

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

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

and

RETHINK CULVER LLC,  
a California limited liability company

(9814 Washington Boulevard, Culver City, California)

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## DISPOSITION AND DEVELOPMENT AGREEMENT

(9814 Washington Boulevard)

This Disposition and Development Agreement (this “**Agreement**”) is entered into by and between the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), and RETHINK CULVER LLC, a California limited liability company (the “**Developer**”). This Agreement is dated, for reference purposes, as of the date that the City executes this Agreement (the “**Effective Date**”). The Parties agree as follows:

### 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, California Health and Safety Code Section 33000, *et seq.*, by providing for the improvement and development of the Site with the 34-unit market rate and affordable housing project with ground-floor arts related space (the “**Project**”), consistent with that certain proposal dated February 23, 2022 (the “**Proposal**”) submitted to the City by the Developer’s predecessor-in-interest, which Proposal is hereby incorporated herein by this reference.

B. The Site is located within the geographical area of the Culver City Redevelopment Project Area (the “**Project Area**”). The proposed Project complies with and furthers the goals and objectives of the Redevelopment Plan for the Project Area approved and adopted by the City Council of the City on November 23, 1998 by Ordinance No. 98-014, as amended on November 23, 1998 by Ordinance No. 98-015 (the “**Redevelopment Plan**”) and the proposed Project also furthers municipal and other public purposes.

C. The City currently owns fee title to the Site (legally described on the Legal Description), upon which all of the Improvements are proposed to be constructed and developed pursuant to this Agreement. The Site is depicted on the Site Map.

D. By entering into this Agreement, the goal of the Parties is to provide a Project which implements the City’s General Plan, completes the objectives of reanimating the Downtown Culver City area, and compliments the redevelopment activities already begun in the Downtown Culver City area.

E. By this Agreement, and subject to the terms and conditions herein, (i) the City agrees to convey to the Developer, and the Developer agrees to accept from the City, the Site; and (ii) the Developer agrees to Develop and Cause Construction of the Project and to record certain easements and covenants, conditions and restrictions against the Site for the benefit of the City, the adjacent parcel, and the public, as the case may be.

F. The City’s disposition of the Site, and the Developer’s construction and

development of the Project pursuant to the terms of this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accordance with the municipal and other public purposes and provisions of applicable federal, state, and local laws and requirements.

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

## **AGREEMENT**

### **100. DEFINITIONS**

#### **101. Definitions**

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

**“Affiliate”** means (i) any Person directly or indirectly controlled by or under common control with another Person, (ii) any Person owning or controlling directly or indirectly a controlling interest in such other Person, (iii) any officer, director, member, manager or partner of such Person, or (iv) if such other Person is an officer, director, member, manager or partner, then any company for which such Person acts in any such capacity. The term “control” (and other tenses or forms of that word) as used in the immediately preceding sentence and in this Agreement means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person, or the power to control election of the board of directors or designation of the manager or a general partner.

**“Affordable Housing Covenants”** means the covenants and restrictions which shall be applicable to the Affordable Housing Units in accordance with the provisions of this Agreement. The Affordable Housing Covenants shall be included in the Agreement Containing Covenants.

**“Affordable Housing Restriction Period”** shall mean 55 years from the date of the issuance by the City of the Release of Construction Covenants for the Project. The Affordable Housing Restriction Period shall apply to each of the Affordable Housing Units.

**“Affordable Housing Units”** means the two studio very low income dwelling units, three studio workforce income dwelling units, and one one-bedroom workforce income dwelling unit to be constructed and incorporated into the Project by the Developer and operated by the Developer pursuant to the Affordable Housing Covenants, and to be rented at an Affordable Rent exclusively to Very Low Income tenants and Workforce Income tenants, respectively.

**“Affordable Rent”**

(i) As used in this definition, “family size appropriate to the unit” shall equal the number of bedrooms in the Affordable Housing Unit plus one.

(ii) With regard to Very Low Income tenants, Affordable Rent means a monthly rent that, when added to the Utility Allowance, does not exceed  $\frac{1}{12}$  of 30% of 50% of Area Median Income adjusted for family size appropriate to the unit.

(iii) With regard to Workforce Income tenants, Affordable Rent means a monthly rent that, when added to the Utility Allowance, does not exceed  $\frac{1}{12}$  of 30% of 129% of Area Median Income adjusted for family size appropriate to the unit.

**“Agreement”** is defined in the preamble to this Agreement. “Agreement” also includes all attachments attached to this Agreement, all other documents incorporated herein by reference, and all other documents referenced in this Agreement for execution by the Parties.

**“Agreement Containing Covenants”** means the agreement containing covenants affecting real property to be recorded against the Site in the Official Records, substantially in the form attached to this Agreement as Attachment No. 15 and incorporated herein by this reference. The Agreement Containing Covenants shall be superior to and not subordinate to any encumbrance, lien or other title exception, including, without limitation, the lien of all security instruments recorded against the Site in connection with the Construction Loan (other than Permitted Exceptions, the Grant Deed and the KDT Easement Deed).

**“ALTA Policy”** is defined in Section 307.

**“Anti-Terrorism Laws”** means all laws relating to terrorism or money laundering, including, without limitation, the Executive Order and the Bank Secrecy Act, as amended by the USA Patriot Act.

**“Area Median Income”** means the median income of the Los Angeles-Long Beach, CA HUD Metro FMR Area, adjusted for family size by HUD, as determined by HUD and published annually by the California Department of Housing and Community Development.

**“Art Space”** means the ground-floor arts related space portion of the Project.

**“Assignment of Construction Contract”** means an assignment signed by the Developer, and consented to by the General Contractor, delivered to and for the benefit of the City, substantially in the form attached to this Agreement as Attachment No. 8 and incorporated herein by this reference.

**“Assignment of Plans, Reports and Data”** means an assignment signed by the Developer, and consented to by the architect, delivered to and for the benefit of the City, substantially in the form attached to this Agreement as Attachment No. 9 and incorporated herein by this reference.

“**Bank Secrecy Act**” means the Currency and Foreign Transactions Reporting Act of 1970, Pub. L. No. 91-508, 84 Stat. 1305 (1970), as amended from time to time.

“**Block Easement Deed**” means that certain easement deed to be recorded against the Site in the Official Records, substantially in the form attached to this Agreement as Attachment No. 14 and incorporated herein by this reference.

“**Building Permits**” are official approvals, permits or licenses issued by the applicable governmental authorities that permit a person (or its contractor) to proceed with the construction of certain improvements on a site. Building Permits do not include Entitlements (but cannot be issued unless and until the applicable Entitlements are obtained).

“**CGL**” is defined in Section 308.1.

“**City**” is defined in the Preamble. “City” also includes any assignee of, or successor to, the rights, powers, and responsibilities of the City.

“**City Documents**” means, collectively, this Agreement, the Grant Deed, the Performance Guaranty, the Agreement Containing Covenants, the Notice of Affordability Restrictions, the Right of Entry Agreement, the Memorandum of Right of First Offer, the Partial Termination of Lease, the KDT Easement Deed, the Block Easement Deed, and any and all other agreements, amendments or modifications entered into by and between the Parties to effect the purposes of the foregoing.

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

“**City’s Conditions Precedent to Closing**” is defined in Section 303.1.

“**Close of Escrow**” means the Closing.

“**Closing**” is defined in Section 302.6.

“**Completion**” means, with regard to development of the Project, the satisfaction of each of the following events: (i) the City shall have determined that development of the Project has been completed in substantial compliance with this Agreement, the Scope of Development, and the Plans approved by the City, (ii) the certificate of occupancy shall have been issued with respect to the Improvements, and (iii) the time for the Developer’s contractor, suppliers and subcontractors to file a claim pursuant to California Civil Code Sections 3115-3117 in connection with the Project has expired or the Developer has delivered to the City unconditional lien releases for its contractor, suppliers and subcontractors, and any mechanic’s liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against.

“**Construction Contract**” is defined in Section 314(d).

“**Construction Contract Disapproval Notice**” is defined in Section 407.

**“Construction Lender”** means an Institutional Lender making a Construction Loan (if any) to the Developer for the Developer to Develop and Cause Construction of the Improvements, and to fund other costs of development of the Site.

**“Construction Loan”** is defined in Section 314(b).

**“Conveyance”** is defined in Section 301.1.

**“CTG”** shall mean CENTER THEATRE GROUP OF LOS ANGELES, a California nonprofit corporation, or its successor or assign.

**“Culver City Resident”** is defined in Section 502.

**“Days”** means calendar days and the statement of any time period herein shall be calendar days and not working or business days, unless otherwise specified.

**“DDA”** means this Agreement.

**“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.

**“Develop and Cause Construction”** means, with respect to any component of the Project, that the Developer shall develop and cause a qualified and licensed contractor to construct such component. As used in the immediately preceding sentence, “cause” shall include, without limitation, the Developer taking all necessary steps and signing all necessary documents to effectuate such construction activities to be performed by duly licensed construction contractors, or to otherwise be done in compliance with all applicable contractor licensing requirements of the State of California. The Parties acknowledge that the Developer is not a licensed general contractor, and nothing in this Agreement shall be interpreted to mean, that the Developer is or is acting as a general contractor.

**“Developer”** is defined in the preamble to this Agreement. “Developer” also includes any permitted assignees or nominees of the Developer, including a Permitted Transferee.

**“Developer Equity”** means funds provided by the Developer for payment of the Developer’s share of Project Costs not funded by the Construction Loan (if any) and shall not include the Construction Loan (if any) or any other borrowed funds.

**“Developer’s Conditions Precedent to Closing”** is defined in Section 303.2.

**“Due Diligence Notice”** is defined in Section 313.

**“Due Diligence Period”** is defined in Section 313.

**“Effective Date”** is defined in the preamble to this Agreement.

“**Entitlements**” are legal rights conveyed by approvals from the applicable governmental authorities (including, but not limited to, from a planning department and/or regulatory commission(s) or agency(ies)), which approvals are required to develop a site for a certain use, intensity, building type or building placement, together with any additional approvals that must be obtained from any private bodies or authorities (such as property owners’ associations and/or architectural review boards) to develop a site for a certain use, intensity, building type or building placement. Entitlements do not include Building Permits.

“**Environmental Laws**” 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) and (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.

“**Escrow**” is defined in Section 302.1.

“**Escrow Agent**” is defined in Section 302.1.

“**Escrow Company**” means First American Title Company acting out of its Los Angeles, California office located at 777 South Figueroa Street; Suite 400, Los Angeles, California 90017 or such other escrow company as may be designated by the City Manager and approved by the Developer.

“**Escrow Cost(s)**” is defined in Section 302.2.

“**Evidence of Financing**” is defined in Section 314.

“**Executive Order**” means the President’s Executive Order No. 13224.

“**Force Majeure**” is defined in Section 805.

“**General Contractor**” is defined in Section 407.

“**Governmental Requirements**” means all laws, ordinances, statutes, codes, rules, orders, decrees, requirements, resolutions, and regulations (including, without limitation, those relating to land use, subdivision, zoning, the environment, labor relations, prevailing wage,

notification of sale to employees, Hazardous Materials, occupational health and safety, water, earthquake hazard reduction and building and fire codes; and including all Environmental Laws and Labor Laws) of the United States, the State of California, the County of Los Angeles, the City and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer or the Site.

“**Grant Deed**” means the grant deed by which the City will convey the Site to the Developer, substantially in the form attached to this Agreement as Attachment No. 6 and incorporated herein by this reference.

“**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 products, including, but not limited to, gasoline and diesel fuel; those substances defined as a “Hazardous Substance”, as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or as “Hazardous Waste” as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*; an “Extremely Hazardous Waste”, a “Hazardous Waste” or a “Restricted Hazardous Waste”, as defined by the Hazardous Waste Control Law under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to Section 25140 of the California Health and Safety Code; a “Hazardous Material”, “Hazardous Substance”, “Hazardous Waste” or “Toxic Air Contaminant” as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under Sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code; “Oil” or a “Hazardous Substance” listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; a “Hazardous Waste”, “Extremely Hazardous Waste”, or an “Acutely Hazardous Waste” listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1-66261.126; chemicals listed by the State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code; a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, materially damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or government agency requires in order for the property to be put to the purpose proposed by this Agreement; any material whose presence would require remediation pursuant to the guidelines set forth in the California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank; pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*; asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*; any radioactive material including, without limitation, any “source material”, “special nuclear material”, “by-product material”, “low-level wastes”, “high-level radioactive waste”, “spent nuclear fuel” or “transuranic waste” and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011

*et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code, Sections 25800 *et seq.*; hazardous substances regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code, Sections 6300 *et seq.*; and/or regulated under the Clean Air Act, 42 U.S.C. 7401 *et seq.* or pursuant to the California Clean Air Act, Sections 3900 *et seq.* of the California Health and Safety Code; or any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to human health or the environment.

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

“**HUD**” shall mean the United States Department of Housing and Urban Development.

“**Improvements**” means the improvements that the Developer will Develop and Cause Construction of upon the Site in accordance with all approvals and permits required for Completion of the Improvements, all as more particularly described in the Scope of Development.

“**Institutional Lender**” means any of the following institutions having assets or deposits in the aggregate of not less than \$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 that 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.

“**KDT Easement Area**” means (a) as of the Effective Date, the area generally outlined in red on Attachment No. 13, attached to this Agreement and incorporated herein by this reference and (b) as of the date of Closing, the easement area more particularly described in the KDT Easement Deed.

“**KDT Easement Deed**” means that certain easement deed affecting the KDT Easement Area, and provided for the benefit of the KDT Property, in order to preserve the loading uses and other uses currently on the Site that service the KDT Property, to be recorded against the Site in the Official Records as of the date of Closing, which shall both (a) name both the City and any lessee of the KDT Property as grantees and (b) be approved in writing by each of the City, the Developer and CTG prior to the date of Closing. The KDT Easement Deed shall be superior to and not subordinate to any encumbrance, lien or other title exception, including, without limitation, the lien of all security instruments recoded against the Site in connection with the Construction Loan (other than Permitted Exceptions and the Grant Deed).

“**KDT Lease**” means that certain Lease Agreement dated on or about September 4, 2003 between the City’s predecessor-in-interest and CTG, with respect to the KDT Property and the Site (as the same may be amended, modified assigned or extended from time to time).

“**KDT Property**” (or “**Kirk Douglas Theatre Property**”) means that certain parcel of real property described as Parcel A in the KDT Lease (and commonly known as 9820 Washington Blvd., Culver City, California 90232), and including the Kirk Douglas Theatre located thereon.

“**KDT Property Policy**” is defined in Section 302.2(v).

“**KDT Protections**” is defined in Section 207.

“**KDT Theatre Operator**” means CTG or any subsequent operator of a theatre on the KDT Property.

“**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) California Labor Code Section 1720 *et seq.*, including, without limitation, the payment of prevailing wage and maintenance of payroll records in accordance with California Labor Code Sections 1776 and 1812, and employment of apprentices in accordance with California Labor Code Section 1777.5.

Any work performed pursuant to this Agreement that the Developer determines is a public work (as defined in California Labor Code Section 1720) (the “work”) shall comply with the requirements of California Labor Code Section 1770 *et seq.* In all bid specifications for any such public work, and contracts and subcontracts for that work, the Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing

rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract for any such public work must contain the following provision:

“It shall be mandatory for the contractor to pay not less than the 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 California Labor Code Section 1775 and the payroll record keeping requirements of California Labor Code Section 1776.”

The provisions of California 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 California Labor Code Section 1810, eight hours labor constitutes a legal day’s work. In accordance with the provisions of California Labor Code Section 3700, the Developer is required to secure payment of compensation to its employees. The Developer shall include in every contract for the development of the Project:

(a) a statement that in accordance with the provisions of California Labor Code Section 3700, the contractor will be required to secure the payment of compensation to its employees; and

(b) with respect to any work constituting a public work requiring payment of prevailing wages, copies of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815.

“**Legal Description**” means that certain legal description of the Site, attached to this Agreement as Attachment No. 2 and incorporated herein by this reference.

“**Losses and Liabilities**” means and includes all third party claims and 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 reasonable attorneys’ fees and costs, court costs, interest or reasonable defense costs, and reasonable 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.

“**Marketing and Tenant Selection Plan**” means a plan for the marketing of the Affordable Housing Units and selection of qualified tenants thereof, to be submitted by the Developer to the City by the date set forth in the Schedule of Performance, for City approval.

“**Maintenance Standards**” is defined in Section 502.

“**Memorandum of Right of First Offer**” means that certain Memorandum of Right of First Offer to be recorded against the Site in the Official Records, substantially in the form attached to this Agreement as Attachment No. 11 and incorporated herein by this reference.

“**Monetary Encumbrances**” is defined in Section 306.

“**Notice**” means a notice in the form prescribed by Section 801.

“**Notice of Affordability Restrictions**” shall mean the Notice of Affordability Restrictions on Transfer of Property to be recorded against the Site in the Official Records, substantially in the form attached to this Agreement as Attachment No. 16 and incorporated herein by this reference.

“**Offering Notice**” is defined in Section 601.1.

“**Offering Notice Response Period**” is defined in Section 601.2.

“**Official Records**” means the Official Records of the Los Angeles County Registrar/Recorder.

“**Outside Closing Date**” means December 29, 2022.

“**Partial Termination of Lease**” means that certain Partial Termination of Lease, substantially in the form attached to this Agreement as Attachment No. 12 and incorporated herein by this reference.

“**Parties**” means both the Developer and the City.

“**Party**” means either the Developer or the City.

“**Performance Guaranty**” means that certain Performance Guaranty to be recorded against the Site in the Official Records, substantially in the form attached to this Agreement as Attachment No. 7 and incorporated herein by this reference.

“**Permitted Exceptions**” is defined in Section 306.

“**Permitted Transfer**” means a Transfer to any Person to whom a Transfer of this Agreement or the Site is specifically permitted by Section 206.3, subject to the terms and conditions of Section 206.3.

“**Permitted Transferee**” means the transferee of a Permitted Transfer.

“**Person**” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

“**Plan Approval Request**” is defined in Section 401.1(e).

**“Plans”** means any and all architectural, design and construction plans and drawings prepared on behalf of the Developer for the Project in accordance with this Agreement, including, without limitation, all such plans and drawings required and approved by the City and, as and to the extent expressly provided in this Agreement, by CTG, and including the schematic drawings.

**“Prohibited Person”** means any of the following:

(a) a Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with whom the Developer is prohibited from dealing or otherwise engaging in any transaction by any of the Anti-Terrorism Laws;

(d) a Person who or that commits, threatens, or conspires to commit or supports “terrorism”, as defined in the Executive Order; or

(e) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control of the U.S. Treasury Department at its official website or any replacement website or other replacement official publication of such list.

**“Project”** is defined in Recital A.

**“Project Area”** is defined in Recital B.

**“Project Costs”** means all costs which are actually incurred by the Developer for the development of the Project, and shall include, without limitation, all of the items of cost as determined for the design, planning, development and construction of (i) the Improvements, and (ii) similar costs, fees and expenses as approved or authorized by the City.

**“Project Design Consultants”** is defined in Section 401.4.

**“Proposal”** is defined in Recital A.

**“Purchase Price”** is defined in Section 301.1.

**“Purchase Price Payment”** means the purchase price payment to be deposited into Escrow by the Developer for the Developer’s purchase of the Site as described in Section 301.2.

**“Redevelopment Plan”** is defined in Recital B.

**“Release of Construction Covenants”** means the document which evidences the Developer’s satisfactory completion of the construction of the Improvements for the Project in accordance with this Agreement, as set forth in Section 413, to be recorded against the Site, substantially in the form which is attached hereto as Attachment No. 5 and incorporated herein by this reference.

**“Reply Notice”** is defined in Section 601.2.

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

**“Right of Entry Agreement”** means that certain agreement to be executed by the Parties allowing the Developer to access the Site for predevelopment work, substantially in the form attached to this Agreement as Attachment No. 10 and incorporated herein by this reference.

**“Right of First Offer”** means the right of first offer granted by the Developer to the City for purchase of the Site, or applicable portion thereof, in accordance with Section 600.

**“Right of Reverter”** is defined in Section 712.

**“Schedule of Performance”** means that certain Schedule of Performance, attached to this Agreement as Attachment No. 4 and incorporated herein by this reference, setting forth the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished by the Parties. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the City Manager, and the City Manager is authorized to make such revisions as the City Manager deems reasonably necessary, and is further subject to adjustment in accordance with the terms and conditions hereof.

**“Scope of Development”** means that certain Scope of Development describing the development of the Project, attached to this Agreement as Attachment No. 3 and incorporated herein by this reference.

**“Site”** means that certain real property and improvements thereon located at 9814 Washington Boulevard, Culver City and legally described in the Legal Description, that will be conveyed to the Developer at the Closing, on which the Developer will Develop and Cause Construction of all of the Improvements pursuant to this Agreement in accordance with the terms and conditions of this Agreement.

**“Site Map”** means the map of the Site, attached to this Agreement as Attachment No. 1 and incorporated herein by this reference.

**“Survey”** is defined in Section 306.

“**Title Commitment**” is defined in Section 306.

“**Title Company**” is defined in Section 306.

“**Title Objection Notice**” is defined in Section 306.

“**Title Response Notice**” is defined in Section 306.

“**Transfer**” means any sale, transfer, assignment, subdivision, lease, sublease, license, franchise, issuance or transfer of ownership interests, conveyance, gift, hypothecation, mortgage, pledge or encumbrance, or refinancing, or the like (including those described in Section 412.1) of the Site or the Developer or any portion thereof or any interest therein or of this Agreement, to any Person.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended from time to time.

“**Utility Allowance**” means an amount designated by the City’s Housing Authority as a reasonable estimate of the cost of utilities paid by tenants of an Affordable Housing Unit, for purposes of calculating Affordable Rent.

“**Very Low Income**” shall have the meaning given to the term in California Health and Safety Code Section 50105. The upper income limit for Very Low Income households shall be the income limits for such households published annually by the California Department of Housing and Community Development with adjustments for household size.

“**Workforce Income**” means an income of a person or family not exceeding 129% of Area Median Income, adjusted for applicable household size.

## **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 City Manager.

#### **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 Agreement**

The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the sale of the Site and development of the Site, and to further municipal and other public purposes. This Agreement is entered into for the purpose of development of the Project on the Site pursuant to this Agreement. The fulfillment generally of this Agreement is in the vital and best interest of the City and the health, safety, and welfare of its residents, and in accord with municipal and other 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. Redevelopment Plan**

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

##### **203. Project Area**

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

##### **204. Site**

The Site is depicted on the Site Map, and legally described in the Legal Description.

Except as expressly provided herein or in any other City Documents, the Site shall be conveyed to the Developer “AS IS, WHERE IS”, and “WITH ALL FAULTS”, expressly without the City’s covenant, warranty or representation as to physical condition, title, leases, rents,

revenues, income, expenses, operation, zoning or other regulation, compliance with law, suitability for particular purposes or any other matter whatsoever. The City has no obligation to make repairs, replacements or improvements to the Site or to pay any fees, costs or expenses related to the Site. The cost of any demolition of existing improvements on the Site shall be the sole responsibility of the Developer, without any cost or expense to the City.

Subject to the restrictions on a Transfer set forth in Section 206, the 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 and all attachments to this Agreement, and to all ancillary documents referenced in 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 of the Site, 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 Agreement**

### **205.1 City**

The City is a public entity existing under the laws of the State of California, whose address is set forth in Section 801 below.

### **205.2 Developer**

The Developer is RETHINK CULVER LLC, a California limited liability company (which is an Affiliate of (and is controlled by) RETHINK DEVELOPMENT CORP., a California corporation), whose address is set forth in Section 801 below.

All of the terms, covenants and conditions of this Agreement shall be binding on, and shall inure to the benefit of, the Developer and any permitted assignees or nominees, including Permitted Transferees.

## **206. Prohibition Against Transfer and Change in Management and Control of Developer**

The terms and conditions of this Section 206 shall remain in effect after recordation of the Release of Construction Covenants, and shall be applicable and remain in full force and effect until the date which is 60 years after the date of the Close of Escrow.

### **206.1 Prohibition**

The qualifications and identities of the Developer and its executives are of particular concern to the City. It is because of those unique qualifications and identities that the City has entered into this Agreement with the Developer and is imposing restrictions upon any Transfer which is not a Permitted Transfer. The Developer represents that it is purchasing the Site

to Develop and Cause Construction of the Project, and that it is not purchasing the Site for purposes of speculation or resale to a third party. Accordingly, the Developer agrees not to engage in any Transfer which is not a Permitted Transfer until the date which is 60 years after the date of the Close of Escrow. No voluntary or involuntary successor in interest to the Developer pursuant to any Transfer (other than pursuant to a Permitted Transfer) or otherwise shall acquire any rights or powers in the Site or under this Agreement except as expressly set forth in this Agreement.

Without the prior written approval of the City, which approval shall not be unreasonably conditioned, withheld, conditioned or delayed, the Developer shall not Transfer all or any part of its interest in or rights under this Agreement or the Site, other than in connection with a Permitted Transfer.

Any Transfer in violation of this Agreement will constitute a breach and, subject to the cure rights provided for herein, entitle the City to use any remedy available to it at law or equity, including, without limitation, the right to terminate this Agreement. Notwithstanding such a termination, the obligations and rights of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect.

Further, in the event that the Developer effects a Transfer, described in this Agreement, and notwithstanding the expiration of the restrictions set forth in this Section 206, the Developer shall comply with the requirements of Section 600 to the extent, if any, applicable to such Transfer.

### **206.2 Change of Ownership; Restriction on Investments**

If control or ownership of the Developer must be changed in order for the Developer to obtain debt or equity financing, then the Developer shall seek the prior written consent of the City, not to be unreasonably withheld, conditioned or delayed, for such change of control or ownership in accordance with this Section 206.

The Developer agrees that during the term of the covenants recorded against the Site in the Agreement Containing Covenants, it shall not use the Site as collateral for any loan or other financial transaction other than a loan or financial transaction as permitted by this Agreement or as approved by the City, for which the proceeds therefrom are used for the construction and development of the Improvements, for operation or financing of the Project, or for refinancing any then existing debt secured by the Site that was permitted under this Agreement.

### **206.3 Permitted Transfer**

In connection with any Permitted Transfer allowed under this Section 206.3, the Permitted Transfer shall not require the approval of the City; provided, that (i) the documents implementing any such Transfer shall be satisfactory and subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed, and shall include an assignment and agreement in a form reasonably acceptable to the City Manager to the extent that such Transfer attempts to effectuate, or effectuates, an assignment of the Developer's rights or obligations under this Agreement, whereby such transferee shall expressly

assume the obligations of the Developer under this Agreement and all ancillary documents and agree to be subject to all conditions and restrictions applicable to the Developer in this Agreement and all ancillary documents, and (ii) such Transfer shall not involve any Prohibited Person or otherwise result in a violation of any of the Anti-Terrorism Laws.

