subdivide the subject site and the vacated parcel resulting from the realignment of Washington Boulevard to the Ince Boulevard street segment between Culver Boulevard and Washington Boulevard and an application to rename the new street segment from "Ince Boulevard to Washington Boulevard The Property, being Parcel 1 of Parcel Map No 25831 and the adjoining portion of Washington Boulevard (between Culver Boulevard / Main Street and Ince Boulevard) to be vacated, is in the Commercial Downtown (CD) and Redevelopment Project Area Overlay (RP) Zones and

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1 WHEREAS, on April 26 2006, the Planning Commission conducted a duly
2 noticed public hearing on these applications fully considering the tentative parcel map
3 application, the street name change application the Negative Declaration finding under the
4 California Environmental Quality Act, the Washington Boulevard Realignment Plan the
5 staff report with attachments and all testimony presented, and

6 WHEREAS, following conclusion of the public discussion and thorough
7 deliberation of the subject matter, the Planning Commission determined by a vote of 4 to 0
8 that the foregoing would not result in significant adverse environmental impacts, that a
9 Negative Declaration finding was appropriate and that Tentative Parcel Map No 66158,
10 TPM P-2006029, including the Washington Boulevard Realignment Plan and all other
11 related public improvements, should be conditionally approved and that Street Name
12 Change, SNC P-2006030 should be approved and recommended to the City Council for
13 approval as outlined in Planning Commission Resolution No 2006-P009 attached herein
14 as Exhibit "A", and

15
16
17 WHEREAS, in order to implement the Redevelopment Plan for the Project
18 Area, the Agency proposes to sell Parcel B (the "Property") which consists of real property
19 located in the 9300 block of Culver Boulevard identified as Lots 6-17 and 20-30 of Block
20 19 Tract 2444 pursuant to the terms and provisions of a certain Disposition and
21 Development Agreement ("Agreement") by and between the Agency and Rush Pacifica
22 LLC ("Developer"), and

23
24 WHEREAS, the proposed Agreement contains all the provisions, terms,
25 conditions and obligations required by State and local law, and

26 WHEREAS the Agency has prepared, and the City Council has reviewed
27 and considered, a summary report setting forth the cost of the Agreement to the Agency
28

1 and including the sale of the Property to the Developer and has made said summary report
2 available for public inspection in accordance with Section 33433 of the California
3 Community Redevelopment Law (Health and Safety Code Sections 33000 et seq), and

4 WHEREAS, pursuant to provisions of California Community Redevelopment
5 Law, the Agency and the City Council have noticed and held a duly noticed joint public
6 hearing on the proposed Project and on the proposed Agreement, and

7
8 WHEREAS in accordance with the California Environmental Quality Act
9 (California Public Resources Code Section 21000 et seq CEQA) the State CEQA
10 Guidelines (Title 14 California Code of Regulations Section 15000 et seq), and
11 procedures adopted by the City and the Agency relating to environmental evaluation of
12 public and private projects the Agency certified a Final Supplemental Environmental
13 Impact Report on May 3 1999 which identifies and analyzes the potential environmental
14 impacts associated with the proposed development, and

15
16 WHEREAS, the City Council has considered all terms and conditions of the
17 proposed Agreement, and has determined that the sale of the Property pursuant to the
18 proposed Agreement is in the best interests of the City and in accord with the public
19 purposes and provisions of applicable State and local laws

20 NOW, THEREFORE, the City Council of the City of Culver City California,
21 DOES HEREBY RESOLVE as follows

22
23 1 Pursuant to the foregoing recitations and the provisions of Culver City
24 Municipal Code (CCMC) Title 15, Section 15 10 265, required findings for a tentative parcel
25 map and subject to the Conditions of Approval as outlined in Planning Commission
26 Resolution No 2006-P009 attached as Exhibit "A" herein, the referenced findings and
27 conditions are approved by the City Council
28

1 2 The City Council hereby finds and determines that the Agency's
2 Agreement to sell the Property pursuant to the Agreement will assist in effectuating the
3 purposes of the Redevelopment Plan for the reasons set forth in the summary report

4 3 The City Council hereby finds and determines that the sale will assist
5 in the elimination of blight and that the consideration to be paid by the Developers in
6 accordance with the terms and provisions of the Agreement is not less than the fair market
7 value of the Property

