

**EXCLUSIVE AGREEMENT TO NEGOTIATE  
(WESTERLY DISPOSITION PACKAGE 1C)**

**THIS EXCLUSIVE AGREEMENT TO NEGOTIATE (DISPOSITION PACKAGE 1C** (“**Agreement**”) is entered into this 7th day of August, 2012 (the “**Effective Date**”) by and between THE CITY OF TUSTIN (the “**City**”) and Regency Centers Acquisition, LLC., a Florida limited liability company (“**Developer**”), with respect to certain land referred to herein as the “**1C Property**” (defined below). The City and Developer 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 1C Property which is the subject of this Agreement, 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 portion of MCAS Tustin located within the City of Tustin and currently owned by 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 Agreement 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, implementing redevelopment plans, the Reuse Plan and the Specific Plan.

1.6 In March 2012, the City issued a Request for Proposal (“RFP”) seeking a developer for the westerly portion of Disposition Package 1C (“**Disposition Package 1C**”).

1.7 Developer submitted a proposal for purchase and development of the property described in Disposition Package 1C RFP Response dated May 21, 2012, as amended by letter dated July 17, 2012 (“**RFP Response**”).

1.8 The property described by Disposition Package 1C is comprised of a portion of property referred to in the Navy transfer documents as “I-H-2, as subsequently reparable and as further legally described and depicted on the Site Map attached as Exhibit A (the “**1C Property**”).

1.6 Developer’s RFP Response proposes development of the 1C Property with approximately 99,940 square feet of retail uses, 40,000 square feet of medical offices, 11,000 square feet of day care use, and a complete accompanying set of amenities to be constructed by Developer. The proposed development of the 1C Property described above and as further described in this Agreement is referred to herein as the “**Project**”.

1.7 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 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 1C Property and the development thereon of the Project.

## **2.0 Agreement to Negotiate.**

2.1 **Terms and Conditions.** The City and Developer each desire to negotiate a DDA and DA which if agreed upon and executed, shall set forth the terms and conditions pursuant to which the 1C Property shall be conveyed by the City to Developer and developed by Developer.

2.2 **DDA and DA.** Notwithstanding that the terms of the purchase and sale and development of the 1C Property are to be negotiated, 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.

2.3 **ENA Not a Final Agreement.** This Agreement (including all exhibits hereto) is solely an exclusive right to negotiate and is not a final agreement. The City and Developer do not intend this agreement to be a purchase, option or similar contract or to be bound in any way by this Agreement, other than to establish a period of exclusive negotiations during which time each of the City and Developer shall negotiate with the other in good faith. The City shall not market the 1C Property to other interested parties and Developer hereby agrees that it shall not withdraw any offer made by it pursuant to Section 4.2.4.

2.4 **Essential Terms Not Agreed.** City and Developer acknowledge that although the parties have set forth a framework for negotiation of essential terms of any transaction: (a) they have not herein agreed upon essential terms of a transaction, including, e.g., price, terms and timing of transfer of the IC Property; (b) they do not intend this Agreement to be a statement of essential terms of the transaction, 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 a DDA and DA approved and executed by authorized representatives of each of the City and Developer

2.5 **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 and the City, approved by counsel to each of the City and Developer as to form and approved by the City Council of the City and by the managing members of Developer, The DDA and DA shall become effective only after and if the agreements have been considered and approved by the legislative body of the City and the City Council of the City after noticed public hearing. Nothing in this Agreement 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.

2.6 **Public Hearings and Compliance.** If the negotiations hereunder culminate in Developer and the City's negotiations concurring on the terms and provisions of a DDA and DA, such DDA and DA will be considered for approval by the City only after all required public hearings have been held and after compliance with all applicable laws and ordinances. The concurrence of the City negotiators with the terms and provisions of a proposed DDA and DA under any provisions of this Agreement 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 legislative body of the City and the City Council that they approve such terms.

2.7 **Assumption of Risk.** City and Developer each assume the risk that, notwithstanding this Agreement 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. 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 IC Property as contemplated by this Agreement;

3.2 **No Speculation in Land Holding.** Developer's intended acquisition of the IC Property and acquisition and its other intended undertakings pursuant to this Agreement shall be used for the timely development of the IC 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; and

3.4 **Long-Term Development Financing.** Developer is capable of providing financing for the development of the IC Property without the necessity of third party financing. Developer has represented to the City in their business offer that acquisition of the property and construction of improvements will be all cash.