A Permitted Transfer under this Agreement means any Transfer permitted by the express provisions of this Section 206.3 only:

(a) Any transfer of the ownership interests of the Developer, or of the ownership interests in any entity which directly or indirectly holds an interest in the Developer, by gift, bequest, inheritance or other estate planning process (such as, but not limited to, transfer to a family-owned trust), provided that such action does not result in a change in the identity of the executives of the Developer, or any Person which directly or indirectly controls the Developer.

(b) Any transfer of any direct or indirect interest in the Developer to any other owner of the Developer or Affiliate of an owner of the Developer, so long as the current executives of the Developer retain operational management and control of the Developer.

(c) Any transfer of any direct or indirect interest in the Developer to any transferee by devise or descent or by operation of law upon the death of a member, partner or shareholder of the Developer.

(d) Any transfer of any direct or indirect interest in the Developer to a transferee in connection with the estate planning of such transferor to (y) an immediate family member or life partner of such interest holder (or to partnerships or limited liability companies controlled solely by one or more of such family members or life partners) or (z) a trust established for the benefit of such immediate family member or life partner.

(e) Subject to the requirements set forth in Section 501, any rental, lease, license or sublease providing for occupancy of the Improvements, or a portion thereof, not restricted by Section 501.

(f) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits, for the purpose of facilitating construction of the Improvements.

(g) A mortgage, deed of trust, security interest, hypothecation or other agreement for financing purposes as permitted by this Agreement, including a permitted financing under Section 412 in connection with the Construction Loan (if any), and any Transfer resulting from a foreclosure or deed-in-lieu of foreclosure related to or in connection with any such permitted financing subject to the provisions of Section 412 and the rights of the City therein.

#### **206.4 Request for Transfer; Approval**

Except as specifically set forth herein, upon the Developer's delivery of written Notice to the City requesting approval of a Transfer not otherwise a Permitted Transfer, the City

reserves its reasonable discretion to approve or disapprove a request for Transfer 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 the City to evaluate the proposed assignee or purchaser resulting from the Transfer, as reasonably determined by the City. An assignment and assumption agreement in a form reasonably satisfactory to the City and the City's legal counsel shall also be submitted to the City for all proposed Transfers requiring the consent of the City and any Permitted Transfer described in clause (e) above. No Transfer shall be effective, nor shall the Developer be relieved of liability hereunder, unless and until the transferee assumes all of the obligations of the Developer with regard to this Agreement and the Site and all ancillary documents entered into pursuant to this Agreement, and with respect to any Transfer requiring the consent of the City and any Permitted Transfer described in clause (e) above, delivers a signed assignment and assumption agreement in a form reasonably satisfactory to the City. The assigning Developer shall not be released from any obligations hereunder or under any of the ancillary documents entered into pursuant to this Agreement unless otherwise approved in writing by the City.

Within 30 Days after the receipt of the Developer's written Notice requesting City approval of a Transfer pursuant to this Section, the City shall either approve or disapprove such proposed Transfer and, in the event of disapproval, shall specify in reasonable detail the reasons therefor. Within 10 Days after receipt of the request for approval of any Transfer, the City shall identify what further information, if any, the City 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, the Developer shall promptly furnish to the City such further information as may be reasonably requested. The Developer agrees to promptly pay all of the City's reasonable out-of-pocket costs, including reasonable attorneys' fees, incurred in connection with review and processing of any request for approval of a Transfer and/or consummation of such Transfer and preparation of any documentation and/or agreements in connection therewith.

The form assignment and assumption agreement to be executed by any City-approved assignee or transferee (or any Permitted Transferee pursuant to a Permitted Transfer described in clause (e) above) shall include an express acknowledgment by the assignee or transferee of the existence and description of (i) this Agreement and all other documents entered into by the Parties pursuant to this Agreement; (ii) the obligations of such assignee or transferee under such agreements, and of the rights of the City and its successors in connection with this Agreement and all ancillary documents; and (iii) an express agreement of the assignee or transferee to comply with such obligations and rights.

## **207. Third Party Beneficiaries**

This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and the Developer, its permitted successors and assigns, and no other person or persons shall have any right of action hereon or hereunder; provided that, notwithstanding any other provision of this Agreement or any of the other City Documents, for as long as the KDT Property is used for theatrical presentations and ancillary purposes, the KDT Theatre Operator will be an express third party beneficiary of: (a) Section 302.2(c)(v) of this

Agreement, (b) Section 401.1(c) of this Agreement, (c) Section 401.1(d) of this Agreement, (d) Section 401.1(e) of this Agreement, (e) Section 401.1(f), (f) the final paragraph of Section 402.4 of this Agreement, (g) Section 502.3 of this Agreement, (h) Section 801 of this Agreement and (i) any other provision in this Agreement that expressly references the KDT Theatre Operator, the KDT Property Policy, the KDT Property, the KDT Easement Area, the KDT Easement Deed and/or the KDT Lease (the foregoing (a)-(i) being, collectively, “**KDT Protections**”). KDT Theatre Operator shall have the right, if any of the KDT Protections is 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 breach to which KDT Theatre Operator may be entitled. Any failure or delay by KDT Theatre Operator in asserting any of its rights and remedies as to any such breach shall not operate as a waiver of any breach or of any such rights or remedies, or deprive KDT Theatre Operator 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.

## **208. Representations and Warranties**

### **208.1 City’s Representations**

The City represents and warrants to the Developer as follows:

(a) Authority. The City is a public entity existing under the laws of the State of California. The execution, delivery and performance of this Agreement by the City have been fully authorized by all requisite actions on the part of the City. To the best of the City’s knowledge, the City has, or will have as of the Close of Escrow, the full authorization to execute, deliver and perform under all other documents or instruments executed and delivered, or to be executed and delivered, pursuant hereto, unless otherwise specifically provided in this Agreement.

(b) No Conflict. To the best of the City’s knowledge, the City’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 the City is a party or by which it is bound and no joinder, consent or waiver of or by any third party is necessary to permit the consummation by the City of the transaction contemplated by this Agreement.

(c) No City Bankruptcy. To the best of the City’s knowledge, the City is not the subject of a bankruptcy proceeding.

(d) Title. The City holds fee simple title to the Site. At the Closing, the City intends on delivering title to the Site free of any right of any third party to possession of all or any part of the Site, except as expressly contemplated by this Agreement.

(e) Litigation. To the best of the City’s knowledge, there are no pending actions, suits, material claims, legal proceedings, or any other proceedings with respect to the ownership, operation or environmental or physical condition of the Site or any part thereof or affecting title or the proposed development of the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(f) Governmental Compliance. The City has not received any written notice from any Governmental Authority alleging that the Site or this Agreement is currently in violation of any Governmental Requirements applicable to its use and operation. If any such notice or notices are received by the City following the Effective Date, then the City shall, within 5 Days after receipt of such notice, notify the Developer thereof and deliver a copy thereof to the Developer, and if such violation was caused by the City or any Representative of the City, then the City shall promptly cure such violation prior to the Closing, as legally permitted. To the best of the City's knowledge, other than as set forth in that certain Hazardous Materials Survey, dated October 2003, prepared by Winzler & Kelly Consulting Engineers (a copy of which has been or will be provided to the Developer), no Hazardous Materials have been or are located in, on, under, about or adjacent to, or have been discharged or released from the Site or any portion thereof.

(g) No Conveyance. The City will not convey any interest in the Site, and the City will not cause or consent to the recordation against the Site of any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the Effective Date which will not be eliminated prior to the Close of Escrow, except as expressly contemplated by this Agreement.

(h) No Alterations. Except as otherwise permitted or contemplated by this Agreement, the City will not make or allow any material alterations to the Site prior to the Closing unless required by law without the Developer's prior written consent.

Until the Closing, the City 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 the Developer, and if such fact or condition is caused by the City, then the City shall promptly cure or remedy such fact or condition, as legally permitted.

## **208.2 Developer's Representations**

The Developer represents and warrants to the City as follows:

(a) Organization. As of the Effective Date, the Developer is a duly organized, validly existing California corporation in good standing under the laws of the state in which it is registered 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 the Developer as of the Effective Date and setting forth the ownership, control and management of the Developer as of the Effective Date have been delivered to the City and are true and correct (and true copies of the originals, if applicable) as of the Effective Date.

(b) Authority. The 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 Persons 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 the 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. To the best of the Developer's knowledge, this Agreement and all other documents or instruments which have been executed and delivered by the Developer 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 the Developer enforceable against it in accordance with their respective terms.

(d) Contingent Obligations. To the best of the Developer's knowledge, the Developer does not have any contingent obligations or any contractual agreements that could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(e) Litigation. To the best of the Developer's knowledge, no action, suit or proceeding is pending or threatened before any governmental department, commission, board, bureau, agency or instrumentality to which the Developer, or its Affiliates, 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 City and which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(f) No Conflict. To the best of the Developer's knowledge, the 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, (i) 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 the Developer, or any provision of the organizational documents of the Developer; (ii) will not conflict with or constitute a breach of or a default under any agreement to which the Developer, or its Affiliates, is a party; and (iii) will not result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto, in each case, in a manner which could materially adversely affect the ability of the Developer to carry out its obligations hereunder.

(g) No Developer Bankruptcy. To the best of the 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 its Affiliates, nor are any of such proceedings contemplated by the Developer, or its Affiliates.

While the Improvements are in existence, the 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 the City, and if such fact or condition is caused by the Developer, then the Developer shall promptly cure or remedy such fact or condition.

### **300. DISPOSITION OF SITE**

#### **301. Sale and Purchase**

##### **301.1 Sale and Purchase of Site; Purchase Price**

Upon satisfaction of the City's Conditions Precedent to Closing and the Developer's Conditions Precedent to Closing, and within the time frame set forth in the Schedule of Performance, the City agrees to convey to the Developer and the Developer agrees to purchase from the City (the "**Conveyance**") the Site, for \$300,000 (the "**Purchase Price**").

Upon Closing, the City shall convey the Site to the Developer by the Grant Deed, subject to the covenants and rights reserved therein. The 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 the City's residents, and in accordance with municipal and other public purposes and provisions of applicable federal, state, and local laws and requirements.

The Purchase Price shall be paid by delivery of the Purchase Price Payment at the Closing.

The Parties agree that the anticipated costs associated with relocating utilities on the Site shall be borne by the Developer, with no cost to the City. The Developer shall secure any and all necessary approvals from Southern California Edison in connection with the proposed relocation of utilities on the Site. At the sole cost of the Developer, the City shall use commercially reasonable efforts to facilitate the relocation of such utilities.

##### **301.2 Purchase Price Payment**

Not less than one business day prior to the scheduled Close of Escrow, the Developer agrees to deposit into Escrow in cash or other readily available funds an amount equal to the Purchase Price plus the Developer's share of Escrow fees and costs.

##### **301.3 Scheduled Close of Escrow**

Escrow shall be scheduled to close on such date, after the City's Conditions Precedent to Closing and the Developer's Conditions Precedent to Closing are met, that is mutually agreed upon by the City and the Developer. Subject to any applicable cure rights set forth herein, Escrow shall close no later than the Outside Closing Date (as it may be extended pursuant to this Agreement or by mutual agreement of the Parties). If the City's Conditions Precedent to Closing or the Developer's Conditions Precedent to Closing (or both) are not satisfied or waived by the respective Party on or before the Outside Closing Date (as it may be extended pursuant to this Agreement or by mutual agreement of the Parties), then, subject to any such applicable cure rights, any Party not then in Default of its obligations hereunder shall have the right to terminate this Agreement in accordance with Section 302.5 below. Upon such a termination, this Agreement shall be of no further force and effect, except that the obligations and rights of the Parties under

this Agreement that expressly continue after termination of this Agreement shall continue in effect.

## **302. Escrow**

### **302.1 Escrow Instructions**

The Parties shall open an escrow for the sale and purchase of the Site (the “**Escrow**”) with an escrow agent acceptable to the Parties (the “**Escrow Agent**”) within the times established therefor in the Schedule of Performance. This Agreement constitutes the joint escrow instructions of the Parties, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the Escrow. The Parties 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 City and to the Developer within two business days after the opening of the Escrow, shall carry out its duties as the Escrow Agent hereunder.

### **302.2 Costs of Escrow**

The following fees, charges and costs shall be paid by the Developer:

- (a) One-half of the escrow fees attributable to the Conveyance of the Site;
- (b) The excess premium for extended coverage under the ALTA Policy, and the cost of any endorsements required by the Developer which are not required to satisfy the City’s obligations to deliver title to the Site in the condition required by this Agreement; and
- (c) *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 conveyance of title.

The following fees, charges and costs shall be paid by the City:

- (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 City’s conveyance of the Site;
- (iii) One-half of the escrow fees attributable to the Conveyance of the Site;
- (iv) The premium for standard coverage under the ALTA Policy and the cost of any endorsements required to satisfy the City’s obligations to deliver title to the Site in the condition required by this Agreement; and

(v) The premium for an ALTA owner's/ground lessee policy of title insurance insuring CTG's interest in both (a) the KDT Lease, as amended by the Partial Termination of Lease and (b) the KDT Easement, and the cost of any endorsements reasonably required by CTG (the "**KDT Property Policy**").

The foregoing, together with any other costs of Closing are referred to herein as an "**Escrow Cost**" or the "**Escrow Costs**". In the event of an Escrow Cost that is not allocated above, such Escrow Cost shall be paid and allocated between the Parties in accordance with customary practice in Los Angeles County.

### **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 certified check or electronic wire transfer of the Escrow Agent, as approved by the Parties. 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 the Parties.

(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, without limitation, a suit in interpleader brought by the Escrow Agent, other than if arising out of the Escrow Agent's gross negligence, wrongful conduct or breach of these instructions and provided that in the event that the Escrow Agent incurs any cost, damages, judgments and expenses as a result of a breach of this Agreement by a Party, the defaulting Party shall pay 100% of the Escrow Agent's costs, damages, judgments and expenses incurred as a result of such breach of this Agreement.

(c) All prorations and/or adjustments called for in the Escrow shall be made on the basis of a 30-Day month unless the Escrow Agent is otherwise instructed in writing by both of the Parties.

(d) Any amendment to these escrow instructions shall be in writing and signed by both the Parties. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as the 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 the Parties, respectively, for any Escrow Costs payable under and in accordance with Section 302.2 hereof;

(b) when both the Developer's Conditions Precedent to Closing and the City's Conditions Precedent to Closing are satisfied or waived in writing by the Party for whom the condition was established, disburse funds to the City and record the recordable documents and deliver such recordable and non-recordable documents: (i) to the City, the Purchase Price Payment (less the City's share of Escrow Costs), (ii) to the City, with copies to the Developer, the Performance Guaranty, the Agreement Containing Covenants, the Notice of Affordability Restrictions, the Memorandum of Right of First Offer, the Partial Termination of Lease, the KDT Easement Deed, and the Block Easement Deed, and (iii) to the Developer, with a copy to the City, the Grant Deed, provided, however, that any funds deposited as part of the Purchase Price shall not be disbursed by the Escrow to the City unless and until the Escrow Agent has recorded the Partial Termination of Lease, the KDT Easement Deed and the Grant Deed, and delivered the ALTA Policy to the Developer, and a the KDT Property Policy to CTG;

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

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

(e) within the discretion of the Escrow Agent, direct the Parties 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. The City 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, in order to assure the 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;

(f) 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

(g) prepare and deliver to the Parties, 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 is not in Default under this Agreement may, in writing, demand the return of money, documents or property deposited by such Party into Escrow, and terminate the Escrow and this Agreement. If either Party makes a written demand for the return of its money, documents or property, then this Escrow shall not terminate until 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 10-Day period, then 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, then the Escrow Agent shall immediately thereafter return the demanded money and/or documents, and the escrow cancellation charges shall be shared equally by the Parties (unless one of the Parties is in Default, in which event such cancellation charges shall be paid by the defaulting 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, and obligations and rights of the Parties under this Agreement that expressly continue notwithstanding a termination of this Agreement shall continue in effect. If no demands for termination are made, then 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 the City or the Developer to specific performance.

### **302.6 Close of Escrow**

The Conveyance shall close on the date mutually agreed upon by the City and the Developer after the date upon which the Developer's Conditions Precedent to Closing and the City'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 City's Conditions Precedent to Closing are satisfied, if the Closing does not occur on or before the Outside Closing Date (as it may be extended pursuant to this Agreement or by mutual agreement of the Parties), then any Party not then in Default of its obligations hereunder may terminate this Agreement in accordance with Section 302.5 above, and upon such termination, this Agreement shall be of no further force and effect, except that the rights and obligations of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect. The Closing shall occur at the offices of the Escrow Company. "**Closing**" means the time and day that the Grant Deed is recorded in the Official Records.

Possession of the Site shall be delivered in "as is" condition to the Developer (subject to the representations and warranties of the City herein and in the other City Documents) immediately following the Closing, except that limited access shall be permitted prior to Conveyance as permitted in Section 313 of this Agreement. The Developer shall accept title and possession of the Site upon the Closing.

### **302.7 Closing Procedure**

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

(a) record the Quitclaim Deed attached to the Partial Termination of Lease with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the City and a conforming copy thereof to the Developer;

(b) record the Grant Deed with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the Developer and a conforming copy thereof to the City;

(c) record the KDT Easement Deed with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the Developer and a conforming copy thereof to the City;

(d) record the Agreement Containing Covenants with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the City and a conforming copy thereof to the Developer;

(e) record the Notice of Affordability Restrictions with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the City and a conforming copy thereof to the Developer;

(f) record the Performance Guaranty with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the City and a conforming copy thereof to the Developer;

(g) record the Memorandum of Right of First Offer with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the City and a conforming copy thereof to the Developer;

(h) record the Block Easement Deed with instructions to the Los Angeles County Registrar/Recorder to deliver such document to the Developer and a conforming copy thereof to the City;

(i) deliver the ALTA Policy issued by the Title Company to the Developer;

(j) deliver the KDT Property Policy issued by the Title Company to CTG;

(k) deliver to the City the funds in an amount equal to the Purchase Price Payment, less prorations and charges applicable against the City, including its share of the Escrow Costs and other costs set forth in Section 302.2 hereof, as evidenced by the settlement statement approved by the Parties;

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

(m) deliver the FIRPTA Certificate, if any, to the Developer;

(n) forward to the Parties 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; and

(o) *ad valorem* taxes and assessments, if any, levied, assessed or imposed on the Site, which apply to any period prior to Conveyance of title to the Developer, shall be borne by the City; *ad valorem* taxes and assessments, if any, levied, assessed or imposed on the Site, which apply to the period after the Conveyance, shall be borne by the Developer. The Escrow Agent shall prorate all such taxes and assessments as of the Close of Escrow based upon the most recent tax bills then available. All supplemental, escape or corrected taxes and assessments thereafter arising with respect to the Site shall be prorated by the Parties outside of Escrow as of the Closing Date.

### **303. Conditions Precedent to Closing**

The obligation of the Parties to instruct the Escrow Agent to effect the Closing is conditioned upon satisfaction of the terms and conditions designated in this Section.

#### **303.1 City's Conditions**

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

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

(b) Execution of Documents. The Developer shall have executed and delivered into Escrow or to the City all documents contemplated hereunder or requested by Escrow Agent, including, without limitation, the Agreement Containing Covenants, the Notice of Affordability Restrictions, the Performance Guaranty, the Memorandum of Right of First Offer, the Partial Termination of Lease, the KDT Easement Deed, the Block Easement Deed, and other City Documents that are required to be executed by the Developer.

(c) Deposit of Funds. The Developer shall have deposited into Escrow the Purchase Price Payment and any such amounts necessary to pay any required costs of Escrow, Closing and the ALTA Policy payable by the Developer.

(d) Drawings. The Developer shall have submitted to the City, and the City shall have approved, the schematic drawings for the development of the Site.

(e) Insurance. The Developer shall have delivered to the City the insurance certificates and endorsements required pursuant to Section 308 hereof.

### **303.2 Developer's Conditions**

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

(a) No Default. The City shall not be in Default of any of its obligations under the terms of this Agreement, and any ancillary agreements and documents and all representations and warranties of the City contained herein shall be true and correct in all material respects.

(b) Execution of Documents. The City shall have executed and deposited into Escrow all documents contemplated hereunder or requested by Escrow Agent, including, without limitation, the Grant Deed, the Partial Termination of Lease, and any other City Documents that are required to be executed by the City.

(c) Deposit of Funds. The City shall have deposited all funds (if any) required to be deposited by the City into Escrow.

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

(e) ALTA Policy. The Title Company shall, upon payment of the Title Company's regularly scheduled premium, be irrevocably committed to issue the ALTA Policy upon the Closing, in the form approved by the Developer pursuant to Section 3.06 below, in accordance with Section 307, subject only to the Permitted Exceptions approved therein.

(f) Entitlements. The Developer shall have obtained all Entitlements required for development and construction of the Project.

(g) No Litigation. No litigation shall be pending or threatened by any third parties that seek to enjoin or otherwise materially interfere with the development of the Project or the transactions contemplated herein or to obtain damages in connection with this Agreement.

### **304. Form of Deed**

The City 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 City shall deposit the Grant Deed with the Escrow Agent on or before the date established for Conveyance in the Schedule of Performance (and in all cases, at least one business day prior to the Closing).

### 306. Condition of Title

Within not more than 5 Days after the Effective Date, or as otherwise expressly provided in the Schedule of Performance, the title company selected by the Parties (the “**Title Company**”) shall deliver to the Developer, with a copy to the City, a title commitment for the Site showing all title exceptions applicable thereto, a copy of all underlying documents referenced in such title commitment, and a plot of all easements, if any, applicable to the Site (the “**Title Commitment**”). The Developer may, at its sole cost and expense, obtain a current ALTA/NSPS Land Title Survey of the Site (a “**Survey**”). No later than the date that is 30 Days after receipt of the Title Commitment, the Developer shall notify the City in writing (the “**Title Objection Notice**”) of any objections that the Developer may have to the title exceptions contained in the Title Commitment (provided that the Developer may reserve the right to object to any such exceptions pending receipt of the Survey). In the event that the Developer delivers a Title Objection Notice disapproving any exceptions in the Title Commitment, the City shall have 15 Days from receipt of the Developer’s Title Objection Notice in order to notify the Developer in writing (the “**Title Response Notice**”) of the City’s election to either (i) agree to remove or cure the objectionable items prior to the Close of Escrow, or (ii) decline to remove or cure the objectionable items. The City’s failure to deliver a Title Response Notice shall be deemed the City’s election not to remove or cure the objectionable items; provided, however, that the Developer’s Title Objection Notice states in bold capitalized letters in 14-point type on the cover page of such Notice that the “**THE CITY’S FAILURE TO RESPOND TO THIS NOTICE WITHIN 15 DAYS SHALL BE DEEMED TO CONSTITUTE THE CITY’S ELECTION REFERENCED IN THIS NOTICE PER THE DDA**”. If the City notifies (or is deemed to have notified) the Developer of the City’s election not to remove and cure any objectionable items, then the Developer shall have the right, by written notice delivered to the City no later than the date that is 10 Days after receipt of the City’s Title Response Notice, or 25 Days after delivery of the Developer’s Title Objection Notice if the City does not deliver a Title Response Notice, to agree to accept the Site subject to the objectionable items, in which event the objectionable items shall be deemed approved by the Developer, and the Developer shall take title to the Site at the Close of Escrow subject to such objectionable items without any adjustment to, reduction of, or credit against the Purchase Price. The exceptions to title that the Developer approves pursuant to this Section 306 shall be referred to herein as the “**Permitted Exceptions**”. The Permitted Exceptions shall also include non-delinquent real property taxes (which shall be prorated as of the Closing) and the documents to be recorded through the Escrow under this Agreement.

No more than 5 business days prior to the date established for Conveyance in the Schedule of Performance, the Parties shall have obtained from the Title Company an update to the Title Commitment dated no later than 5 business days from the date established for Conveyance in the Schedule of Performance, together with legible copies of all documents referenced as exceptions therein which were not referenced in the Title Commitment for the Site. Nothing in this Agreement shall obligate the Developer to proceed with the Close of Escrow in the event that new liens, encumbrances or exceptions on the Site (other than any matters contemplated by this Agreement) are discovered or arise through no fault of the Developer after the date of the Title Commitment and are not removed by the City at the City’s sole cost, unless the Developer so elects to proceed; provided, however, the City shall be obligated to the extent legally permissible to remove any new matters caused by the act or omission of the City, or any of its agents or

Representatives, at the City's sole cost and expense. In the event that the Developer elects to terminate Escrow, in accordance with the provisions of Section 302.5, because of the discovery of such new matter, then upon such election, this Agreement shall terminate and, upon such termination, the Developer shall have no further interest in the Site or any further obligations hereunder, except that the rights and obligations of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect.

Notwithstanding anything herein to the contrary, the City shall be obligated to remove all Monetary Encumbrances against the Site excluding non-delinquent real property taxes and assessments to be prorated at the Closing. "**Monetary Encumbrances**" means all liens and/or encumbrances upon the Site that secure mortgages or loans secured by such Site and delinquent taxes and assessments and any other exceptions to title to the Site that secure obligations to pay money. Except as otherwise expressly provided in this Agreement, the City shall not intentionally create or permit the creation of any new exceptions to title or otherwise alter the physical condition of the Site following the Effective Date so long as this Agreement remains in effect.

### **307. Title Insurance**

Concurrently with recordation of the Grant Deed, Title Company shall provide and deliver to the Developer a 2006 ALTA Extended Coverage Owner's Policy of title insurance in the form approved by the Developer in accordance with Section 3.06 above (the "**ALTA Policy**") with a policy coverage limit in the amount requested. The cost of such ALTA Policy shall be allocated between the Parties in accordance with Section 302.2 above. The ALTA Policy shall show title to the Site vested in the Developer and shall be subject only to the Permitted Exceptions described above, and shall include any endorsements requested by the Developer. The Title Company shall provide the City with a copy of the ALTA Policy. In the event that the Title Company requires an ALTA survey as a condition to issuance of the ALTA Policy or as a condition to elimination of any survey exception shown therein, the Developer shall provide such ALTA survey at its sole cost and expense or accept title subject to such limitation in or exception to the ALTA Policy.

Notwithstanding anything above which is or appears to be to the contrary, the Developer shall have the right to request issuance of any endorsements to the ALTA Policy which it may desire as a condition to the Close of Escrow; provided, however, that all expense or cost attributable to issuance of any such endorsements shall be the sole responsibility of the Developer.