8
9 4 The City Council hereby finds that the sale of the Property pursuant to
10 the Agreement complies with the Implementation Plan adopted for this Redevelopment
11 Project Area pursuant to Section 33490 of the California Health and Safety Code

12 5 The City Council hereby finds and determines that the Final
13 Supplemental Environmental Report certified by the Agency on May 3, 1999 satisfies the
14 requirements under CEQA and that no additional environmental analysis is required in
15 connection with the proposed sale and development of the Property

16
17 APPROVED and ADOPTED this _____ day of _____ 2006

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19
20 _____
GARY SILBIGER MAYOR
City of Culver City, California

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22 ATTEST

23 APPROVED AS TO FORM

24 _____
CHRISTOPHER ARMENTA City Clerk

25 _____
CAROL A SCHWAB, City Attorney

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28 A06 00363

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EXHIBIT A" PLANNING COMMISSION

RESOLUTION NO 2006-P009

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CULVER CITY CALIFORNIA APPROVING TENTATIVE PARCEL MAP NO 66158, TPM P-2006029 TO SUBDIVIDE THE PROPERTY AT 9300 CULVER BOULEVARD AND THE ADJACENT VACATED PARCEL RESULTING FROM THE REALIGNMENT OF WASHINGTON BOULEVARD TO THE INCE BOULEVARD STREET SEGMENT BETWEEN CULVER BOULEVARD AND WASHINGTON BOULVEARD, AND APPROVING AND RECOMMENDING APPROVAL TO THE CITY COUNCIL STREET NAME CHANGE, SNC P-2006030, FOR THE RENAMING OF A PORTION OF INCE BOULEVARD TO WASHINGTON BOULEVARD AS A PART OF THE REALIGNMENT OF WASHINGTON BOULEVARD IN THE COMMERCIAL DOWNTOWN (CD) AND REDEVELOPMENT PROJECT AREA OVERLAY (RP) ZONES

(Tentative Parcel Map No 66158, TPM P-2006029)

(Street Name Change, SNC P-2006030)

WHEREAS on January 12 2006, the Culver City Redevelopment Agency, as owner of the property at 9300 Culver Boulevard which is bounded by Culver Boulevard on the north, Ince Boulevard on the east and the curved portion of Washington Boulevard [between the intersection with Culver Boulevard / Main Street and the intersection with Ince Boulevard] on the south and west filed an application to subdivide the subject site and the vacated parcel resulting from the realignment of Washington Boulevard to the Ince Boulevard street segment between Culver Boulevard and Washington Boulevard, and an application to rename the new street segment from "Ince Boulevard" to Washington Boulevard The subject 9300 Culver Boulevard site, being Parcel 1 of Parcel Map No

1 25831 and the adjoining portion of Washington Boulevard [between Culver Boulevard /
2 Main Street and Ince Boulevard] to be vacated is in the Commercial Downtown (CD) and
3 Redevelopment Project Area Overlay (RP) Zones and

4 WHEREAS, on April 26 2006, the Planning Commission conducted a duly noticed
5 public hearing on these applications fully considering the tentative parcel map application,
6 the street name change application the Negative Declaration finding under the California
7 Environmental Quality Act, the Washington Boulevard Realignment Plan, the staff report
8 with attachments, and all testimony presented and
9

10 WHEREAS, following conclusion of the public discussion and thorough deliberation
11 of the subject matter, the Planning Commission determined by a vote of 4 to 0 that the
12 project would not result in significant adverse environmental impacts, that a Negative
13 Declaration finding was appropriate and that Tentative Parcel Map No 66158, TPM
14 P-2006029, including the Washington Boulevard Realignment Plan and all other related
15 public improvements, should be conditionally approved, and that Street Name Change,
16 SNC P-2006030 should be approved and recommended to the City Council for approval
17 as set forth herein below
18

19 NOW THEREFORE THE PLANNING COMMISSION OF THE CITY OF CULVER CITY CALIFORNIA RESOLVES
20 AS FOLLOWS

21 SECTION 1 Pursuant to the foregoing recitations and the provisions of Culver City
22 Municipal Code (CCMC) Title 15 Section 15 10 265 required findings for a tentative parcel
23 map and subject to the Conditions of Approval herein, the following findings are hereby
24 made
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A The proposed map is consistent with the General Plan

The proposed tentative parcel map is consistent with the General Plan Land Use and Circulation Elements in that the proposed resubdivision of land into a two (2) lot subdivision for private office / retail use and public plaza use shall provide new office, retail, employment and entertainment opportunities within an existing downtown commercial area. The proposed subdivision, realignment of Washington Boulevard to Ince Boulevard, the widening of Ince Boulevard, and all other associated traffic related improvements are consistent with the goals and objectives as listed in the General Plan, including the continuation of a street circulation system that supports the planned land use objectives within the downtown area.

