

**EXCLUSIVE AGREEMENT TO NEGOTIATE
(CORNERSTONE I)**

THIS EXCLUSIVE AGREEMENT TO NEGOTIATE (CORNERSTONE I) (“ENA”) is entered into this And day of June, 2015 (the “Effective Date”) by and between THE CITY OF TUSTIN (the “City”) and LINCOLN PROPERTY COMPANY COMMERCIAL, INC., a Texas corporation (“Developer”), with respect to certain land referred to herein as the “Property” (defined below). The City and Developer (each, a “Party” and collectively, the “Parties”) hereby agree as follows:

1.0 Introduction.

1.1 Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended, the federal government determined to close the Marine Corps Air Station-Tustin (“MCAS Tustin”) located substantially in the City of Tustin. In 1992, the City was designated as the Lead Agency or Local Redevelopment Authority for preparation of a reuse plan for MCAS Tustin in order to facilitate the closure of MCAS Tustin and its reuse in furtherance of the economic development of the City and surrounding region. The MCAS Tustin Reuse Plan developed in accordance with this procedure was adopted by the City Council of the City of Tustin (the “City Council”) on October 17, 1996 and amended in September, 1998 (the “Reuse Plan”).

1.2 A Final Joint Environmental Impact Statement/Environmental Impact Report for the Disposal and Reuse of MCAS Tustin (the “Final EIS/EIR”) and Mitigation Monitoring and Reporting Program for the Final EIS/EIR were adopted by the City on January 16, 2001. In March 2001, a record of decision was issued by the Department of the Navy (hereinafter, “Navy”) approving the Final EIS/EIR and the Reuse Plan. Subsequently, a Supplement to the Final EIR/EIS and an Addendum to the Final EIS/EIR were approved by the City.

1.3 In May 2002, the Navy approved an “Economic Development Conveyance of Property at MCAS Tustin” and agreed to convey 1,153 acres of MCAS Tustin to the City. On May 13, 2002, a total of 977 acres, including the Property which is the subject of this ENA, was conveyed by the Navy to the City by quitclaim deed, in accordance with the provisions of that certain Memorandum of Agreement by and between The United States of America (through the Secretary of the Army or designee) and the City dated May 13, 2002 (“Memorandum of Agreement” or “MOA”). Additional acreage is currently under ground lease by the City from the Navy. The 1,153 acres of MCAS Tustin located within the City of Tustin and either conveyed by the Navy to the City or subject to ground lease between the Navy and the City is referred to herein as “Tustin Legacy”.

1.4 On February 3, 2003, the City adopted an ordinance approving the MCAS Tustin Specific Plan/Reuse Plan setting forth the zoning and entitlement framework for future development of Tustin Legacy. Since its initial adoption, the City has approved numerous Specific Plan Amendments. All references in this ENA to the “Specific Plan” shall be deemed to refer to the MCAS Tustin Specific Plan/Reuse Plan, as the same may be amended from time to

time. The Specific Plan conforms to and implements the Reuse Plan and the City's General Plan.

1.5 The City desires to effectuate development of Tustin Legacy through the sale and development of such property in accordance with applicable federal and local requirements. Tustin Legacy shall be developed in accordance with all City requirements, including, without limitation, the Reuse Plan and the Specific Plan.

1.6 The Disposition Strategy for Former Master Developer Footprint, Tustin Legacy Project (April, 2011) adopted by the City Council provides the City with the authority to directly market portions of the Disposition Packages to potential end business users in order to more specifically direct and accelerate development absorption. Consistent with the Disposition Strategy, the City retained CBRE ("CBRE") to assist the City in identifying commercial development opportunities in portions of Disposition Package 4 at Tustin Legacy. CBRE, utilizing evaluation and screening criteria approved by the City Council, identified office development companies with the qualifications, financial capacity and experience to develop large scale creative office development at Tustin Legacy. City has reviewed competitive proposals from the development companies, and has elected to consider Developer's proposal.

1.7 Developer submitted a business proposal on March 9, 2015 (the "**Business Proposal**") for purchase in two phases of approximately 37.4 acres of land within Disposition Area 4, generally in the location depicted on the Site Map attached as Exhibit A (the "**Property**"). The exact location and size of the Property and the Project shall be determined during the ENA Negotiating Period (defined below). Developer proposes development of the Property with development totaling approximately 835,000 rentable square feet, including approximately 760,000 square feet of creative office (to be defined during the ENA Negotiating Period (as defined in Section 4.2.1) but to specifically exclude warehousing or manufacturing), approximately 16,500 square feet of food hall, approximately 44,400 square feet of retail, and approximately 13,500 square feet reserved for commercial pads, together with in-tract infrastructure and an accompanying set of amenities to be agreed by City and Developer and constructed by Developer. The proposed development of the Property described above and as further described in this ENA is referred to herein as the "**Project**".

1.8 The City and Developer desire, for the period set forth herein, to negotiate diligently and in good faith, the terms and conditions of a disposition and development agreement ("**DDA**") and development agreement ("**DA**") which if agreed upon and executed will specify the rights, obligations and method of participation of the City and Developer with respect to the sale and development of the Property and the development thereon of the Project (the "**Transaction**").

2.0 Agreement to Negotiate.

2.1 **Terms and Conditions.** Notwithstanding that the terms of the Transaction are to be negotiated, the City and Developer and the City have agreed that the transactional documents to be negotiated to describe the Transaction shall be in the form of a DDA and DA, the necessity for and the form and substance of which shall be agreed upon by the Parties each in its sole discretion the ("**Transaction Documents**"). The City and Developer each desire to negotiate

Transaction Documents which if agreed upon and executed, shall set forth the terms and conditions pursuant to which the Property shall be conveyed by the City to Developer or a joint venture between the Developer (or an affiliate) and a capital partner as described in the Business Proposal and approved by the City (the “**Joint Venture**”) and developed by Developer or the Joint Venture.

2.2 **ENA Not a Final Agreement.** The Parties acknowledge and agree that this ENA is for the sole purpose of establishing and facilitating the initial basis for negotiation of the Transaction. This ENA is not, and the Parties do not intend that this ENA be, a lease, purchase and sale agreement, option or similar contract setting forth the essential terms of a land transaction (an “**Essential Terms Agreement**”). Subject to the obligations and rights expressed in this ENA, unless and until a DDA and any other agreed upon Transaction Documents are approved as set forth in Section 2.4 and executed by both Parties, the Parties do not intend to be bound in any way to an Essential Terms Agreement, nor do they intend to be bound by any other agreement except for the specific undertakings of each set forth in this ENA. Each Party acknowledges that this ENA is merely an agreement to enter into the ENA Negotiating Period according to the concepts presented herein, reserving final discretion and approval of any Transaction Documents by the City Council (or in the case of Developer, the authorized representatives of Developer) as to actions required, if any.

2.3 **Essential Terms Not Agreed.** The City and Developer acknowledge that this ENA is a framework for negotiation of essential terms of any transaction in an Essential Terms Agreement, but that they have not herein agreed upon the essential terms or the material elements of a transaction, including, without limitation, the purchase price, the legal description of the Property to be conveyed (including the exact amount of acreage, phasing, and precise location of the land), the time or manner of and significant terms related to the conveyance, the conditions precedent to conveyance (including without limitation, related to the design and entitlement of the Project) and the requirements related to development of the Project, each of which are an essential component of the transaction (collectively, the “**Essential Terms**”); (b) they do not intend this ENA to be a statement of Essential Terms, which shall be the subject matter of their further negotiations, and (c) the Essential Terms of the Transaction, if agreed to by the City and Developer, shall be set forth, if at all, in the Transaction Documents approved by the City Council (or in the case of Developer, the authorized officers or members of Developer) and executed by authorized representatives of each of the City and Developer or the Joint Venture. Further, Developer acknowledges that the design of the Proposed Project, the identity, stability and financial capacity of Developer and any proposed manager/operator of the Project and the terms and conditions of the sale of the Project, if any, will be of material concern to the City and comprise part of the Essential Terms that are not yet agreed upon by the Parties.