### **308. Insurance**

#### **308.1 General Requirements**

Prior to entry upon the Site (with respect to the liability coverages in (a)-(d) below) and prior to the Closing (with respect to the property insurance described in (e) below) and continuing in each case until a Release of Construction Covenants is issued by the City for all Improvements, without limiting the indemnity provisions set forth herein, to the fullest extent permitted by law, the Developer, at its sole cost, shall procure and maintain in full force and effect the following policies of insurance with respect to the Site from a company or companies licensed

to do business in the State of California, with a claims paying ability rating of “BBB” or better by S&P (and the equivalent by any other Rating Agency) and a rating of A-:VIII or better in the current Best’s Insurance Reports:

(a) An occurrence based Commercial General Liability (“CGL”) policy, at least as broad as ISO Form CG 0001, in the minimum amount of \$3,000,000 each occurrence, with not less than \$6,000,000 in annual aggregate coverage.

The CGL Policy shall have the following requirements:

(i) The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall be utilized to satisfy, to the extent of the coverage limits, the City’s self-insured retention under any other policy of insurance. The coverage shall not be excess or contributing with respect to the City’s self-insurance, commercial liability insurance, or any pooled risk arrangements;

(ii) The policy shall provide \$3,000,000 coverage per accident, for owned, hired and non-owned automobile liability; automobile liability coverage may be satisfied with a stand- alone policy or as a component of the CGL policy;

(iii) The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law. The Developer’s obligation to indemnify the City and its Representatives as required under Section 814 of this Agreement;

(iv) The Policy shall not exclude coverage for Completed Operations Hazards or Athletic or Sports Participants;

(v) The City, members of its City Council, its boards and commissions, officers, agents, and employees shall be named as an additional insured in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney;

(vi) The Policy shall not contain an “Independent Negligence” provision that would void or otherwise nullify the insurer’s obligation to defend and indemnify the City in the event that its independent negligence is alleged or proven.

(vii) The CGL limits may be satisfied with a primary policy with \$3,000,000 occurrence/\$6,000,000 annual aggregate, OR, by a primary policy with lower limits of coverage plus an Excess or Umbrella policy which will satisfy the occurrence and aggregate limit requirement. If the Developer’s insurance coverage provides coverage in excess of these required limits, but is eroded by payment or claim reserves, then the Developer or its insurance carrier shall notify the City within 10 days when the contractual coverage limits provided are below the required coverage limits; and

(viii) The City reserves the right to review and waive or modify the CGL aggregate requirement in the event that an adequate project specific policy and limits are provided.

(b) Business Automobile Liability Insurance coverage in the amount of \$3,000,000, providing coverage for use of mobile equipment (*i.e.*, heavy mobile equipment or vehicles primarily for use in an off-road environment), to the extent that (i) such mobile equipment will be used within the City limits or on City business, and (ii) coverage for mobile equipment is not otherwise covered by the CGL policy listed in (a), above.

(c) Professional/Negligent Acts, Errors and Omissions Insurance in the minimum amount of \$1,000,000 per claim, and shall include coverage for separate “personal injury” alleged to have been committed in the course of rendering professional services, unless such coverage is provided by the CGL policy listed in (a), above.

(d) If this Agreement will have Developer employees working within the City limits, then the Developer shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000 per accident). The Developer shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees and volunteers.

(e) Fire and hazard “all risk” insurance covering 100% of the replacement cost of the Improvements (including offsite materials) in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by “all risk” coverage policies in the area where the Site is located (excluding flood and earthquake coverage).

Any insurance policies held by the City on the Site are not to be transferred, and the City will cancel its own policies (if any) in connection with the Site effective upon the Closing.

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

### **308.2 Waiver by City**

The City may waive one or more of the coverages listed in Section 308.1, above. This waiver must be express and in writing, and will only be made upon a showing by the Developer that its operations in and with respect to the City are not such as to impose liability within the scope of that particular coverage.

### **308.3 Deductible and Self-Insured Retention**

In the event that any of the insurance coverages required to be furnished by the Developer has deductible or self-insured provisions, the Developer shall fully protect the 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 the City, and the City reserves the right to reasonably limit said amount and to review the Developer’s financial statements if the amount exceeds a level reasonably acceptable to the City Attorney. A deductible amount of not more than \$25,000 shall be acceptable to the City.

#### **308.4 Additional Insurance Requirements**

(a) The Developer shall provide the City with at least 30 days’ prior written notice of any modification, reduction or cancellation of any of the Policies required in Section 308.1, or a minimum of 10 days’ notice for cancellation due to non-payment.

(b) The City may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, upon prior written notice to the Developer.

#### **308.5 Failure to Maintain Coverage**

Should the Developer fail to maintain policies with the coverages and limits specified in Section 308.1 above in full force and effect at all times required, then the City shall have the right to suspend the Developer’s operations until the Developer has fully complied with these provisions and furnished the required evidence of insurance. In the event that the Developer’s operations are suspended for failure to maintain acceptable insurance coverage, the 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 name the Parties as additional insureds under their policies, and the 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 \$1,000,000 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 assessments, if any, on the Site or any portion of the Site attributable to the period 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 Site**

The Site shall be conveyed free of any possession or right of possession except that of the Developer and easements of record constituting Permitted Exceptions, except as contemplated herein.

**311. Zoning of Site**

In the event that the zoning of the Site at the time of Conveyance thereof shall not permit development of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement, then the City shall cooperate with the Developer and the City with regard to the necessary modification to such zoning.

**312. Condition of Site; Release of City**

The City 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, except as expressly set forth in this Agreement.

The City represents and warrants that it has delivered to the Developer all Environmental Reports prepared by or in the possession of the City pertaining to the Site and/or in the City's possession with respect to the Site. The Developer acknowledges and agrees that the Site is to be conveyed to, and accepted by, the Developer, in its present condition, "AS IS", and the Developer hereby assumes the risk 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 the City to the Developer in an "as-is" condition, with no warranty expressed or implied by the City, 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, in each case, except as provided herein.

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

The 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

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Developer Initials

The 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 and released in this Section 312. Unless explicitly set forth elsewhere in this Agreement, the Developer does not waive or relinquish any such rights and benefits it may have with respect to any other obligations of the City set forth in this Agreement.

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

The terms and conditions of this Section 312 shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

### **313. Preliminary Work by Developer; Due Diligence**

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

Prior to the Conveyance of the Site and upon the Parties' execution of the Right of Entry Agreement and the Developer's satisfaction of conditions precedent therein, the City shall permit the Developer to enter the Site for the purpose of soils testing, survey work and other predevelopment activities by the Representatives of the Developer at all reasonable times. The City agrees to provide, or cause to be provided, to the Developer all data and information pertaining to the Site which is available to the City when requested by the Developer. The Developer shall defend, indemnify, and hold the City harmless for all Losses and Liabilities incurred by the City arising out of any Site investigation activity pursuant to this Section 313; provided, however, that such indemnity shall not extend to the mere discovery of pre-existing conditions. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

The Developer shall notify the City in writing on or before the Day which is 45 Days after the later of the Effective Date and the date that the City shall first permit the Developer to enter the Site for the purposes described above (the “**Due Diligence Period**”) of the Developer's approval or disapproval, in its sole and absolute discretion, of the due diligence materials provided for its review, the condition of the Site and the Developer's investigations with respect thereto, including, without limitation, the Developer's environmental review of the Site and all studies,

reports and assessments concerning the environmental condition of the Site (the “**Due Diligence Notice**”). The Developer’s disapproval of the Site by delivery of the Due Diligence Notice within the Due Diligence Period shall constitute the Developer’s election not to acquire the Site and, in such event, this Agreement shall terminate, and any documents and funds delivered by either Party to the other or to Escrow shall be returned to it. Upon such termination, the rights and obligations of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect.

### **314. Evidence of Financing**

Within the time set forth in the Schedule of Performance, the Developer shall submit to the City evidence reasonably satisfactory to the City that the Developer has obtained sufficient equity capital and commitments for the financing necessary for the development of the Site and the Improvements. The City shall approve or disapprove such Evidence of Financing within 15 Days after submission, with such approval not to be unreasonably withheld, conditioned or delayed. Such evidence (the “**Evidence of Financing**”) shall include, at a minimum:

(a) A construction budget for the Project.

(b) If the Developer intends to obtain a construction loan, then draft Construction Loan documents from an Institutional Lender or another lender reasonably acceptable to the City (including any amendments thereto, the “**Construction Loan**”) along with evidence reasonably satisfactory to the City Manager that the lender intends (subject to the satisfaction of all conditions set forth in such lender’s term sheet, loan commitment or loan application) to execute the same. A Construction Loan (if any) may be secured by a deed of trust or other security instrument recorded against the Site. Any such Construction Loan shall provide for notice of default to the City, the right to cure and such other terms as required by Section 406.

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

(d) A fixed or guaranteed maximum price construction contract (including any amendments thereto, the “**Construction Contract**”) or other commitment acceptable to the City along with evidence reasonably satisfactory to the City Manager that the contractor intends to execute the same and is ready, willing and able to construct the Improvements for the cost indicated therein. Any such Construction Contract shall provide for notice of default to the City, the right to cure and such other terms as required by Section 407. By the time set forth therefor in the Schedule of Performance, the Developer shall submit to the City the Assignment of Construction Contract.

(e) A copy of the 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 principles or federal income tax basis of accounting consistently applied, or in accordance with such other principles or methods as are reasonably acceptable to the City Manager.

(f) An operations/business plan identifying annual costs and revenues to operate the Project over a five-year period.

(g) A pro forma showing the fiscal feasibility for all aspects of the Project, including ongoing operations of the Project.

(h) Such other documentation and financial information relating to evidence of financing as may be reasonably requested by the City with respect to the Developer or otherwise with respect to construction and operation of the Project.

To the extent that the cost of acquisition of the Site and the cost of the design, planning, construction and development of the Improvements are to be financed with funds other than the proceeds of a Construction Loan (if any), evidence satisfactory to the City that the Developer has, at the time such evidence of financing is required to be demonstrated, sufficient equity capital, in sufficiently liquid form, not otherwise encumbered by any pledge or grant of a security interest to a third party, to assure complete funding for the development and construction of the Improvements (as set forth in the Scope of Development and provided for in this Agreement). The Developer shall have the right to use any funds or assets available to the Developer for actual payment of costs, notwithstanding that said funds or assets may be different from the sources of equity capital utilized to demonstrate the evidence of equity financing required by this Agreement. The Developer's evidence of equity financing shall be satisfied by evidence of any combination of the following:

(1) Cash, on deposit in a construction account, checking account, money market account, escrow or other immediately available form of deposit, held in the name of the Developer, over which the Developer retains the right to direct investments;

(2) An irrevocable direct pay letter of credit, in favor of the Developer, drawn on a bank or other financial institution first approved in writing by the City, with a term that is consistent with the anticipated need for funds during the construction period, the terms of which are consistent with this Agreement;

(3) An available line of credit with a bank or other financial institution approved in writing by the City Manager, the terms of which are consistent with this Agreement, provided that the collateral or assets pledged by the Developer for such line of credit shall not otherwise be utilized to demonstrate the evidence of equity financing required by this Agreement, unless the Developer has the right to substitute such collateral or assets with other collateral or assets which other collateral or assets are not otherwise utilized to demonstrate the evidence of equity financing required by this Agreement and which may or may not be liquid; or

(4) Evidence of any other comparable form of assets or funding commitment that the City Manager reasonably determines is sufficiently liquid to assure that it

will be available to the Developer when needed to pay Project expenses.

### **315. Real Estate Commissions**

The City shall not be liable for any real estate commissions or brokerage fees which may arise in connection with the sale of the Site to the Developer. The City represents that it has engaged no broker, agent, finder or third party in connection with this transaction. The Developer hereby agrees to indemnify the City 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 which was engaged or purportedly engaged by the Developer, and the Developer shall be solely responsible for any compensation that may be due such broker or finder, if any. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

### **316. Demolition of Site**

Subsequent to the Closing, the Developer shall perform any necessary demolition on the Site. The Developer shall perform all such demolition and containment activities in accordance with Environmental Laws. The 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 of Hazardous Materials and the Site or development of the Site 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. The 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, or (ii) permit the deposit of Hazardous Materials in, on or upon the Site in violation of any applicable Governmental Requirements.

### **317. Developer Responsibilities after Closing**

After the Closing, it shall be the Developer's responsibility to remedy any soil or geologic condition on the Site, at its sole cost and expense, as required to fulfill its obligations hereunder. The Developer shall perform all preparation of the Site for construction of the Project in accordance with Environmental Laws. The Developer shall be responsible for all Site preparation costs after the Closing. The 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 of Hazardous Materials or the Site or development of the Site 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. The 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, or (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, the Parties 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. The Developer shall maintain the Site and any Improvements thereon in good condition free from graffiti and from any accumulation of debris or waste materials. The Developer shall keep and maintain the Site in conformity with the Culver City Municipal Code and all other applicable Governmental Requirements.

With respect to any environmental remediation performed by the Developer on the Site, all such work shall be performed by an environmental contractor selected by the Developer and reasonably acceptable to the City, and the Developer promptly shall provide the City with a copy of each Hazardous Materials manifest required in connection with the performance of any such remediation work.

### **318. Required Disclosures after Closing**

If, after the Developer takes title to the Site, the 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, the Developer shall provide to the City 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:

- (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirements;
- (b) All notices of suspension of any environmental permits;
- (c) All notices of violation from federal, state or local environmental authorities;
- (d) 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;

(e) All orders under the Porter Cologne Act, including corrective action orders, cease and desist orders, and clean up and abatement orders;

(f) Any notices of violation from OSHA or Cal OSHA concerning employees' exposure to Hazardous Materials; and

(g) All complaints and other pleadings filed against the Developer relating to the Developer's storage, use, transportation, handling or disposal of Hazardous Materials on the Site.

In the event that any Hazardous Materials are discovered on the Site after the Closing in violation of applicable Governmental Requirements, or a release of Hazardous Materials into the environment occurs after the Closing 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; provided that nothing herein shall limit the responsibility of the City for any Hazardous Materials released or deposited by the City or its Representatives on the Site except to the extent of the Developer's negligence. Upon reasonable request of the City, the Developer shall furnish to the City a copy of any and all other environmental documents or inquiries relating to or affecting the Site from time to time during the Developer's ownership or possession thereof.

### **319. Taxes and Assessments**

Subsequent to the Conveyance, the Developer shall pay, when due, all taxes, assessments, and special taxes levied on the Site including, without limitation, such taxes and assessments levied in connection with the Improvements, in accordance with applicable Governmental Requirements. The 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 that the value challenged is in excess of the actual costs of construction and land, or any increase in assessment because of a purported change of ownership where no such change of ownership occurred, or any increase in assessment because of a change in ownership that exceeds the *bona-fide* arm's-length consideration paid in connection with such sale.

### **320. City Rights of Entry**

If, at any time, the Developer fails to maintain the Site in accordance with all applicable Governmental Requirements and maintenance standards set forth in the Grant Deed and the Agreement Containing Covenants and such condition is not corrected (i) within 48 hours after written notice from the City for problems posing an immediate risk to public health and safety; (ii) within ten business days after written notice from the City for graffiti and general site maintenance; or (iii) within 30 Days after written notice from the City with respect to landscaping (if any) and building improvements, then the City, 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 (if any) thereon with respect to the matter identified in such written notice from the City, 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 City and/or costs of such cure, which amount shall be promptly paid by the Developer upon demand; provided that such lien shall be effective only upon recordation of a written notice thereof and shall be subordinate to any deed of trust or other like encumbrance entered into in good faith and for value and recorded against the Site prior to recordation of such lien.

### **321. Indemnification**

Following the Conveyance, the Developer agrees to save, protect, defend, indemnify and hold harmless the City and its 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 negligence or intentional misconduct of the City or its Representatives) which may now or in the future be incurred or suffered by the City or its Representatives by reason of, resulting from or arising from, directly or indirectly, (i) any negligent act or omission on the part of the Developer, or its Representatives, contractors or invitees with respect to the Site or construction of the Improvements thereon, (ii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Site of any Hazardous Materials first becoming present, in, on, under or about the Site following the Conveyance, (iii) any environmental or other condition of the Site first becoming present, in, on, under or about the Site following the Conveyance, and (iv) any Losses and Liabilities incurred with respect to the Site under any Governmental Requirements relating to Hazardous Materials first becoming present, in, on, under or about the Site following the Conveyance. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

## **400. DEVELOPMENT OF SITE**

### **401. Scope of Development; Schematic Drawings; Landscaping and Grading Plans; Project Design Consultants**

#### **401.1 Scope of Development**

The 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. The Developer shall construct the Improvements in accordance with the Scope of Development, the Schedule of Performance and the Plans, drawings and documents submitted by the Developer and approved by the City as set forth herein, which approval shall not be unreasonably withheld, conditioned or delayed. The Construction Contract(s) entered into by the Developer for the Improvements shall require construction of the Improvements in a manner consistent with the Plans, drawings, and documents approved by the City.

Development of the Site will include the following:

(a) Improvements. The Developer shall Develop and Cause Construction of the Improvements, in accordance with this Agreement including, without limitation, the Scope of Development and the Plans approved by the City.

(b) The Project shall be developed such that the Project may achieve, and the Developer shall exercise commercially reasonable efforts to achieve, LEED certification from the U.S. Green Building Council under the Leadership in Energy and Environmental Design Green Building Rating System for New Construction and Major Renovations (LEED-NC) (Version 2.2), or its equivalent.

All Project concepts shall comply with the CalGreen requirements, photovoltaic requirements and green building requirements as mandated by the City for general application in the City, and should incorporate sustainable development principles to the extent practical.

The Project shall be developed consistent with (i) the Proposal (ii) the Redevelopment Plan, (iii) all plans and specifications approved by the City, and (iv) all applicable local, state and federal laws, rules and regulations.

All Plans for the construction of the Project shall be subject to applicable City design review approval procedures, and shall be consistent with, and a logical evolution of, the Scope of Development.

(c) The following provisions shall apply to the Art Space:

(i) The Developer is responsible for building out the shell and core of the Art Space.

(ii) During design and construction of the shell and core of the Art Space, the Developer shall meet regularly with CTG to allow for appropriate input into the design of the Art Space, with the goal of making the space as useful and flexible as possible, for use by CTG or another arts-related user.

(iii) At the time of commencement of construction of the anticipated Art Space improvements, the Developer shall provide CTG with a proposed amount of “rent” that would be associated with the proposed tenant improvements as required to build out the space for use by CTG (calculated utilizing the Developer’s cost of capital plus one percent), currently estimated to be approximately \$1.25/square foot, and a reasonably detailed description of the scope of improvements proposed to be provided, together with an estimate of any anticipated common area charges. At that time, the Developer would also provide CTG a “buy out” number that would allow CTG to make an upfront payment to the Developer for the cost of the proposed buildout, or the Developer can elect to build out the space itself.

(iv) If CTG elects to have the Developer build out the Art Space on its behalf, utilities will to the extent possible be separately metered to the Art Space (and if any such utilities cannot be separately metered, will be submetered), and CTG will confirm in writing

the placement of hot and cold running water, power outlets, number of circuits, etc., within the Art Space. If CTG elects the “buy out” or self “build out” option, then CTG would have the right to occupy the Art Space, rent free (other than approved common area charges), for the term of the KDT Lease. CTG and the Developer may also propose a different buildout and reach a mutually agreeable rent/buy out number.

(v) The Developer shall provide CTG 60-days-notice of the date when the Developer anticipates the substantial completion of the shell and core of the Art Space improvements.

(vi) CTG shall have a period of one-year from the date of substantial completion of the shell and core of the Art Space improvements to make its election with respect to its occupancy of the space. If CTG has not elected to sign a lease at the proposed rent, or made a buy-out payment, or elected to self-construct by that time, then the Developer may at its election build the space out for another compatible arts-related use, subject to CTG’s reasonable approval, it being understood that in all circumstances the Art Space must be used for a compatible arts-related use until the date that is 60 years after the Close of Escrow.

(vii) As used herein, substantial completion shall mean that construction of the shell and core of the Art Space shall have been accomplished such that (a) the contractor undertaking the work shall have given the Developer a notice of substantial completion under the applicable construction contract and (b) the Developer has determined that such shell and core improvements have been completed in accordance with all Developer-approved plans.

(viii) As used herein, a compatible arts-related use is defined as the following: Any arts or artistic media-related use with at least 25% of the space regularly available for public interaction such as classroom, educational programming, gallery, community gathering space, café/beverage space or mix of concepts such as these, with the remaining spaces being utilized for other arts-oriented uses such as office or makers/studio spaces. No use will be considered compatible if it will be programmed in a way that adversely conflicts with the scheduled use of the Kirk Douglas Theatre or could create noise levels that would disturb a performance in the Kirk Douglas Theatre.

(ix) Any requests of or notices to CTG under this Section 401(c) shall be in writing.

(d) Additional Rights of CTG

(i) Nothing in this Agreement shall waive or impact the independent rights CTG has with respect to the Site, including, but not limited to, its right to ensure that any development of the Site provides comparable space and uses to those utilized by CTG on the Site as of the date of this Agreement. This Agreement requires the dedication of appropriate easements (and potentially a lease) to preserve these loading uses and other uses utilized by CTG, at no cost to CTG, and requires CTG’s review and approval of the plans and drawings (including any changes thereto) to the extent contemplated in this Agreement with respect to the Site development to ensure its rights are respected. The City and the Developer acknowledge and agree

that, as a condition precedent to Closing, CTG, the City and the Developer shall mutually approve the KDT Easement (and possibly a lease, to the extent the easement cannot provide sufficient comparable rights) for comparable space on the Site for the exclusive use of the KDT Theatre Operator, to ensure that that the operations of the Kirk Douglas Theatre can continue without alteration or impairment.

(ii) Without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement, the Developer understands and agrees that CTG will have absolute written approval rights with respect to any portion of the plans and drawings (including any changes thereto) intended to satisfy CTG's rights with respect to the Site as of the date of this Agreement, including, without limitation, the KDT Easement Area and any other portion of the plans that touches or otherwise concerns the functionality of the KDT Property and/or the KDT Easement Area. The Developer agrees that CTG must approve in writing: (A) the rolling gate length on the Culver frontage, which must be at least sixteen feet; (B) the column placement for the overhang, as well as how the ducts and pipes are configured and the clear height under the overhanging portion of the building; (C) the revised door placement of the shed space; and (D) the details of soundproofing, plumbing and electrical work. The Developer further agrees that the first floor of the Site shall not be used for any use that is not currently expressly shown on Attachment No. 13, unless such other use is approved in writing by CTG. The Developer acknowledges and agrees that Attachment No. 13 shows the Developer's plans for the first floor of the Site as of the Effective Date, but that such plans have not been approved by CTG in accordance with this Agreement as of the Effective Date.

(iii) Utilities that are located on the Site but that serve the KDT Property, and/or KDT Easement Area, will, to the extent possible be separately metered (and if any such utilities cannot be separately metered, will be submetered) and will be approved in writing by CTG. The portions of such plans that show the placement of any hot and cold running water, power outlets, number of circuits, utility facilities, HVAC equipment, etc. located in the KDT Easement Area or otherwise serving the KDT Property and/or the KDT Easement Area, shall be subject to the prior written approval of CTG. All costs of designing, constructing and developing the Site, including any cost to properly move, reinstall, or replace any and all HVAC, mechanical systems, plumbing, electrical, or any other systems or equipment serving the KDT Property or KDT Easement Area to the extent required or otherwise undertaken to accommodate the Project will be paid for by the Developer.

(iv) The Developer shall request any approval contemplated under Section 401.1(d) in writing.

(e) CTG shall grant or withhold its approval of any plans or drawings by delivery of written notice to the Developer within 15 Days after delivery of such request for approval ("**Plan Approval Request**") by the Developer to CTG, which response from CTG shall state in writing the reasons for disapproval and the suggested means to correct the disapproved matters to the extent CTG believes there is such a solution. CTG's failure to approve or disapprove any submittal within the above described 15-Day period shall be deemed an approval of that submission if and only if: (i) the Developer's submission of the Plan Approval Request states in bold capitalized letters in 14-point type on the cover page of such submittal that the "**CTG'S**

**FAILURE TO RESPOND TO THIS DOCUMENT WITHIN 15 DAYS SHALL BE DEEMED TO CONSTITUTE CTG’S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE DDA”;** and (ii) a copy of any such Plan Approval Request is sent via e-mail to each CTG notice party set forth in Section 801 within one (1) day of the Developer’s delivery of such Plan Approval Request to CTG. The Developer, upon receipt of any disapproval based upon powers reserved to CTG hereunder, shall revise such disapproved portions and promptly resubmit the revised documents to CTG, using the same procedure previously described. CTG and the Developer agree to work together in good faith to reach a mutually agreeable solution to any such disapproved matter(s); provided, however, nothing in this Agreement obligates CTG to agree there is an acceptable solution to a disapproved matter. Notwithstanding anything herein to the contrary, the Schedule of Performance (other than the outside date for the Conveyance) shall be extended for up to 15 Days, and thereafter only upon the mutual agreement of the Parties, to permit the Parties to attempt to resolve any CTG disapproval.

(f) For so long as the KDT Property is used for theatrical presentations and ancillary purposes, the Developer shall coordinate all construction and operational activities with the Kirk Douglas Theatre operations to minimize disruption.

#### **401.2 Schematic Drawings**

The Developer shall submit to the City a complete set of schematic drawings for the Project by the date set forth in the Schedule of Performance. The City shall approve or disapprove the schematic drawings within 15 business days after their submittal. The City shall reasonably approve the schematic drawings provided that the City determines that such schematic drawings are in substantial conformance with the entitlements for the Project.

The schematic drawings shall include a site plan, roof plans, floor plans, elevations and sections of the Project as they are to be developed and constructed on the Site.

#### **401.3 Landscaping and Grading Plans**

The Developer shall prepare and submit to the City for its approval preliminary and final landscaping and preliminary and finish grading plans for the Site, as appropriate and as required.

If applicable, the landscaping plans shall be prepared by a professional landscape architect, and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as the Developer’s architect. Within the times established in the Schedule of Performance, the Developer shall submit to the City for approval the name and qualifications of its civil engineer. From time to time, the Developer may replace its architect, landscape architect and/or civil engineer, subject to the consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

#### **401.4 Pre-Approved List of Project Design Consultants**

The City has preapproved the names and qualifications of the following firms or

individuals as the “**Project Design Consultants**”. Any change of services to other firms or individuals not identified on the following list shall require the City’s prior approval (which approval shall not be unreasonably withheld, conditioned or delayed):

- (i) Project Architect: Brooks + Scarpa.
- (ii) Landscape Architect: Brooks + Scarpa.
- (iii) Structural Engineer: Ashley & Vance
- (iv) MEP Engineers: Gausman & Moore
- (v) Civil Engineers: Forma Engineering

#### **402. Design Review**

The Developer acknowledges and agrees that, in reviewing and approving documents under this Section, the City’s actions are separate and distinct from the City’s exercise of its police powers.

##### **402.1 Review and Approval**

The Developer shall submit to the City a complete set of design development drawings for the Project by the date set forth in the Schedule of Performance. The City shall have the right to approve the design development drawings for conformance with the schematic drawings as a logical evolution thereof, 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 City’s reasonable discretion.

