TUSTIN LEGACY
DISPOSITION AND DEVELOPMENT AGREEMENT

FOR DISPOSITION PARCEL 1C

by and between

CITY OF TUSTIN

and

1C TUSTIN LEGACY, LLC

DATED: October 20, 2015

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TUSTIN LEGACY DISPOSITION AND DEVELOPMENT AGREEMENT FOR DISPOSITION PARCEL 1C

THIS TUSTIN LEGACY DISPOSITION AND DEVELOPMENT AGREEMENT FOR DISPOSITION PARCEL 1C (the "**Agreement**") is entered into as of October __, 2015 (the "**Effective Date**") by and between the CITY OF TUSTIN (as more fully defined in Section 1.4.1, "**City**") and 1C TUSTIN LEGACY, LLC, a Delaware limited liability company (as more fully defined in Section 1.4.2, the "**Developer**"). The City and Developer and their respective successor and assigns are sometimes referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties.**" The Parties agree as follows:

1. Subject and Purpose of Agreement; Parties; Applicable Requirements.

1.1 Background Regarding MCAS Tustin.

1.1.1 Pursuant to the Defense Base Closure and Realignment Act of 1990, (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended (the "**Base Closure Law**") the Federal Government (defined below) 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 on October 17, 1996 and amended in September, 1998 (the "**Reuse Plan**").

1.1.2 A Final Environmental Impact Statement/Final 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 United States 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.

1.1.3 In May 2002, the Navy and the City entered into that certain Agreement between the United States of America and the City of Tustin, California for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin dated as of May 13, 2002 (the "**Memorandum of Agreement**"), pursuant to which the Navy agreed to convey approximately 1,153 acres of MCAS Tustin to the City. On May 13, 2002, a total of 977 acres, including the Development Parcels (as hereinafter defined) which are the subject of this Agreement, were conveyed by the Navy to the City by quitclaim deed in accordance with the provisions of the Memorandum of Agreement. The additional acreage was made subject to a ground lease by the City from the Navy. The approximately 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 in this Agreement as "**Tustin Legacy**".

1.1.4 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, which has been subsequently amended. The intent of the Specific Plan (as defined below) is to conform to and implement the Reuse Plan and the City's General Plan.

1.1.5 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. It is the City's intent that Tustin Legacy shall be developed in accordance with all City requirements, including implementing redevelopment plans, the Reuse Plan and the Specific Plan. To this end, pursuant to the Disposition Strategy for the Master Development Footprint adopted by the City Council in April, 2011 (the "**Disposition Strategy**"), the City issued a Request for Proposals (the "**RFP**") seeking a developer for the westerly portion of Disposition Package 1C (" **Disposition Package 1C**") for a retail and medical office project.

1.1.6 In response to the RFP, Developer submitted a proposal for purchase and development dated May 21, 2012, as amended by letter dated July 17, 2012 and was selected by the City for further negotiations. Subsequently, on August 7, 2012, Developer and the City entered into that certain Exclusive Negotiation Agreement, as subsequently amended, with respect to the land described by Disposition Package 1C (the "**ENA**").

1.1.7 In accordance with the RFP response of Developer, Developer intends to acquire and develop the Retail Property (as defined below) and to identify and transfer the Healthcare Property (as defined below) to one or more developers of medical and healthcare uses. To that end, Developer has entered into the SN PSA (as defined below) with SN Properties, LLC ("**SN**") for the Healthcare Property and has proposed that both SN and Hoag Memorial Hospital Presbyterian ("**Hoag**") act as the Healthcare Developer (as defined below) as to the separate parcels to be acquired by each party and further that Hoag would acquire the portion of the Healthcare Parcel upon which construction of a medical office building of 60,000 GBA ("**Medical Office Building**") is proposed, comprised of Parcel 12 as shown on the Site Plan attached hereto as Attachment 3 ("**Medical Office Parcel**") and SN would acquire the remainder of the Healthcare Property ("**Other Healthcare Parcels**"). As of the Effective Date, the City has not approved SN or Hoag or any officer, director, partner or member thereof as Healthcare Developer. City approval of SN or Hoag or any subsequent Healthcare Developer proposed by Developer as Approved Healthcare Developer (as defined below) will in all events be subject to the Transfer provisions described in Section 2.2.3(b) and the financing provisions set forth in Section 4.6 applicable to Healthcare Developer and the HCD Guarantor. Prior to a Transfer by Developer to a Healthcare Developer approved by the City in its sole discretion in accordance with this Agreement, Developer shall be responsible for and shall undertake all responsibilities of Healthcare Developer under this Agreement.