B The design of the proposed subdivision is consistent with the General Plan

The design of the proposed tentative parcel map subdivision is consistent with the General Plan Land Use and Circulation Element in that the proposed lot configurations are consistent with the objectives of the General Plan Commercial Downtown land use designation that encourages the anticipated private office / retail use and public plaza use with its related new office, retail, employment and entertainment opportunities within an existing downtown commercial area. The broad based street plan designation within the downtown area continues to provide the City with the opportunity to interpret the proposed street realignment plan to be consistent in a manner similar to prior City interpretations that approved the realignment of the Washington Boulevard / Culver Boulevard intersection from its original 'scissor configuration' to its reconfiguration as part of the Culver Boulevard Urban Design Plan approved circa 1985, and finally to its current configuration aligned opposite Main Street.

C The site is physically suitable for the type of development

The site of the proposed tentative parcel map subdivision is physically suitable for the proposed street realignment and any future private office / retail use and public plaza use with its related new office, retail, employment and entertainment opportunities in that the project complies with all applicable lot area zoning standards.

D The site is physically suitable for the proposed density of development

The site of the proposed tentative parcel map subdivision is physically suitable for the proposed street realignment and any future private office / retail use and public plaza use with its related new office, retail, employment and entertainment opportunities in that the CD Zone permits the anticipated uses.

1 **E The design of the subdivision is not likely to cause substantial environmental**
2 **damage or substantially and avoidably injure fish or wildlife or their habitat**

3 The proposed tentative parcel map subdivision and all associated onsite and offsite
4 improvements including the realignment of Washington Boulevard from its existing
5 south to west curved configuration between Ince Boulevard and Culver Boulevard /
6 Main Street which is proposed to be vacated to its proposed location at the existing
7 Ince Boulevard street segment between Culver Boulevard and Washington
8 Boulevard which shall be widen and subject to other related public improvements
9 including a street name change shall not cause any known environmental damage
10 and shall not damage any fish and/or wildlife habitats because such fish and/or
11 wildlife habitats do not exist on or near the site

12 **F The design of the subdivision is not likely to cause serious public health**
13 **problems**

14 The proposed tentative parcel map subdivision and all associated onsite and offsite
15 improvements including the realignment of Washington Boulevard from its existing
16 south to west curved configuration between Ince Boulevard and Culver Boulevard /
17 Main Street which is proposed to be vacated to its proposed location at the existing
18 Ince Boulevard street segment between Culver Boulevard and Washington
19 Boulevard which shall be widen and subject to other related public improvements
20 including a street name change shall not cause any known serious public health
21 problems because all applicable zoning code development standards will have been
22 met applicable to the subject applications, and the applicant is required to meet all
23 of the conditions of approval that the reviewing agencies of the City, such as Fire
24 Planning Building and Safety, and Engineering have recommended for the project

25 **G The design of the subdivision will not conflict with easements, acquired by the**
26 **public at large, for access through or use of, property within the proposed**
27 **subdivision**

28 The proposed tentative parcel map subdivision and all associated onsite and offsite
improvements including the realignment of Washington Boulevard from its existing
south to west curved configuration between Ince Boulevard and Culver Boulevard /
Main Street which is proposed to be vacated to its proposed location at the existing
Ince Boulevard street segment between Culver Boulevard and Washington
Boulevard which shall be widen and subject to other related public improvements
including a street name change shall not conflict with any existing and/or proposed
easements

SECTION 2 Pursuant to the foregoing recitations and findings, the Planning

Commission of the City of Culver City, California hereby approves and recommends to the
City Council for approval Street Name Change SNC P-2006030 the renaming of the
existing segment of Ince Boulevard between Culver Boulevard and Washington Boulevard

to Washington Boulevard, and approves Tentative Parcel Map No 66158 TPM P-2006029 including the Washington Boulevard Realignment Plan and all other related public improvements, subject to the following conditions