2.4 **Effectiveness of Subsequent Agreements.** The DDA and the DA shall not exist and shall not be binding unless and until each is fully executed by Developer or the Joint Venture and the City, approved by the City Council of the City and by the authorized representatives of Developer. The DDA and DA shall become effective only after and if the agreements have been considered and approved by the City Council of the City at a properly noticed meeting and after compliance with CEQA as further described below. Nothing in this ENA shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City pursuant to the Tustin City Code or the provisions of any applicable State or Federal law or regulation.

2.5 **Public Hearings and Compliance.** The concurrence of the City negotiators with the terms and provisions of a proposed DDA and DA shall not be construed or interpreted as the City approving or accepting such terms. Such concurrence shall be viewed as nothing more than the willingness of the City negotiators to recommend to the City Council that they approve such terms.

2.6 **Assumption of Risk.** City and Developer each assume the risk that, notwithstanding this ENA and good faith negotiations, the City and Developer may not enter into any agreement due to their failure to agree upon Essential Terms of the transaction or the Transaction Documents. Accordingly, except as specifically set forth in this ENA, neither Party will have any liability to the other in the event that the Parties are unable to reach such a definitive agreement with respect to the proposed transaction for any reason or no reason.

3.0 **Developer's Representations, Warranties and Agreements.** Developer represents, warrants and agrees as follows:

3.1 **Expertise and Financial Qualifications.** Developer has the necessary expertise, experience and financial capability to undertake development of the Project at the Property as contemplated by this ENA.

3.2 **No Speculation in Land Holding.** Developer's intended acquisition of the Property and its other intended undertakings pursuant to this ENA shall be used for the timely development of the Project at the Property, and accompanying infrastructure and amenities, and not for speculation in land holding.

3.3 **Experience.** Developer is experienced in development and understands the process and requirements required to make development projects such as the Project described herein.

3.4 **Project Financing.** Developer is capable of acquiring the Property and developing the Project with a capital partner and financing from a bank group or other institutional lender, utilizing the Property and the Project as collateral. Developer has represented that it intends for Developer, its capital partner, or the Joint Venture to provide any nonrecourse carve-out guarantee, construction completion guarantee, and environmental indemnity required by the lender under such financing.

3.5 **Creative Office Campus Project – Phase I (Minimum Project).** Developer in Business Proposal referenced in Section 1.7 has represented that the Project would be built as described without user/tenant contingencies for the following products by category: 1) Office(s) for approximately 345,000 square feet; 2) Food Hall for approximately 16,500 square feet; 3) Retail for approximately 20,000, 4) pad uses for approximately 3,500 square feet, and 5) sufficient parking for the described products which will include a parking structure and surface parking. These products shall be developed on approximately 17.53 acres in the approximate location described in the Business Proposal. All proposed products shall be of the quality described in the City's Cornerstone Design Guidelines dated November 6, 2014.

3.6 **Creative Office Campus Project – Phase II.** Developer and City shall during the course of negotiating the Transaction Documents agree upon the terms and conditions for the

conveyance of Phase II, that is, the balance of the site and intensity of development. The quality of the Project negotiated shall be at a level not less than the Project designed and constructed in Phase I.

3.7 **Release.** Except as specifically set forth in Sections 4.3.3, 4.4.1, 6.9.2 and 10.5, Developer, on behalf of itself and its successors and assigns, hereby waives the right to recover from and fully and irrevocably releases the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, consultants, contractors, successors and assigns (the “City Parties”) with respect to any and all claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including, without limitation, attorneys’ fees, consultant fees and court, arbitration and litigation costs) or any other type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen (“Claims”) that Developer or its officers, directors, employees, agents, representatives, tenants, prospective tenants, consultants or contractors may now or hereafter have or incur relating to or arising from: (a) the process for selection of CBRE or Developer, or any modification or defect thereto, or any information provided by the City or CBRE during the course of the selection or negotiation process, (b) with respect to the terms of this ENA including, without limitation, the information set forth herein or the termination hereof, (c) any disputes, claims, actions, causes of action, demands or orders arising between Developer and any third parties, and/or (d) any actions of the City, CBRE or the City Parties in connection with any of the foregoing (including, without limitation, the exercise by the City of its discretion, decision, or judgment with respect to the foregoing).. This waiver and release includes, without limitation, a waiver and release with respect to: (w) any and all damages and/or monetary relief (whether based in contract or in tort), including, without limitation, any right to claim direct, compensatory, reliance, special, indirect or consequential damages, (x) any right to payment or reimbursement from the City, (y) the right to protest the terms of this ENA, any Transaction Document or the selection or negotiation process and (z) the failure of the City to negotiate in good faith pursuant to this ENA or to enter into a Transaction Document. Nothing herein limits or releases Claims by Developer against the United States Government, including but not limited to the Department of the Navy, regarding the environmental condition of the Property.

3.8 **Survival of Provisions.** The provisions of this Section 3 shall survive the termination of this ENA.

4.0 Negotiations.

4.1 **Good Faith Negotiations.** The City will prepare a draft of the Transaction Documents and submit the draft documents to Developer for review and comment. The City and Developer agree for the period set forth in Section 4.2 to exclusively negotiate with one another diligently and in good faith to prepare Transaction Documents and related documents to be entered into between the City and Developer (or Joint Venture) with respect to the purchase and sale and development of the Project at the Property.

4.2 Period of Negotiations.

4.2.1 **Initial Period.** The parties agree to negotiate exclusively and in good faith

for a period of one hundred eighty (180) days from the Effective Date, subject to extensions as further provided in this Section 4.2 (as so extended or earlier terminated in accordance with the provisions of this ENA, the “**ENA Negotiating Period**”). If on the 180th day from the Effective Date (or within any extension of time mutually approved by the City and Developer in accordance with the terms of this ENA), Developer or the Joint Venture has not signed Transaction Documents in form and substance prepared and approved by the City in its sole discretion, then this ENA shall automatically terminate.

4.2.2 Request for Extension. Developer may request from the City an extension of the 180-day exclusive negotiation period. The City will determine whether reasonable and sufficient progress has been made toward fulfillment of the requirements of this ENA in its consideration of any extension. The 180-day exclusive negotiation period may be extended by the mutual consent of the City and Developer for up to two (2) additional periods of sixty (60) days each.

4.2.3 Authority to Extend. The City hereby delegates to the City Manager, or his or her designated representative, the authority to agree to grant the extensions specified in Section 4.2.2 upon determination by the City Manager or his or her designated representative in their sole and absolute discretion that Developer has negotiated diligently and in good faith and that reasonable and sufficient progress has been made toward fulfillment of the requirements of this ENA. No such extension of the ENA Negotiating Period shall be effective unless it is in writing. Any extensions other than the two (2) periods of sixty days specified in Section 4.2.2 shall require approval by the City Council, which approval shall be at the sole and absolute discretion of the City Council.

4.2.4 Offer to Purchase. The execution by the Developer or Joint Venture of a form DDA and DA shall constitute an offer to purchase the Property on the terms set forth therein. Developer hereby agrees that it shall not withdraw such offer to purchase for a period of sixty (60) days following submittal of the executed DDA and DA to the City. Such offer shall remain in effect for a period of sixty (60) days (“**Offer Period**”) to enable the City to (a) consider the environmental impacts of the proposed Definitive Transaction Documents as evaluated in an environmental document prepared in accordance with the California Environmental Quality Act; (b) determine whether it desires to enter into such a DDA and DA; (c) take the actions necessary to authorize the City to sign the DDA and DA if the City desires to do so; and (d) sign the DDA and DA. If the City has not considered and approved the DDA and DA by such 60th day or, at the end of any extension mutually agreed upon by the City and Developer in writing, then this ENA shall automatically terminate.