3.5 **Release.** Except as specifically set forth in Section 4.4, Developer hereby waives the right to recover from and fully and irrevocably releases the City and its elected officials, employees, agents, representatives, consultants and contractors (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 that Developer may have or incur (a) pursuant to the RFP selection process, the RFP’s or any modification or defect thereto, or any information set forth therein, (b) with respect to the terms of this Agreement 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 or the City Parties in connection with any of the foregoing (including, without limitation, the exercise by the City of its discretion, decision, 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 except as specifically set forth in Section 4.4 of this Agreement, (y) the right to protest the RFP and/or the terms or selection process pursuant to the RFP and (z) the failure of the City to negotiate in good faith pursuant to this Agreement or to enter into a DDA and/or DA.

3.6 **Survival of Provisions.** The provisions of this Section 3 shall survive the termination of this Agreement.

#### **4.0 Negotiations.**

4.1 **Good Faith Negotiations.** The City will prepare a draft of the DDA and DA 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 a DDA and a DA and related documents to be entered into between the City and Developer with respect to the purchase and sale and development of the IC Property.

#### **4.2 Period of Negotiations.**

4.2.1 **Initial Period.** The Parties agree to negotiate for a period of one hundred eighty (180) days from the Effective Date, subject to extensions as further provided in this Section 4.2. 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 the Agreement), Developer has not signed a DDA and DA in form and substance prepared and approved by the City in its sole discretion, then this Agreement 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 Agreement 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 thirty (30) 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 Agreement. No such extension of time shall be effective unless it is in writing.

4.2.4 Offer to Purchase. The execution by Developer of a form DDA and DA shall constitute an offer to purchase the IC Property. 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 to enable the City to (a) determine whether it desires to enter into such a DDA and DA; (b) take the actions necessary to authorize the City to sign the DDA and DA if the City desires to do so; and (c) 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 Agreement shall automatically terminate.

#### 4.3 Deposits and Costs.

4.3.1 Good Faith Deposit. Within three (3) business days following execution of this Agreement by the City, Developer will submit to the City a good faith deposit in the sum of Two Hundred Fifty Thousand Dollars (\$250,000) (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 Agreement and to also be applied to cover any City Transaction Expenses (defined below) incurred by the City after the Effective Date of this Agreement. 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's costs during the DDA negotiation process, 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.

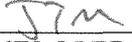
4.3.2 City Transaction Expenses. From and after the Effective Date, the ENA Deposit may be used by the City to pay the City's third party predevelopment costs including,

without limitation, third party consultants, outside counsel, and any other expenditures required in connection with the drafting, negotiation and execution of the DDA or termination of this Agreement, including any and all City third party fees and costs incurred by legal counsel, financial and other consultants ("City Transaction Expenses"). City Transaction Expenses do not include any fees or 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. 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 amounts constituting City Transaction Expenses to be retained by City.

4.3.3 Return of Deposit Under Specified Conditions. If the Parties enter into a DDA within the time period identified in Section 4.2 of this Agreement, the City shall return any remaining unused funds in the ENA Deposit account to Developer or Developer can apply it to any additional deposit required as security for the performance under the DDA. If the Parties fail to enter into the DDA within the time period identified in Section 4.2 of this Agreement or any extension thereto, the City may retain any remaining unused portions of the ENA Deposit only if Developer has not negotiated diligently or in good faith or has not carried out its obligations under this Agreement and the City has negotiated diligently and in good faith and has carried out its obligations under this Agreement. The Developer's failure to submit to the City plans, reports, studies, investigations, applications and materials specified in Section 5 and Section 6 of this Agreement within the time periods specified therein, 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 which would result from a breach by Developer of its obligations under this Agreement are uncertain and would be impractical or extremely difficult to determine, the City shall be entitled to retain any remaining unused portions of the original \$250,000 ENA Deposit plus interest, if any, which has accrued thereon, as liquidated and agreed damages.

4.3.4 Not Sole Remedy of City. Subject to Section 10.6 of this Agreement, by the initials of their respective signatories hereunder, the City and Developer acknowledge and agree that forfeiture of the original amount of the deposit (together with any interest earned and accrued thereon) is not in lieu of any other relief, right or remedy to which the City might be entitled by reason of Developer's default (other than a default in any obligation to negotiate in good faith which shall be governed by the preceding paragraph).