Tentative Parcel Map No 66158, TTM P-2006029

Planning Division

- 1 The Planning Commission approval of Tentative Parcel Map No 66158, TPM P-2006029, shall not become effective unless and until the City Council approves the proposed Washington Boulevard Realignment Plan as generally illustrated on the tentative parcel map dated "Received Planning Division April 17 2006", and labeled Exhibit "A to this resolution, or a realignment plan substantially similar
- 2 The final parcel map shall conform to the tentative parcel map prepared for this project and filed dated "Received April 17, 2006", as approved by the Planning Commission and as noted below The Planning Manager, after conferring with the City Engineer, may approve minor modifications to the map components provided such adjustments do not result in a significant change to the project as a whole All minor modifications considered for approval shall be substantially similar and not conflict with any other condition of approval or Culver City Municipal Code (CCMC) requirement

Engineering Division

- 3 The tentative parcel map shall expire within three (3) years after the date it becomes effective [i.e the date of City Council approval of the Washington Boulevard Realignment Plan] unless the applicant submits an extension request at least sixty (60) days prior to the expiration of the map's approval in writing to the Planning Manager and is granted said extension by the Planning Manager, Planning Commission or City Council
- 4 A copy of the first plan check package as submitted to the Los Angeles County Department of Public Work for review of the final parcel map shall also be submitted concurrently to the Culver City Engineering Division for review
- 5 The final map shall
 - A Be prepared by a surveyor or civil engineer licensed in the State of California

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- 1 B Substantially conform to the tentative parcel map conditionally approved by
the Planning Commission on April 26, 2006, or as amended
- 2 C Include a project boundary tied to at least one (1) City global positioning
3 satellite (GPS) monument
- 4 D Dedicate a corner cut-off for street purposes at the Washington Boulevard /
5 Ince Boulevard new corner of the site to the satisfaction of the City Engineer
- 6 E Be submitted to the Los Angeles County Department of Public Works for
7 review and recordation All applicable documents and fees shall be paid for
by the applicant
- 8 F Be filed with the Engineering Division in digital and mylar formats prior to final
9 acceptance by the City
- 10 6 All required boundary monuments shall be installed prior to the recording of the final
11 parcel map
- 12 7 The applicant shall be responsible for the installation of all necessary street
13 improvements required for the realignment of Washington Boulevard The new
14 alignment shall be as shown on the Washington Boulevard Realignment Plan, as
approved by City Council The street improvements for the Washington Boulevard
realignment shall include but not be limited to the following
- 15 A Widening of existing Ince Boulevard, between Washington Boulevard and
16 Culver Boulevard, to a right-of-way width of one hundred eight feet (108'-0)
- 17 B Provide a loading and unloading turnout parking area on the realigned
18 Washington Boulevard segment adjacent to Trader Joe's Market property
19 [i.e. 9290 Culver Boulevard] measuring twelve feet (12'-0") in width and of a
length as approved by the City Engineer
- 20 C Provide a twelve foot (12'-0) wide 'Fire Lane' within the middle area of the
21 realigned Washington Boulevard between existing Washington Boulevard
22 and Culver Boulevard The signing and striping of this "Fire Lane" shall be as
directed by the Traffic Engineering Manager
- 23 D Install a triangular raised pedestrian island at the southwest corner of the
intersection of new Washington Boulevard and Culver Boulevard
- 24 E Install a triangular raised directional island at the northwest corner of the
25 intersection of Culver Boulevard and Canfield Avenue directing southbound
26 Canfield Avenue to westbound Culver Boulevard traffic
- 27 F Revise and reconstruct the raised center median islands along Culver
28 Boulevard that are located easterly and westerly of Canfield Avenue