4.3 Deposits and Costs.

4.3.1 Good Faith Deposit. Concurrent with the execution of this ENA by the City, Developer will submit to the City a good faith deposit in the sum of One Hundred Fifty Thousand Dollars (\$150,000) (together with any interest accruing thereon and any additional amount deposited as set forth below in this Section 4.3.1, the “**ENA Deposit**”) in the form of a check to the City to ensure that Developer will proceed diligently and in good faith to negotiate and perform all of Developer obligations under this ENA and to also be applied to cover any City Transaction Expenses (defined below) incurred by the City after the Effective Date of this

ENA. The ENA Deposit shall be deposited in an account in a bank or trust company selected by the City. Interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer's obligations hereunder. The ENA Deposit will be expended to cover the City Transaction Expenses, as further described in Section 4.3.2 and the ENA Deposit will be depleted accordingly. Each time the amount of funds in the ENA Deposit account is depleted below Fifty Thousand Dollars (\$50,000), Developer shall be required to submit an additional Fifty Thousand Dollars (\$50,000) to City which shall be credited by the City to the ENA Deposit account. Amounts due to the City on account of City Transaction Expenses and deducted by the City from the ENA Deposit are referred to herein as "**City Expense Payments**".

4.3.2 City Transaction Expenses. From and after the Effective Date, the ENA Deposit may be used by the City to pay the predevelopment and negotiation costs and expenses incurred by the City or accrued during the ENA Negotiating Period and, if a DDA is executed by Developer, through the Offer Period, including, without limitation, City staff costs attributable to the Project, fees and costs of third party consultants, legal counsel (including, without, limitation, fees and expenses of the City Attorney and outside legal counsel) financial advisors, engineers, appraisers and environmental and other consultants and any other expenditures required in connection with the implementation and/or termination of the ENA, the drafting, negotiation and execution of the Transaction Documents, and other acts carried out in contemplation of the proposed Project (collectively, the "**City Transaction Expenses**"). Fees and deposits required of Developer for processing entitlement applications or complying with provisions of the California Environmental Quality Act ("**CEQA**") or its State CEQA implementing regulations shall be separately funded by Developer and shall not constitute City Transaction Expenses. Determination of costs, expenses, and fees constituting City Transaction Expenses shall be made by the City in its sole discretion and Developer shall upon request be entitled to receive summary notices from the City setting forth the identity of the provider or cost and the amounts attributable to each that constitute City Transaction Expenses.

4.3.3 Return of Deposit Under Specified Conditions. If the Parties enter into Transaction Documents, the Unapplied Deposit Funds (defined below) shall be returned to Developer, or at Developer's request, applied to any deposit required as security for Developer's or the Joint Venture's performance under the DDA. If the parties fail to enter into the Transaction Documents within the ENA Negotiating Period or any subsequent Offer Period and Developer has not negotiated diligently or in good faith or has not otherwise carried out its obligations under this ENA, the City may retain the Unapplied Deposit Funds unless a court of competent jurisdiction determines in a final decision that the City has not negotiated in good faith as described in Section 4.4. In all other cases, upon the expiration or termination of the ENA, the City shall return the Unapplied Deposit Funds to Developer. "**Unapplied Deposit Funds**" means the amount of the ENA Deposit (including any additional funds deposited by Developer pursuant to this Section 4.3) remaining after the City has deducted therefrom the full amount of the City Transaction Expenses incurred by the City to the date of termination of this ENA and, if applicable, the Offer Period.

4.3.4 Additional Transaction Deposit. Developer acknowledges that it is currently anticipated that the Transaction Documents shall require an additional deposit in an amount to be determined as security for the performance of Developer's or Joint Venture's obligations under the Transaction Documents.

4.3.5 Costs and Expenses Borne by Developer. Developer acknowledges and agrees that the City shall have no responsibility to pay or reimburse Developer for costs and expenses incurred by Developer in connection with this ENA or the compliance by Developer with its obligations under this ENA unless the City, in its sole discretion, agrees to assume any specific responsibilities in the fully executed Transaction Documents. Developer shall be responsible, without any cost or liability to the City (except as otherwise set forth in Sections 4.4.1, 6.9.2 and 10.5), for all City Transaction Expenses and all costs and expenses incurred by Developer with respect to compliance with the terms of this ENA, including without limitation, costs incurred by Developer in planning and designing the Project, preparing Plans, submitting applications, conducting due diligence or property investigations, arranging financing, negotiating the terms of the Transaction Documents or carrying out other acts in contemplation of the possible purchase and sale of the Property.

4.3.6 Developer Right to Terminate. Developer may terminate this ENA and the ENA Negotiation Period upon provision of three (3) days prior written notice to the City in the event that during the course of the investigations and evaluation of the Property and the Project, Developer determines in good faith that the Project is not feasible or financeable. In such event, the City shall return the Unapplied Deposit Funds, if any, to Developer upon termination of this ENA in the event Developer has negotiated in good faith hereunder and materially complied with the terms hereof.

4.3.7 Payment of Outstanding Amounts. Upon a termination of this ENA other than as set forth in Section 4.4, to the extent that the funds provided by Developer to pay the City Transaction Expenses are not sufficient to pay all City Transaction Expenses, Developer shall promptly fund the amount remaining unpaid to the City.

4.3.8 Survival of Provisions. The provisions of this Section 4.3 shall survive the termination of this ENA.

4.4 Exclusivity; Good Faith Negotiations and Remedies.

4.4.1 City Failure to Negotiate in Good Faith. During the period of exclusive negotiation, the City covenants and agrees to negotiate exclusively with Developer and not to solicit another party for the Project or enter into any agreement with any other party regarding the development of the Property or any portion thereof. The City acknowledges and agrees that but for this exclusivity, Developer would not have entered into this ENA. If a court of competent jurisdiction determines in a final decision that the City has breached this exclusivity covenant, the City shall be deemed to have failed to negotiate in good faith. Developer's sole remedies for any breach by the City of the City's obligations to negotiate in good faith and exclusively under this ENA shall be (a) the right to terminate this ENA and (b) the return to Developer of the ENA Deposit, including the refund of any City Expense Payments made. Except as specifically required by this Section 4.4.1, the City shall at no time have any obligation to return any City Expense Payments.

4.4.2 Developer Failure to Negotiate in Good Faith. Developer's failure to submit to the City plans, reports, studies, investigations, applications and materials specified in Section 5 and Section 6 of this ENA within the time periods specified therein, failure to provide

and maintain the insurance required by Section 4.5.2, or breach of the representations, warranties and agreements set forth in Section 3 shall be deemed to demonstrate Developer's failure to negotiate diligently and in good faith and its failure to carry out its obligations hereunder. If Developer has failed to do so, inasmuch as the actual damages that would result from a breach by Developer of its obligations under this ENA are uncertain and would be impractical or extremely difficult to determine, the City shall be entitled to retain the ENA Deposit including, without limitation, the Unapplied Deposit Funds, as liquidated and agreed damages. The City's sole remedy for any breach by Developer of Developer's obligations to negotiate in good faith and exclusively as required by this ENA shall be (a) the right to terminate this ENA and (b) the retention by the City of the ENA Deposit including, without limitation, the Unapplied Deposit Funds. Nothing herein shall be deemed to preclude the City from seeking or receiving payment for amounts which Developer is obligated to pay pursuant to Section 4.3 (to the extent the ENA Deposit is not sufficient to cover all City Transaction Expenses or such amounts are not included in City Transaction Expenses) and Sections 4.5.3 and 10.5 of this ENA or for direct monetary damages for breach by Developer of Sections 4.2.4 or 4.3.5 of this ENA provided that City shall not be entitled to any damages in addition to the actual amounts owed by the Developer to City pursuant to such Sections.