The Developer shall submit to the City a complete set of building permit/construction drawings for the Project by the date set forth in the Schedule of Performance. The City 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 as a logical evolution thereof. By the time set forth therefor in the Schedule of Performance, the Developer shall submit to the City the Assignment of Plans, Reports and Data.

##### **402.2 Standards for Approval**

The City 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 as a logical evolution thereof. The City shall have the right to disapprove in its reasonable discretion any of the building permit/construction drawings if the building permit/construction drawings do not conform to the approved design development drawings as a logical evolution thereof. The City shall grant or withhold its approval by delivery of written notice to the Developer within 15 Days after delivery by the Developer to the City, which notice shall state in writing the reasons for disapproval and the suggested means to correct the disapproved matters. The City’s failure to

approve or disapprove any submittal within that 15-Day period shall constitute a deemed approval of that submission; provided, however, that the Developer's submission of any such submittal states in bold capitalized letters in 14-point type on the cover page of such submittal that the **"THE CITY'S FAILURE TO RESPOND TO THIS DOCUMENT WITHIN 15 DAYS SHALL BE DEEMED TO CONSTITUTE THE CITY'S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE DDA"**. The Developer, upon receipt of a disapproval based upon powers reserved to the City hereunder, shall revise such portions and promptly resubmit the revised documents to the City. Notwithstanding anything herein to the contrary, the Schedule of Performance (other than the outside date for the Conveyance) shall be extended for up to 15 Days, and thereafter only upon the mutual agreement of the Parties, to permit the Parties to resolve any City disapproval.

### **402.3 Consultation and Coordination**

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

### **402.4 Revisions**

The Developer agrees not to make material changes to the exterior design of the Improvements without the prior written consent of the City once the schematic drawings, design development drawings, plans and specifications, building permit/construction drawings and other items documenting the design of the Improvements are approved by the City.

Thereafter, if the Developer desires to propose any material changes to the exterior design of the Improvements set forth in the schematic drawings, design development drawings, plans and specifications, building permit/construction drawings and other items documenting the design of the Improvements, then the Developer shall submit such proposed changes to the City and shall also proceed in accordance with any and all State and local laws and regulations regarding such changes. The City shall grant or withhold such approval (such approval not to be unreasonably withheld or delayed) by delivery of written notice to the Developer within 15 Days after delivery by the Developer to the City of such revisions, which notice shall state in writing the reasons for any disapproval and the suggested means to correct the disapproved matters. The Developer, upon receipt of a disapproval based upon powers reserved to the City hereunder, shall revise such portions and promptly resubmit the revised documents to the City. Notwithstanding anything herein to the contrary, the Schedule of Performance (other than the outside date for the Conveyance) shall be extended for up to 15 Days, and thereafter only upon the mutual agreement of the Parties, to permit the Parties to resolve any City disapproval. At the sole discretion of the City, if any change in the basic uses of the Site is proposed, then the City may require, without waiving any of the City's rights and remedies herein, that this Agreement be subject to renegotiation of all terms and conditions as a condition to proceeding with discussion for the

modification in the basic uses of the Site.

In addition, the Developer agrees not to make material changes to the design of the Improvements as they pertain to the areas approved by CTG in accordance with Section 401.1(d) of this Agreement, without the prior written consent of CTG once such items have been approved by CTG.

#### **402.5 Defects in Plans**

The City shall not be responsible either to the Developer or to third parties in any way for any defects in the basic concept drawings, the design development drawings or the building permit/construction 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/construction drawings. The Developer hereby waives and releases any claim it may have against the City 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. The Developer makes such release with full knowledge of California 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

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Developer Initials

The Developer hereby agrees to indemnify and hold harmless the City and its Representatives for any Losses and Liabilities (including attorneys' fees and costs) incurred as a result of third party claims of defects in the Improvements' plans, design or drawings in connection with the Site, including, without limitation, the violation of any laws, and for defects in any structural or other work performed by or on behalf of the Developer in designing or constructing the Improvements. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

#### **403. Permits**

Before commencement of the construction of the Improvements or other work upon the Site, the 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, whether required by the City or any other governmental agency affected by such construction or work. The 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.

The Developer shall obtain all land use entitlements, approvals and permits necessary for the development of the Project not already obtained and shall pay all fees in connection therewith, including, but not limited, to the review and processing of such land use entitlements, approvals and permits by the City. The City staff will work cooperatively with the 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 the City does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals required by the City.

Notwithstanding any other provision of this Agreement, pursuant to Section 17.400.065(B)(5) of the Culver City Municipal Code, the City hereby grants the Site, the Project and the Developer relief from the following otherwise applicable development standards: (i) commercial frontage uses on ground floor, (ii) outside unit storage space per unit, and (iii) requirements for minimum 75% - 0 setbacks facing Culver and Washington Boulevards.

#### **404. Schedule of Performance**

The 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 therefor in the Schedule of Performance. The Developer shall provide quarterly progress reports of Project implementation to the City Manager or designee in a format reasonably requested by the City Manager or designee. These reports, at a minimum, shall include status reports regarding progress associated with the Schedule of Performance. All dates and periods in the Schedule of Performance shall be subject to adjustment in accordance with the terms and conditions of this Agreement, including Section 805 below.

#### **405. Project Costs**

The Project Costs of developing the Site and designing and constructing the Project, including any off-site improvements legally required by the City in connection therewith, shall be the responsibility of the Developer, without any cost to the City. The Developer shall design and Develop and Cause Construction of the Project in accordance with the following: the Developer shall Develop and Cause Construction of the Improvements to Completion and shall fund, without any cost to the City, all of the cost of planning, designing, developing and constructing all of the Improvements, in conformance with the approved Plans, including, without limitation, schematic drawings, design development drawings, and building permit/construction drawings, all as approved by the City.

#### **406. Construction Budget; Construction Loan**

By the deadline specified in the Schedule of Performance, the Developer shall submit to the City a draft Construction Loan (if any) for financing the Improvements and other

costs of development of the Site. In connection with submission of the Construction Loan (if any), the Developer shall submit to and obtain the City's written approval (which approval shall not be unreasonably withheld, conditioned or delayed and shall be provided within the period specified in Section 314 above) 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 for the Project at the time incurred. Line item estimates of the uses of funds shall be supported by such documentation, including appraisals and construction cost estimates, as may reasonably be required by the City Manager or designee.

The Construction Loan (if any) shall be consistent, in all material respects, with the terms and provisions of this Agreement and shall provide, among other matters, that a copy of all construction draw requests must be provided to the City Manager concurrently with their submittal to the Construction Lender (if any). Prior to execution of any final Construction Loan documents (if any) by the Developer, the Developer shall secure the City's approval of the terms and conditions of those Construction Loan documents (if any), which approval shall be limited to and only for the purpose of assuring compliance of the Construction Loan documents (if any) with the requirements of this Agreement and the Construction Contract. The City shall approve or disapprove said Construction Loan documents (if any) (which approval shall not be unreasonably withheld, conditioned or delayed) within 15 Days after submission to the City. Concurrent with any disapproval, the City shall inform the Developer in writing of the reasons for such disapproval. Failure to approve or disapprove such Construction Loan documents (if any) within such 15-Day period shall be deemed an approval of the Construction Loan documents (if any); provided, however, that the Developer's submission of such Construction Loan documents (if any) states in bold capitalized letters in 14-point type on the cover page of such submittal that the **"THE CITY'S FAILURE TO RESPOND TO THIS DOCUMENT WITHIN 15 DAYS SHALL BE DEEMED TO CONSTITUTE THE CITY'S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE DDA"**.

The City shall, upon request, consult with the Developer with respect to the City's requirements with respect to the Construction Loan documents during the negotiation thereof, and in connection therewith, shall upon request, promptly review and provide comments on drafts of the Construction Loan documents.

The Construction Loan (if any) shall be made by an Institutional Lender or other lender approved by the City and secured by the 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 (if any) shall include such other matters as reasonably requested by the City, including, without limitation, the right to notice of default and the right (but not the obligation) to cure such default and purchase the Construction Loan in accordance with Section 412.4 below.

In no event shall the Construction Loan (if any) be cross-defaulted with any other loan secured by any other property of the Developer other than the Site. The Developer shall draw upon and utilize the full amount of the Construction Loan (if any) only for financing the Project Costs for the Site, and the Construction Loan (if any) shall be disbursed and applied in accordance

with the approved construction budget, as it may be amended in connection with the Improvements only from time to time upon notice to the City.

The City approval of the Construction Loan (if any) shall not constitute a waiver by the City 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 (if any).

#### **407. Construction Contract**

By the deadline specified therefore in the Schedule of Performance and prior to the execution of any final contract, the Developer agrees to deliver to the City, 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) (the “**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 the City the right, but not the obligation, to cure defaults thereunder and to assume the Developer’s obligations and rights under the contract; provided, however, that such right to cure and assume that contract shall be subject to the rights, if any, of the Construction Lender (if any) with respect to such Construction Contract. In addition, each Construction Contract shall provide that once the cost of any change orders to such Construction Contract cumulatively exceeds five percent of the original amount, each and every subsequent proposed change order in excess of \$25,000 shall be provided to the City Manager for his or her review and reasonable approval. Further, each Construction Contract shall set forth a reasonably detailed schedule for completion of each stage of construction.

The City shall approve or disapprove said draft Construction Contract within 15 Days after submission and, in any event, by the date set forth in the Schedule of Performance, which approval shall not be unreasonably withheld, conditioned or delayed. Failure to approve or disapprove such draft Construction Contract within such 15-Day period shall be deemed to constitute approval of such submission; provided, however, that the Developer’s submission of any such submittal states in bold capitalized letters in 14-point type on the cover page of such submittal that the “**THE CITY’S FAILURE TO RESPOND TO THIS DOCUMENT WITHIN 15 DAYS SHALL BE DEEMED TO CONSTITUTE THE CITY’S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE DDA**”. The City approval of a Construction Contract shall not constitute a waiver by the City 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.

In the event of any disapproval of the draft Construction Contract, the City shall, concurrently with delivery of the notice of such disapproval to the Developer, inform the Developer in writing of the reasons for disapproval and the required changes to the draft Construction Contract. The Developer and General Contractor shall have 15 Days from receipt of any notice from the City specifying required changes (the “**Construction Contract Disapproval**”).

**Notice**”), within which to notify the City that the Developer agrees to negotiate with the General Contractor to make such changes or that the Developer objects to any such requested changes. If the Developer notifies the City within said 15-Day period of its objections to any such requested changes, then the Parties shall meet at a mutually acceptable time to discuss their differences within 15 Days after the Developer gives such notice. Following such meeting, the Developer shall use commercially reasonable efforts to cause the General Contractor to revise the Construction Contract and resubmit it for approval to the City as required by this Agreement by the later of (i) 30 Days after receipt of the Construction Contract Disapproval Notice, or (ii) 15 Days after such meeting between the Parties, unless the nature of such changes requires a longer period of time, in which case the Developer shall resubmit said revised Construction Contract as soon as possible, and, in any case, no later than 45 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 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 the City with a Construction Contract acceptable to the City within the time provided in the Schedule of Performance (or within such additional time as the City shall allow), and such failure is not cured within the cure period provided by this Agreement, then either Party may thereafter elect to terminate this Agreement. Upon such termination, the rights and obligations of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect.

The City shall, upon request, consult with the Developer with respect to the City’s requirements with respect to the Construction Contract during the initial preparation and negotiation thereof, and in connection therewith, shall upon request, promptly review and provide comments on drafts of the Construction Contract.

In connection with the Improvements, the Developer shall not be required to furnish a contractor’s performance bond and/or a payment bond.

#### **408. Rights of Access**

Prior to the issuance of the Release of Construction Covenants, for purposes of assuring compliance with this Agreement, Representatives of the City shall have the right of access to all portions of 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 the City Representatives comply with all Contractor’s reasonable rules (including safety rules) and procedures relating thereto and, at the Developer’s option, are escorted by a Representative of the Developer and/or the Contractor. The City (or its Representatives) shall, except in emergency situations, notify the Developer and Contractor prior to exercising its rights pursuant to this Section. The City shall indemnify, defend and hold harmless the 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**

The Developer shall carry out the design and construction of the Project in conformity with all Governmental Requirements applicable thereto, 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.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, California Civil Code Section 51, *et seq.*

### **409.1 Prevailing Wages**

(a) The Developer hereby agrees to carry out the rehabilitation, construction, development (as defined by applicable law) and operation of the Improvements on the Site, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable Federal and State labor laws, including, without limitation, the payment of State prevailing wages for the Project.

(b) The Project may be a “public work”, as defined in Section 1720 of the California Labor Code. If the Project is a “public work”, the Developer hereby agrees that the Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. The Developer hereby agrees that the Developer shall have the obligation to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. The Developer hereby agrees that the Developer shall have the obligation, at the Developer’s sole cost, risk and expense, to obligate any party as may be required by California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. The Developer shall indemnify, protect, defend and hold harmless the City and its officers, Representatives, employees, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including labor costs, penalties, reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the rehabilitation, construction and/or development (as defined by applicable law) of the Project, including, without limitation, any and all public works (as defined by as Section 1720 of the California Labor Code), results or arises in any way from any of the following: (1) the noncompliance by the Developer of any applicable Federal and/or State labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Sections 1726 and 1781 of the California Labor Code with respect to the Project, as the same may be enacted, adopted or amended from time to time, or any other similar law; (3) failure by the Developer to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by the Developer to provide and maintain

any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law; and/or (5) failure by the Developer to obligate any party as may be required by California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, any other similar law.

(c) It is agreed by the Parties that, in connection with the Developer's rehabilitation, construction and/or development (as defined by applicable law) of the Project, including, without limitation, any public work (as defined by Section 1720 of the California Labor Code), the Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other similar provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in California Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

(d) The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

#### **410. Nondiscrimination in Employment**

The 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. The Developer shall allow Representatives of the City access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by the City. Section 503 of this Agreement sets forth the nondiscrimination and nonsegregation clauses required to be contained in deeds, leases and contracts, when applicable.

#### **411. Levies and Attachments on Site**

The Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time to the extent arising from the Developer's direct or indirect actions. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amount of any levy or attachment or to limit the remedies available to the Developer with respect thereto.

## **412. Financing of Improvements**

### **412.1 No Encumbrances Except Mortgages and Deeds of Trust**

Mortgages and deeds of trust, recordable against the Site only, through an Institutional Lender or other lender approved by the City only for the purpose of securing loans of funds are to be used for (i) financing the acquisition, predevelopment or development of the Site or other costs of 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 in connection with the Site only with the City's prior written approval in accordance with Section 206. The City shall cooperate with the Developer in facilitating all required financing for the Project and will in good faith consider all reasonable requests by an Institutional Lender or other lender approved by the City providing existing or proposed financing to the Project to modify certain provisions of 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", "trust deed" and "deeds of trust" solely as used in this Section 412.1 shall include sale and lease-back and other means of financing which involve the granting of a security interest in the Site or in the Developer, including mezzanine financing.

### **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 the Developer as provided herein, whenever the City may deliver any notice or demand to the Developer with respect to any material breach or Default by the Developer in completion of construction of the Improvements, the City 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 the City are concerned) have the right, at its option, within 60 Days after the later of (i) the receipt of the notice and (ii) expiration of all cure periods available to the Developer, 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 through a receiver or otherwise,

then such holder shall have until 60 Days after obtaining possession to cure such Default. Notwithstanding anything to the contrary contained herein, in the case of a Default which cannot with diligence be remedied or cured within 60 Days, such holder shall have such additional time as reasonably necessary to remedy or cure such Default with diligence; provided, however, that such holder diligently and continuously pursues such cure to completion but in no event longer than 180 Days after receipt of notice hereunder (or after obtaining possession, as applicable); provided, further, that such holder shall not be required to remedy or cure any non-curable Default of the 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 the Developer's obligations to the City by written agreement reasonably satisfactory to the City. The holder in that event shall only be liable or bound by the 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 in accordance with Section 413.

It is understood that a holder shall be deemed to have satisfied the 60-Day (or 180 Day as applicable) 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 60-Day (or 180-Day as applicable) period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and thereafter cures or remedies such Default within 180 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 non-judicial 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, the City agrees that it shall not unreasonably withhold, condition or delay its approval of further extensions of time for performance of the Developer's obligations under this Agreement as appropriate but in no event for a period of time longer than 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, 60 Days after obtaining title to or possession of the Site, the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof has not exercised the option to construct the Improvements, or if it has exercised the option but has defaulted hereunder and failed to timely cure such Default, the City may, upon 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, then the City, 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 (including principal and interest and all other sums and advances secured by the mortgage or deed of trust) at the time title became vested in the holder (less the amount received by holder from 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 the City; and

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

#### **412.5 Right of City to Cure Mortgage or Deed of Trust Default**

In the event of a material, uncured mortgage or deed of trust default or breach by the Developer prior to the issuance of the Release of Construction Covenants (unless the Developer is contesting such default in good faith), the Developer shall immediately deliver to the City 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 412.3, then the City shall have the right, but not the obligation, upon 30-Days' Notice to the Developer, to cure the default. In such event, the City shall be entitled to reimbursement from the Developer of all proper direct and actual out-of-pocket costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements; provided, however, that any such lien shall be junior and subordinate to the mortgages, deeds of trust or any other security interests permitted under this Agreement, and the City Manager, as a condition to the imposition of its lien, shall execute subordination agreements in such form and substance as required by the holder of any such mortgage, deed of trust or other security interests.

#### **413. Release of Construction Covenants**

Within 15 Days after receipt by the City of Notice from the Developer that the construction of the Improvements has been completed in conformity with this Agreement, the City shall furnish the Developer with the Release of Construction Covenants. The City shall not unreasonably withhold, condition or delay 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 against the Site in the Official Records.

If the City refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, then the City shall, within 10 Days after written request therefor, provide the Developer with a written statement of the reasons that the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the 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, then the City will issue its Release of Construction Covenants upon the posting of a bond or cash security by the Developer with the City in an amount representing 125% of the fair value of the work not yet completed or other evidence reasonably satisfactory to the City assuring the City that the Developer will pay for and complete the same. If the reason for such refusal includes other uncompleted obligations of the Developer under this Agreement which can otherwise be provided for, to the reasonable satisfaction of the City, then the City will issue its Release of Construction Covenants upon the City's approval of such measures as will reasonably satisfy the City that such obligations will be completed. Even if the City shall have failed to provide such written statement

within such 10-Day period, the Developer shall not be deemed entitled to the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the 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 8182 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 City and its officers, officials, agents, Representatives, members, contractors, staff and employees 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 or the construction and operation of the Improvements, 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 any other indemnification set out elsewhere in this Agreement. The foregoing indemnity shall survive termination of this Agreement and shall continue after recordation of the Release of Construction Covenants.

#### **415. Indemnification**

To the full extent permitted by law, the Developer shall indemnify, defend and hold harmless the City and its officers, officials, agents, Representatives, members, contractors, staff and employees, 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) the Developer's compliance with or failure to comply with all applicable Governmental Requirements applicable to the Project, including all applicable Labor Laws; (ii) defects in the design of the Improvements, including (without limitation) the violation of any Governmental Requirements applicable to the Improvements, and for defects in any work done according to the City-approved plans; or (iii) any negligent performance or act or failure to perform or act pursuant to this Agreement by the Developer, or by any individual or entity that the Developer shall bear the legal liability thereof, including, but not limited to, officers, agents, employees, contractors or subcontractors of the Developer, in connection with the development of the Improvements.

Without affecting the rights of the City and its officers, officials, agents, Representatives, members, contractors, staff and employees under any provisions of this Agreement, the Developer shall not be required to indemnify and hold harmless the City and its officers, officials, agents, Representatives, members, contractors, staff and employees for the percentage of liability attributable to the active negligence or intentional misconduct of the City and its officers, officials, agents, Representatives, members, contractors, staff and employees, provided such active negligence or intentional misconduct is determined by agreement between the Parties or by the findings of a court of competent jurisdiction.

The Developer agrees to be fully responsible to the City or its officers, officials, agents, Representatives, members, contractors, staff and employees, and defend, indemnify and hold harmless such parties for any and all Losses and Liabilities resulting from any negligent acts of each and every contractor or any other person or entity involved by, for, with or on behalf of the Developer in the performance of this Agreement in connection with development of the Improvements.

In the event that any claim or legal action is brought against the Developer and/or the City pertaining to an act or failure of the Developer to act for which the City is indemnified hereunder, the Developer shall defend itself and, without cost to the City, defend, indemnify and hold the City harmless therefrom. Upon the Developer's failure to defend, indemnify and hold the City harmless from such claims, the City shall be entitled to recover from the Developer all of the City'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 City, or permit a default judgment to be taken against the City, without the prior written approval of the City, which shall not unreasonably be withheld, conditioned or delayed.

Failure of the City or its officers, officials, agents, Representatives, members, contractors, staff and employees to monitor compliance with these requirements imposes no additional obligations on the City or its officers, officials, agents, Representatives, members, contractors, staff and employees, and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend the City or its officers, officials, agents, Representatives, members, contractors, staff and employees as set forth herein is binding on the successors, assigns or heirs of the Developer and shall survive the expiration or termination of this Agreement or this Section 415.

#### **416. Disclaimer of Responsibility of City**

Except as expressly provided in this Agreement or the documents and agreements executed pursuant hereto, the City neither undertakes nor assumes nor will have any responsibility or duty to the Developer or to any third party to review, inspect, supervise, pass judgment upon or inform the Developer or any third party of any matter in connection with the development or construction of the Improvements on the Site, whether regarding the quality, adequacy or suitability of the plans, whether or not approved by the City, any labor, service, equipment or material furnished to the Site, any person furnishing the same, or otherwise. The Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to the Developer or to any third party by the City in connection with such matter is for the public purpose of redeveloping the Site, and neither the Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. Except as expressly provided herein and in the documents and agreements executed pursuant hereto, the City shall not be responsible for any of the work of construction, improvement or development of the Site or any part of the Project relating to the Site.

## **500. COVENANTS AND RESTRICTIONS**

### **501. Covenant Regarding Specific Uses**

The 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. The Developer, for itself and on behalf of its successors and assigns, agrees to the following covenants and restrictions, and which are in addition to the covenants, restrictions, and rights reserved to the City in the Grant Deed:

### **502. Covenants Regarding Maintenance and Affordable Housing**

**502.1 Maintenance.** The Developer shall maintain the Site and all Improvements thereon in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan, all applicable provisions of the Culver City Municipal Code, and all applicable policies, rules and regulations approved by the City. The Developer shall maintain the Improvements and landscaping (if any) on the Site in accordance with the Maintenance Standards. Such Maintenance Standards shall apply to all buildings, open areas, signage, lighting, landscaping (if any), irrigation of landscaping (if any), and architectural elements identifying the Site. To accomplish the maintenance, the 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 reasonable maintenance standards for similar, neighboring structures used for similar purposes, 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 curblin. The Site shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable developments used for similar purposes.

(b) If applicable, 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 (in each case, subject to the requirements and limitations of all applicable Governmental Requirements).

(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 (if any) 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.

The City agrees to notify the 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 the Developer to cure the deficiencies. Upon notification of any maintenance deficiency, the Developer shall have 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 the Developer is diligently pursuing such correction, remedy or cure. If the written notification expressly states that the problem is urgent relating to an imminent risk to public health and safety of the City, then the Developer shall have 48 hours in order to commence curing the problem. In the event that the Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards specified herein, and such failure continues beyond the notice and cure period specified above, the City 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 the Developer, and the Developer shall be responsible for the reimbursement of all such out-of-pocket third party costs incurred by the City.

At the time set forth therefor in the Schedule of Performance, the Developer shall prepare and submit to the City a maintenance plan for the Project with regard to the Developer's compliance with the Maintenance Standards.

**502.2 Affordable Housing.** The following covenants shall comprise the Affordable Housing Covenants and shall be imposed on the Site, and shall be included in the Agreement Containing Covenants for the Affordable Housing Restriction Period:

(a) The Developer shall rent two studio Affordable Housing Units exclusively to Very Low Income persons and families at a rental not to exceed an Affordable Rent for Very Low Income persons and families. The Developer shall rent three studio Affordable Housing Units and one one-bedroom Affordable Housing Unit exclusively to Workforce Income persons and families at a rental not to exceed an Affordable Rent for Workforce Income persons and families.

(b) The Very Low Income and Workforce Income Affordable Housing Units shall be designated as such on the Plans approved by the City for the Project, and shall be rented by the Developer as the respective Affordable Housing Units required by this Agreement.

(c) The Developer shall be responsible for obtaining all source documentation evidencing income (such as paycheck stubs, banking statements, tax returns, IRS transcripts, pension statements, Social Security Benefit statements, asset information, and/or family gifts and contributions) as necessary to comply with the Affordable Housing Covenants of this Agreement.

To the extent permitted by law, the Developer shall provide priority in the selection of tenants of the Affordable Housing Units to persons and families who have been displaced as a result of the acquisition of property by the City or by other activities of the City. To the extent permitted by law, the Developer shall provide priority in the selection of tenants of the Affordable Housing Units to tenants who live or work in the City (each, a “**Culver City Resident**”). The Developer shall cooperate with the City prior to the initial rental of any Affordable Housing Unit to effectuate this provision. The Developer shall use commercially reasonable best efforts to accept any City displacee or Culver City Resident who meets the Developer’s selection criteria and the requirements of the Affordable Housing Covenants. To implement this provision, the Developer agrees to provide notice to the City, in writing, prior to beginning to market the Affordable Housing Units and shall have received City approval of the Marketing and Tenant Selection Plan consistent with the terms and provisions of this Agreement. This requirement shall be deemed satisfied when the Developer has rented all of the Affordable Housing Units to qualified Very Low Income and Workforce Income tenants in accordance with this Agreement. The determination of whether a person or family is a Very Low Income or Workforce Income person or family shall be made at the time of the application for rental of the applicable Unit is made by such person or family.

**502.3 Coordination of Operations.** For as long as the KDT Property is used for theatrical presentations and ancillary purposes, the Developer shall coordinate all construction and operational activities with the KDT Theatre Operator to minimize disruption with the operations of the Kirk Douglas Theatre.

**503. Covenants Regarding Redevelopment Plan; Nondiscrimination**

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

The 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 the Developer itself or any of its Representatives 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.

The 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 any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the California Government Code shall also apply to the above paragraph.

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

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

Notwithstanding the above paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the California Government Code shall apply to the above paragraph.

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections

12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

#### **504. Effect of Violation of Section**

The City is the beneficiary of the terms and provisions of this Section 500 of the 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 Section 500 of this Agreement and the covenants running with the land have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site or in the Project. The City shall have the right, if this Section 500 of 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 Section 500 of this Agreement and any covenants may be entitled.

The KDT Theatre Operator is the beneficiary of the terms and provisions of Section 502.3 of this Agreement, and the KDT Theatre Operator shall have the right, if Section 502.3 of this Agreement is 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 KDT Theatre Operator may be entitled. This Section 504 shall in no way limit KDT Theatre Operator’s rights under Section 207 of this Agreement.