  
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CITY'S INITIALS

  
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DEVELOPER'S INITIALS

4.3.5 Additional DDA Deposit. Developer acknowledges that it is currently anticipated that the DDA shall require an additional deposit in an amount to be determined as security for the performance of Developer's obligations under the DDA.

4.3.6 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 Agreement or the compliance by Developer with its obligations under this Agreement unless the City assumes any specific responsibilities in the fully executed DDA. Costs and expenses for which Developer shall be responsible include all pre-contractual expenses described in the RFP, all City Transaction Expenses and all costs and expenses incurred by Developer with respect to compliance with the terms of this Agreement.

4.3.7 Developer Right to Terminate. Developer may terminate this Agreement in the event that during the course of the investigations and evaluation of the IC Property and the Project, it determines in good faith that the Project is not feasible or financeable. The City shall return the deposit (less any costs of the City associated with negotiation of the DDA from the Effective Date together, with any interest accrued thereon) to Developer upon termination of the Agreement in the event Developer has negotiated in good faith hereunder and materially complied with the terms hereof.

4.3.8 Payment of Outstanding Amounts. Upon a termination of this Agreement 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.

4.3.9 Survival of Provisions. The provisions of this Section 4.3 shall survive the termination of this Agreement.

4.4 **Exclusivity; Good Faith Negotiations.** During the period of exclusive negotiation, the City covenants and agrees to negotiate exclusively with Developer and shall not solicit another party for the Project or enter into any agreement with any other party regarding the development of the IC Property or any portion thereof. The City acknowledges and agrees that but for this exclusivity, Developer would not have entered into this Agreement. In the event 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. For any breach of the covenant of good faith by the City, provided a DDA has not been entered into pursuant to this Agreement, Developer's sole remedy shall be the termination of this Agreement and the return of the good faith deposit (together with interest accrued thereon) and any other deposits made by Developer pursuant to this Agreement.

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 term of this Agreement to enter upon the IC 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; (b) give the City twenty-four (24) hours telephonic or written notice of any intended access which involves work on or may result in any impairment of the use of the IC Property ; (c) access the IC 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; and (g) conduct inspections and testing, subject to the rights of any existing tenants or contractors doing work on the IC 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). The limited license granted herein is revocable by the City during the continuation of any breach of this Agreement by Developer and shall be automatically revoked and terminated, without further action of the City, upon the termination of this Agreement or any period of exclusive negotiation hereunder.

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 IC 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 term of this Agreement and so long thereafter as necessary to cover any claims or damages 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 its elected officials, employees, agents, representatives, consultants and contractors free and harmless from and against any and all claims, costs and/or Losses arising in connection with or resulting from Developer's or the Developer Parties' access to the IC Property or its exercise of its rights hereunder, including, without limitation, any inspections, surveys, tests or studies performed by Developer or the Developer Parties, save and except to the extent such claims result from the gross negligence or willful misconduct of the City or its agents, employees or representatives. Developer shall keep the IC Property free and clear of any mechanics' liens or materialmen's liens related to Developer's inspection of the IC Property. The indemnification by Developer set forth in this Section 4.5.3 shall survive the termination of this Agreement and the execution of the DDA and the closing and transfer to Developer and shall not merge into any deed granted pursuant to the DDA.

## **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 IC Property consistent with the MCAS Tustin Reuse Plan, the General Plan, and the Specific Plan.

5.2 Terms of DDA to be Negotiated. Developer and the City agree that it is their intent, upon entry into this Agreement, to negotiate a DDA which is 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 Essential Terms. Developer shall acquire the IC Property from the City. The terms and conditions of the conveyances, including but not limited to the manner of the conveyance, the conditions precedent to conveyance, the amount of the purchase price, the methodology and approach for City of Tustin Profit Participation shall be determined as part of the negotiation of and detailed in the DDA, provided Developer acknowledges and agrees that the purchase price for the IC Property shall be consistent with Developer's Response to RFP.