4.4.3 Limitation on Damages Payable by City. Developer acknowledges that the City would not have entered into this ENA if the City could become liable for significant damages under or with respect to this ENA or the proposed transaction. Consequently, and notwithstanding any other provision of this ENA, except as set forth in Section 4.4.1 and the following sentence, the City shall not be liable in damages under this ENA to Developer or any third party and Developer, on behalf of itself and its successors and assigns, hereby waives any and all rights to claim damages, reimbursements or monetary payments of any kind or nature from the City except as set forth herein. Nothing herein shall be deemed to preclude Developer from seeking payment for amounts which City is obligated to pay pursuant to Sections 4.4.1, 6.9.2 and/or 10.5 of this ENA, provided that Developer shall not be entitled to any damages in addition to the actual amounts owed by the City to Developer pursuant to such Sections.

4.4.4 Additional Limitations on Damages. Each of the Parties, on behalf of itself and its successors and assigns, hereby expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary or punitive damages or damages or monetary remedies not otherwise specifically set forth in this ENA.

4.4.5 No Liens or Lis Pendens. Developer, on behalf of itself and its successors and assigns, hereby expressly waives any and all rights to record a lis pendens or to otherwise place a lien or restriction of any type upon or affecting the Property.

4.4.6 Other Remedies and Restrictions. In the event the Parties enter into one or more Transaction Documents, each Party, on behalf of itself and its successors and assigns, hereby expressly waives its right to assert any breach by the other Party of the covenants of good faith and exclusivity in this ENA. Nothing in this ENA shall preclude either Party from seeking injunctive relief in order to enforce the Offer Period, release and/or confidentiality requirements of this ENA.

4.5 Inspection; License.

4.5.1 Access License. The City hereby grants to Developer, for use by Developer and its employees, representatives, agents, contractors and consultants (collectively, the “Developer Parties”), a license during the ENA Negotiating Period to enter upon the Property for purposes of conducting a due diligence inspection, provided that Developer shall and shall cause the Developer Parties to: (a) deliver to the City written evidence that Developer has procured the insurance required under Section 4.5.2 prior to entry on the Property; (b) give the City twenty-four (24) hours advance telephonic or written notice of any intended access which involves work on or may result in any impairment of the use of the Property; (c) access the Property in a safe manner; (d) conduct no invasive testing or boring without the written consent of the City; (e) allow no dangerous or hazardous condition created by Developer and/or the Developer Parties to continue beyond the completion of such access; (f) comply with all laws and obtain all permits required in connection with such access; (g) keep the Property free and clear of any and all liens of any kind caused by Developer or the Developer Parties, including without limitation, mechanics' liens or materialmen's liens related to Developer's access to or inspection of the Property and (h) conduct inspections and testing, subject to the rights of any existing tenants or contractors doing work on the Property, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City's consent, which shall not be unreasonably withheld) and in accordance with reasonable terms and conditions established by the City. The limited license granted herein is revocable by the City during the continuation of any breach of this ENA by Developer and shall be automatically revoked and terminated, without further action of the City, upon the termination of this ENA or the ENA Negotiating Period.

4.5.2 Insurance. Developer shall obtain, or cause the Developer Parties, with respect to their access and investigative activities, to obtain, at Developer's or the Developer Parties' sole cost and expense prior to commencement of any investigative activities on the Property, a policy of commercial general liability insurance covering any and all liability of Developer and the City arising out of Developer's investigative activities, in an amount of \$1,000,000 and issued by a company authorized by the Insurance Department of the State of California and rated A, VII or better (if an admitted carrier) or A-, X (if offered by a surplus line broker), by the latest edition of Best's Key Rating Guide. Such policy of insurance shall name the City, its officials and employees as additional insured on the policy. Developer shall provide certificates of insurance and insurer endorsements (or a copy of the signed policy binder, if applicable), signed by a representative of the carrier evidencing the required insurance. Such policy of insurance shall be kept and maintained in force during the ENA Negotiating Period and, if applicable, the Offer Period and so long thereafter as necessary to cover any Claims by persons or property resulting from any acts or omissions of Developer and/or the Developer Parties.

4.5.3 Indemnity. Developer hereby agrees to indemnify, defend, protect and hold the City and the City Parties free and harmless from and against any and all Claims arising or resulting from or related to Developer's or the Developer Parties': (a) exercise of the license provided in Section 4.5.1, including without limitation, entry onto or access to the Property; (b) exercise of any rights hereunder, including, without limitation, any inspections, surveys, tests or studies performed by Developer or the Developer Parties, (c) presence, activities or work on or

related to use of the Property and any mechanics' or materialmen's liens arising with respect thereto, or (d) bodily injury to or death of any person (including, without limitation, any of the City Parties) or damage to or loss of use of property resulting from the foregoing, save and except to the extent such Claims result from (x) the discovery by Developer of any pre-existing environmental conditions on the Property not caused or contributed to by Developer or the Developer Parties, or (y) the gross negligence or willful misconduct of the City or its agents, employees or representatives.

4.5.4 Survival of Provisions. The insurance obligations in Section 4.5.2 and the indemnification by Developer set forth in Section 4.5.3 shall survive the termination of this ENA and, if applicable, the execution of the DDA and the closing and transfer to Developer or the Joint Venture and shall not merge into any deed conveying the Property.

5.0 Proposed Development Concept.

5.1 Compliance with Existing Land Use and Zoning Requirements. The proposed Project to be negotiated hereunder shall include the development and use of the Property consistent with the Reuse Plan, the City's General Plan, and the Specific Plan.

5.2 Terms of Transaction Documents to be Negotiated. Developer and the City agree that it is their intent, upon entry into this ENA, to negotiate Transaction Documents which are anticipated to address the following terms and conditions and such other terms and conditions as they may agree, and which will be binding upon City and Developer and, to the extent provided therein, their successors and assigns.

5.2.1 As-Is Conveyance. While Developer should undertake its own investigation to determine the presence of hazardous materials and suitability of the Property for development, Developer acknowledges and agrees that if the Property is conveyed by the City pursuant to Transaction Documents, the Property shall be conveyed on an "AS-IS, WHERE-IS AND WITH ALL FAULTS" basis, and Developer or the Joint Venture shall be obligated to release, defend, indemnify and hold harmless the City with respect to its acquisition and development of the Property and the condition of the Property, including, without limitation, any and all land use, soil and environmental conditions of the Property.

5.2.2 Development. The Developer shall design and construct the Project on the Property at its own, or the Joint Venture's cost and expense in accordance with the scope of development and a schedule of performance to be negotiated as part of the Transaction Documents and in accordance with plans and specifications prepared by Developer, and approved by the City in accordance with such schedule of performance and in compliance with all requirements and regulations of the City including, without limitation, applicable zoning.

5.2.3 Product(s). Developer understands and acknowledges that the product(s) proposed for the Project will be subject to approval by the City, in its governmental and proprietary capacity, and will be required to comply with applicable development standards in the Specific Plan and any requirements contained in the Transaction Documents.

5.2.4 Community Facilities District (CFD). Developer acknowledges that the City has formed a community services district for services to fund a portion of the City essential

services, including, without limitation, police and fire protection, ambulance and paramedic services, recreation programs and services, street sweeping, traffic signal maintenance and the maintenance of City-owned parks, parkways and open spaces, lighting, flood control and storm drain services and other City services and facilities at Tustin Legacy by forming a community facilities district pursuant to which is imposed a Special Tax "B" ("Tax B"). Developer acknowledges and agrees that the term of Tax B imposed upon the Property and the Buildings(s) and improvements thereon shall be perpetual and shall not be time limited in any manner unless determined by the City in its sole discretion. Developer acknowledges and agrees that its development plan will not require use of CFD proceeds of any kind and that CFD proceeds will not be used to reimburse Developer for any costs of the development including without limitation, any infrastructure costs.