1.2 Description of Development Parcels; Subdivision.

The real property described by Disposition Package 1C is comprised of a portion of property referred to in the Navy transfer documents as I-H-2 and in the Reuse Plan as Parcel 25, as subsequently reparcelized, and consists of approximately 20.96 acres of land located in the City of Tustin, County of Orange, California, as legally described and depicted on Attachment 2A ("**Development Parcels**"). As of the Effective Date, the Development Parcels are owned in fee by the City. As part of the transactions contemplated herein, Developer shall process, on behalf of the City, pursuant to the Subdivision Map Act and the City Code, a parcel map (the "**Parcel Map**") subdividing the Development Parcels into 13 numbered parcels and four (4) lettered lots with the boundaries depicted on the Site Plan attached as Attachment 3 to this Agreement. Each legally subdivided parcel depicted on Attachment 3 is referred to herein as a "**Building Pad**". Pursuant to the terms of this Agreement, the City intends to establish by declaration of Special Restrictions certain covenants, conditions and restrictions with respect to the Development Parcels and the Property (as defined below), and thereafter, to convey the Retail Parcel, comprising the portion of the Development Parcels to be conveyed to Developer at the Retail Property Close of Escrow, and the Healthcare Parcel, comprising the portion of the Development Parcels to be conveyed to Developer at the Healthcare Property Close of Escrow, each as depicted on Attachment 2B, in one or two closings in accordance with the terms and conditions of this Agreement. The Parties currently contemplate that the Healthcare Property Close of Escrow will occur concurrently with or following the Retail Property Close of Escrow and, as further set forth in Sections 7.1.1(a) and 7.2.2(l), in no event shall the Healthcare Property Close of Escrow occur prior to the Retail Property Close of Escrow.

1.3 Purpose of Agreement.

1.3.1 **Purpose**. The purpose of this Agreement is (a) to effectuate the Reuse Plan and the Specific Plan, in accordance with the terms and conditions set forth therein and in the Memorandum of Agreement and the Federal Deed, through disposition and development of portions of Tustin Legacy as further described in this Agreement and (b) to provide for the sale and conveyance of the Property (as defined below) and its maintenance and use in accordance with the requirements of this Agreement.

1.3.2 **Project Definition**. This Agreement further provides for development by Developer on the Development Parcels of the "**Project**" to consist of construction and installation of the following Improvements:

(a) the Horizontal Improvements required to be constructed or installed on or in connection with the development of the Property, as further described in the Scope of Performance attached to this Agreement as Attachment 8 and/or depicted on Attachment 9 and

(b) the "**Vertical Improvements**" consisting of:

(i) the "**Retail Vertical Improvements**," comprised of a neighborhood commercial shopping center depicted on the Scope of Development and proposed to contain approximately 98,300 GBA (as defined below) for Retail Uses, but which shall in all

events include the following Vertical Improvements (the "**Minimum Retail Vertical Improvements**"): 53,000 GBA for Retail Uses including a single grocery store of not less than 40,000 GBA, and a drug store (which may include a drive-through pharmacy window); provided that construction of a day care center and/or car wash shall not be included in the calculation of GBA comprising the Minimum Retail Vertical Improvements, and

(ii) the "**Healthcare Vertical Improvements**" depicted on the Scope of Development and which shall include development of Buildings containing at least 60,000 GBA for Medical Uses and 15,000 GBA for Medical Uses and/or Healthcare Parcel Retail Uses (the "**Minimum Healthcare Vertical Improvements**"), and potentially including an additional 75,000 GBA for Medical Uses, for a total of not more than 150,000 GBA, parking and related Vertical Improvements. The Improvements shall be designed and constructed in a manner consistent with the Specific Plan, the Reuse Plan, the Approved Plans, the Entitlements and all applicable Governmental Requirements. Nothing contained in this Agreement shall obligate Developer to construct any Improvements solely because they are identified in the Scope of Development or in any of the items identified in the preceding sentence, provided that a failure of either Developer or Healthcare Developer, as applicable, to commence or Complete in accordance with the terms of Section 8.2 of this Agreement, the portions of the Minimum Improvements to be carried out by it shall be a Default under this Agreement.