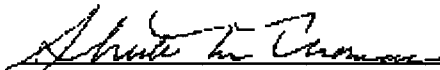
- 1 G Provide a loading and unloading parking turnout area along the south side of
2 Culver Boulevard in the vicinity of The Culver Hotel property [i.e. 9400 Culver
3 Boulevard]
- 4 H Remove all parking meters and poles, parking tees and repaint any red curb
5 along both sides of Culver Boulevard between Canfield Avenue and Cardiff
6 Street and both sides of the new Washington Boulevard between Culver
7 Boulevard and existing Washington Boulevard. The parking meter poles
8 shall be completely removed with the sidewalk being reconstructed from
9 score line to score line using the same pattern and concrete mix as used in
10 the Downtown Streetscape project. The parking meter heads shall be
11 removed by City forces.
- 12 I Relocate and upgrade to the satisfaction of the Transportation Director the
13 existing bus shelter located on westbound Culver Boulevard at an existing
14 location east of Cardiff Avenue to a new location along Culver Boulevard
15 east of Main Street and on eastbound Culver Boulevard at an existing
16 location west of existing Washington Boulevard to a new location along
17 Culver Boulevard east of its present location.
- 18 J Battery backups shall be installed to the satisfaction of the City Engineer on
19 new or existing traffic signals at the intersections of Washington Boulevard
20 and Ince Boulevard, new Washington Boulevard and Culver Boulevard,
21 Culver Boulevard and Main Street, Culver Boulevard and Cardiff Street,
22 Culver Boulevard and Irving Place-Washington Boulevard, Culver Boulevard
23 and La Fayette Place, Culver Boulevard and Duquesne Avenue and
24 Duquesne Avenue and Washington Boulevard.
- 25 K The signal timing of the intersections as listed herein under the battery
26 backup condition of approval "J" above shall be reviewed and revised using
27 computer modeling. Timing charts reflecting City of Los Angeles Department
28 of Transportation (LADOT) Automated Traffic Surveillance and Control
(ATSAC) standards shall also be prepared and submitted to the Engineering
Division for review and approval.
- L Traffic signal preemption devices using the latest Opticom model equipment,
shall be installed to the satisfaction of the City Engineer at intersections listed
herein under the battery backup condition of approval "J" above.
- M Audible pedestrian indicators and handicap pedestrian push buttons shall be
installed to the satisfaction of the City Engineer at intersections listed herein
under the battery backup condition of approval.
- N Illuminated and reflectorized street name signs shall be installed on
intersections impacted by this work to the satisfaction of the City Engineer.
Additionally, all existing street name signs that are removed due to signal
relocation shall be salvaged and new signs shall be installed to the
satisfaction of the City Engineer.

- 1 O Street names shall be stamped in the sidewalk area of those intersections
2 where the curb returns are being modified by this work In those intersections
3 where the curb returns are being eliminated, the street names shall be
4 removed and the sidewalk shall be reconstructed from score line to score line
5 using the same concrete mix and pattern that exists for this area
- 6 P Traffic signal heads and controller cabinets (including the internal equipment)
7 that need to be relocated shall be replaced with new equipment to the
8 satisfaction of the City Engineer All parts that can be salvaged shall be
9 delivered to the City's maintenance yard
- 10 Q Install a closed circuit television (CCTV) traffic monitoring camera [i.e., 337
11 cabinet size] and a thirty five foot (35'-0") tall pole at a designated corner at
12 the intersection of the existing Ince Boulevard and Washington Boulevard
13 intersection shall be installed to the satisfaction of the City Engineer In
14 addition, install all necessary hub equipment needed to accommodate the
15 added camera installation
- 16 8 A street improvement plan, prepared by a civil engineer registered in the State of
17 California shall be submitted to the Engineering Division for review, approval and
18 permitting This plan shall include all necessary street revisions or improvements to
19 accomplish the proposed realignment of Washington Boulevard and shall also
20 include the design of new or relocated street trees, street lights or all other public
21 improvements in the area
- 22 9 A traffic signal and striping plan prepared by a traffic engineer registered in the
23 State of California, shall be submitted to the Engineering Division for review,
24 approval and permitting This plan shall include the design of all necessary
25 revisions, or improvements, to the traffic signal systems of the affected
26 intersections All striping and signage shall be to the latest approved Manual of
27 Uniform Traffic Control Devices (MUTCD) standards
- 28 10 The excess three foot (3'-0") wide $\pm$ street right-of-way along the southerly side of
existing Washington Boulevard between Ince Boulevard and the westerly line of Lot
3 of Tract No 2530 shall be abandoned on the final parcel map
- 11 The existing sidewalk along the southerly side of existing Washington Boulevard
and adjacent to The Culver Studios property [i.e. 9336 Washington Boulevard],
shall be removed and reconstructed in a manner that is consistent with any future
development of the lots being created by this tentative parcel map Approval from
The Culver Studios shall be obtained for the reconstruction of the sidewalk in this
area since it is located on their property Since existing public utilities are also
located within this sidewalk area, it shall be the responsibility of the applicant to
obtain a public utility easement from The Culver Studios or relocate said utilities
- 12 Concurrent with the submittal of the street improvement plan, a Local Storm Water
Pollution Prevention Plan (LSWPPP) shall be submitted for review and approval by