5.2.5 Applications. Developer shall prepare and process applications for and obtain from the City and other federal, state and local jurisdictions, all applicable land use, planning and zoning approvals for the proposed development with the support of the City. These approvals will be required to be consistent with the Specific Plan, unless, as part of approval of any application, modifications to the Specific Plan or any development standards are granted by the City.

5.2.6 Project Costs: Local Infrastructure. Project costs and revenues will be separately analyzed. Funding of all Project costs will be the responsibility of Developer without any cost or liability whatsoever to the City, provided that the City shall provide utilities to the boundaries of the Property. Project costs for which the Developer will be responsible shall include, without limitation, all costs of planning, designing, entitling and constructing the Project and all costs of any necessary local infrastructure improvements (except with respect to utilities at the Property boundaries as described above) and in-tract improvements required in connection with development of the Project. Nothing in this ENA waives or otherwise limits the applicability of the Tustin Legacy Backbone Infrastructure Program.

5.2.7 Development Fees. In connection with its development of the Property, Developer acknowledges that the Property will be subject to applicable development fees, including, but not limited to, those required by the City of Tustin, or other jurisdictions, such as the Foothill/Eastern Corridor Fee, the Santa Ana/Tustin Transportation System Improvement Area (TSIA) fee, school impact fees by the Santa Ana Unified School District, current Orange County School Facility Bonds (Measure G and Measure L), utility meter and connection fees.

5.2.8 Transfer and Assignment Restrictions. Developer acknowledges that the Transaction Documents shall contain limitations on transfer and assignment of the rights of Developer including, among other things, the right of the City to approve in its sole discretion all assignments and transfers by Developer of interests in Developer, the Transaction Documents, the Project or the Property.

5.2.9 Mortgagee Limitations and Subordination. Developer acknowledges that the Transaction Documents shall impose limitations on mortgages and mortgagees on the Property and shall require subordination of any mortgage to the Transaction Documents.

5.2.10 Remedies and Termination Rights. Developer acknowledges that the Transaction Documents shall contain remedies and termination rights in favor of the City for breach of the Transaction Documents, which shall include, without limitation, rights of reverter in conveyed land.

5.2.11 Purchase Price. The basis for the Parties' negotiations with respect to the purchase price for the Property and the costs for which Developer will be responsible shall be established by the Business Proposal.

6.0 Developer's Responsibilities.

6.1 Status Reports. Developer agrees to make bi-weekly oral and/or written reports advising the City and/or its staff of all matters and studies being made, Developer's progress in analyzing the feasibility of the Project and Developer's compliance with the requirements of this ENA, and such other information as may be reasonably requested by the City or its staff.

6.2 Development Team. Developer shall, within ten (10) days of execution of this ENA, submit in writing to the City full disclosure of the names of Developer's agents, authorized negotiators, professional employees or other associates of Developer who may be participants in development of the Project and other relevant information concerning the above, such as addresses, telephone numbers and employers. Developer shall also designate and submit in writing to the City the names of all of Developer's lead negotiators who shall have authority to make decisions on behalf of Developer.

6.3 Financial Status. Developer shall continue to be responsible for demonstrating to the City Developer's financial capacity and capability to perform its obligations under this ENA and the proposed Transaction Documents. Subject to the Confidentiality Protocols (as defined, and set forth, below), Developer shall submit any additional financial information required to demonstrate Developer's financial capacity and capability to perform its obligations under this ENA and the proposed Transaction Documents as requested by the City within thirty (30) days of a request. Developer acknowledges that documents or other "records" (as that term is defined in the California Public Records Act ("CPRA")) related to the Project may be required to be made public upon request. Government Code Section 6253(a) provides that "Public records are open to inspection at all times during the office hours" of the City. If Developer believes that any documents or other records requested by the City are exempt from the CPRA, Developer shall state in writing the legal basis for Developer's belief that such documents or other records are exempt from the CPRA. Developer and City shall meet and confer about exemption of such documents or other records, and City shall evaluate the asserted basis for the exemption(s) in good faith. If City determines that the requested documents or other records qualify for an exemption, Developer shall conspicuously mark the documents and other records "Confidential" and shall submit them to City, and City will not make the records public except as otherwise required by law or by court order. City's failure to correctly determine the applicability or inapplicability of an exemption to the CPRA shall not constitute a breach of this ENA or the Transaction Documents. City will endeavor to notify Developer of any request made for records related to the Project when the request for the records allows adequate time to provide such notice. Developer agrees to defend, indemnify and hold harmless the City and the City Parties from any claims for damages, costs, court costs, attorney fees, or

related claims in all lawsuits and writ proceedings seeking to make records public that Developer has marked "Confidential" hereunder. (The third through ninth sentences of this Section 6.3 are hereinafter referred to as the "**Confidentiality Protocols.**")

6.4 **Assignment.** If Developer determines to joint venture or partner development of the Property, or if Developer determines to form a new legal entity to develop the Property, Developer shall promptly inform the City of such determination and, subject to the Confidentiality Protocols set forth in Section 6.3 above, submit to the City the joint venture's or partner's or new entity's most recent financial statements and the financial statements of its key principals. The assignment of Developer's rights under this ENA to any new entity, partnership or joint venture may be approved in writing by the City, provided that the City is satisfied, in its sole discretion, that the new entity, partnership, or joint venture has the financial capability to perform under this ENA and the proposed Transaction Documents.

6.5 **Design Review/Entitlements.** It is understood and agreed by Developer that the quality, character and uses proposed for the Project are of particular importance to the City and that planning and design review approval and other entitlements by the City will be required for the development of the Property. Developer and the proposed architect and engineer for the Project shall meet with representatives of the City to review and come to a clear understanding of the planning and design criteria required by the City. Within twenty (20) days after the Effective Date, Developer shall submit a schedule for entitlement processing. Within sixty (60) days after the Effective Date, Developer shall submit for approval of the City preliminary revised design drawings and related documents containing the overall plan for development of the Project including the following: preliminary site plan showing building layout and dimensions, parking, landscaping and access on or related to each individual parcel, floor plans, preliminary materials call-outs and conceptual building renderings and a development schedule.

6.6 **Project Financial Pro Forma.** Within sixty (60) days after the Effective Date, Developer shall submit its overall cost and revenue estimates, Project cost and revenue data including information on the Project's financial return adequate to enable the City to evaluate Developer's business offer and economic feasibility of the proposed development of the Project, as proposed, on the Property. The information submitted shall be in the business plan format requested by the City. Developer shall periodically update the financial pro formas for the Project throughout the ENA Negotiating Period to reflect changes to the Project, the Plans (defined below), expected costs and revenue assumptions, and any comments the City provides to Developer on the Project, including, without limitation, the preliminary site plan. Developer shall provide updated pro formas to the City on a quarterly basis, or more frequently if requested by the City.

6.7 **Additional Information.** Developer understands and agrees that the City's negotiating team reserves the right at any time to reasonably request from Developer additional information, including data and commitments to ascertain the depth of Developer's capability and desire to develop the Property expeditiously. The City's negotiating team will provide a reasonable time in which Developer may obtain and submit to the City such additional information.

6.8 Contacts During Negotiation. Developer shall only negotiate with the City's negotiating team as defined in writing by the City Manager, or his or her designated representative, and with no other persons unless expressly authorized to do so by the City's negotiating team. During the period of negotiations, Developer shall make no statements to the media about the proposed Project without the approval of the City Manager or his or her designated representative. The Developer's failure to comply with the provisions of this Section 6.8 shall be conclusive evidence that Developer has not "negotiated in good faith."