1.3.3 **City Benefits**. The disposition of the Property, the development and Completion of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the citizens of the City and the health, safety and welfare of its residents, and are in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

1.4 Parties to the Agreement.

1.4.1 **City**. The City is a municipal corporation of the State of California. The City has been recognized as the Local Redevelopment Authority by the Office of the Secretary of Defense for the former Marine Corps Air Station, Tustin, for purposes of the Base Closure Law. "**City**" as used in this Agreement shall mean the City of Tustin and each assignee or successor to the City's rights, powers and responsibilities. The City Council shall have the right, in its sole discretion, to assign its rights and obligations to any agency or instrumentality of the City, provided that in the event the City exercises such right to assign any of its proprietary obligations, such assignment shall not relieve the City of any responsibility for its governmental

obligations, if any, under this Agreement. The principal office of the City and mailing address is 300 Centennial Way, Tustin, California 92780.

1.4.2 **Developer**. Developer is 1C Tustin Legacy, LLC, a Delaware limited liability company that is wholly owned and Controlled by Regency Centers Corporation, a publicly traded Florida corporation ("**REG**"). Whenever the term "**Developer**" is used in this Agreement, such term shall have the meaning set forth in Attachment 1. The principal office of 1C Tustin Legacy, LLC and mailing address is 915

Wilshire Blvd., Suite 2200, Los Angeles, CA 90017. 1C Tustin Legacy, LLC specifically excluding any Transferee or successor assign thereof, is the "**Initial Developer**".

1.4.3 **Relationship of City and Developer**. It is hereby acknowledged that the relationship of the City and Developer is neither that of a partnership nor that of a joint venture. Notwithstanding any provision of this Agreement, Developer is not, and shall not be deemed to be, the agent of the City for any purpose, and shall not have the power or the authority to bind the City to any contractual or other obligation. Prior to each Close of Escrow, with respect to portions of the Property not yet acquired by Developer, Developer may only characterize itself to third parties as the prospective purchaser and/or developer of the Property. Developer shall not at any time hold itself out to the City or to any other third party as an agent of the City, and shall not, by any act or omission, mislead any third party into believing, or allow any third party to continue in the mistaken belief, that Developer is an agent of the City or has the power or authority to bind the City to any contractual or other obligation.

1.4.4 **Healthcare Developer**. Developer shall, concurrently with and as a condition subsequent to the Healthcare Property Close of Escrow, assign its rights and obligations under this Agreement and the Other Agreements with respect to development of the Healthcare Vertical Improvements on the Healthcare Parcel to one or more Approved Healthcare Developers. Such assignment shall be carried out in accordance with the requirements of this Agreement, including by execution by Developer and Healthcare Developer of an agreement in substantially the form and substance of the Healthcare Assignment and Assumption Agreement attached hereto as Attachment 16B or as otherwise approved by the City in its sole discretion ("**HCD Assignment**"), pursuant to which Healthcare Developer shall assume and agree to comply with the terms of this Agreement with respect to and perform all obligations of "Healthcare Developer" under this Agreement including, unless otherwise agreed by Developer and Healthcare Developer and approved by the City, all obligations of "Developer" with respect to the Healthcare Property, construction of the Healthcare Vertical Improvements, and use and maintenance of the Healthcare Project and the Improvements located thereon and all matters related thereto. Without limiting any of its approval rights under this Agreement, the City agrees to cooperate with Developer in connection with execution of an HCD Assignment with any Approved Healthcare Developer.

1.5 Federal Requirements Applicable to Tustin Legacy.

1.5.1 **Federal Economic Development Conveyance**. The Parties acknowledge and agree that this Agreement is entered into as part of an economic development conveyance of Tustin Legacy to the City pursuant to the Base Closure Law, the Memorandum of Agreement and the terms and conditions of the Federal Deed, including the Environmental Restriction pursuant to California Civil Code Section 1471 contained therein. Notwithstanding any provision to the contrary contained in this Agreement, this Agreement is and shall be subject to the terms and conditions of the Memorandum of Agreement and the Federal Deed and the rights, obligations and remedies of the Federal Government thereunder, and nothing contained in this Agreement shall be

construed in a manner that is inconsistent with the rights, obligations and remedies of the Federal Government thereunder.

1.5.2 **Memorandum of Agreement and Federal Deed**. Notwithstanding anything in this Agreement to the contrary, if any provision of this Agreement contradicts, modifies or in any way changes the terms of the Memorandum of Agreement or the Federal Deed, the terms of the Memorandum of Agreement and Federal Deed shall prevail and govern.