The covenants contained in this Section shall remain in effect as follows:

(a) The covenants pertaining to maintenance of the Site and all Improvements thereon, as set forth in Section 502, shall remain in effect so long as the Project remains on the Site.

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

(c) The Affordable Housing Covenants shall remain in effect until the expiration of the 55-year period required by the Affordable Housing Restriction Period.

(d) The covenants regarding coordination of operations in Section 502.3 shall remain in effect for so long as the KDT Property is used for theatrical presentations and ancillary purposes.

## **600. RIGHT OF FIRST OFFER**

### **601. Right of First Offer for City to Purchase Site**

If the Developer desires to sell the Site, or any portion thereof, to a third party for consideration, then the Developer shall first comply with the procedures set forth in this Section 600. Nothing in this Section 600 shall relieve the Developer from its obligation to comply with Section 206 hereof.

#### **601.1 Offering Notice**

If at any time prior to the date which is five years after the Effective Date, the Developer desires to sell its fee interest in the Site, or any portion thereof, to a third party for consideration, then the Developer, for itself and its successors and assigns, covenants and agrees that it shall, before pursuing such sale provide written notice (an “**Offering Notice**”) to the City of such intent.

#### **601.2 Right of First Offer**

The City would provide the Developer a written notice (a “**Reply Notice**”) within 30 Days after the date of receipt of an Offering Notice (the “**Offering Notice Response Period**”) from the Developer of the terms which have been authorized by the City Council for purchase of the Site or any portion thereof, and upon which the City would be willing to proceed with purchase of the Site, or such portion thereof. If the City delivers a Reply Notice before the last day of the Offering Notice Response Period and the Developer’s staff and the City’s staff, each acting in their sole discretion, thereafter reach tentative agreement upon the terms, conditions and form of the purchase and sale agreement within 90 Days after delivery of the Offering Notice, then the City staff would undertake such actions as are necessary to bring the purchase and sale agreement to the City Council for consideration within 45 Days after reaching such tentative agreement. Nothing herein shall be deemed a pre-commitment on behalf of either the City or the Developer to reach agreement on the terms and conditions of the purchase and sale agreement or a representation that the City Council will approve the purchase and sale agreement. Without limiting the generality of the foregoing, the Developer acknowledges that the City Council’s approval of the purchase and sale agreement will be subject to those public hearings, notices and subsequent approvals as may be required by law.

#### **601.3 Right of Developer to Proceed**

If the City does not provide a Reply Notice to the Developer before the last day of the Offering Notice Response Period, or if the City provides such Reply Notice but the Developer’s staff and the City’s staff are unable after good faith negotiations to agree upon the terms, conditions and form of the purchase and sale agreement within 90 Days after delivery of the Offering Notice, or if the City Council does not timely approve any purchase and sale agreement presented for its consideration, in each case, time being of the essence, then the Developer shall be free to thereafter enter into a transaction for sale of the Site, or such portion thereof, to a third party; provided, however, that, if the City did timely deliver a Reply Notice to the Developer: (i) the transaction

with such third party proceeds upon terms and conditions which, in their totality, are not materially less favorable to the Developer than those set forth in the later of (A) the last written offer, if any, from the City or (B) the last form of the purchase and sale agreement (if any) which the City proposed prior to the expiration of the 90-Day negotiating period described above (with respect to the purchase price, the Parties acknowledge that materially means a purchase price that is more than 20% less than the City-proposed price identified above); and (ii) the transaction with such third party is entered into within one year after the expiration of the 90-Day negotiating period described above or the failure of the City Council to approve any agreement submitted for its approval, whichever is later. If the City timely delivers the Reply Notice and the transaction with such third party is not entered into within such one-year period, or if the City timely delivers the Reply Notice and the proposed subsequent transaction would be concluded on terms and conditions materially less favorable to the Developer than those set forth in the last written offer from the City or the last form of the purchase and sale agreement (if any) which the City proposed prior to the expiration of the 90-Day negotiating period, as applicable, then, in such event, the Developer shall not thereafter enter into an agreement for sale of the Site, or portion thereof, to a third party without first giving the City another Offering Notice in accordance with the provisions of this Section 600.

#### **601.4 Expiration of Right of First Offer**

The City's rights under this Section 600 shall survive with respect to the Site, or any portion thereof, until the earlier of: (i) the fifth anniversary of the Effective Date, (ii) upon the conclusion of a transaction between the Developer and a third party transferee (other than the City) following the Developer's compliance with the applicable requirements of this Section 600 for the Site, or such portion thereof, (iii) upon the City's failure to timely deliver a Reply Notice following receipt of the Offering Notice as to the Site, or such portion thereof, (iv) upon a failure of the City Council to approve any purchase agreement submitted by the City staff to the City Council for approval following delivery of the Reply Notice, or, if such purchase agreement is approved by the City Council, upon a failure of the City to close upon the purchase of the Site, or portion thereof, pursuant to that purchase agreement as a result of any act or omission of the City, or any party acting on its behalf or at its direction, in connection with the Site, or such portion thereof, or (v) upon a foreclosure or deed *in lieu* of foreclosure of the Site, or a portion thereof, resulting from a default under any financing for the Project or a portion thereof (and such lender's exercise of its rights and remedies upon a default with respect to such financing shall not be limited in any way by, or subject to the Right of First Offer). For purposes of clarity, notwithstanding a sale of one or more portions of the Site to a third party following compliance with the provisions of this Section 600 with respect to such sale(s), the Right of First Offer shall continue to apply to all remaining portions of the Site after any such portion(s) of the Site is (are) sold, and the City's rights under this Section 600 do not expire or terminate as to any portion of the Site as to which the Developer retains fee title until the provisions of this Section 600 are complied with by the Developer with respect to such portion of the Site and until such right expires or terminates by the provisions of subsections 601.4(i)-(v) above with respect to such portion of the Site. For purposes of clarity and without thereby implying any expansion of the scope of the Right of First Offer and not as a limitation of the rights and obligations of the Parties set forth in Section 206, the Right of First Offer shall not, in any event, apply to a Transfer between the Developer and an Affiliate of the Developer (or any other Permitted Transfer), but, in that event, such Affiliate (or other

Permitted Transferee) shall remain subject hereto with respect to any proposed subsequent third party sale of the Site, or any portion thereof, by such Affiliate (or other Permitted Transferee). In any event, the Right of First Offer herein is personal to the City and, in no event, shall the City have the right to assign or otherwise transfer that right to any other person or entity.

## **602 Memorandum of Right of First Offer**

The Parties agree to cause the Memorandum of Right of First Offer 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 805, failure or delay by either Party to perform any term or provision of this Agreement constitutes a default under this Agreement, and if not cured within the applicable notice and cure period, constitutes a Default under this Agreement.

In addition, each of the following shall constitute a default of the Developer or, with respect to item (a), the City hereunder, as applicable, and if not cured within the applicable notice and cure period, constitutes a Default under this Agreement:

(a) The Developer or the City fails to comply with any material provision contained in the City Documents; or

(b) The occurrence of any default under any of the Construction Loan documents (if any) or other loan documents secured by an interest in the Site or under any other documents entered into by the Developer pursuant to this Agreement prior to the completion of construction following the expiration of any applicable notice or cure period set forth therein; or

(c) Subject to the provisions of Section 805, the Improvements are not completed within the time provided in the Schedule of Performance; or

(d) The Developer (i) is unable to pay its respective debts as they become due, or files a petition in bankruptcy (or otherwise commences bankruptcy or a similar proceeding), or (ii) has filed by or against it, under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, a petition in bankruptcy or other commencement of a bankruptcy or similar proceeding and such petition or proceeding is not dismissed within 90 Days after filing.

Prior to exercising any right or remedy because of a Default and as a condition thereto, 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 the expiration of the cure period provided herein with respect to such Default. 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 Breach is not cured or commenced to be cured and thereafter diligently pursued to completion by the defaulting Party within 30 Days after service of the Notice of Default (unless such Breach 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 the Developer or the City, as applicable, is diligently pursuing such correction, remedy or cure), then such failure shall constitute a “**Default**” under this Agreement, and the defaulting Party will be liable to the other Party for any damages, subject to the limitations set forth in Section 708, caused by the Default and other relief as is afforded by applicable Governmental Requirements.

This Agreement may be terminated by the non-defaulting Party upon a Default and, in addition, the non-defaulting 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, subject to the limitations set forth in Section 708, for any Default or to obtain any other legal equitable remedy consistent with the purpose of this Agreement. To the extent permitted by law, such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, or in the Federal District Court in the Central District of California.

### **703. Termination by Developer Prior to Closing**

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

(a) The City 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 without the fault of the Developer, or

(b) The City commits a Default (i.e., a default which is not cured within the time provided under this Agreement); or

(c) One or more of the Developer’s Conditions Precedent to Closing is not satisfied on or before the Outside Closing Date;

then this Agreement may, at the Developer’s option, be terminated by Notice to the City. From the date of the Notice of termination of this Agreement by the Developer to the City and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties, except that the obligations and rights of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect.

Upon such termination by the 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 the City, then the City shall pay all escrow cancellation costs. If this Agreement is terminated for any other reason, then the Parties shall each pay one-half of the escrow cancellation costs. In the event of a termination as a result of a Default of the City, the Developer shall have remedies provided by applicable law, subject to the limitations on damages set forth in Section 708.

#### **704. Termination by City**

##### **704.1 Termination Prior to Closing**

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

- (a) The Developer commits a Default (i.e., a default which is not cured within the time provided under this Agreement); or
- (b) One or more of the City's Conditions Precedent to Closing is not satisfied on or before the Outside Closing Date; or
- (c) The Developer does not accept title to the Site or any portion thereof pursuant to the Grant Deed in the manner and condition set forth in this Agreement on or before the Outside Closing Date;

then this Agreement may, at the City's option, be terminated by Notice to the Developer. From the date of the Notice of termination of this Agreement by the City to the Developer and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties, except that the obligations and rights of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect. Upon such termination by the City, 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 a Default of the Developer, then the Developer shall pay all escrow cancellation costs. If this Agreement is terminated for any other reason, then the Parties shall each pay one-half of the escrow cancellation costs. In the event of a termination as a result of a Default of the Developer, the City shall have remedies provided by applicable law, subject to the limitations on damages set forth in Section 708.

##### **704.2 Termination After Closing**

After the Close of Escrow but before Completion of the Project, the City shall have the additional right to terminate this Agreement, in the event that any of the following Defaults shall occur:

- (a) The Developer fails to commence construction of the Project as required by this Agreement on or before the date specified in the Schedule of Performance (as such date may be adjusted in accordance with the terms and conditions of this Agreement, including

Section 805 below, and such failure continues for a period of 90 Days after written notice from the City; or

(b) The Developer abandons or substantially suspends construction of the Project (other than for any reason permitted hereunder or as a result of any event described in Section 805 below), and does not resume construction of the Project within 90 Days after written notice thereof has been given by the City to the Developer; or

(c) The Developer commits a Transfer not expressly permitted under this Agreement or approved in advance in writing by the City; or

(d) The Developer otherwise materially breaches this Agreement, and such breach is not cured within the time provided in this Agreement.

then this Agreement may, at the City's option, be terminated by Notice to the Developer. From the date of the Notice of termination of this Agreement by the City to the Developer and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties, except that the obligations and rights of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect. In the event of a termination as a result of a Default of the Developer, the City shall have remedies provided by applicable law, subject to the limitations on damages set forth in Section 708.

The rights established in this Section 704.2 shall not apply to any part of the Project with respect to which the City has issued a Release of Construction Covenants or Partial Release of Construction Covenants.

In the event that the City terminates this Agreement pursuant to this Section 704.2, the City shall retain its rights under Section 712, notwithstanding the termination of this Agreement.

#### **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 City, then service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

If any legal action is commenced by the City against the Developer, then service of process on the Developer shall be made by personal service upon an officer or executive 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 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 City defaults with regard to any of the provisions of this Agreement, then the non-defaulting Party shall serve written Notice of such Default upon the defaulting Party. If the default is not cured within the cure period provided in this Agreement, then the defaulting Party shall be liable to the other party for any damages caused by such Default. Neither Party, however, shall have any right to indirect or consequential or punitive damages against the other, and each Party hereby waives the right to claim the same against the other.

**709. Specific Performance**

If either the Developer or the City defaults under any of the provisions of this Agreement, then the non-defaulting Party shall serve written Notice of such Default upon the defaulting Party. If the default is not cured within the cure period provided in this Agreement, then 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.

**710. Inaction Not 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 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.

**711. 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, to 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 out of pocket fees and expenses of counsel to the Parties hereto 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.

## **712. Right of Reverter**

The City shall have the additional right, at its option, to re-enter and take possession of all portions of the Site conveyed to the Developer pursuant to this Agreement, with all improvements thereon, and revert in the City the estate theretofore conveyed to the Developer (the “**Right of Reverter**”) if, after Conveyance of title and prior to recordation of the Release of Construction Covenants for such portions of the Site, the City terminates this Agreement pursuant to Section 704.2.

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 of 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 City’s rights as set forth in this Section 712, 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 City’s right to reenter, terminate and revert as to such portion of the Site shall terminate, and the City shall only be entitled to reenter, terminate and revert with respect to the other parcels within the Site for which no Release of Construction Covenants has been issued (if any).

Upon the revesting in the City of title to the Site as provided in this Section 712, the City 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 City shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan and in furtherance of municipal and other public purposes to a qualified and responsible party or parties (as determined by the City in its sole discretion, as between the Parties), who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the City 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 City on its own behalf and on behalf of the City for all reasonable and necessary out of pocket costs and expenses incurred by the City in

connection with reentering, terminating and revesting and resale of all such portions of the Site, 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 City 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 that the Site is exempt from taxation or assessment of such charges during the period of ownership by the City, 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 or to prevent from attaching or being made any 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 City 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 Payment (as described in Section 301.2) paid to the City 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; and

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

To the extent that the rights established in this Section involves a forfeiture, the rights of the City hereunder must be strictly interpreted against the City, as 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 City will convey the Site to the Developer for development of the Project as set forth herein and not for speculation, and the fact that such right is expressly authorized by California Health and Safety Code Section 33438.

## **800. GENERAL PROVISIONS**

### **801. Notices, Demands and Communications Between 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 or CTG as provided in this Section, all such communications will be addressed as follows:

To City: City of Culver City  
Attn: Sol Blumenfeld, Community Development Director  
9770 Culver Boulevard  
Culver City, California 90232-0507

Copy to: City of Culver City  
Attn: Heather Baker, Esq., City Attorney  
9770 Culver Boulevard  
Culver City, California 90232-0507

Copy to: Kane, Ballmer & Berkman  
Attn: Todd C. Mooney, Esq.  
515 S. Figueroa Street, Suite 780  
Los Angeles, California 90071

To Developer: RETHINK CULVER LLC.  
c/o RETHINK DEVELOPMENT CORP.  
9812 Washington Boulevard  
Culver City, California 90232

Copy to: Zuber Lawler LLP  
Attn: David B. Lambert, Esq.  
350S. Grand Ave., 32<sup>nd</sup> Floor  
Los Angeles, California 90071  
Email: dlambert@zuberlawler.com

To CTG: Center Theatre Group  
c/o Kirk Douglas Theatre  
Attn: Managing Director  
601 W Temple St.  
Los Angeles, CA 90012  
Email: MPressman@ctgla.org

and to: Gibson, Dunn and Crutcher LLP  
Attn: Amy R. Forbes  
333 South Grand Ave., Suite 4900  
Los Angeles, California 90071  
Email: AForbes@gibsondunn.com

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. Conflicts of Interest**

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

**803. 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.

**804. Nonliability of City Officials and Employees**

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

**805. 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 (but not including COVID-19); 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 or failure to act of any public or governmental agency or entity (provided that acts or failure to act of the City shall not excuse performance by the City); delays in the issuance of any governmental permits, approvals or authorizations; 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 and such notice shall be provided to the other Party within 60 Days after the date of knowledge of the commencement of the cause of the delay. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure delay unless and until the Party claiming such delay and interference with obligations hereunder delivers written notice to the other Party within the time period stated above which notice shall describe the event, its cause, when and how such Party obtained knowledge, the date the event commenced and the date the Party obtained knowledge of the commencement of the delay caused by the event, and the estimated delay resulting therefrom.

Except as provided in the 4<sup>th</sup> paragraph of this Section 805, the lack of funding to complete the design and development of the Site shall not in itself constitute grounds of Force Majeure delay pursuant to this Section 805. Subject to the 4<sup>th</sup> paragraph of this Section 805, the 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. The Developer acknowledges and agrees that the provisions of this Section 805 shall not operate to excuse the Developer from prompt payment of 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, that in no event shall the Outside Closing Date be excused pursuant to this Section 805 for any Force Majeure delay for a cumulative period of more than 18 months. If said Force Majeure delay extends the Outside Closing Date for more than 18 months, then either Party may terminate this Agreement upon 15 Days written notice to the other Party, and upon such termination all documents and funds deposited into Escrow shall be returned to the Party depositing those funds or documents. Upon such termination, the obligations and rights of the Parties under this Agreement that expressly continue after termination of this Agreement shall continue in effect.

Notwithstanding the foregoing, the Developer shall additionally be entitled to an extension of its obligation to commence and complete development of the Project on the Site for up to six additional months (for a total of up to 24 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 months) if the Developer demonstrates to the reasonable satisfaction of the City 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. The Developer shall notify the City in writing of its intention to seek such additional six-month period (including a description of the Force Majeure event causing such conditions and the Developer's efforts to complete the development of the Project in spite of such conditions) not later than 30 Days prior to the expiration of the 18-month period specified above. The City shall notify the Developer of its approval or disapproval of such additional six-month period within 10 Days after the receipt of the Developer's notice.

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

#### **806. Plans and Data**

If this Agreement is terminated by the Developer pursuant to Section 703, then the City shall have the right, but not the obligation, to purchase from the Developer all of the Developer's right, title and interest in and to all plans, drawings, studies and related documents concerning the Project within the Developer's possession and control, without representation or warranty. The purchase price for all or any part of such materials shall be the actual cost to the Developer, less any reimbursements or payments paid by the City, prior to such termination, to the Developer or third party contractor for such Plans drawings, studies and related documents concerning the Project. To the extent that the City paid in full for any such plans, drawings, studies and related documents concerning the Project, all such material shall be considered the sole property of the City and the Developer shall promptly deliver all such material to the City in the Developer's possession at no cost or expense to the City.

If this Agreement is terminated by the City pursuant to Section 704, then, pursuant to the exercise of the City's rights under the Assignment of Plans, Reports and Data, the Developer shall deliver to the City any and all plans, drawings, studies and related documents concerning the Project within the Developer's possession and control, without representation or warranty and

subject to all third party rights therein.

Upon delivery to the City pursuant to this Section, the City shall have the right to use such materials as it deems necessary and appropriate to fulfill the purposes of this Agreement without obligation to the Developer but subject to all third party rights therein.

**807. Approval by Parties**

Approvals required of the Parties shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City or the Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld, conditioned or delayed. In the event that a Party declines to approve any contract, document, plan, proposal, specification, drawing or other matter, such denial shall be in writing and shall include the reasons for such denial. The Party considering the request for such approval shall in all cases use commercially reasonable efforts to respond to such request for approval within 15 Days after receipt unless a different period for response is expressly provided herein.

**808. Relationship Between Parties**

The Parties agree that the Developer, in the performance of this Agreement, shall act as and be an independent contracting party and shall not act in the capacity of an agent, employee or partner of the City. It is hereby acknowledged that the relationship between the Parties is not that of a partnership or joint venture and that the Parties shall not be deemed or construed for any purpose to be the agent of the other.

**809. 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, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday. If any act is to be done by a particular time during a day, then that time shall be Pacific Time Zone time.

**810. 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.

**811. Time of Essence**

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

**812. Administration**

This Agreement shall be administered by the City Manager or Community Development Director following approval of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Manager or the Community Development Director is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City Manager, the Community Development Director is authorized to act on behalf of the City Manager as his designee. The City Manager or the Community Development Director shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted for the Project, or materially add to the costs of the City as specified herein or as agreed to by the City Council. Notwithstanding the foregoing, the City Manager or the Community Development Director may in his or her sole and absolute discretion refer any matter to the City Council for action, direction or approval.

**813. 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 agrees to reasonably consider such modifications.

**814. Ground Breaking and Grand Openings**

To insure proper protocol and recognition of the City Council, the Developer shall cooperate with the 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 by providing the City staff with at least three weeks written prior notice of any such event.

**815. 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, and such other matters as may be reasonably requested.

**816. Counterparts**

This Agreement may be signed in counterparts, each of which shall be deemed to be an original. The Parties specifically agree that signatures on this Agreement transmitted electronically or by facsimile shall be legally binding and that each Party is entitled and authorized to rely on such electronic or facsimile signature of the other Party hereon as if it were an original signature. Original signatures of the Developer shall also be provided to the City for its records.

**817. Entire Agreement, Waivers and Amendments**

This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement includes 82 pages, two signature pages and Attachment Nos. 1 through 16, and any agreements entered into by the Parties substantially in the form of Attachment Nos. 1 through 16, 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 City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Parties.

**818. Time for Acceptance of Agreement by City**

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

**900. SPECIAL PROVISIONS**

**901. Parking**

The total number of Culver City Municipal Code-complying parking spaces required for the Project shall be as determined by the City, sufficient to accommodate the approved uses, unless waived by the City. To satisfy the parking needs of the Project, the Developer shall secure off-site parking to serve the Project in order to provide parking that complies with the Culver City Municipal Code, as it may be amended from time to time, unless waived by the City. At the time set forth therefor in the Schedule of Performance, the Developer shall prepare and submit to the City a plan for satisfaction of all parking requirements (if any).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**“DEVELOPER”**

RETHINK CULVER LLC, a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signatures Continue on Following Page]*

**“CITY”**

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

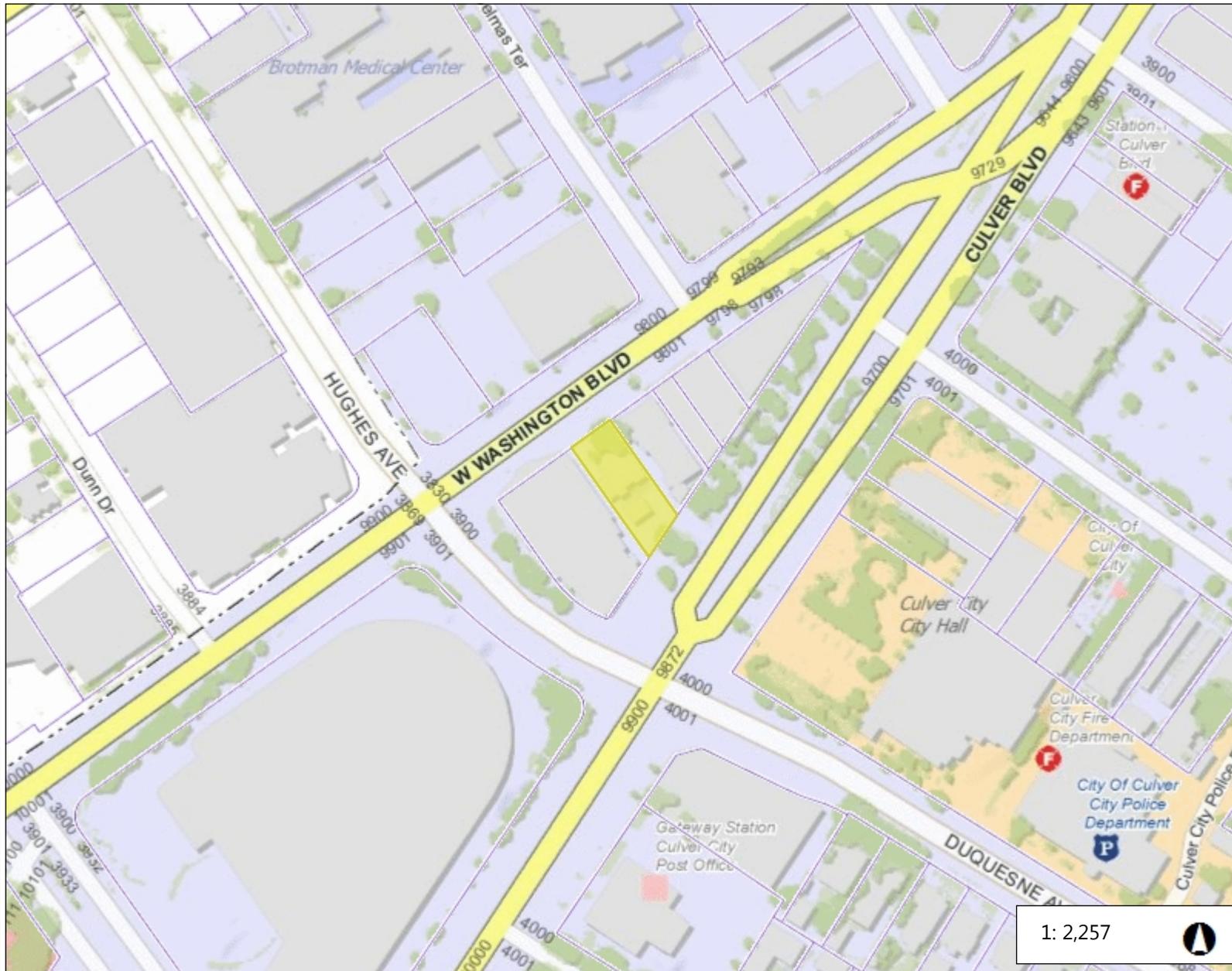
By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

**ATTACHMENT NO. 1**

**SITE MAP**

[behind this page]

# 9814 Washington Blvd



## Legend

□ Parcels

## Notes

0.1 0 0.04 0.1 Miles

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Latitude Geographics Group Ltd.

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

**ATTACHMENT NO. 2**

**LEGAL DESCRIPTION**

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

**PARCEL 1:**

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**PARCEL 2:**

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

**ATTACHMENT NO. 3**  
**SCOPE OF DEVELOPMENT**

[behind this page]

## SCOPE OF DEVELOPMENT

1. Project. The Developer shall Develop and Cause Construction upon the Site, in accordance with all approvals and permits required for Completion, the 34-unit market rate and affordable housing project with ground-floor arts related space, consistent with the Developer's Proposal.
2. Relocation. The Developer shall relocate existing HVAC equipment and electrical transformers currently within the CTG craft area to another area of the Site, or to an off-Site location approved by CTG, in order to accommodate the Developer's construction of the Project.
3. Below-Grade Installation. To the extent permitted, the Developer shall install below grade all HVAC equipment, electrical transformers, boilers, and other related equipment to be located on the Site, or to an approved off-Site location.
4. Public Improvements. The Developer shall complete certain public improvements as reasonably directed and approved by the City.
5. Edges of Development. The edges of the development shall be designed in order to maximize compatibility with the abutting and adjacent uses and in order to minimize noise by the use of a variety of materials in order to provide a sense of visual relief and openness.
6. KDT Improvements. The Project shall include the construction of utility loading facilities and a craft service area serving the Kirk Douglas Theatre Property, as well as replacement and/or relocation of any and all existing HVAC, mechanical systems, plumbing, electrical, and any other systems serving the Kirk Douglas Theatre Property to the extent such replacement and/or relocation is required or otherwise undertaken to accommodate the Project.
7. Block Improvements. The Project shall include the construction of a trash, recycling, and grease receptor area for use by businesses along the block.