6.9 Environmental and Other Studies.

6.9.1 Environmental Requirements. Compliance with CEQA is a legal precondition to any final City action to approve and execute the Transaction Documents for the Property. While the City has agreed to process and reflect the terms of a proposed transaction in Transaction Documents to be considered by the City for approval, the Parties agree that no obligation to enter into such Transaction Documents, or transaction, shall exist and no project nor Transaction Document shall be approved or deemed to be approved on the part of any Party, until after the Project is reviewed by the City in accordance with the requirements of CEQA. Developer shall cooperate with the City and abide by the City's environmental compliance procedures and fee requirements, which include, but are not limited to, the obligation to deposit funds to pay all of the City's costs of preparing any additional required environmental studies as may be determined.

6.9.2 Plans, Reports, Studies and Investigations. Developer shall provide the City, without cost or expense to the City, copies of all plans, reports, studies or investigations (collectively, "**Plans**") prepared by or on behalf of Developer for development of the Project on the Property. All Plans shall be prepared at Developer's sole cost and expense. If this ENA is terminated for any reason other than a material breach or default hereunder by the City, the City may request that Developer, for consideration to be mutually agreed, transfer Developer's rights to any or all Plans identified by the City, but in no event shall the cost to the City exceed five hundred dollars (\$500.00). Upon such request, Developer shall deliver to the City copies of all Plans requested by the City together with a bill of sale therefore, provided that Developer makes no representations, warranties or guarantees regarding the completeness or accuracy of the Plans, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such Plans shall thereupon be free of all claims or interests of Developer or any liens or encumbrances. Upon the City's acquiring Developer's rights to any or all of the Plans, the City shall be permitted to use, grant, license or otherwise dispose of such Plans to any person or entity for development of the Property or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee of title to the Plans in connection with the use of the Plans

6.9.3 Hazardous Materials Assessment. Developer acknowledges that, in accordance with the City of Tustin's acquisition of the Property from the Department of the Navy by quitclaim, the Navy issued Findings of Suitability for Transfer ("**FOST**") (FOST #2 dated September 2001, and FOST #7 dated April 2005) for unrestricted use, subject to notification and restrictions set forth in the FOSTs, also determining that the Property can be used with acceptable risk to human health and the environment. The City would intend upon approval of a DDA to sell and convey by quitclaim in the same manner as the parcels were

conveyed to the City including, without limitation, the covenants and warranties as identified in the Navy's quitclaim deed.

6.9.4 Insurance. The Developer, and any permitted assignee(s), will be responsible in conjunction with the Transaction Documents to provide commercial general liability, workers compensation, builder's risk property insurance, and environmental insurance as further described on Exhibit "B" attached hereto.

7.0 The Developer.

7.1 Nature of Developer. Developer will be Lincoln Property Commercial, Inc. or such other business entity (such as a limited liability company or limited partnership joint venture with a capital partner) as the City may approve upon such terms and conditions as the City may request and the City and Developer may agree, as specified in the Transaction Documents. Should another business entity be desired by Developer, subject to approval of the City, Developer shall submit a copy of the applicable formation documents relating to Developer and any corporate members of Developer (i.e., as applicable: articles of incorporation; partnership agreement; and/or limited liability corporation articles of incorporation, statement of information and operating agreement).

7.2 Offices of Developer. The principal offices of Developer are located at 2000 McKinney Ave., Suite 1000, Dallas, Texas 75201. The principals of Developer for purposes of this ENA are as follows:

David Binswanger, Senior Executive Vice President
Kevin Hayes, Executive Vice President

7.3 The Developer's Consultants and Professionals. Developer is required to make full disclosure to the City of any changes to its principals, officers, stockholders, partners, joint venturers, Project employees, and other associates and all other pertinent information concerning Developer and its associates as identified in its Business Proposal. Developer agrees to substitute or supplement any of its consultants and professionals as reasonably requested by the City.

8.0 The Developer's Financial Capacity.

8.1 Financial Capacity. Any additional financial information required to demonstrate financial capacity and capability to perform the obligations under this ENA of Developer, if requested, shall, subject to the Confidentiality Protocols set forth in Section 6.3, be submitted to the City or its consultant as requested by the City for the purposes of this ENA. .

8.2 Equity. Developer proposes to obtain its equity capital for development of the Property from in-house sources and a qualified limited partner or limited liability company member with whom the Developer has a current or prior relationship in funding similar projects.

8.3 Construction Financing. Developer proposes to finance construction of the Project with equity and a bank group or other institutional lender.

8.4 **Long-Term Development Financing.** Developer intends to obtain long-term development financing from a bank group or other institutional lender.

8.5 **Bank and Other Financial References.** The Developer's bank and other financial references have been provided to the City under separate cover.

8.6 **Full Disclosure.** Developer will be required to make and maintain full disclosure to the City of the methods of financing and the financing documents proposed to be used in the development.

9.0 **City's Responsibilities.**

9.1 **Environmental Requirements.** A final Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") has been prepared and certified for the MCAS Tustin Reuse Plan. Developer agrees to finance and supply information and otherwise assist the City as requested to enable the City to determine the environmental impact of the proposed development of the Project as described by the Transaction Documents and to prepare such additional environmental documents, if any, as may be needed to be completed for the development.

9.2 **Plans and Studies.** The City shall, within ten (10) business days of execution of this ENA and at no cost to Developer, make available to Developer copies of all plans, reports, studies, investigations and other materials the City may have pertinent to the Property provided, however, that the City makes no representations, warrantee or guarantee regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials and the City shall have no liability whatsoever to Developer or any transferee of Developer in connection with such plans and studies or the use thereof for any purposes. Nothing herein limits or releases Claims by Developer against the United States Government, including but not limited to the Department of the Navy.

9.3 **FOST.** The City agrees to make available a copy of the FOST to Developer within ten (10) business days following the Effective Date.

10.0 **Miscellaneous.**

10.1 **Real Estate Commissions.** The City has retained CBRE pursuant to a separate agreement and shall be responsible for payment of amounts, if any, due to CBRE thereunder in connection with the transaction described in this ENA. The City agrees to hold Developer and its representatives, successors and assigns harmless from any losses and liabilities arising from or in any way related to any claim by CBRE regarding this ENA or this sale of the Property. Developer represents that it has not engaged any broker, agent, or finder in connection with this ENA and Developer agrees to hold the City and its representatives, successors and assigns harmless from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by Developer, regarding this ENA or this sale of the Property. The provisions of this Section 10.1 shall survive the termination of this ENA.

10.2 **No City Duty.** Notwithstanding any other provision of this ENA to the contrary, except as expressly provided in Sections 4.3.3 and 4.4, the City shall have no obligations or

And with a copy to: David E. Kendig
City Attorney
Woodruff Spradlin & Smart
555 Anton Blvd. Suite 1200
Costa Mesa, CA 92626

Developer: David Binswanger
Lincoln Property Company Commercial, Inc.
915 Wilshire Blvd., Suite 2050
Los Angeles, CA 90017

Kevin Hayes
Lincoln Property Company Commercial, Inc.
5 Hutton Centre Dr., Suite 120
Santa Ana, CA 92707

And with a copy to: Gregory S. Courtwright
Lincoln Property Company Commercial, Inc.
2000 McKinney Ave., Suite 1000
Dallas, Texas 75201

10.8 Any such notice or submittal shall be deemed received upon delivery to all required recipients, if delivered personally; one (1) day after delivery to the courier, if delivered by courier; and three (3) days after deposit into the United States mail if delivered by registered or certified mail.

10.9 **Prohibition Against Assignments.** This ENA shall not be assigned by Developer without the consent of the City in its sole discretion. Any attempted or purported assignment by Developer of this ENA without the consent of the City as aforesaid shall be void and a breach by Developer of its obligation to negotiate in good faith under this ENA.

10.10 **No Third Party Beneficiaries.** Execution of this ENA is not intended to create or confirm any third party beneficiary rights in or create any liability on the part of either the City or Developer to any third parties.