1.6 Local Requirements Applicable to Tustin Legacy.

This Agreement is subject to all Governmental Requirements, including the General Plan, the Specific Plan, the City Code, the Reuse Plan and any redevelopment plan applicable to the Property; provided, however, that the City acknowledges that, concurrently with the execution of this Agreement, City and Developer are entering into a Development Agreement (the "**DA**") relating to the Property and that any provisions of this Agreement requiring Developer or the Property to comply with any Governmental Requirements imposed by the City relating to entitlements or development of the Property shall be subject to the terms of the DA and in the event of any inconsistency between such Governmental Requirements and the DA, the Governmental Requirements required to be imposed pursuant to the DA shall control.

1.7 Not a Development Agreement.

This Agreement is not a development agreement as provided in Government Code Section 65864 and, as further set forth in Section 8.3.4, is not a grant of any entitlement, permit, land use approval, or vested right in favor of Developer, the Project or the Property. The City shall use good faith efforts, within applicable legal constraints and consistent with applicable City policies, to take such actions as may be necessary or appropriate to effectuate and carry out this Agreement in a timely and commercially reasonable manner.

1.8 ENA Deposits, City Transaction Expenses and Independent Contract Consideration.

1.8.1 **ENA Deposits and ENA Transaction Expenses**. Pursuant to the ENA, Developer has paid to the City deposits totaling Three Hundred and Fifty Thousand Dollars ($350,000.00) (the "**ENA Deposit**") to be used by the City to pay "City Transaction Expenses" as defined therein and City staff costs (the "**ENA Transaction Expenses**").

1.8.2 **City Costs Deposit; Independent Consideration**. Upon the execution of this Agreement by the Parties, the funds remaining in the ENA Deposit shall be the "City Costs Deposit", provided that Developer shall, as a condition to the effectiveness of this Agreement, deliver to the City additional funds sufficient to bring the City Costs Deposit to $100,000.00 (the "**City Costs Deposit**"). The City Costs Deposit shall be deposited by the City in an account in a bank or trust company selected by the City. If any interest is paid on such account, such interest shall accrue to any balances in the account for the benefit of Developer and as additional security for Developer obligations hereunder. One Hundred Dollars ($100.00) of the City Costs Deposit shall be

retained by the City as "**Independent Contract Consideration**". If at any time prior to the earlier of (a) the Healthcare Property Close of Escrow or (b) the Healthcare Property Outside Closing Date, the amount of funds in the City Costs Deposit account is depleted below Fifty Thousand Dollars ($50,000), Developer shall be required to pay to the City each time an additional Fifty Thousand Dollars ($50,000) which shall be credited to the City Costs Deposit. Each such payment shall be deposited by the City into the City Costs Deposit account and shall be applied to City Transaction Expenses in accordance with the provisions of Section 1.8.2.

1.8.3 **Payment of Transaction Expenses**. Developer shall pay (a) all ENA Transaction Expenses incurred prior to the Effective Date and remaining unpaid as of the Effective Date and (b) all DDA Transaction Expenses incurred by the City during the term of this Agreement, whether arising with respect to matters or incurred by the City prior to or following each Close of Escrow (collectively, the "**City Transaction Expenses**"). The City Costs Deposit has been established to fund the City Transaction Expenses and may be used by the City for such purpose, and shall be depleted accordingly. Immediately upon incurring any City Transaction Expenses or receipt of an invoice from third parties for same, the City shall have the right to deduct the amounts due it on account thereof from the City Costs Deposit. In addition, to the extent then unpaid, at each Close of Escrow or at the earlier termination of this Agreement, the City shall be entitled to deduct from the City Costs Deposit the payment of all City Transaction Expenses then unpaid and Developer shall, as a condition to Close of Escrow, pay the full amount of City Transaction Expenses incurred by the City to and including the date of such Close of Escrow. Within thirty (30) calendar days following the earlier of (x) the Healthcare Property Close of Escrow or (y) the Healthcare Property Outside Closing Date, the remaining amount of the City Costs Deposit then held by the City, if any, shall be promptly returned by the City to Developer, provided that the return of such funds shall not terminate the obligations of each of Developer and Healthcare Developer to pay all City Transaction Expenses arising or incurred prior to issuance of the Certificate of Compliance for its respective portion of the Project. Developer shall pay the outstanding amounts due with respect to City Transaction Expenses to the City within thirty (30) calendar days following receipt of an invoice from the City therefor, provided that the City shall first apply the amount of the City Cost Deposit, if any, then held by it in satisfaction of such invoice, and shall reflect the amount of such credit on the invoice.