**ATTACHMENT NO. 4**  
**SCHEDULE OF PERFORMANCE**

[behind this page]

## SCHEDULE OF PERFORMANCE

	<b>Task</b>	<b>Deadline</b>
1.	Parties open Escrow with Escrow Agent (§302.1)	10 Days after Effective Date
2.	Developer submits name and qualifications of its civil engineer (§401.3)	90 Days prior to Outside Closing Date
3.	Developer submits complete set of schematic drawings for Project (§401.2)	10 days after Effective Date
4.	Developer submits complete set of design development drawings for Project (§402.1)	90 days after Effective date
5.	Conveyance (§301.1)	December 29, 2022
6.	Developer submits complete set of building permit/construction drawings for Project (§402.1)	245 Days after Effective Date
7.	Developer submits Assignment of Plans, Reports and Data (§402.1)	60 Days after Close of Escrow
8.	Developer's submits Evidence of Financing (§314)	The latter of 315 Days after Effective Date or 45 days after ready to issue permit
9.	Developer prepares and submits plan for satisfaction of all parking requirements (if any) (§901)	60 Days after Close of Escrow
10.	Developer delivers fixed price or guaranteed maximum cost Construction Contract(s) (§407)	The latter of 300 Days after Effective Date or 30 days after ready to issue permit
11.	City approves or disapproves draft Construction Contract (§407)	10 Days after Developer submits
12.	Developer submits draft Construction Loan (if any) (§406)	The latter of 315 Days after Effective Date or 45 days after ready to issue permit
13.	City approves or disapproves Construction Loan (if any) (§406)	10 Days after Developer submits
14.	Developer submits Assignment of Construction Contract (§314(d))	The latter of 330 Days after Effective Date or 60 days after ready to issue permit
15.	Developer prepares and submits maintenance plan for Project with regard to Developer's compliance with Maintenance Standards (§502)	90 Days after Close of Escrow
16.	Developer prepares and submits Marketing and Tenant Selection Plan for Affordable Housing Units (§502)	90 Days after Close of Escrow
17.	Developer commences construction of Improvements (§404)	365 Days after Effective Date or 75 days after ready to issue permit
18.	Developer substantially completes all construction of Improvements (§404)	24 months after construction commencement

**ATTACHMENT NO. 5**

**RELEASE OF CONSTRUCTION COVENANTS**

[behind this page]

OFFICIAL BUSINESS

Document entitled to free recording  
per California Government Code Section 27383

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

---

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-\_\_\_

**RELEASE OF CONSTRUCTION COVENANTS**

THIS RELEASE OF CONSTRUCTION COVENANTS (this “**Release**”) is hereby made as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by between the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), in favor of RETHINK CULVER LLC a California limited liability company (the “**Developer**”).

**RECITALS**

WHEREAS, the City and the Developer entered into that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 2022, a public record on file in the office of the City Clerk (the “**DDA**”), relating to, among other things, that certain real property located in the County of Los Angeles, State of California and legally described in Exhibit A attached hereto and incorporated herein by this reference (the “**Site**”). “**DDA**” as used herein shall mean, refer to and include the above described DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto or other documents expressly incorporated by reference in the above described DDA. Any capitalized term not herein defined shall have the same meaning as set forth in the DDA. The DDA is hereby incorporated herein by this reference; and

WHEREAS, in accordance with and pursuant to Section 413 of the DDA, upon notice from the Developer of the completion of the construction of the Improvements, the City shall issue for recordation against the Site, a Release of Construction Covenants acknowledging the Developer’s satisfactory completion of the construction of the Improvements in accordance with the DDA; and

WHEREAS, the Developer has satisfactorily completed the construction of the Improvements as required by the DDA and has requested that the City issue this Release; and

WHEREAS, the City has inspected and determined that the construction required by the DDA has satisfactorily been completed, and the City now desires to issue this Release pursuant to the terms and conditions of the DDA.

NOW THEREFORE, it is hereby acknowledged and certified by the City that:

1. The construction of the Improvements has been fully and satisfactorily performed and Completed in accordance with the DDA.
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 DDA to construct the Improvements; however, such party shall be bound by any and all of the DDA's covenants, conditions, and restrictions concerning the Site which survive the recordation of this Release.
3. Nothing contained in this instrument shall modify any provisions of the DDA.
4. This Release is not a notice of completion as referred to in Section 8182 of the California Civil Code.

[signatures on following page]

[remainder of page intentionally left blank]

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

**“CITY”**

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-\_\_\_

**ATTACHMENT NO. 6**

**GRANT DEED**

[behind this page]

OFFICIAL BUSINESS

Document entitled to free recording  
per California Government Code Section 27383

RECORDING REQUESTED BY:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

WHEN RECORDED MAIL TO AND SEND  
TAX STATEMENTS TO:

RETHINK DEVELOPMENT CORP.  
9812 Washington Boulevard  
Culver City, California 90232

---

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-915

The undersigned Grantor declares:

Documentary Transfer Tax is: \$\_\_\_\_\_ (County); City Tax is: \$\_\_\_\_\_.

[ X ] computed on full value of property conveyed, or

[ ] computed on full value less value of liens or encumbrances remaining at time  
of sale,

[ ] Unincorporated area;  [ X ] City of Culver City.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged the CITY OF CULVER CITY, a charter city of the State of California, herein called the “**Grantor**”, acting to carry out the Redevelopment Plan for the Culver City Redevelopment Project, herein called the “**Redevelopment Plan**”, under the Community Redevelopment Law of the State of California, hereby grants to RETHINK CULVER LLC., a California limited liability company, herein called the “**Grantee**”, the real property, hereinafter referred to as the “**Site**”, described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference. The Site is adjacent to the property commonly known as 9820 Washington Blvd, Culver City, California 90232 on which the Kirk Douglas Theatre currently operates, described in the document attached hereto, labeled Exhibit B and incorporated herein by this reference (the “**KDT Property**”).

(1) The Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Site which might otherwise pass with a conveyance of the Site.

(2) The Site is conveyed in accordance with and subject to the Redevelopment Plan, which was approved and adopted on November 23, 1998 by Ordinance No. 98-014 of the City Council of the City of Culver City, as amended, and the Disposition and Development Agreement (the “**DDA**”) entered into by and between the Grantor and the Grantee as of \_\_\_\_\_, 2022, both of which documents are public records on file in the offices of the City Clerk of the City of Culver City. The DDA is hereby incorporated herein by this reference. “DDA” as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto or other documents expressly incorporated by reference in the DDA. Any capitalized term not herein defined shall have the same meaning as set forth in the DDA.

(3) The Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site that the Grantee, such successors and such assigns, shall develop, maintain, and use the Site only as follows:

(a) Until the date which is 60 years after the date of the date of this Grant Deed, the Site shall be used as a market rate and affordable housing project with ground-floor arts related space (the “**Project**”), or other use approved by the City Manager or designee.

(b) Until the date which is 55 years after the date of the issuance by the City of the Release of Construction Covenants (all terms in initial capitals used herein without definition will have the meanings given to such terms in the DDA) for the Project, designated portions of the Site shall be offered for rent by the Grantee to members of the public for community meetings and performance space, on terms and conditions first reasonably approved in writing by the City Manager or designee.

(c) Until the date which is 60 years after the date of the date of this Grant Deed, the Grantee, or any transferee under a Transfer permitted under the DDA shall be the sole operator of the Project, unless and until the City Manager or designee has approved in writing an alternative operator, co-operator, or sub-operator thereof. Approval of any alternative operator, co-operator, or sub-operator shall not obligate the City Manager or designee to approve a subsequent alternative operator, co-operator, or sub-operator of the Project. Notwithstanding the foregoing, CENTER THEATRE GROUP OF LOS ANGELES, a California nonprofit corporation (“**CTG**”), the current lessee of the KDT Property and current operator of the Kirk Douglas Theatre, is hereby pre-approved as an alternative operator, co-operator, or sub-operator of the ground-floor arts related space portion of the Project (the “**Art Space**”). The Grantee shall not lease the Art Space (or any portion thereof) to any tenant (other than CTG) other than in accordance with the DDA. As used herein, “**KDT Theatre Operator**” means CTG or any subsequent operator of a theatre on the KDT Property.

(d) The following provisions shall apply to the Art Space:

(i) The Grantee is responsible for building out the shell and core of the Art Space.

(ii) During design and construction of the shell and core of the Art Space, the Grantee shall meet regularly with CTG to allow for appropriate input into the design of the Art Space, with the goal of making the space as useful and flexible as possible, for use by CTG or another arts-related user.

(iii) At the time of commencement of construction of the anticipated Art Space improvements, the Grantee shall provide CTG with a proposed amount of “rent” that would be associated with the proposed tenant improvements as required to build out the space for use by CTG, currently expected to be approximately \$1.25/square foot, and a reasonably detailed description of the scope of improvements proposed to be provided, together with an estimate of any anticipated common area charges. At that time, the Grantee would also provide CTG a “buy out” number that would allow CTG to make an upfront payment to the Grantee for the cost of the proposed buildout, or the Grantee can elect to build out the space itself.

(iv) If CTG elects the “buy out” or self “build out” option, then CTG would have the right to occupy the Art Space, rent free (other than approved common area charges), for the term of the Kirk Douglas Theatre lease. CTG and the Grantee may also propose a different buildout and reach a mutually agreeable rent/buy out number.

(v) The Grantee shall provide CTG 60-days-notice of the date when the Grantee anticipates the substantial completion of the shell and core of the Art Space improvements.

(vi) CTG shall have a period of one-year from the date of substantial completion of the shell and core of the Art Space improvements to make its election with respect to its occupancy of the space. If CTG has not elected to sign a lease at the proposed rent, or made a buy-out payment, or elected to self-construct by that time, then the Grantee may at its election build the space out for another compatible arts-related use (as defined in Section 3(d)(viii) below), subject to the reasonable approval of the KDT Theatre Operator (for as long as the KDT Property is used for theatrical presentations and ancillary purposes), it being understood that in all circumstances the Art Space must be used for a compatible arts-related use until the date that is 60 years after the date of this Grant Deed.

(vii) As used herein, substantial completion shall mean that construction of the shell and core of the Art Space shall have been accomplished such that: (a) the contractor undertaking the work shall have given the Grantee a notice of substantial completion under the applicable construction contract and (b) the Grantor has determined that such shell and core improvements have been completed in accordance with all Grantor-approved plans.

(viii) As used herein, a compatible arts-related use is defined as the following: Any arts or artistic media-related use with at least 25% of the space regularly available for public interaction such as classroom, educational programming, gallery, community gathering space, café/beverage space or mix of concepts such as these, with the remaining spaces being utilized for other arts-oriented uses such as office or makers/studio spaces. No use will be considered compatible if it will be programmed in a way that adversely conflicts with the

scheduled use of the Kirk Douglas Theatre or could create noise levels that would disturb a performance in the Kirk Douglas Theatre.

(ix) Any requests of or notices to CTG under this Section 3(d) shall be in writing.

(e) Nothing in this Grant Deed shall waive or impact the independent rights CTG has with respect to the Site, including but not limited to its right to ensure that any development of the Site provides comparable space and uses to those utilized by CTG on the Site as of the date of the DDA. The DDA requires the dedication of appropriate easements to preserve these loading uses and other uses utilized by CTG, at no cost to CTG, and, as and to the extent provided therein, requires CTG's review and approval of the plans (including any changes thereto) with respect to the Site development to ensure its rights are respected.

(f) So long as the KDT Property is used for theatrical presentations and incidental purposes, the Grantee shall coordinate all construction and operational activities with the Kirk Douglas Theatre operations to minimize disruption.

(g) The Grantee shall maintain the Improvements on the Site and in the public rights-of-way (curb to property line) on all sides of the Site, and shall keep the Site and such public rights-of-way free from any accumulation of debris or waste materials, in each case, in accordance with the Maintenance Standards specified in the DDA. The Grantee shall also maintain the required landscaping on the Site and in such public rights-of-way in accordance with the Maintenance Standards specified in the DDA.

(4) The Grantee covenants to timely perform the remaining tasks required of it in the Schedule of Performance included in the DDA, as such schedule has been or may be revised or extended from time to time.

(5) Until the respective times set forth therefor in the DDA:

(a) The Grantee shall not make any sale, transfer, conveyance or assignment of the Site or any part thereof or the buildings or structures thereon, without the prior written approval of the Grantor, except as expressly permitted by the DDA. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, nor shall it prohibit granting any security interests permitted by Paragraph (5)(b) of this Grant Deed for financing the acquisition and development of the Site. Notwithstanding the foregoing, the lease of the Art Space to CTG, is hereby pre-approved, and subject to the Affordable Housing Covenants, the leasing of the Units for residential purposes is hereby pre-approved.

(b) The Grantee shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, or any other form of conveyance permitted by the DDA. The Grantee shall notify the Grantor in advance of any such conveyance for financing as and to the extent required under the DDA. Except as provided in the DDA, the Grantee shall not enter into any such conveyance for financing without prior written approval of the Grantor, which approval the Grantor agrees to give if any such conveyance is permitted by the DDA and

with an Institutional Lender or other responsible financial or lending institution or other acceptable person or entity.

(6) Prior to the issuance of a Release of Construction Covenants or Partial Release of Construction Covenants by the Grantor for the Improvements to be constructed on the Site or on any part thereof:

(a) The Grantor shall have the right at its option to reenter and take possession of the Site hereby conveyed (or portion thereof) with all improvements thereon, and to terminate and revest in the Grantor the Site hereby conveyed (or portion thereof) to the Grantee if the City terminates the DDA as a result of:

(i) The Grantee's fails to commence construction of the Project as required by the DDA on or before the date specified in the Schedule of Performance (as such date may be adjusted in accordance with the terms and conditions of this Agreement, including Section 805 below, and such failure continues for a period of 90 Days after written notice thereof from the Grantor or

(ii) The Grantee abandons or substantially suspends construction of the Project (other than for any reason permitted hereunder or as a result of any event described in Section 805 below), and does not resume construction of the Project within 90 Days after written notice thereof has been given by the Grantor to the Grantee; or

(iii) The Grantee commits a Transfer not expressly permitted under the DDA or approved in advance in writing by the Grantor; or

(iv) The Grantee otherwise materially breaches the DDA, and such breach is not cured within the time provided in the DDA.

(b) The right to reenter, repossess, terminate and revest, and the provisions below regarding the application of proceeds, shall be subject to and be limited by and shall not defeat, render invalid, or limit:

(i) Any mortgage or deed of trust or other security interest permitted by Paragraph (5)(b) of this Grant Deed; or

(ii) Any rights or interests provided for the protection of the holders of such mortgages, deeds of trust, or other security interests.

(c) The right to reenter, repossess, terminate and revest shall not apply to the Site, or portions thereof, for which a Release of Construction Covenants or Partial Release of Construction Covenants has been issued by the Grantor and recorded.

(d) In the event title to the Site or any part thereof is revested in the Grantor as provided in this Paragraph (6), the Grantor shall, pursuant to its responsibilities under State law, use its best efforts to resell the Site, or any part thereof, as soon and in such manner as the Grantor

shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified party or parties (as determined by the Grantor in its sole discretion) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the Grantor and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site and satisfaction of obligations owed to the holder of any mortgage, deed of trust or other security interest authorized by the DDA, the proceeds thereof shall be applied:

(i) First, to reimburse the Grantor on its own behalf for all reasonable and necessary out of pocket costs and expenses incurred by the Grantor in connection with reentering, terminating and revesting and resale of all such portions of the Site, 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 Grantor 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 that the Site is exempt from taxation or assessment of such charges during the period of ownership by Grantor, such taxes, assessments or charges (as determined by the Grantor assessing official) as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or to prevent from attaching or being made any encumbrances or liens due to obligations, defaults or acts of the Grantee, 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 Grantor by the Grantee and its successor or transferee; and

(ii) Second, to reimburse the Grantee, its successor or transferee up to the amount equal to: (1) the sum of the Purchase Price Payment paid to the Grantor by the Grantee 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 Grantee from the Site or the improvements thereon.

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

(e) To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted against the Grantor, as the party for whose benefit it is created. This right is to be interpreted in light of the fact that the Grantor hereby conveys the Site to the Grantee for development and not for speculation in undeveloped land.

(7) The Grantee 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 the Grantee itself or any of its Representatives 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.

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

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

Notwithstanding the above subparagraph, with respect to familial status, subparagraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in subparagraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the California Government Code shall also apply to the above subparagraph.

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

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

Notwithstanding the above subparagraph, with respect to familial status, subparagraph (2) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code. With respect to familial status, nothing in subparagraph (2) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51

and Section 1360 of the California Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the California Government Code shall apply to the above subparagraph.

3. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

(9) All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Grantor, its successors and assigns, against the Grantee, its successors and assigns, to or of the Site conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Site or portion thereof.

(10) The conditions contained in Paragraphs (4) and (6) of this Grant Deed shall terminate and become null and void upon recordation of a Certificate of Completion issued by the Grantor for the Site or the applicable portion thereof. The conditions contained in Paragraph (5) of this Grant Deed shall terminate and become null and void upon the respective times set forth therefor in the DDA. All other covenants in this Grant Deed shall remain in perpetuity, except as otherwise expressly provided herein.

(11) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(12) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by Paragraph (5)(b) of this Grant Deed; provided, however, that any subsequent owner of the Site 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.

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

(14) The covenants contained in this Grant Deed shall be construed as covenants running with the land for the benefit of Grantor (and with respect to the covenants included in Paragraphs 3(c), 3(d), 3(e) and 3(f) above, the KDT Property), and not as conditions which might result in forfeiture of title, except for the covenant and condition contained in Paragraph (6) of this Grant Deed.

[signatures on following page]

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**“GRANTOR”**

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

*[Signatures Continue on Following Page]*

The Grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

**“GRANTEE”**

RETHINK CULVER LLC,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

105608806.9

**ATTACHMENT NO. 7**  
**PERFORMANCE GUARANTY**

[behind this page]

OFFICIAL BUSINESS

Document entitled to free recording  
per California Government Code Section 27383

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

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SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-915

**PERFORMANCE DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING  
(WITH ASSIGNMENT OF RENTS)**

This Performance Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) (this “**Deed of Trust**”) is made as of \_\_\_\_\_, 2022, by RETHINK CULVER LLC., a California limited liability company (the “**Trustor**”), whose address is c/o ReThink Development Corp., 9812 Washington Boulevard, Culver City, California 90232, to FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation (the “**Trustee**”), for the benefit of the CITY OF CULVER CITY, a charter city of the State of California (the “**Beneficiary**”), whose address is 9770 Culver Boulevard, Culver City, California 90232-0507.

**Witnesseth:** That the Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to the Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION all present and future right, title and interest of the Trustor in and to the following property (the “**Trust Estate**”):

(A) All of the Trustor’s right, title and interest in and to that certain real property in the City of Culver City, County of Los Angeles, State of California more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the “**Subject Property**”);

(B) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the “**Improvements**”);

(C) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefiting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the “**Appurtenances**”) (the Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the “**Real Property**”);

(D) subject to the assignment to the Beneficiary set forth in Section 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate, or from the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “**Rents**”);

(E) all present and future right, title and interest of the Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “**UCC**”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, theater equipment, seating, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to the Trustor (the “**Goods**”, and together with the Real Property, the “**Property**”); and

(F) all present and future right, title and interest of the Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate): (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with the Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such

property, in each case, to the extent assignable (the “**Intangibles**”).

The Trustor further grants to the Trustee and the Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of the Trustor in and to all Goods and Intangibles and all of the Trust Estate described above in which a security interest may be created under the UCC (collectively, the “**Personal Property**”). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to the Trustee and the Beneficiary. The Trustee and the Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a “secured party” under the UCC and other applicable California law. The Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9334 and 9502(b) of the UCC.

The Trustor and the Beneficiary entered into that certain Disposition and Development Agreement, dated as of \_\_\_\_\_, 2022 (the “**DDA**”). The DDA is incorporated herein by this reference. The “DDA” as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which is and are hereby incorporated herein by this reference). Any capitalized term not defined herein shall have the meaning ascribed to such term in the DDA.

**FOR THE PURPOSE OF SECURING** the Trustor’s timely performance of the remaining tasks required of it in the Schedule of Performance of the DDA, as such schedule has been or may be revised or extended from time to time (collectively, the “**Secured Obligations**”),

**AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES:**

1. That the Trustor shall timely perform the Secured Obligations.
2. That the Trustor shall not permit or suffer the use of any of the Property for any purpose other than the use set forth in the DDA.
3. That the Secured Obligations are incorporated in and made a part of this Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may exercise its remedies under this Deed of Trust.
4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of securing the Trustor’s performance. Permission is hereby given to the Trustor, so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the DDA.
5. That upon default hereunder or under the DDA, and after the giving of notice and

the expiration of any applicable cure period, the Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom.

6. That the Trustor will keep the Property insured against loss by fire and such other hazards, casualties, and contingencies as required under the DDA. In no event shall the amounts of coverage be less than 100% of the insurable value of the Property, subject to reasonable deductible amounts. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof shall be deposited with the Beneficiary. Unless approved otherwise in writing by the City Manager of the Beneficiary, or his or her designee, the Trustor shall maintain insurance as required by Section 308 of the DDA.

7. To pay, before delinquency, any taxes and assessments affecting the Property; to pay, when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Deed of Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, the Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as the Trustor is contesting the legality thereof in good faith and by appropriate proceedings, and the Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep the Property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon (other than as indicated in the approved Plans (as defined in the DDA)); to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon (other than as a result of demolition in accordance with the approved Plans) and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon (subject to the Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law and/or covenants, conditions and/or restrictions affecting the Property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon the Property without the consent of the Beneficiary.

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees in a reasonable sum (including the reasonable value of the services of in-house counsel), in any such action or proceeding in which the Beneficiary or the Trustee may appear.

10. Should the Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, but without obligation so to do, and without notice to or demand upon the Trustor, and without releasing the Trustor from any obligation hereof, may make or do the

same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, the Beneficiary or the Trustee being authorized to enter upon the Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his or her reasonable fees.

11. The Beneficiary shall have the right to pay fire and other property insurance premiums (for insurance required hereunder) when due should the Trustor fail to make any required premium payments. The premiums paid by the Beneficiary shall be treated as a loan, due from the Trustor, to be paid on the first day of the month following the date on which the premiums were paid or, at the Beneficiary's election, credited against any monies owed by the Beneficiary to the Trustor. The Beneficiary shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

12. To pay immediately and without demand all sums so expended by the Beneficiary or the Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the lesser of 10% or the highest rate of interest permitted by law.

13. The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as permitted under the DDA or otherwise authorized by the Beneficiary, and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the premises. Notwithstanding anything to the contrary contained in this Deed of Trust, the Trustor shall not be obligated to pay any claims for labor, materials or services which the Trustor in good faith disputes and is diligently contesting, provided that the Trustor shall, at the Beneficiary's written request, within 30 days after the filing of any claim or lien (but in any event, and without any requirement that the Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of Los Angeles County, a surety bond in the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to the Beneficiary.

14. That any and all improvements made or about to be made upon the premises covered by this Deed of Trust, and all plans and specifications, comply with the DDA, all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations.

**IT IS MUTUALLY AGREED THAT:**

15. Should the Property or any part thereof be taken or damaged by reason of any

public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, the Trustor shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the Property or part thereof that was taken or damaged.

16. If the construction of any improvements as herein referred to shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than events of enforced delay pursuant to Section 28 hereof, then the Beneficiary, after due notice to the Trustor or any subsequent owner, is hereby invested with full and complete authority to enter upon the Site, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the Personal Property therein

17. If the City terminates this Agreement pursuant to Section 704.2 of the DDA and exercises its Right of Reverter in accordance with Section 712 of the DDA then after the lapse of such time as may then be required by law following the recordation of such notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee or the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including therein reasonable the Trustee's fees or attorneys' fees for conducting the sale (including the reasonable value of the services of in-house counsel), and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on the Trustee's deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified herein; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto.

18. The Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

19. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

20. This Deed of Trust shall be released and reconveyed upon completion of performance of the Secured Obligations. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust to the Trustee for cancellation and retention and upon payment of its fees, the Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as “the person or persons legally entitled thereto”.

21. The trust created hereby is irrevocable by the Trustor.

22. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term “Beneficiary” shall include not only the original the Beneficiary hereunder but also any future owner and holder, including pledgees. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

23. The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which the Trustor, the Beneficiary or the Trustee shall be a party unless brought by the Trustee.

24. The undersigned the Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to the Trustor at the address set forth in the first paragraph of this Deed of Trust.

25. The Trustor agrees at any time and from time to time upon receipt of a written request from the Beneficiary, to furnish to the Beneficiary detailed statements in writing of all then income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by the Beneficiary.

26. The Trustor shall permit the Beneficiary and its agents or representatives to inspect the Property at any and all reasonable times, with or without advance notice.

27. The Property shall be subject to the restrictions set forth in the DDA, and the Trustor hereby consents to such restrictions and agrees to be bound thereby. Such restrictions

shall be in addition to and not in limitation of the rights of the Beneficiary expressly set forth in this Deed of Trust.

28. Notwithstanding specific provisions of this Deed of Trust, performance by a party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, Acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, or challenges to entitlements within applicable statute of limitations periods, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of the Beneficiary or any other public or governmental agency or entity (other than that acts or failure to act of the Beneficiary shall not excuse performance by the Beneficiary) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. 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 30 days of knowledge of the commencement of the cause. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and the Trustor.

29. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, then the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by the Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

30. (a) Subject to the extensions of time set forth in Section 28 and the DDA, and subject to the notice and cure provisions of this Section 30, failure or delay by the Trustor to perform any term or provision respectively required to be performed under the DDA or this Deed of Trust constitutes a default under this Deed of Trust.

(b) The Beneficiary shall give written notice of default to the party in default, specifying the default complained of by the Beneficiary. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Deed of Trust, any failures or delays by the Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Beneficiary in asserting any of its rights and remedies shall not deprive the Beneficiary 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.

(c) If a monetary event of default occurs, prior to exercising any remedies hereunder, then the Beneficiary shall give the Trustor written notice of such default. The Trustor

shall have a period of 10 calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the Beneficiary.