5.2.2 As-Is Conveyance. While Developer should undertake its own investigation to determine the presence of hazardous materials and suitability of the IC Property for development, Developer acknowledges and agrees that if the IC Property is conveyed by the City pursuant to a DDA, the IC Property shall be conveyed on and "AS-IS, WHERE-IS AND WITH ALL FAULTS" basis, and Developer shall be obligated to release, defend, indemnify and hold harmless the City with respect to its acquisition and development of the IC Property and the condition of the IC Property, including any and all land use, soil and environmental conditions of the IC Property.

5.2.3 Development. The Developer shall design and construct the Project on the IC Property at its own cost and expense in accordance with the scope of development and a schedule of performance to be negotiated as part of the DDA 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.

5.2.4 Product Mix. Developer understands and acknowledges that the product mix proposed for the Project will be subject to approval by the City, in its governmental capacity, and any necessary City entitlement approvals requested, including the specific development option included in Developer's RFP Response that is desired by the City. The actual tenant mix and total square footage to be developed on the IC Property will be based on compliance with development standards in the Specific Plan and any requirements contained in the DDA

5.2.5 Tustin Legacy Backbone Infrastructure Program Costs. In connection with development of the IC Property, Developer shall have a Fair Share Obligation to make a contribution to the Tustin Legacy Backbone Infrastructure Program, as a Fair Share Contribution to the Tustin Legacy Backbone Infrastructure Program. The Fair Share Obligation allocated to the IC Property is currently estimated at \$10,305,617 and shall be adjusted at building permit stage based on refined design information, updates to the benefit analysis or availability of any outside funding sources and adjustments in the construction cost index, as appropriate.

5.2.6 Community Facilities District (CFD). Consistent with Developer's RFP Response, the DDA shall provide for imposition of a CFD including the Tax A and Tax B approaches used within the Tustin Legacy Project as described in the RFP, with CFD proceeds flowing solely to the City. Developer acknowledges and agrees (a) that the DDA shall provide

for creation and imposition of the CFD, (b) that its development plan will not require use of CFD proceeds and (c) that CFD proceeds will not be used to reimburse Developer for its Fair Share Obligation or Project specific infrastructure costs.

5.2.7 Local Infrastructure. The Developer will also be responsible for all costs of any necessary Local Infrastructure Improvements and in-tract improvements as identified for IC Property in the RFP.

5.2.8 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 entitlements will be required to be consistent with the Specific Plan, unless as part of approval of any application under the Tustin City Code modifications to development standards are granted by the City.

5.2.9 Project Costs. Project costs and revenues will be separately analyzed and funding of all Project costs will be the responsibility of Developer, as applicable.

5.2.10 Development Fees. In connection with its development of the IC Property, Developer acknowledges that the IC 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 Tustin Unified School District (TUSD), current Orange County School Facility Bonds (Measure G and Measure L), utility meter and connection fees. Developer also acknowledges that the IC Property may be subject to a future community facilities district for financing of school facilities to benefit Tustin pursuant to an agreement between the City and the Tustin Unified School District regarding the transfer of school sites.

5.2.11 Transfer and Assignment Restrictions. Developer acknowledges that the DDA shall contain limitations on transfer and assignment of the rights of Developer including the right of the City to approve in its sole discretion all assignments and transfers by Developer of interests in Developer or in the DDA.

5.2.12 Mortgagee Limitations and Subordination. Developer acknowledges that the DDA shall impose limitations on mortgages and mortgagees and shall require subordination of any mortgage to the DDA and DA and other transaction documents as applicable.

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

## **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, including Developer's progress in analyzing the feasibility of the Project as may be requested by the City or its staff.

6.2 **Development Team.** Developer shall, within ten (10) days of execution of this Agreement, 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 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 Agreement and the proposed DDA. Developer shall submit any additional financial information required to demonstrate Developer's financial capacity and capability to perform its obligations under this Agreement and the proposed DDA as requested by the City within thirty (30) days of a request. Developer shall identify with specificity the documents which Developer wants the City to maintain as confidential documents and a statement as to why the request is consistent and complies with the provisions of the Public Records Act of the State of California. If confidentiality is requested and if nondisclosure under the Public Records Act is allowed, the documents shall be delivered to and maintained by the City and copies shall not be disseminated. To the extent permitted by law, the City shall not make public disclosure of the documents. The City's agents, negotiators and consultants may review the statements as necessary as long as such parties agree to maintain the confidentiality of such statements.