1.8.4 **Payment of City Transaction Expenses; Exclusions from 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 notices from the City setting forth amounts constituting City Transaction Expenses and related non-confidential documents evidencing such expenses. If Developer reasonably objects to any such amounts and the City agrees, in its sole discretion, that such objection is reasonable, the City shall cooperate with Developer to investigate such amounts and to seek an appropriate adjustment or reduction in such amounts. Notwithstanding anything to the contrary in this Agreement, the City and Developer hereby acknowledge and agree that the City Transaction Expenses do not include: (a) any fees or deposits required of Developer for processing entitlement applications; (b) any fees or costs for complying with provisions of CEQA or its State

CEQA implementing regulations or other matters identified in Section 8.3.8; (c) any costs to review or approve any applications or submittals by Developer to the City in connection with the Project; (d) the Development Costs, Project Fair Share Contribution or any other development impact fees, exactions or other costs imposed as conditions of approval with respect to the Entitlements or pursuant to the Other Agreements; (e) the Marketing Fees; (f) fees incurred pursuant to Section 2.2.6 or (g) any other matters in this Agreement that expressly require Developer to pay, at its sole cost, for the expenses in connection with such matters, other than as expressly set forth in this Section 1.8. The obligation of Developer to pay for the City Transaction Expenses pursuant to this Section 1.8 shall not diminish or limit Developer's obligation to pay for any of the costs in the preceding sentence.

1.9 Non-Refundable Deposits. Pursuant to the ENA, Developer has paid to the City certain non-refundable deposits also totaling Three Hundred and Fifty Thousand Dollars ($350,000) as consideration for various extensions of the term of the ENA by the City, of which:

(a) Two Hundred and Fifty Thousand Dollars ($250,000) is agreed by the Parties to be fully non-refundable to Developer and vested in the City and shall not be: (i) deemed consideration under this Agreement, (ii) made applicable to the Base Purchase Price or the Additional Purchase Price or (iii) refunded or refundable by the City for any reason, including for Default by the City under this Agreement (the "**Non-Refundable ENA Deposit**");

(b) One Hundred Thousand Dollars ($100,000) (the "**Applicable ENA Deposit**") shall be retained by the City in all events, but shall be applied by the City as a credit against the Retail Property Base Purchase Price.

1.10 Definitions; Attachments.

1.10.1 **Definitions**. Capitalized terms used in this Agreement, including in the Attachments attached hereto, unless otherwise defined in this Agreement, shall have the respective meanings specified in the Glossary of Defined Terms attached hereto as Attachment 1. Unless otherwise indicated, references in this Agreement to sections, paragraphs, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Agreement and all attachments and schedules referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

1.10.2 "**Substantially in the Form and Substance**". Wherever used in this Agreement, the term "substantially in the form and substance" shall mean that the referenced document, when compared to the previously approved form of document, is consistent in all material respects, and none of the modifications in the referenced document diminish a Party's rights or increase such Party's obligations thereunder, as determined by the Party for whose benefit the condition is written, in its sole discretion.

2. **Prohibition Against Transfers and Transfer of Control.**

2.1 Importance of Developer Qualifications.

Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Project and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Initial Developer and REG, its Controlling Person, and Developer's agreement to construct the Project without encumbering the Property in any way including, prior to Transfer Approval End Date, without a Mortgage (unless such Mortgage is a Permitted Mortgage expressly permitted by this Agreement with respect to portions of the Other Healthcare Parcels only (and specifically excluding the Medical Office Parcel)), are of particular concern to the City and community and in light of the following:

(a) The importance of the development of the Development Parcels and Tustin Legacy to the general welfare of the community;

(b) The fact that a Transfer of Control is for practical purposes a transfer of rights and obligations under this Agreement or the Property; and

(c) That it is because of the qualifications and identity of Initial Developer's Key Employees and Initial Developer's Controlling Persons that the City is entering into the Agreement with Developer.

2.2 Transfers and Transfers of Control.

2.2.1 **Restrictions on Transfers.** For the reasons set forth in Section 2.1, Developer, on behalf of itself and all Successor Owners, acknowledges and agrees as follows:

(a) Any Transfer or Transfer of Control in contravention of this Section 2 shall be a Material Default under this Agreement in accordance with Section 14.2.3.

(b) Except as set forth in Section 2.2.2, prior to the Transfer Approval End Date applicable to a Parcel, no Transfer or Transfer of Control with respect thereto, or with respect to the ownership thereof or with respect to this Agreement shall be valid or have any force or effect unless the City shall have provided its prior written consent thereto in accordance with the requirements of this Section and such Transfer has been carried out in accordance with the requirements of this Section 2.

(c) No Person shall acquire any rights or powers under this Agreement except as set forth in this Section 2.