1 the City Engineer The LSWPPP shall be developed and implemented in
2 accordance with the requirements of the Los Angeles County Stormwater Quality
3 Management Program NPDES Permit No CAS614001 The plan shall include the
4 design and placement of recommended Best Management Practices (BMP s) to
5 effectively prohibit the entry of pollutants from the construction site into the public
street or storm drain system The improvement plans shall note that the contractor
shall comply with the California Stormwater Best Management Practice
Handbooks"

- 6 13 The final design of the westerly side of the proposed intersection at Washington
7 Boulevard and Ince Boulevard cannot be finalized until such time as the
8 development plan for Parcel 1 of the tentative parcel map has been reviewed
9 Access to The Culver Studios lot must be maintained and the usage of this entryway
10 to the proposed development of Parcel 1 will impact the geometrical design of this
11 future intersection The design of this future intersection may require additional
12 right-of-way to be dedicated for street purposes Therefore, the final parcel
13 configuration for both Parcels 1 and 2 may be revised during the final map process

14 APPROVED and ADOPTED this 26th day of April 2006

15 
16 SHEILA THOMAS CHAIRPERSON
17 PLANNING COMMISSION
18 CITY OF CULVER CITY CALIFORNIA

19 Attested by

20 
21 Joanne Hunt
22 Administrative Secretary

23 JMrabn
24
25
26
27
28

Exhibit A (Sheet 1 of 2) to Planning Commission Resolution No. 2006 P009
Tentative Parcel Map No. 66158 TPM P 2006029
and
Street Name Change SNC P 2006030

TENTATIVE PARCEL MAP NO 661BB

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THESE PORTIONS OF LOTS THREE
AND FOUR ARE DEDICATED BY
DEED TO THE EASTERN ILLINOIS
LOCAL 201 OF THE I.O.O.F.

WALKER & WALKER
1000 Third St. NW, Suite 1000
Washington, DC 20004
Tel: 202-331-1000
Fax: 202-331-1001
E-mail: info@walkerandwalker.com
Web: www.walkerandwalker.com

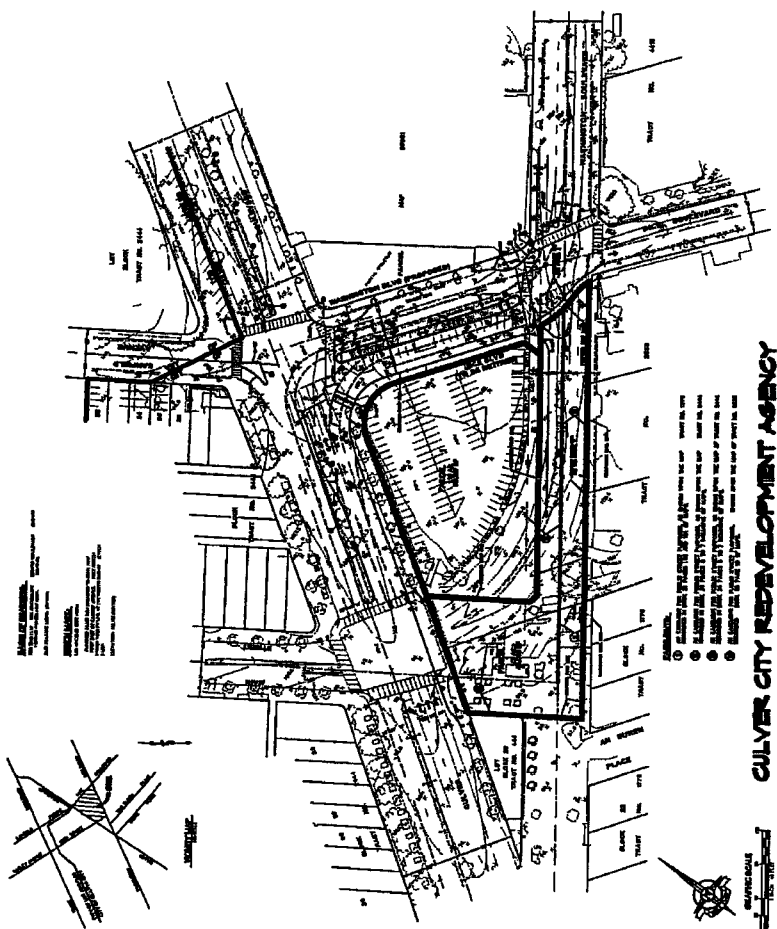
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SPECIAL ADVERTISING SECTION