10.11 **Effect of Disposition and Development Agreement.** Following mutual execution by the City and Developer of the Transaction Documents, this ENA shall be of no further force or effect, except that, unless otherwise agreed in writing by Developer and the City, the releases set forth in Section 3.7, the insurance requirements set forth in Section 4.5.2, the indemnities set forth in Section 4.5.3 and Section 10.1, and the confidentiality provisions set forth in Section 10.12 shall remain in effect with respect to matters or Claims arising, and documents and information delivered, during the ENA Negotiating Period. In the event of any conflict between the provisions of this ENA and any Transaction Document approved by the City and Developer, the provisions of the Transaction Document shall for all purposes prevail.

10.12 Confidentiality. Except as otherwise required by law or court order, the City and Developer represent and warrant that each shall keep this ENA and all information and/or reports obtained from the other, or related to or connected with the Property, the other Parties, this ENA, and until presentation to the City for approval, the Transaction Documents or any other documents negotiated by the City and Developer, confidential and will not disclose any such information to any person or entity without obtaining the prior written consent of the other Party, except that (a) the City shall have the right (i) to disclose any information contained in any third party reports obtained by Developer and (ii) make disclosures to City's employees and independent contractors, including, but not limited to consultants, financial planners, outside counsel, contractors and experts as necessary in order to determine if the Project is feasible and financeable, provided such persons and entities are made aware the information is confidential; and (b) Developer shall have the right to make disclosures to Developer's potential capital partners and lenders, and Developer's and their respective employees, partners, members, affiliates and independent contractors, including but not limited to consultants, financial planners, outside counsel, and experts as necessary in order to determine if the Project is feasible and financeable, provided such persons and entities are made aware the information is confidential. Notwithstanding the foregoing, this ENA, the draft DDA and DA and all other material relating to this ENA are subject to the provisions of the California Public Records Act (Government Code Section 6250 et seq.) ("Act"). The City's use and disclosure of its agreements and records are governed by the Act and nothing herein limits the City's right and obligation to comply with the Act or with laws mandating public notice or disclosure of public records, including without limitation, agendas, public hearings, staff reports and minutes produced in connection therewith, including, without limitation, the Ralph M. Brown Act. The City makes no representations nor warranties that writings and materials provided to or generated by the City during negotiations will be exempt from the Public Records Act; provided however that nothing in the foregoing shall relieve the City of its obligation to abide by the Confidentiality Protocols as set forth in Section 6.3 of this ENA.

10.13 Governing Law/Exclusive Venue. This ENA shall be interpreted in accordance with California law. The Parties agree that in the event of litigation, exclusive venue shall be in Orange County, California.

10.14 Counterparts. This ENA may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the City and Developer hereto have executed this ENA as of the Effective Date set forth above.

{remainder of page is blank/signatures commence on following page}

Dated: 6/2/15

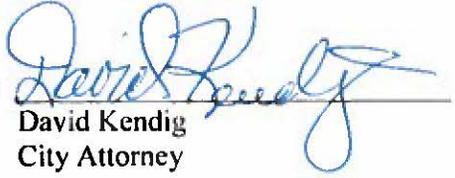
"CITY"

City of Tustin

By: 

Jeffrey C. Parker
City Manager

APPROVED AS TO FORM

By: 
David Kendig
City Attorney

"DEVELOPER"

Lincoln Property Company
Commercial Inc., a Texas corporation

By: 

Name: David Binswanger
Title: Executive Vice President

EXHIBIT "A"
General Depiction of Property

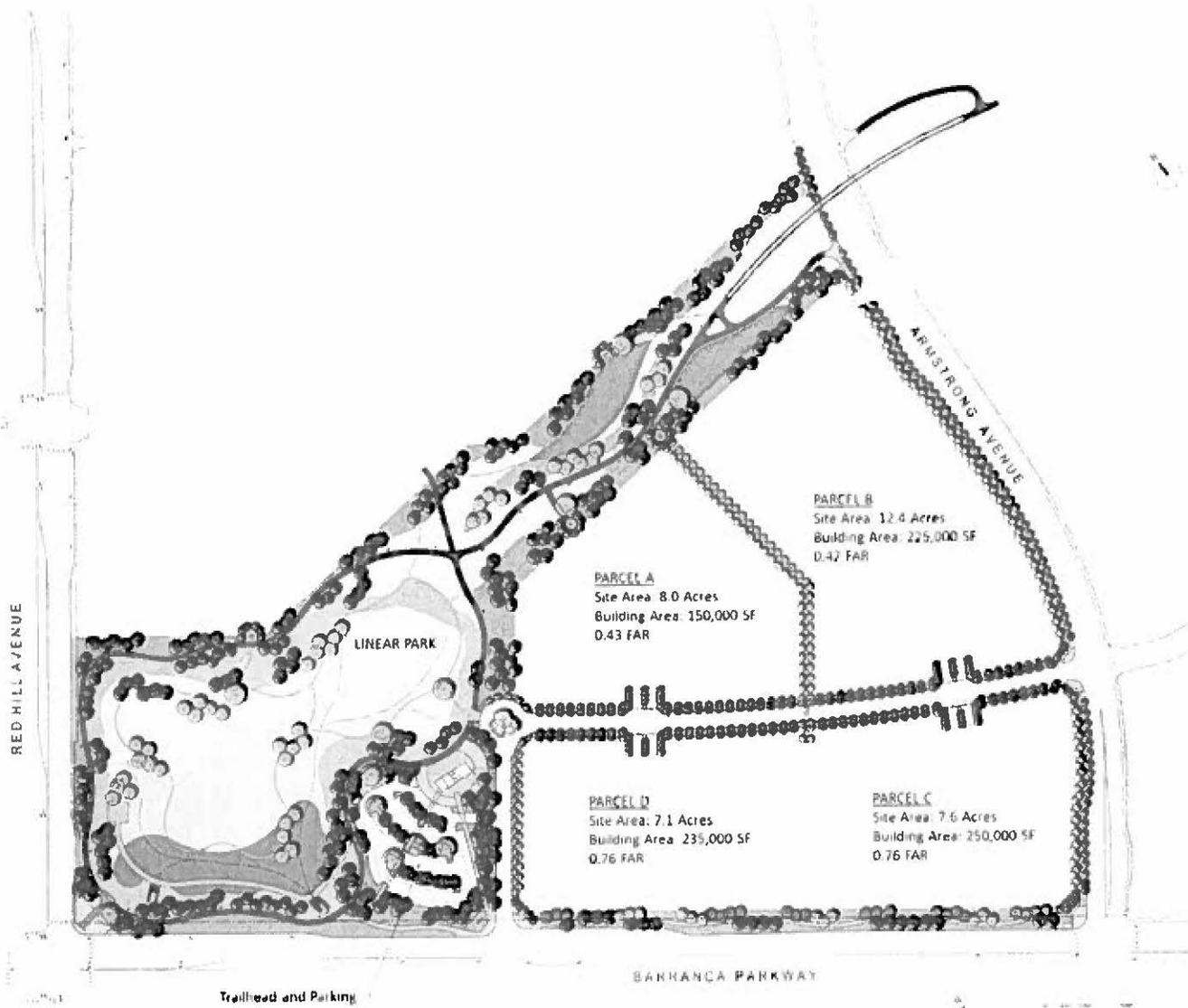


EXHIBIT "B"
DDA INSURANCE REQUIREMENTS

1. **Insurance.**

1.1. **Required Insurance.**

Without limiting the City's rights to indemnification, Developer shall procure and maintain, at its own cost and expense, and furnish or cause to be furnished to the City, evidence of the following policies of insurance (complying with the requirements set forth below) naming Developer as insured and, with respect to the general liability and environmental liability insurance required pursuant to Section 1.1.1 and 1.1.4 only, the City as additional insured. All insurance required below shall be kept in force with respect to each such component of the Property, the Project and/or the improvements until issuance of a final Certificate of Compliance by the City with respect thereto or for such longer period as is described below.