(d) Notwithstanding any Transfers and/or Transfers of Control, Developer on behalf of itself and each Successor Owner agrees that: (i) neither Developer nor Healthcare Developer, as applicable, shall be released with respect to matters for which it remains liable pursuant to Sections 2.2.2(a) and 2.2.2(b) and for the Ongoing Matters, and (ii) unless it is released by the City as set forth in Section 2.2.3(a)(iv) or 2.2.3(b)(v) or as otherwise set forth in this Agreement or agreed to by the City in writing, each Developer and

Healthcare Developer shall each remain fully liable for their respective obligations as Developer and Healthcare Developer under this Agreement and the Other Agreements for such period as each is Developer or Healthcare Developer, as applicable, under this Agreement and for the Additional Liability Period and that Developer and Healthcare Developer shall each remain liable with respect to each and every term of this Agreement expressly surviving termination of this Agreement for the period described herein.

2.2.2 **Permitted Transfers**. The following Transfers shall be "**Permitted Transfers**" and shall not be subject to the City's prior written consent; provided that in the case of clause (a) and (b) below, Developer or Healthcare Developer, as applicable, shall provide the City with written notice of such transaction not less than ten (10) calendar days prior to its occurrence, and shall provide, no later than ten (10) calendar days following such Transfer, (x) an original certificate executed by an officer of the Transferee in favor of City as to the matters set forth in this Section 2.2.2 below and (y) an original certificate executed by an officer of the transferor that the conditions set forth in the applicable portion of this Section 2.2.2 have been satisfied and reaffirming the ongoing obligations of such party, as applicable, under this Agreement and the Other Agreements, notwithstanding such Permitted Transfer:

(a) Any Transfer by Developer to a Developer Affiliate or by Healthcare Developer to a HCD Affiliate; provided that:

(i) the City shall be entitled to look to the Person approved by the City that was the Developer or Healthcare Developer, as applicable, prior to such Transfer (with the right, but not the obligation, to additionally look to the last Developer or Healthcare Developer approved in writing by the City) to fully comply with this Agreement as though there had not been a Transfer, and to cause the Developer Affiliate or HCD Affiliate, as applicable, to comply with this Agreement;

(ii) REG is, directly or indirectly, the Controlling Person of the Developer Affiliate that is the Transferee or, if applicable, Healthcare Guarantor is, directly or indirectly, the Controlling Person of the HCD Affiliate that is the Transferee;

(iii) if previously executed and delivered to the City, the Retail Equity Funding Letter, the REG Guaranty, the HCD Equity Funding Letter and/or the HCD Guaranty shall remain in full force and effect following such Transfer without any defaults thereunder and without any modifications thereto other than modifications that have been consented to by the City in its sole discretion;

(iv) neither Developer nor Healthcare Developer shall be in Potential Default or Material Default under this Agreement at the time of such Transfer;

(v) the Transferee at the time of the Transfer shall have expressly assumed for itself and its successors and assigns, and for the benefit of the City, by instrument substantially in the form and substance of the Assignment attached as Attachment 16A or as otherwise approved by the City in its sole discretion the obligations applicable to the property being acquired, including the covenants set forth in Section 8 of this

Agreement; with respect to a Developer Transfer, or an HCD Assignment, with respect to a Healthcare Developer Transfer, or otherwise in a form acceptable to the City in its sole discretion, acknowledged and Recorded, all the rights and obligations of Developer and/or Healthcare Developer, as applicable, under this Agreement and the Other Agreements arising from and after the date of such Transfer and the Transferee shall agree to assume and to be subject to all the conditions and restrictions to which Developer and/or Healthcare Developer, as applicable, is subject by reason of this Agreement and the Other Agreements; and

(vi) the Transferee shall certify in writing for the benefit of the City as to the truth and correctness, as of the effective date of the assignment, of the representations and warranties set forth in Section 3.1 to the knowledge of its specified Developer Knowledge Parties.

(b) Any Transfer of Control by Developer to a Developer Affiliate or by Healthcare Developer to a HCD Affiliate; provided that:

(i) the City shall be entitled to look to the Person that is Developer or Healthcare Developer, as applicable, prior to such Transfer of Control to fully comply with this Agreement as though there had not been a Transfer of Control;

(ii) REG is, directly or indirectly, the Controlling Person of such Developer Affiliate or, if applicable, Healthcare Guarantor is, directly or indirectly, the Controlling Person of such HCD Affiliate;

(iii) if previously executed and delivered to the City, the Retail Equity Funding Letter, the REG Guaranty, the HCD Equity Funding Letter and/or the HCD Guaranty, as applicable, shall remain in full force and effect following such Transfer of Control without any defaults thereunder and without any modifications thereto other than modifications that have been consented to by the City in its sole discretion; and