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www.cbmconsulting.com

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CULVER CITY REDEVELOPMENT AGENCY

FILE 501
INCHES

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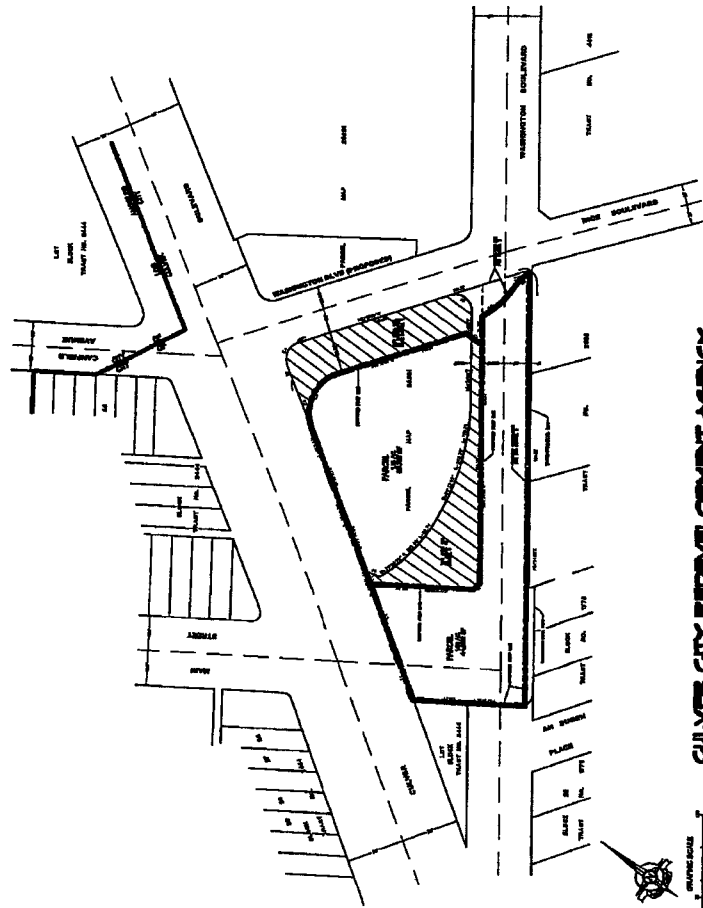
Exhibit "A" (Sheet 2 of 2) to Planning Commission Resolution No 2006-P009

Exhibit A (Sheet 2 of 2) to Planning Commission Resolution No 2006 P009
Tentative Parcel Map No 66158 TPM P 2006029
and
Street Name Change SNC P 2006030

PROPERTY CHANGES TO TENTATIVE PARCEL MAP NO 66158
IN THE CITY OF CULVER CITY, LOS ANGELES COUNTY, CALIFORNIA

THE CITY OF CULVER CITY, LOS ANGELES COUNTY, CALIFORNIA, HAS RECEIVED A REQUEST FROM THE CULVER CITY REDEVELOPMENT AGENCY FOR A TENTATIVE PARCEL MAP NO 66158 TO BE AMENDED TO REFLECT THE PROPOSED CHANGES TO THE PARCEL MAP. THE CITY OF CULVER CITY, LOS ANGELES COUNTY, CALIFORNIA, HAS REVIEWED THE REQUEST AND HAS DETERMINED THAT THE PROPOSED CHANGES TO THE PARCEL MAP ARE IN ACCORDANCE WITH THE CITY OF CULVER CITY, LOS ANGELES COUNTY, CALIFORNIA, ORDINANCES AND THE CITY OF CULVER CITY, LOS ANGELES COUNTY, CALIFORNIA, CHARTER. THE CITY OF CULVER CITY, LOS ANGELES COUNTY, CALIFORNIA, HAS THEREFORE APPROVED THE REQUEST FOR A TENTATIVE PARCEL MAP NO 66158 TO BE AMENDED TO REFLECT THE PROPOSED CHANGES TO THE PARCEL MAP.

1800 CULVER BLVD PROPERTY CHANGE



CULVER CITY REDEVELOPMENT AGENCY



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