(d) If a non-monetary event of default occurs, then prior to exercising any remedies hereunder, the Beneficiary shall give the Trustor notice of such default. If the default is reasonably capable of being cured within 30 calendar days after such notice is received or deemed received, then the Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary. If the default is such that it is not reasonably capable of being cured within 30 days after such notice is received, and the Trustor (1) initiates corrective action within such period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in any event no more than 120 days of receipt of such notice of default from the Beneficiary.

(e) In no event shall the Beneficiary be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within 120 days after the first notice of default is given.

(f) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by the Trustor; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

(g) Notwithstanding the foregoing, with respect to any event of default hereunder that is additionally a default under the DDA, Trustor’s notice and cure period with respect to such default that is specified in the DDA shall control.

(h) After the giving the notice and cure specified in this Section 30, and exercise by Beneficiary of its Right of Reverter under Section 712 of the DDA, the Beneficiary may declare all sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice the Trustee shall cause to be duly filed for record and the Beneficiary may foreclose this Deed of Trust. The Beneficiary shall also deposit with the Trustee this Deed of Trust and all documents evidencing expenditures secured hereby.

(i) Delay in giving any of the notices referenced in this Section 30 shall not constitute a waiver of any default nor shall it change the time of default.

31. In the event of any fire or other casualty to the Property and the improvements or eminent domain proceedings resulting in condemnation of the Property and the improvements or any part thereof, the Trustor shall have the right to rebuild the improvements, and to use all

available insurance or condemnation proceeds therefor, provided that (the Beneficiary shall have the right to approve plans and specifications for any major rebuilding. If the casualty or condemnation affects only part of the improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding.

32. The Trustor agrees to defend, indemnify and hold harmless the Beneficiary and its officers, directors, employees, agents, attorneys, successors and assigns (collectively, the “**Indemnitees**”) from and against any and all obligations (including removal and remedial actions), losses, claims (including third party claims), suits, judgments, forfeitures, liabilities, penalties, fines, damages, costs and expenses (including consultants’, attorneys’ fees (including the reasonable value of the services of in-house counsel), expert fees and expenses) of whatever kind or nature whatsoever that may at any time be incurred by, imposed on, or asserted against the Indemnitees directly or indirectly based on, arising or resulting from or caused in whole or in part by or related to (i) the actual or alleged presence of Hazardous Materials at, on or beneath the Property, or any portion thereof as a result of any act or omission of Trustor, (ii) any environmental claim relating in any way to the alleged presence of Hazardous Materials at, on or beneath the Property, or any portion thereof as a result of any act or omission of Trustor, or (iii) the performance by Trustor of its obligations under the DDA with respect to remediation of Hazardous Materials on the Property and from any and all costs incurred in connection with any site investigation and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of the Property required to be performed by Trustor under the DDA. For the purpose of this Deed of Trust, the term “Hazardous Materials” shall have the meaning ascribed to such term in the DDA.

IN WITNESS WHEREOF, the Trustor has executed this Deed of Trust as of the day and year set forth above.

**“TRUSTOR”**

RETHINK CULVER LLC.,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

**ATTACHMENT NO. 8**

**ASSIGNMENT OF CONSTRUCTION CONTRACT**

[behind this page]

## ASSIGNMENT OF CONSTRUCTION CONTRACT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RETHINK CULVER LLC, a California limited liability company (the “**Developer**”), as additional security for its obligations under that certain Disposition and Development Agreement (the “**DDA**”), dated as of \_\_\_\_\_, 2022, to which the Developer and the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), are parties, hereby assigns to the City all of the Developer’s rights, title and interest, but not its obligations, in, under and to a construction contract between the Developer and \_\_\_\_\_, a \_\_\_\_\_ (the “**Contractor**”) dated \_\_\_\_\_, 2022 upon the following terms and conditions. “DDA” as used herein shall mean, refer to and include the above described DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto or other documents expressly incorporated by reference in the DDA. Any capitalized term not herein defined shall have the same meaning as set forth in the above described DDA. The DDA is hereby incorporated herein by this reference.

A. Pursuant to the DDA, the Developer intends to construct certain Improvements on that certain real property described in Exhibit A attached hereto and incorporated herein by this reference (the “**Site**”).

B. As a requirement of the DDA and in order to protect the City’s right in the event that the Site reverts to the City, the City has required that the Developer execute and deliver this Assignment of Construction Contract (this “**Assignment**”) to the City as security for the performance of the Developer’s obligations under the DDA. All of the terms and agreements contained in this Assignment shall be binding upon the Developer and the Developer’s successors and assigns.

NOW THEREFORE, the Developer hereby agrees, for itself and its successors and assigns, as follows:

1. (a) The Developer agrees to obtain and deliver to the City, concurrently with delivery of this Assignment, a Consent to Assignment of Construction Contract from the Contractor substantially in the form attached hereto as Exhibit B and incorporated herein by this reference (the “**Consent**”).

(b) This Assignment and the Consent do not relieve the Developer of its obligations under the Construction Contract. The City does not hereby assume any of the Developer’s obligations or duties concerning any Construction Contract including, without limitation, any obligation to pay for the work done pursuant thereto.

2. The Developer hereby assigns, conveys and transfers to the City, as security for the Developer’s obligations under the DDA, all of the Developer’s rights, title, interest, privilege, benefit and remedies in, to and under the following:

(a) the construction contract and any other agreements with the Contractor listed in Exhibit C attached hereto and incorporated herein by this reference (collectively, the “**Construction Contract**”); and

(b) all other agreements now or hereafter entered into by the Developer with the Contractor in connection with construction of the Improvements; 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 C shall be provided to the City concurrently with delivery of this Assignment. Each of the agreements described above in this Section 2 is referred to herein as an “**Agreement**”.

3. Upon the occurrence of an Event of Default by the Developer under the DDA resulting in the City’s exercise of its Right of Reverter under Section 712 of the DDA, the City may, at its option and with no obligation, upon written notice to the Contractor, exercise any or all of the rights and remedies granted to the Developer under the Construction Contract as if the City had been an original party to such Construction Contract. The City may elect to assume some or all of the obligations of the Developer under the Construction Contract by giving notice to that effect to the Contractor; provided, however, that the City shall not be responsible for any default, liability, or obligation of the Developer under the Construction Contract occurring prior to the time that the City gives such notice to the Contractor (but upon any such assumption, the City shall be obligated to cure any such defaults that are continuing and are capable of being cured by the City).

4. Upon the occurrence of an Event of Default by the Developer under the DDA resulting in the City’s exercise of its Right of Reverter under Section 712 of the DDA, the Developer shall be deemed to have irrevocably constituted and appointed the City as its attorney in fact, which power is coupled with an interest so that the City shall have the right to demand, receive and enforce the Developer’s rights with respect to the Construction Contract, to give appropriate receipts, releases and satisfactions for and on behalf of the Developer, and to do any and all acts with respect to the Construction Contract in the name of the Developer or in the name of the City with the same force and effect as the Developer could have done.

5. The Developer hereby represents and warrants to the City that, except for any assignment as may be required by the Construction Lender (if any), the Developer has not made any previous assignment of the Construction Contract, and the Developer agrees not to assign, sell, pledge, transfer or otherwise encumber its interest in the Agreements so long as this Assignment is in effect. The Developer represents and warrants that the copy of the Construction Contract provided by the Developer to the City shall be the complete and entire agreement between the parties thereto as of the date hereof. The Developer agrees not to materially modify the Construction Contract without the City’s written consent, except to the extent otherwise permitted in the DDA.

6. If any provision of this Assignment shall be invalid, illegal or unenforceable, then it shall not affect or impair the validity, legality and enforceability of the other provisions of this

Assignment or of the DDA. 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. The Developer shall indemnify and hold harmless the City against any liabilities, claims, costs or expenses, including reasonable attorneys' fees (including the reasonable value of the services of in-house counsel), incurred by the City as a result of the City's exercise of its rights under this Assignment. The indemnity contained in this Section 7 shall not extend to any actions, suits, claims, demands, liabilities, losses, damages, obligations, costs or expenses caused as a result of the City's gross negligence or willful misconduct.

8. This Assignment shall be binding upon the Developer and the Developer's successors, legal representatives and assigns, and shall inure to the benefit of the City, its successors and assigns, including any purchaser upon foreclosure of the deed of trust securing any loan contemplated by the DDA, any receiver in possession of the property described therein, and any corporation formed by or on behalf of the City which assumes the City's rights and obligations under the DDA.

9. This Assignment is subordinate to any assignment of the Construction Contract to a Construction Lender.

10. Upon the due recordation of a Release of Construction Covenants in accordance with the DDA, this Assignment shall automatically terminate.

11. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

[signatures on following page]

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the Developer has caused this Assignment to be executed as of the date first set forth above.

**“DEVELOPER”**

RETHINK CULVER LLC,  
a California limited liability company,

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-\_\_\_

EXHIBIT B

CONSENT TO ASSIGNMENT OF CONSTRUCTION CONTRACT

[behind this page]

**CONSENT TO ASSIGNMENT OF CONSTRUCTION CONTRACT**

The undersigned hereby consents to that certain Assignment of Construction Contract (the “Assignment”) dated as of even date herewith, executed by RETHINK DEVELOPMENT CORP., a California corporation (the “Developer”), for the benefit of the CITY OF CULVER CITY, a charter city of the State of California (the “City”), and agrees to perform pursuant to the terms and conditions of the undersigned’s Construction Contract and/or Agreement with the Developer described in Exhibit C attached to the Assignment. If requested by the City in the exercise of its rights under the Assignment, the undersigned shall continue to perform its obligations under its Construction Contract and/or the Agreement for which the undersigned shall be compensated in accordance with such document. The undersigned agrees that, upon request by the City, the undersigned shall provide a complete list of all of its subcontractors in connection with work for or on the Site done or to be done pursuant to the DDA and shall cooperate to provide and permit access to the City or its agents for inspection of the Site and the work in process. The undersigned also agrees that, in the event of a breach by the Developer of any of the terms and conditions of the Construction Contract and/or the Agreement, the undersigned will give prompt written notice of such breach to the City at the City’s address set forth below. The City shall have 60 calendar 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 the City to cure said default, but the City shall, in its sole discretion, have the option to do so but without the obligation therefor. The undersigned acknowledges that the City is relying on this Consent and the assurances herein in approving the DDA and that this Consent shall also be for the benefit of and bind any assignee or successors of the City and the undersigned. All capitalized terms used in this Consent shall have the same meaning as in the Assignment. The Construction Contract and/or Agreement between the Developer and the undersigned is in full force and effect as of the date hereof.

Dated as of \_\_\_\_\_, 2022 \_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Contractor’s Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City’s Address: CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Manager

EXHIBIT C

LIST OF CONSTRUCTION CONTRACTS

[behind this page]

**ATTACHMENT NO. 9**

**ASSIGNMENT OF PLANS, REPORTS AND DATA**

[behind this page]

## ASSIGNMENT OF PLANS, REPORTS AND DATA

FOR VALUE RECEIVED, the receipt and sufficiency of which are hereby acknowledged, RETHINK CULVER LLC, a California limited liability company (the “**Developer**”), does hereby, pursuant to this Assignment of Plans, Reports and Data (this “**Assignment**”), to the extent assignable, assign, pledge, transfer and set over to the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), 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 that certain real property described in Exhibit A attached hereto and incorporated herein by this reference (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 (the “**Architect’s Agreement**”) by and between the Developer and any architect engaged to perform services with respect to the Site (the “**Architect**”) and those certain plans and specifications referred to therein, and all amendments, modifications, supplements, general conditions and addenda thereto (collectively, the “**Architectural Plans**”) prepared by the Architect for the account of the Developer in connection with the development of certain real property located on the Site. The Plans, Reports and Data, including, without limitation, the Architect’s Agreement and the Architectural Plans, are hereby assigned as consideration for the City’s execution of that certain Disposition and Development Agreement (the “**DDA**”), dated as of \_\_\_\_\_, 2022 and entered into by and between the Developer and the City. “**DDA**” as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto or other documents expressly incorporated by reference in the above described DDA. Any capitalized term not herein defined shall have the same meaning as set forth in the above described DDA. The DDA is hereby incorporated herein by this reference. For purposes hereof, “**Environmental Reports**” means any “Phase I” and/or “Phase II” investigations of the Site, and all final reports and test results (not including drafts) provided by the Developer’s environmental consultant.

Upon the occurrence of an Event of Default by the Developer under the DDA resulting in the City’s exercise of its Right of Reverter under Section 712 of the DDA, the City shall have the right, but not the obligation, at any time, in its own name or in the name of the Developer, or otherwise, to take such action as the City may at any time or from time to time determine to be necessary or desirable in order to cure any default by the Developer under the Architect’s Agreement, including, without limitation, the protection of the Developer’s rights with respect to the Architectural Plans or to protect the rights of the Developer thereunder . The Developer hereby indemnifies and agrees to hold the City harmless from and against any and all loss, claim, demand, cost, liability, damage or expense, including, without limitation, reasonable attorneys’ fees and expenses in connection with any such action or actions (including the reasonable value of the services of in-house counsel). 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 the City’s gross negligence or willful misconduct. The Developer agrees to have each Architect engaged to perform services in connection with the Site execute a Consent in the form attached hereto.

Upon a termination of the DDA, the City may exercise its rights hereunder and take possession of and title to the Plans, Reports and Data. The Developer shall deliver possession of and title to the Plans, Reports and Data to the City promptly upon the City's request.

The Developer and the Architect, by executing the Consent to this Assignment, agree that the City does not assume any of the Developer's obligations or duties concerning the Architect's Agreement and the Architectural Plans, including, without limitation, the obligation to pay for the preparation of the Architect's Agreement and the Architectural Plans, until and unless the City shall exercise its rights hereunder.

The Developer hereby represents and warrants to the City that, except for any assignment as may be required by the Construction Lender (if any), 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 the Developer agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Plans, Reports and Data (other than to the Construction Lender, if any), including, without limitation, the Architect's Agreement and the Architectural Plans, so long as this Assignment is in effect.

This Assignment is subordinate to any assignment of the Plans, Reports and Data to a Construction Lender.

Upon the due recordation of a Release of Construction Covenants in accordance with the DDA, this Assignment shall automatically terminate.

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 City.

[signatures on following page]

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Developer has caused this Assignment of Plans, Reports and Data to be executed as of \_\_\_\_\_, 2022.

**“DEVELOPER”**

RETHINK CULVER LLC,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**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 the 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 the Developer's interest in the Architectural Plans is assigned to the City, the undersigned shall give written notice to the City of such breach. The City shall have 60 calendar days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require or obligate the City to cure said default, but only gives it the option to do so, unless and until the City exercises its rights hereunder.

The undersigned also agrees that in the event of default by the Developer under any of the documents or instruments entered into in connection with said Architect's Agreement, the undersigned, at the City'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 City's behalf.

Dated: \_\_\_\_\_, 2022

ARCHITECT:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

**ATTACHMENT NO. 10**  
**RIGHT OF ENTRY AGREEMENT**

[behind this page]

**RIGHT OF ENTRY AGREEMENT  
(Due Diligence)**

This Right of Entry Agreement (Due Diligence) (this “**Agreement**”), dated as of \_\_\_\_\_, 2022 (the “**Date of Agreement**”), is entered into by and between the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”) and RETHINK CULVER LLC, a California limited liability company, commencing on [[\_\_\_\_\_]] and continuing (the “**Developer**”).

**RECITALS**

A. The City and the Developer entered into that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 2022, a public record on file in the office of the City Clerk (the “**DDA**”), relating to, among other things, that certain real property located in the County of Los Angeles, State of California and legally described in Exhibit A attached hereto and incorporated herein by this reference (the “**Site**”). “**DDA**” as used herein shall mean, refer to and include the above described DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto or other documents expressly incorporated by reference in the above described DDA. Any capitalized term not herein defined shall have the same meaning as set forth in the DDA. The DDA is hereby incorporated herein by this reference.

B. The City is the owner of the Site.

C. The Developer desires to enter onto the Site for the purpose of conducting environmental testing and surveys of the Site prior to acquisition of the Site and the development and construction on the Site, and the City desires to accommodate the 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:

**AGREEMENT**

**Section 1. Right of Entry.** Provided that all of the terms and conditions of Section 2 of this Agreement are fully satisfied, the City hereby grants to the Developer and its agents and contractors, a temporary and conditional right to enter upon, in and below the Site for a continuous period from the Date of Agreement to the earlier of (a) the Closing or (b) termination of the DDA, (i) for the purpose of surveying the Site, (ii) for purposes of designing the Project, and (iii) for carrying out relevant and necessary geological and environmental testing of the Site (in each case in accordance with a work plan to be provided to the City prior to commencement of such testing, and reasonably approved by the City prior to the commencement of any such testing), and (iv) for other purposes relevant to Developer’s potential acquisition of the Site.

**Section 2. Conditions to Entry.** Prior to the Developer entering the Site, or any portion of the Site, the following conditions must be satisfied:

(a) The Developer shall give the City reasonable prior written notice (email will suffice) prior to each act of entering the Site and conducting investigation and testing of the Site.

(b) The Developer shall furnish to the City evidence satisfactory to the City that the Developer or its contractors have obtained comprehensive liability insurance in an amount as required under the DDA for the purpose of protecting the City from claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs, including the reasonable value of the services of in-house counsel), 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 anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after the termination of this Agreement.

(c) With respect to any invasive geological or environmental testing or actions (such as coring or trenching), the Developer or its contractors shall have submitted to the City, and the City shall have reasonably approved, a work plan setting forth the actions needed to carry out invasive geological or environmental testing or actions to be performed on the Site pursuant to this Agreement.

**Section 3. Liens.** With regard to actions performed on the Site under this Agreement, the Developer shall not permit to be placed against the Site, or any part thereof, any design professional's, mechanic's, materialmen's, contractor's, or subcontractor's liens (collectively, the "Liens"). The Developer shall indemnify, defend and hold harmless the City from and against all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees (including the reasonable value of the services of in-house counsel), arising from any Liens caused by Developer's actions performed on the Site under this Agreement. The City reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Site, or any portion thereof, or on the improvements on the Site, any notices of non-responsibility or other notice as may be desirable to protect the City from and against liability. In addition to, and not as a limitation of the City's other rights and remedies under this Agreement, should the Developer fail, within 10 business days after written request from the City, either to discharge any Lien or to bond against any Lien, in either case, caused by Developer's actions performed on the Site under this Agreement, or to defend, indemnify, and hold harmless the City from and against any loss, damage, injury, liability or claim arising out of a Lien caused by Developer's actions performed on the Site under this Agreement, then the City, at its option but without the obligation, 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 (including the reasonable value of the services of in-house counsel) incurred in doing so shall be paid to the City by the Developer upon written demand.

**Section 4. Minimal Interference; Restoration of Site.** The Developer shall take all reasonable measures in connection with its actions performed on the Site under this Agreement, to minimize interference with the use of the Site by the City and any party permitted by the City to use the Site. The Developer shall promptly repair and restore any damage caused by its entry onto

the Site and any environmental or other testing or other activity performed by or on behalf of the Developer on the Site. Without limiting the generality of the foregoing, Developer's rights under this Agreement shall not adversely conflict with the scheduled use of the Kirk Douglas Theatre or create any noise levels that could disturb a performance at Kirk Douglas Theatre. Developer shall coordinate all activities under this Agreement with CTG to avoid disruption with the operations of the Kirk Douglas Theatre.

**Section 5. Compliance with Laws/Permits.** The 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, applicable to such activities. Without limiting the generality of the foregoing, the 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 that the Developer desires to conduct or have conducted on the Site pursuant to this Agreement. In the event that the Developer or its agents or employees discover(s) any Hazardous Materials on the Site, the Developer shall immediately notify or cause notice to be given to the City.

**Section 6. Indemnification.** The Developer hereby agrees to indemnify, defend, assume all liability for and hold harmless the City and its agents, employees, members, independent contractors, affiliates, principals, shareholders, officers, council members, board members, committee members, and planning and other commissioners, partners, attorneys, accountants, representatives, and staff, from and against all actions, claims, suits, penalties, obligations, liabilities, damages to property, claims or injuries to persons (collectively "**Claims**") which may be caused by the Developer's negligence or wrongful acts arising out of or in connection with the Developer's, its agents' and/or contractors' activities pursuant to this Agreement. The Developer's indemnity given under this Section 6 shall apply whether such negligence or wrongful acts are by the Developer or anyone directly or indirectly employed or under contract with the Developer, and whether such Claims shall accrue or be discovered before or after the termination of this Agreement. The indemnity and other rights afforded the City by this Section 6 shall survive the expiration of this Agreement. Notwithstanding the foregoing, the Developer's indemnity shall not apply to the extent claims are caused by, arise out of, or in connection with, (a) any negligent or intentional acts of the City or any party using or occupying the Site with the permission of the City, or any of their respective its agents' and/or contractors', or (b) any dangerous condition that exists on the Site, or any Hazardous Materials that are present in, on, under or about the site, in either case, that was not caused by Developer or Developer's, its agents' and/or contractors' activities.

**Section 7. Inspection.** The City and its representatives, employees, agents or independent contractors may enter onto and inspect the Site or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify the Developer's compliance with the terms and conditions of this Agreement.

**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 Site to the 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 City: CITY OF CULVER CITY  
Attn: Sol Blumenfeld, Community Development Director  
9770 Culver Boulevard  
Culver City, California 90232-0507

To Developer: RETHINK CULVER LLC.  
c/o ReThink Development Corp.  
9812 Washington Boulevard  
Culver City, California 90232

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 hereto 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 the Developer and the City. 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 (excluding the provisions of the DDA).

**Section 13. Attorneys' Fees.** In the event of a dispute between the parties hereto 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 but one and the same instrument.

**Section 15. Damages.** Neither party hereto shall have any right to indirect or consequential or punitive damages against the other, and each party hereto hereby waives the right to claim the same against the other.

[signatures on following page]

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**“DEVELOPER”**

RETHINK CULVER LLC  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[signatures conclude on following page]

**“CITY”**

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

EXHIBIT B

[RESERVED]

**ATTACHMENT NO. 11**

**MEMORANDUM OF RIGHT OF FIRST OFFER**

[behind this page]

OFFICIAL BUSINESS

Document entitled to free recording  
per California Government Code Section 27383

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

---

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-915

**MEMORANDUM OF RIGHT OF FIRST OFFER**

This Memorandum of Right of First Offer (this “**Memorandum**”), dated as of \_\_\_\_\_, 2022, is entered into by and between the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), and RETHINK CULVER LLC, a California limited liability company (the “**Developer**”), relating to that certain real property located in the City of Culver City, County of Los Angeles, State of California and legally described in Exhibit A attached hereto and incorporated herein by this reference (the “**Site**”).

Pursuant to Sections 600 through 602 of that certain Disposition and Development Agreement, dated as of \_\_\_\_\_, 2022, by and between the City and the Developer (the “**DDA**”), the Developer granted to the City a right of first offer to purchase the Site, and any portion thereof, at a price and under the terms and conditions described in detail in the DDA, the terms of which bind the heirs, successors, and assigns of the Developer.

This Memorandum does not amend or modify the DDA.

[signatures on following page]

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum as of the date first written above.

**“DEVELOPER”**

RETHINK CULVER LLC,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[signatures conclude on following page]

**“CITY”**

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California )  
County of \_\_\_\_\_ )

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

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )  
County of \_\_\_\_\_ )

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

**ATTACHMENT NO. 12**  
**PARTIAL TERMINATION OF LEASE**

[behind this page]

## PARTIAL TERMINATION OF LEASE

This Partial Termination of Lease (this “**Partial Termination**”), dated as of \_\_\_\_\_, 2022, is entered into by and between the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), and CENTER THEATRE GROUP OF LOS ANGELES, a California nonprofit corporation (the “**Lessee**”). The City and the Lessee shall be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

A. The City’s predecessor-in-interest and the Lessee entered into that certain Lease Agreement dated on or about September 4, 2003 (as amended and assigned from time to time, the “**Lease**”). Any capitalized term not herein defined shall have the same meaning as set forth in the Lease. The Lease is hereby incorporated herein by this reference.

B. The Site which is subject to the Lease consists of two contiguous parcels: Parcel A and Parcel B.

C. Section 202(d) of the Lease contemplates that the Lease would terminate as to Parcel B provided that certain conditions (collectively, the “**Parcel B Lease Termination Conditions**”) were satisfied.

D. The City and RETHINK CULVER LLC, a California limited liability company, entered into that certain Disposition and Development Agreement, dated as of \_\_\_\_\_, 2022 (the “**DDA**”), with regard to Parcel B, whereby actions corresponding to the Parcel B Lease Termination Conditions are to be carried out, including: (i) providing the Lessee with the right to utilize comparable space and uses to those previously utilized by the Lessee within Parcel B and (ii) burdening Parcel B with appropriate easements and/or other occupancy rights in order to preserve the loading uses and other uses made of Parcel B by the Lessee in order to serve its use of Parcel A under the Lease (collectively, the “**Lessee Protection Measures**”).

E. Section 202(e) of the Lease provides that at the expiration or earlier termination of the Lease as to Parcel B, the Lessee shall execute, acknowledge and deliver a valid and recordable quitclaim deed in connection therewith (the “**Quitclaim Deed**”).

F. As a result of the City’s implementation of the Lessee Protection Measures in furtherance of the Parcel B Lease Termination Conditions, the Parties desire to (i) terminate the Lease as to Parcel B (but NOT as to Parcel A), and (ii) grant the Lessee rights under the Lessee Protection Measures as the same are contained in any recorded easements benefitting Parcel A.

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

### AGREEMENT

**Section 1. Partial Termination.** The Parties hereby terminate the Lease as to Parcel B only. The Lease remains in full force and effect with respect to Parcel A, and binding in accordance with its terms, and the City grants Lessee all rights under the Lessee Protection Measures, including but not limited to the grantee's rights under any easement benefitting Parcel A.

**Section 2. Satisfaction.** The Parties hereby agree that the Lessee Protection Measures to be carried out pursuant to the DDA shall satisfy (and/or be deemed to satisfy) the Parcel B Lease Termination Conditions. The Parties further agree and acknowledge that the Promissory Note dated September 6, 2003, in the amount to \$1,000,000, by and between the City's predecessor-in-interest and the Lessee, has been fully satisfied.

**Section 3. Quitclaim Deed.** Concurrent with the Lessee's execution of this Partial Termination, the Lessee shall execute, acknowledge and deliver to the City the Quitclaim Deed attached hereto as Exhibit A and incorporated herein by this reference.

**Section 4. Further Acts.** Each of the Parties shall execute such other and further documents and do such further acts as may be reasonably required in order to effectuate the intent of the Parties and carry out the terms of this Partial Termination. The City Manager or designee is authorized to take such actions on behalf of the City that are consistent with this Partial Termination, without further approval from the City Council.

**Section 5. Lease.** Aside from the effects of the terms of this Partial Termination, the Lease remains unchanged and in full force and effect.