(iv) neither Developer nor Healthcare Developer shall be in Potential Default or Material Default under this Agreement at the time of such Transfer of Control;

(c) Any Transfer pursuant to a Space Lease; provided that for each Space Lease entered into by Developer prior to the Retail Approval End Date, Developer shall use its commercially reasonable efforts to include in such Space Lease a covenant from the occupant under such lease to fully stock and open for business within the leased space for one (1) day;

(d) Any Transfer of portions of the Property to the City and/or grants of easements affecting the Development Parcels to the City, to any public or quasi-public entity or to any utility, as necessary or desirable for the development thereof;

(e) Any temporary license or other grant of access rights to the Development Parcels to the City, a Developer Affiliate or HCD Affiliate, and/or to any other third party, as necessary or desirable for the development of the Property; or

(f) Any Transfer that is a grant of a security interest in the Healthcare Project, the Healthcare Parcel, the Healthcare Property or any Improvements existing or to be constructed thereon, or any portion thereof, provided in each case that such security interest shall be permitted only if it is a Permitted Mortgage made with a Permitted Mortgagee and pursuant to and in accordance with Section 17 including the requirements for City consent set forth therein; provided that, for avoidance of doubt, under no circumstances may the Developer encumber the Retail Property, the Retail Parcel, the Medical Office Parcel, or any portion thereof or Improvements thereon with any Mortgage (regardless of whether such Mortgage is a Permitted Mortgage) prior to the Transfer Approval End Date applicable to such Parcel.

2.2.3 **Provisions Applicable to Transfers and Transfers of Control Other than Permitted Transfers**. Except for Permitted Transfers described in Section 2.2.2, prior to any Transfer or any Transfer of Control, Developer and Healthcare Developer, as applicable, shall comply with the requirements of this Section 2.2.3. Section 2.2.3(a) applies to Transfers of the entirety of Developer's or Healthcare Developer's interest in the Project. Section 2.2.3(b) applies to the Transfer of the entirety of Developer's interest in the Healthcare Project to the Healthcare Developer. Section 2.2.3(c) applies to Transfers (whether by Developer or Healthcare Developer) of Building Pads to End Users. Section 2.2.3(d) applies to Transfers of Leasable Space pursuant to a Space Lease. References below to Transfers of the Project shall apply to and include Transfers of Developer's or Healthcare Developer's interests in any of: this Agreement, the Improvements, the Property or the Project. References below to Transfers of the Healthcare Project under Section 2.2.3(b) shall apply solely to Developer's initial Transfer to Healthcare Developer of the Healthcare Project and shall include a Transfer as part of such action of Developer's interests in any of this Agreement, the Healthcare Improvements, the Horizontal Improvements on the Healthcare Parcel, the Healthcare Property or the Healthcare Project.

(a) **Transfer of Entire Interest**. The following shall apply with respect to Transfers of the entirety of the Developer's or Healthcare Developer's interest in the Project and Transfer of Control by either Developer or Healthcare Developer (but shall specifically exclude the initial Transfer of the Developer's interests in and to the Healthcare Project and the Healthcare Property to a Healthcare Developer, which shall be governed by Section 2.2.3(b)):

(i) Prior to any Transfer or Transfer of Control governed by this Section, Developer or Healthcare Developer, as applicable, shall obtain the prior written consent of the City to such Transfer or Transfer of Control which consent shall be granted or denied in the City's sole discretion.

(ii) In order to provide the City with information necessary to inform its right to consent to a Transfer or Transfer of Control pursuant to this Section, Developer or Healthcare Developer, as applicable, shall provide to the City at least twenty (20) Business Days prior to the date of any proposed Transfer or Transfer of Control:

(A) The names and biographies of the proposed Transferee and its principals or the new Controlling Person, as applicable;

(B) All of the material proposed terms of the Transfer or Transfer of Control;

(C) In the case of a Transfer, current audited financial statements of the proposed Transferee (or financial statements certified by an officer or authorized representative of the proposed Transferee, if the proposed Transferee does not have audited financial statements);

(D) In the case of a Transfer of Control, current audited financial statements of the proposed new Controlling Person (or financial statements certified by an officer or authorized representative of the proposed new Controlling Person, if the proposed new Controlling Person does not have audited financial statements);

(E) The names of all Persons who Control the proposed Transferee or the new Controlling Person, as applicable;