1.1.1. **Liability Insurance.** Commencing upon the effective date of the DDA, Developer shall maintain or cause to be maintained commercial general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any Person or Persons whomsoever on or about the Property, the Project and/or the improvements and the business of Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer or anyone directly or indirectly employed or contracted with or acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any Person occurring on or about the Property, the Project and/or the improvements or related to the Project and the business of Developer on the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or any Person acting for Developer, or under its control or direction. Such insurance shall also provide for and protect the City against incurring any legal cost in defending Claims for alleged loss. Such insurance shall be maintained in full force and effect until issuance of the Certificate of Compliance and so long thereafter as necessary to cover any claims of damages suffered by persons or property prior to issuance of the Certificate of Compliance, resulting from any acts or omissions of Developer, Developer's employees, agents, contractors, suppliers, consultants or other related parties. The amount of insurance required hereunder shall include comprehensive general liability and personal injury with limits of at least Five Million Dollars (\$5,000,000.00) and automobile liability with limits of at least Two Million Dollars (\$2,000,000.00) combined single limit per occurrence. The insurance shall be issued by a company permitted by the Insurance Department of the State and rated A-/VII or better (if an admitted carrier) or A-/X (if offered by a surplus line broker), by the latest edition of Best's Key Rating Guide. Such insurance may be provided by an umbrella insurance policy otherwise meeting the requirements of this Section 1.

An ACORD certificate evidencing the foregoing and providing the following endorsements approved by the authorized representative of the underwriter and approved by the City shall be delivered within seven (7) business days following the effective date of the DDA and annually (upon request from the City) evidencing renewals of each policy until issuance of the Certificate

of Compliance for the Project. The endorsements shall provide as follows: (1) designate the City, its elected and appointed officials, agents, representatives and employees as additional insureds on the commercial general liability policies; (2) the commercial general liability insurance coverage shall be primary, and not contribute with any insurance or self-insurance maintained by the City and (3) a waiver of subrogation for the benefit of the City. The procuring of such insurance and the delivery of policies, certificates or endorsements evidencing the same shall not be construed as a limitation of Developer's obligation to indemnify the City Parties as required by the DDA.

1.1.2. **Workers' Compensation Insurance.** Commencing upon the effective date of the DDA, Developer shall obtain, and thereafter maintain or cause to be maintained, workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all Persons employed by Developer in connection with the Project and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any Person incurring or suffering injury or death in connection with the Project or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Developer shall deliver to the City evidence that such self-insurance has been approved by the appropriate State authorities. Developer shall also furnish (or cause to be furnished) to the City evidence satisfactory to the City that any contractor with whom it has contracted for performance of work on the Property or otherwise pursuant to the DDA carries workers' compensation insurance required by law. The insurance policy, and each renewal or replacement thereof, by endorsement approved by an authorized representative of the underwriter, shall contain a waiver of subrogation against the City, and its council members, officers, employees, attorneys and agents. The insurance provided for under this Section 1.1.2 shall be issued by a company rated B-/VIII or better or by the State Compensation Fund.

1.1.3. **Builder's Risk Insurance.** Commencing upon the commencement of construction by Developer of any improvements and continuing until such time as the City delivers a final Certificate of Compliance, Developer shall obtain, or shall cause its contractor to obtain, and thereafter maintain a builder's risk policy with respect to such improvements or maintain comparable coverage through a property policy. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Building(s) and improvements. The insurance provided for under this Section 1.1.3 shall be provided by insurer(s) permitted to do business in the State and with a Best's rating of B/NR or better.

1.1.4. **Environmental Insurance.** From and after the Close of Escrow, Developer shall obtain and shall thereafter maintain environmental and pollution legal liability insurance coverage for the Property, including coverage for loss, remediation expense and legal defense expenses, and naming the City as a named insured to address pollution risks at the Property. Such policy shall include coverage relating to known pre-existing conditions and/or conditions that are discovered during development on the Property. Such policy shall comply with the following requirements:

(a) The policy shall be written by the insurance company selected by Developer and approved by the City, which approval shall not be unreasonably withheld, and which insurer(s) shall have a Best's rating of A-/VII or better;

(b) The policy shall provide not less than Five Million Dollars (\$5,000,000) in coverage, subject to a maximum One Hundred Thousand Dollar (\$100,000) deductible per claim, to protect against Claims and loss from liability relating to known and unknown conditions on the Property for a period of not less than 10-years; and

(c) The policy shall be paid for in full at the time of issuance and shall be endorsed as non-cancelable by Developer without the written consent of the City in its sole discretion to such cancellation and shall contain a waiver of subrogation for the benefit of the City and its council members, officers, employees, attorneys and agents. As such, Developer's obligation to maintain environmental insurance pursuant to this Section 1.1.4 shall survive the termination of the DDA following the Close of Escrow for the term required for such insurance policy pursuant to Section 1.1.4(b).

(d) Developer's insurance policies shall name the City as an additional insured with respect to any additional environmental and pollution legal liability insurance coverage Developer acquires for the Project, the Property or any portion thereof.

The provisions of this Section 1.1.4 shall survive the termination of the DDA.

1.2. **General Insurance Requirements.**

1.2.1. For all policies or certificates, the insurer endorsements (or a copy of the policy binder, if applicable) shall specifically identify the DDA and shall provide evidence that either (a) Developer has paid for its premium in full for any policy that is currently in place, or (b) that said insurance shall not be cancelled except if the City is given at least thirty (30) calendar days advance written notice of any cancellation or termination of insurance by the insurer.

1.2.2. The term "**full insurable value**" as used in this Section 1 shall mean the cost determined by mutual agreement of the Parties (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar improvements of equal size and providing the same habitability as the improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision.

1.2.3. All insurance provided under this Section 1 shall be for the benefit of the Parties. Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit certificates evidencing the insurance required by Sections 1.1.1 and 1.1.2 to the City on an ACORD form within seven (7) business days, following the effective date of the DDA, the insurance required by Section 1.1.3 on or before commencement of construction, and the insurance required by Section 1.1.4, at the Close of Escrow. Within seven (7) calendar days, after expiration of any such policy, certificates and

endorsements evidencing renewal policies shall be submitted to the City, together with evidence of payment of premiums.

1.2.4. If Developer fails or refuses to procure and maintain insurance as required by the DDA, the City shall have the right, at the City's election, and upon ten (10) calendar days' prior notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as a loan, due from Developer, to be paid on the first calendar day of the month following the date on which the premiums were paid. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insurer(s).

1.2.5. Since the insurance policies required by Section 1.1.4 will not be effective until after the Close of Escrow, the evidence of insurance to be delivered by Developer to the City at the Close of Escrow shall be limited to a binder evidencing that the insurance required by Section 1.1.4 will become effective following the Close of Escrow.

2. Initially capitalized terms used in this Exhibit "A" and not otherwise defined in the ENA shall have the meanings set forth below:

2.1. **"Certificate of Compliance"** shall mean a certificate to be issued with respect to the Property by the City upon completion by Developer of all of the Buildings and improvements and satisfaction of all additional conditions precedent thereto with respect to the Property or Phase, as the case may be, as described in the DDA.

2.2. **"Close of Escrow"** shall mean the close of escrow for the Property and the transfer of fee title to the Property by the City to Developer.

2.3. **"Governmental Authority"** shall mean any and all federal, State, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State of California and any political subdivision, public corporation, district, joint powers authority or other political or public entity) or departments thereof having or exercising jurisdiction over the Parties, the Project, the Property or such portions of the foregoing as the context indicates.

2.4. **"Person"** shall mean an individual, partnership, limited partnership, trust, estate, association, corporation, Limited Liability Company, joint venture, firm, Joint Stock Company, unincorporated association, Governmental Authority, governmental agency or other entity, domestic or foreign.

2.5. **"State"** shall mean the State of California.