6.4 **Assignment.** If Developer determines to joint venture or partner development of the IC Property , or if Developer determines to form a new legal entity to develop the IC Property , Developer shall promptly inform the City of such determination and submit to the City the joint venture's or partner's most recent financial statements and the financial statements of its key principals. The assignment of Developer's rights under this Agreement 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 Agreement and the proposed DA.

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 IC 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 Developer's 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 revised overall cost and revenue estimates, Project cost and revenue data including information on 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 IC Property. The information submitted shall be in the same Business Plan format provided in response to the Request for Proposal for Disposition Package IC or as otherwise requested by the City. The financial pro formas for the Project shall reflect any comments the City provides to Developer on the preliminary site plan.

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 IC 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 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 a DDA and DA for the IC Property. 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 IC Property. All Plans shall be prepared at Developer's sole cost and expense. If this Agreement 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, warranty or guarantee 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 IC Property or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee or 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 IC Property from the Department of the Navy by quitclaim, the Navy found and determined that there was no contamination on the IC Property and issued a Finding of Suitability for Transfer ("FOST") dated April 22, 2002. 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 to include the covenants and warranties as identified in the Navy's quitclaim deed attached in the RFP.

6.9.4 Insurance. The Developer, and any permitted assignee(s), will be responsible in conjunction with any DDA to provide commercial general liability, workers compensation, builder's risk property insurance, and environmental insurance as identified in the RFP.

## **7.0 The Developer.**

7.1 Nature of Developer. Developer will be Regency Centers Acquisition, LLC Corp. or such other business entity (such as a limited liability corporation) as the City may approve for Disposition Package IC, , upon such terms and conditions as the City may request and the City and Developer may agree, as specified in the DDA and DA. 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 local offices of Developer are located at 915 Wilshire Boulevard, Suite 2200, Los Angeles, California, 90017. The principals of Developer are as follows:

Mac Chandler, Manager Director-West  
John T. Mehigan, Vice President, Investments  
John Hayes, Vice President of Project Management  
Steve Shaul, Senior Manager of Investments

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 RFP responses. 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 Agreement of Developer, if requested, shall be submitted to the City or its consultant as requested by the City for the purposes of this Agreement.

8.2 **Equity.** Developer proposes to obtain its equity capital for development of the IC Property from in-house financing.

8.3 **Construction Financing.** Developer proposes to finance Project costs for development of the IC Property with 100% equity.

8.4 **Long-Term Development Financing.** Developer is capable of providing financing for the development of the IC Property without the necessity of third party financing.

8.5 **Bank and Other Financial References.** The Developer's bank and other financial references are as set forth in Developer's RFP Response.

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 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 DDA and DA and to prepare such additional environmental documents, if any, as may be needed to be completed for the development.

9.2 **Assistance and Cooperation.** The City shall cooperate with Developer by providing appropriate information and assistance as reasonably requested by Developer.

9.3 **Plans and Studies.** The City shall, within ten (10) business days of execution of this Agreement and at no cost to Developer, provide Developer with copies of all plans, reports, studies, investigations and other materials the City may have pertinent to Disposition Package IC and/or development of the Project on the IC 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.

9.4 **FOST.** The City agrees to provide a copy of the FOST to Developer within 10 days following the Effective Date.

## **10.0 Miscellaneous.**

10.1 **Assistance and Cooperation.** Developer and the City shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement

10.2 **Real Estate Commissions.** The City shall not be liable for any real estate commission, finder's fee or any broker's fees which may arise from this Agreement. Developer represents that it has not engaged any broker, agent, or finder in connection with this Agreement and Developer agrees to hold the City and its representatives 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 Agreement or the sale or development of the IC Property. The provisions of this Section 10.2 shall survive the termination of this Agreement.

10.3 **No City Duty.** Except as expressly provided above in Section 4.3.3, the City shall have no obligations or duties hereunder and no liability whatsoever in the event the City and Developer fail to agree upon or to execute a DDA and a DA.

10.4 **Non-Liability of City Officials and Employees.** No member, official, representative, director, staff member, attorney or employee of the City shall be personally liable to 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 Developer or to its successor, or on any obligations under the terms of this Agreement.

10.5 **Entire Agreement.** This Agreement represents the entire agreement of the City and Developer with respect to the matters set forth herein and supersedes any prior negotiations or contemporaneous writings or statements. This Agreement may not be amended except in writing signed by each of the City and Developer hereunder.