**Section 6. Governing Law.** This Partial Termination shall be governed by the laws of the State of California.

**Section 7. Interpretation.** This Partial Termination 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 8. Amendment of Partial Termination; Merger.** No modification, rescission, waiver, release or amendment of any provision of this Partial Termination shall be made except by a written agreement executed by the Parties. This Partial Termination merges all negotiations, stipulations and provisions relating to the subject matter of this Partial Termination which preceded or may accompany the execution of this Partial Termination.

**Section 9. Attorneys' Fees.** In the event of a dispute between the Parties with respect to the terms or conditions of this Partial Termination, 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 10. Counterparts.** This Partial Termination may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one and the same instrument.

**Section 11. Damages.** Neither Party shall have any right to indirect or consequential or punitive damages against the other, and each Party hereby waives the right to claim the same against the other.

**Section 12. Authority.** Each of the Parties hereby represents that the persons executing this Partial Termination on behalf of such Party have full authority to do so and to bind such Party to perform pursuant to the terms and conditions of this Partial Termination.

[signatures begin on following page]

[remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the Parties have executed this Partial Termination as of the date first written above.

**“LESSEE”**

CENTER THEATRE GROUP OF LOS ANGELES,  
a California nonprofit corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[signatures conclude on following page]

**“CITY”**

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

EXHIBIT A

QUITCLAIM DEED

[behind this page]

OFFICIAL BUSINESS  
Document entitled to free  
recording per California Government Code  
Section 27383

RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM DOCUMENTARY TRANSFER TAX  
PER CALIFORNIA REVENUE AND TAXATION CODE SECTION 11922

QUITCLAIM DEED

CENTER THEATRE GROUP OF LOS ANGELES, a California nonprofit corporation (the "**Grantor**"), hereby quitclaims to the CITY OF CULVER CITY, a charter city of the State of California, any and all of its right, title and interest in and to the real property legally described in the Legal Description attached hereto as Attachment No. 1, incorporated herein by this reference.

Mail tax statements as directed above.

[remainder of page intentionally left blank]

[signatures on following page]

**IN WITNESS WHEREOF**, the Grantor has executed this Quitclaim Deed as of this  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

CENTER THEATRE GROUP OF LOS ANGELES,  
a California nonprofit corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signatures Continue On Next Page]*

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Quitclaim Deed dated \_\_\_\_\_, 2022, from the CENTER THEATRE GROUP OF LOS ANGELES, a California nonprofit corporation, to the CITY OF CULVER CITY, a charter city of the State of California (the “City”), is hereby accepted by the undersigned officer on behalf of the City pursuant to authority conferred by the City through Resolution No. 2022-\_\_\_\_\_ adopted on September 12, 2022, and the City consents to recordation thereof by its duly authorized officer.

“CITY”

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )  
County of \_\_\_\_\_ )

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Signature \_\_\_\_\_

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State of California )  
County of \_\_\_\_\_ )

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

ATTACHMENT NO. 1

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

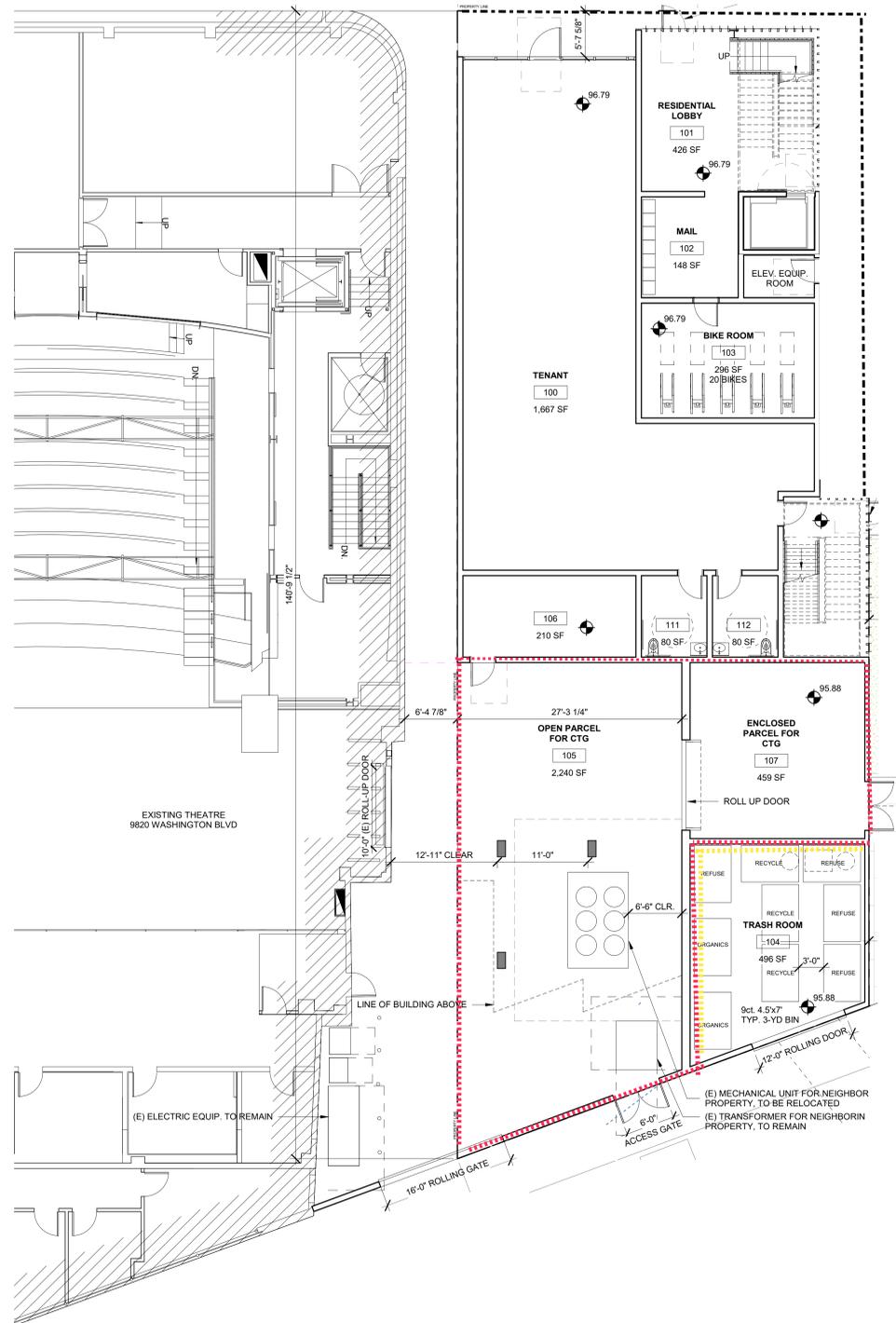
THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

105608802.5

**ATTACHMENT NO. 13**  
**KDT EASEMENT AREA**

[behind this page]



Area Outlined in Red - Approximate KDT Easement Area; final KDT Easement Area to be determined once relocated utility facilitates for Kirk Douglas Theatre are determined, and access to utility room marked as "106" on this attachment is mutually approved.

Area Outlined in Yellow - Location of the trash room, which is subject to the terms of Section 401.1(d)(ii) of the DDA.



1ST FLOOR 01  
SCALE: 1/8" = 1'-0"



BROOKS + SCARPA ARCHITECTS  
3929 W. 139TH STREET  
HAWTHORNE, CA. 90250  
t. 323.598.4700  
f. 310.453.9606

9763 CULVER BLVD  
PROJECT DESCRIPTION HERE

9814 WASHINGTON BLVD  
PROJECT NUMBER: 22002.0

REVISIONS:  
△

SHEET TITLE: 1ST FLOOR PLAN

SCALE: 1/8" = 1'-0"  
DATE PRINTED: 10/06/16

ALL DRAWINGS & WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL & UNPUBLISHED WORK OF THE ARCHITECT. & MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.

A3.10

**ATTACHMENT NO. 14**  
**BLOCK EASEMENT DEED**

[behind this page]

RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

---

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-915

The undersigned Grantor declares:

Documentary Transfer Tax is: \$0.00 (County); City Tax is: \$0.00.

[ X ] computed on full value of property conveyed, or

[ ] computed on full value less value of liens or encumbrances remaining at time  
of sale,

[ ] Unincorporated area;  [ X ] City of Culver City.

### EASEMENT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, RETHINK CULVER LLC, a California limited liability company (the “**Grantor**”), owner of the real property described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference (the “**Servient Tenement**”), hereby grants to each of the owners of the Dominant Tenement (as hereinafter defined) (each, a “**Grantee**” and collectively, the “**Grantees**”) a non-exclusive unlocated appurtenant easement for trash, recycling and grease receptor purposes (the “**Easement**”) in, over, under, along and across the Easement Area (as hereinafter defined) of the Servient Tenement as further described below.

1. The dominant tenement (the “**Dominant Tenement**”) is that certain triangle-shaped city block in the City of Culver City, County of Los Angeles, State of California, bounded by Duquesne Avenue to the southwest, West Washington Boulevard to the northwest, and Culver Boulevard to the southeast, excluding the Servient Tenement.

2. The “**Easement Area**” shall mean the portion of the Servient Tenement specified by Grantor from time to time, upon which trash, recycling, and grease receptacles are placed by the Grantor or its designee, the location of which within the Servient Tenement may be changed by the Grantor from time to time without notice to any of the Grantees; provided that the Easement Area will at all times accommodate at least nine (9) three (3) yard bins, including two such bins that will be for the exclusive use of the occupants of the Servient Tenement.

3. Aside from the Grantor’s (and its designees’) use of the trash, recycling, and grease receptacles in the Easement Area, the Easement is for the exclusive use of businesses located and operating within the Dominant Tenement.

4. Items may be placed in the trash, recycling, and grease receptacles at only reasonable times and in only reasonable quantities. No hazardous materials may be placed in the trash, recycling, and grease receptacles or elsewhere in, over, under, along or across the Servient Tenement. Any use of the Easement that unreasonably interferes with the Grantor's use and enjoyment of the Servient Tenement is prohibited.

5. The Easement shall exist commencing upon Completion of the Project and continuing until December 31, 2082, at which time it will automatically terminate without further action or notice unless extended by the Grantor (or its successor-in-interest) in writing.

6. The Grantor reserves to itself all other uses in the Servient Tenement.

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

[signatures on following page]

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Grantor has caused this Easement Deed to be executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**“GRANTOR”**

RETHINK CULVER LLC,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Easement Deed dated \_\_\_\_\_, 2022, by RETHINK CULVER LLC, a California limited liability company, is hereby accepted by the undersigned officer on behalf of the CITY OF CULVER CITY, a charter city of the State of California (the “City”), pursuant to authority conferred by the City through Resolution No. 2022-\_\_\_\_\_ adopted on September 12, 2022, and the City consents to recordation thereof by its duly authorized officer.

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

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State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )  
County of \_\_\_\_\_ )

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

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

**ATTACHMENT NO. 15**

**AGREEMENT CONTAINING COVENANTS**

[behind this page]

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

---

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-915

OFFICIAL BUSINESS  
Document Entitled to Free Recording  
Per California Government Code §27383

**Agreement Containing Covenants Affecting Real Property**

This AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (this “**Agreement**”), dated as of \_\_\_\_\_, 2022, is entered into by and between the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), and RETHINK CULVER LLC, a California limited liability company (the “**Developer**”).

RECITALS

A. The Developer is the owner of fee title to that certain real property, hereinafter referred to as the “**Site**”, described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference.

B. The City and the Developer entered into that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 2022 (the “**DDA**”), which is incorporated herein by this reference. “**DDA**” as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto or other documents expressly incorporated by reference in the DDA. Any capitalized term not herein defined shall have the same meaning as set forth in the DDA.

C. This Agreement is entered into pursuant to the DDA and relates to the use of the Site both before and after Completion of the Project.

TERMS

The Developer hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site, or any portion thereof, or any interest therein, as follows:

1. The Developer hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any portion thereof or any interest therein, that upon the date of this Agreement and during construction through Completion of development and thereafter:

A. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Site, which use or operation is obnoxious to or out of harmony with the development, including, without limitation, the following:

i. Any warehouse, other than that which is incidental to the primary commercial use or business operation, and any assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation. Notwithstanding the foregoing, such uses in support of the adjacent Kirk Douglas Theatre are permitted;

ii. Any pawn shop or retail sales operation involving second-hand merchandise;

iii. Any adult business or facility as defined or regulated in City's Municipal Code. Such uses include, without limitation, massage establishments, adult news racks, adult bookstores, adult motion picture theaters, and paraphernalia businesses;

iv. Any retail sales operation for which the average price of merchandise is \$5 or less, unless otherwise first approved in writing by the City's Community Development Director;

v. Any use or operation which is incompatible with the proposed uses or operations at the Site as reasonably determined by the City's Community Development Director, or for as long as the parcel adjacent to the Site is used for theatrical presentations and ancillary purposes, that conflicts with the scheduled use of such theatre; and

vi. Any noise or sound that is objectionable due to intermittence, beat frequency, shrillness or loudness, or for as long as the parcel adjacent to the Site is used for theatrical presentations and ancillary purposes, that creates noise levels that would disturb a performance in such theatre;

provided that nothing in this Section 1.A shall restrict or prohibit any use that is expressly permitted under the DDA.

B. The Developer shall comply with the following Affordable Housing Covenants for the Affordable Housing Restriction Period:

(1) two studio Units shall be rented exclusively to Very Low Income tenants at an Affordable Rent as provided in California Health and Safety Code Section 50053;

(2) three studio Units shall be rented exclusively to Workforce Income tenants at an Affordable Rent that shall be equal to a monthly rent that, when added to the utility allowance, does not exceed  $\frac{1}{12}$  of 30% of 129% of Area Median Income adjusted for family size appropriate to the Unit; and

(3) one one-bedroom Unit shall be rented exclusively to Workforce Income tenants at an Affordable Rent that shall be equal to a monthly rent that, when added to the

Utility Allowance, does not exceed 1/12 of 30% of 129% of Area Median Income adjusted for family size appropriate to the Unit.

The maximum incomes of eligible tenants under (1) above shall be determined on the basis of the income limits for Very Low Income households in Los Angeles County, published approximately annually by the California Department of Housing and Community Development (“HCD”). If HCD discontinues publishing such income limits, then the term “Very Low Income ” shall mean a household income that does not exceed 50% of the area median income, adjusted for family size. The term “Workforce Income” means an income of a person or family not exceeding 129% of the area median income, adjusted for the applicable household size.

Rents charged to a tenant of an Affordable Housing Unit may not exceed rents that are affordable to Very Low Income households or Workforce Income households, as applicable. The maximum rents, including a reasonable utility allowance for utilities and services (excluding telephone) to be paid by Very Low Income and Workforce Income households for Affordable Housing Units will be the maximum rent for the applicable income level as set forth below:

(i) In the case of a Very Low Income household, the maximum rent shall be a rent that does not exceed  $\frac{1}{12}$  of 30% of 50% of Area Median Income adjusted for household size appropriate to the unit, as determined by HCD.

(ii) In the case of a Workforce Income household, the maximum rent shall be a rent that does not exceed  $\frac{1}{12}$  of 30% of 129% of Area Median Income adjusted for household size appropriate to the unit, as determined by HCD.

A sample calculation of the maximum rents to be paid by Very Low Income and Workforce Income households for Affordable Housing Units is attached hereto as Exhibit B and incorporated herein by this reference. The Very Low Income units and the Workforce Income units shall be designated as such on the Plans approved by the City for the Project and the designated units shall be rented by the Developer as the respective Affordable Housing Units required by the DDA.

The Developer shall be responsible for obtaining all source documentation evidencing income (such as paycheck stubs, banking statements, tax returns, IRS transcripts, pension statements, Social Security Benefit statements, asset information, and/or family gifts and contributions) as necessary to comply with the Affordable Housing Covenants of this Agreement and the DDA. To the extent permitted by law, the Developer shall provide priority in the selection of tenants for the Affordable Housing Units to persons and families who have been displaced as a result of the acquisition of property by the City or by other activities of the City. To the extent permitted by law, the Developer shall provide priority in the selection of tenants of the Affordable Housing Units to tenants who live or work in the City (each, a “**Culver City Resident**”). The Developer shall cooperate with the City prior to the initial rental of any Affordable Housing Unit to effectuate this provision. The Developer shall use commercially reasonable best efforts to accept any City displacee or Culver City Resident who meets the Developer’s selection criteria

and the requirements of the Affordable Housing Covenants. To implement this provision, the Developer agrees to provide notice to the City, in writing, prior to beginning to market the Affordable Housing Units and shall have received City approval of the Marketing and Tenant Selection Plan consistent with the terms and provisions of the DDA. The determination of whether a person or family is a Very Low Income or Workforce Income person or family shall be made at the time of the application for rental of the applicable Unit is made by such person or family.

Each tenant lease for the Affordable Housing Units shall contain a provision to the effect that the Developer has relied on the income certification and supporting information supplied by the tenant in determining its qualification for occupancy of a unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease to the fullest extent allowed by law.

The Developer shall update income records annually and provide copies of updated tenant eligibility records and monthly rental records to the City for review. Upon review of such records, if the City has reason to believe there are any ineligible tenants in an Affordable Housing Unit, then the City may at its option perform an independent audit of the tenant eligibility records in order to verify compliance with the income and affordability requirements set forth herein. The Developer shall retain the records described in this paragraph for a period of not less than five years after the date that each record was created. Notwithstanding the foregoing, nothing in this Agreement (or the DDA) shall require the Developer to terminate or attempt to terminate any tenancy or occupancy in violation of any lease or any applicable laws.

The Developer, its successors and assigns will not charge rents for the Affordable Housing Units in excess of the amounts determined as set forth in this Agreement. In the event that either the Developer or the City determines that the Developer has charged a tenant in an Affordable Housing Unit rent in excess of the amount set forth herein, the Developer shall immediately reimburse the tenant the amount of overpayment, within 10 days of such determination. The Developer may increase rents for the Affordable Housing Units not more than once annually.

2. 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 Site, 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 Site. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Site 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 any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

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

C. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants or vendees of the land.”

3. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement or in the DDA shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other security interest permitted by this Agreement and made in good faith and for value; provided, however, that any subsequent owner of the Site 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, and shall be entitled to all the benefits granted to the Developer and its assigns hereunder.

4. All covenants contained in this Agreement shall be covenants running with the land. All of the Developer's obligations and covenants hereunder except as provided hereunder and the DDA shall remain in effect in perpetuity.

5. All covenants without regard to technical classification or designation, legal or otherwise, shall be, to the fullest extent permitted by law and equity, binding for the benefit of the City, its successors and assigns, and such covenants shall run in favor of, and be enforceable by, the City, its successors and assigns, and in the case of Paragraph 1.A.v and 1.A.vi, the Kirk Douglas Theatre lessee/operator, against the Developer, its successors and assigns, to or of the Site or any portion thereof or any interest therein, and any party in possession or occupancy of the Site or portion thereof, for the entire period during which such covenants shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenants relate. The City, its successors and assigns, and in the case of Paragraph 1.A.v and 1.A.vi, the Kirk Douglas Theatre lessee/operator, 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.

6. The covenants contained in this Agreement shall remain in effect as follows:

A. The covenants pertaining to the Project uses as set forth in Paragraph 1.A of this Agreement shall remain in effect in perpetuity.

B. The Affordable Housing Covenants as set forth in Paragraph 1.B of this Agreement shall remain in effect until the expiration of the 55-year period required by the Affordable Housing Restriction Period.

C. The covenants against discrimination, as set forth in Paragraph 2 of this Agreement, shall remain in effect in perpetuity.

7. Both the City, its successors and assigns, and the Developer and the Developer's successors and assigns in and to all or any part of the fee title to the Site shall have the right with the mutual consent of the Developer and the City to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, or restrictions contained in this Agreement 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 Site. However, notwithstanding the foregoing, 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 hereto concerning such changes to this Agreement, and changes to Paragraph 1.A.v or 1.A.vi require the prior written consent of the lessee/operator of the Kirk Douglas Theatre (for as long as the KDT Property is used for theatrical presentations and ancillary purposes). The covenants contained in this Agreement, 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. As used in this Agreement, "lessee/operator of the Kirk Douglas Theatre" and "the Kirk Douglas Theatre lessee/operator" means the then-current lessee and the

then-current operator of the real property located at 9820 Washington Blvd. Culver City, California 90232.

*[Signatures Begin On Next Page]*

IN WITNESS WHEREOF, the City and the Developer have caused this instrument to be executed on their behalf by their respective officers hereinto duly authorized as of the date first set forth above.

**“CITY”**

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

*[Signatures Continue On Next Page]*

**“DEVELOPER”**

RETHINK CULVER LLC,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

State of California )  
County of Los Angeles )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )  
County of Los Angeles )

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State of California )  
County of Los Angeles )

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

LOT 4 IN BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THAT PORTION OF LOT 27, BLOCK 1 OF TRACT NO. 1775, IN THE CITY OF CULVER CITY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 21 PAGE 190 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 4 OF SAID BLOCK 1.

APN 4207-006-915

EXHIBIT B

SAMPLE CALCULATION OF AFFORDABLE RENTS

[behind this page]



**AFFORDABLE RENT CALCULATIONS**  
**2022 INCOME STANDARDS**  
**PASKAN BUILDING**  
**CULVER CITY, CALIFORNIA**

---

		<u>Studio Units</u>	<u>One Bedroom Units</u>
<b>I. <u>General Assumptions</u></b>			
Area Median Income (AMI)	1	\$63,750	\$72,900
Monthly Utilities Allowance	2	\$69	\$89
<b>II. <u>Very Low Income Units - Rent Based on 50% AMI</u></b>	3		
Benchmark Annual Household Income		\$31,875	\$36,450
Percentage of Income Allotted to Housing Expenses		30%	30%
Monthly Income Available for Housing Expenses		\$797	\$911
(Less) Monthly Utilities Allowance		(69)	(89)
<b>Maximum Allowable Rent</b>		<b>\$728</b>	<b>\$822</b>
<b>III. <u>Workforce Units - Rent Based on 129% AMI</u></b>			
Benchmark Annual Household Income		\$82,238	\$94,041
Percentage of Income Allotted to Housing Expenses		30%	30%
Monthly Income Available for Housing Expenses		\$2,056	\$2,351
(Less) Monthly Utilities Allowance		(69)	(89)
<b>Maximum Allowable Rent</b>		<b>\$1,987</b>	<b>\$2,262</b>

---

<sup>1</sup> Based on the 2022 Los Angeles County household incomes published by the California Housing & Community Development Department (HCD). The benchmark household size is set at the number of bedrooms in the unit plus one.

<sup>2</sup> Based on the LACDA utilities allowances effective as of 7/1/22. Assumes: Gas Heating, Gas Cooking, and Gas Water Heater; Basic Electric; and Air Conditioning.

<sup>3</sup> Based on the California Health & Safety Code Section 50053 calculation methodology.

**ATTACHMENT NO. 16**

**NOTICE OF AFFORDABILITY RESTRICTIONS**

[behind this page]

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF CULVER CITY  
9770 Culver Boulevard  
Culver City, California 90232-0507  
Attn: City Clerk

---

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: 4207-006-915

OFFICIAL BUSINESS  
Document Entitled to Free Recording  
Per California Government Code §27383

### **Notice of Affordability Restrictions on Transfer of Property**

NOTICE IS HEREBY GIVEN that pursuant to California Health and Safety Code Section 33334.3(f), the CITY OF CULVER CITY, a charter city of the State of California (the “**City**”), is recording this Notice of Affordability Restrictions on Transfer of Property (this “**Notice**”) with regard to the property described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference (the “**Site**”).

The Site is subject to the Agreement Containing Covenants Affecting Real Property (the “**Agreement Containing Covenants**”) recorded concurrently herewith. Any initially-capitalized term not defined herein shall have the meaning set forth therefor in the Agreement Containing Covenants (or in the DDA (as defined in the Agreement Containing Covenants). The Agreement Containing Covenants restricts the use of the Site as follows:

- (1) two studio Units shall be rented exclusively to Very Low Income tenants at an Affordable Rent as provided in California Health and Safety Code Section 50053;
- (2) three studio Units shall be rented exclusively to Workforce Income tenants at an Affordable Rent that shall be equal to a monthly rent that, when added to the utility allowance, does not exceed  $\frac{1}{12}$  of 30% of 129% of Area Median Income adjusted for family size appropriate to the Unit; and
- (3) one one-bedroom Unit shall be rented exclusively to Workforce Income tenants at an Affordable Rent that shall be equal to a monthly rent that, when added to the Utility Allowance, does not

exceed  $\frac{1}{12}$  of 30% of 129% of Area Median Income adjusted for family size appropriate to the Unit.

The maximum incomes of eligible tenants under (1) above shall be determined on the basis of the income limits for Very Low Income households in Los Angeles County, published approximately annually by the California Department of Housing and Community Development (“HCD”). If HCD discontinues publishing such income limits, then the term “Very Low Income” shall mean a household income that does not exceed 50% of the area median income, adjusted for family size. The term “Workforce Income” means an income of a person or family not exceeding 129% of the area median income, adjusted for the applicable household size.

Rents charged to a tenant of an Affordable Housing Unit may not exceed rents that are affordable to Very Low Income households or Workforce Income households, as applicable. The maximum rents, including a reasonable utility allowance for utilities and services (excluding telephone) to be paid by Very Low Income and Workforce Income households for Affordable Housing Units will be the maximum rent for the applicable income level as set forth below:

(i) In the case of a Very Low Income household, the maximum rent shall be a rent that does not exceed  $\frac{1}{12}$  of 30% of 50% of Area Median Income adjusted for household size appropriate to the unit, as determined by HCD.

(ii) In the case of a Workforce Income household, the maximum rent shall be a rent that does not exceed  $\frac{1}{12}$  of 30% of 129% of Area Median Income adjusted for household size appropriate to the unit, as determined by HCD.

The affordability restrictions imposed on the Site by the Agreement Containing Covenants are scheduled to expire on the date that is 55 years after the date of the issuance by the City of the Release of Construction Covenants for the Project.

[Remainder of page intentionally left blank]

This Notice is recorded for the purpose of providing notice only and it in no way modifies the provisions of the Agreement Containing Covenants.

**“CITY”**

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
John M. Nachbar  
City Manager

ATTEST:

By: \_\_\_\_\_  
Jeremy Green  
City Clerk

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sol Blumenfeld  
Community Development Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Heather Baker  
City Attorney

By: \_\_\_\_\_  
KANE, BALLMER & BERKMAN  
City Special Counsel

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

State of California

County of Los Angeles

)

)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

CONSENT TO RECORDATION

The undersigned, owner of the real property legally described in Exhibit A hereto, hereby consents to the recordation of the foregoing Notice of Affordability Restrictions on Transfer of Property against said real property.

RETHINK CULVER LLC,  
a California limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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State of California )  
County of Los Angeles )

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Signature \_\_\_\_\_

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APN 4207-006-915