10.6 **Attorneys' Fees.** If either the City or Developer brings an action or files a proceeding in connection with the enforcement of its respective rights or as a consequence of any breach by any party of its obligations hereunder, then the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees.

10.7 **Covenant Against Discrimination.** Developer shall not discriminate against nor segregate, any person or group of persons on account of sex, race, color, age, marital status, religion, handicaps, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the IC Property, nor shall Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the IC Property.

10.8 **Notices/Submittals.** All notices or submittals required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such party at its address shown below, or to any other place designated in writing by such party.

City: John Buchanan, Program Manager  
City of Tustin  
300 Centennial Way  
Tustin, CA 92780

Jeffrey C. Parker, City Manager  
City of Tustin  
300 Centennial Way  
Tustin, CA 92780

Developer: John Mehigan, Vice President  
916 Wilshire Boulevard  
Suite 2200  
Los Angeles, CA 90017

10.9 Any such notice or submittal shall be deemed received upon delivery, 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.

10.10 **Prohibition Against Assignments.** This Agreement 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 Agreement 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 Agreement.

10.11 **No Third Party Beneficiaries.** Execution of this Agreement 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.

10.12 **Effect of Disposition and Development Agreement.** Following mutual execution by the City and Developer of a DDA and DA, this Agreement 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 Sections 3.5 and 6.9.2, the indemnities set forth in Section 4.5.3 and Section 10.2 and the confidentiality provisions of and Section 10.13 of this Agreement shall remain in effect with respect to claims arising during the term of this Agreement. In the event of any conflict between the provisions of this Agreement and any DDA or DA approved by the City and Developer, the provisions of the DDA and DA shall for all purposes prevail.

10.13 **Confidentiality.** The City and Developer represent and warrant that each shall keep this Agreement and all information and/or reports obtained from the other, or related to or connected with the IC Property, the other parties, this Agreement, and until presentation to the City for approval, the DDA and DA 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 parties, except that the City shall have the right to disclose any information contained in any third party reports obtained by Developer and Developer shall have the right to make disclosures to Developer's employees 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. Notwithstanding the foregoing, this Agreement, the draft DDA and DA and all other material relating to this Agreement are subject to the provisions of the California Public Records Act (Government Code Section 6250 et seq.). The City's use and disclosure of its agreements and records are governed by this Act. The provisions of this Section shall survive the termination of this Agreement.

10.14 **Governing Law/Exclusive Venue.** The Agreement 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.

10.15 **Counterparts.** This Agreement 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 Agreement as of the date set opposite their signatures.

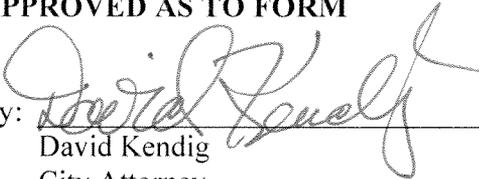
**“CITY”**

City of Tustin

Dated: 8-8-12

By:   
\_\_\_\_\_  
Jeffrey C. Parker  
City Manager

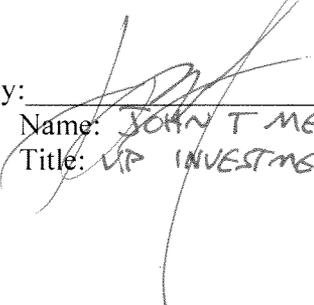
**APPROVED AS TO FORM**

By:   
\_\_\_\_\_  
David Kendig  
City Attorney

Dated: 8-7-12

**“DEVELOPER”**

REGENCY CENTERS  
ACQUISITION,LLC,  
By: Regency Centers, L.P., a  
Delaware limited partners, its Manager  
By: Regency Centers Corporation, a  
Florida corporation, its General  
Partner

By:   
\_\_\_\_\_  
Name: JOHN T. MEHIGAN  
Title: VP INVESTMENTS

**Exhibit A**

**ICProperty Legal Description and Site Map**

**LEGAL DESCRIPTION**

Lots 1, X, and Y of Tract No. 17404 in the City of Tustin, County of Orange, State of California as shown on a map filed in Book 884, Pages 1 to 14, Official Records of Orange County, California.

**SITE MAP**