(F) In the case of Transfer, a certificate of the proposed Transferee generally in the form of Attachment 18B and additionally describing other real estate projects developed by, leased by, or sold by the proposed Transferee in California over the preceding five (5) year period, the dates of involvement by the proposed Transferee with such projects, such certificate to be made by the manager, president or other Person with appropriate authority from the proposed Transferee to do so and if requested by the City, a certificate generally in the form of Attachment 13C;

(G) In the case of a Transfer of Control, a certificate generally in the form of Attachment 13C by the proposed new Controlling Person and additionally describing other real estate projects developed by, leased by, or sold by the proposed new Controlling Person in California over the preceding five (5) year period, the dates of involvement by the proposed new Controlling Person with such projects, such certificate to be made by the manager, president or other Person with appropriate authority from the proposed new Controlling Person to do so; and

(H) Such other relevant information as the City may request in its sole discretion in connection with its consent rights under this Agreement (including information analogous to the information described in Sections 4.6.1 through 4.6.8, Sections 8.5.1, 8.5.2 and Section 8.6 of this Agreement), which may include evidence that the proposed Transferee or proposed new Controlling Person has sufficient financial capacity to perform the obligations of Developer or Healthcare Developer, as applicable, under this Agreement and without utilizing a Mortgage, unless use of a Permitted Mortgage is specifically authorized by Sections 4.6.4(c) and 17 of this Agreement.

(iii) Upon a Transfer of all of Developer's or Healthcare Developer's interests in the Project pursuant to this Section 2.2.3(a), the proposed Transferee at the time of the Transfer shall have expressly assumed for itself and its successors and assigns, and for the benefit of the City, (A) in the case of a Transfer by Developer of its entire interest in

the Project, pursuant to Assignment, or (B) in the case of a Transfer by Healthcare Developer of its entire interest in the Project, pursuant to HCD Assignment, in each case acknowledged and Recorded, all the rights and obligations of Developer or Healthcare Developer, as applicable, under this Agreement and the Other Agreements arising from and after the date of such Transfer with respect to the assigned interests in the Project, and the proposed Transferee shall agree to be subject to all the conditions and restrictions to which Developer or Healthcare Developer, as applicable, is subject by reason of this Agreement and the Other Agreements with respect to the assigned interests in the Project, and shall certify in writing for the benefit of the City as to the truth and correctness, as of the effective date of the assignment, of the representations and warranties set forth in Section 3.1 to the knowledge of its specified Developer Knowledge Parties.

(iv) Upon a Transfer of all of Developer's or Healthcare Developer's, as applicable, interests in the Project pursuant to this Section 2.2.3(a) to a Transferee approved by the City, in the City's sole discretion, and the provision by the Transferee of the following items, Developer or Healthcare Developer, as applicable, shall be released from its obligations under this Agreement and the Other Agreements arising from and after the date of such Transfer; provided that in no event shall Developer or Healthcare Developer be released with respect to the Ongoing Matters:

(A) An assumption in writing by a Transferee of all obligations of the assignor under this Agreement and the Other Agreements (including the respective obligations to deliver a Retail Equity Funding Letter or an HCD Equity Funding Letter and to otherwise comply with the requirements of Section 4.6, as applicable) pursuant to an Assignment as described in Section 2.2.3(a)(iii), including with respect to a Transfer of the Retail Property, an assumption in writing by Transferee of the Healthcare Transferor Obligations; and

(B) A guaranty made by a Person with assets meeting the requirements of the City and sufficient, in the determination of the City in its sole discretion, to secure the development, construction and maintenance obligations of Developer or Healthcare Developer, as applicable, under this Agreement, which shall be: (1) in the case of a Transfer by Developer of its entire interest in the Project, substantially in the form and substance of the instrument attached hereto as Attachment 14A or otherwise in a form acceptable to the City in its sole discretion and meeting the requirements of Section 4.6.3 and (2) in the case of a Transfer by Healthcare Developer of its entire interest in the Project, substantially in the form and substance of the instrument attached hereto as Attachment 14B or otherwise in a form acceptable to the City in its sole discretion and meeting the requirements of Section 4.6.5.

(b) **Transfer to Healthcare Developer**. Notwithstanding anything in this Agreement to the contrary, following the Healthcare Property Close of Escrow, Developer shall have the right and, as a condition to the Healthcare Property Close of Escrow, the obligation, to Transfer the entirety of Developer's interest in the Healthcare Project, the Healthcare Property and the Improvements thereon to one or more entities affiliated with or acting on behalf of a Healthcare User to develop improvements to be occupied by a Healthcare User (such entity or entities shall be referred to herein as "**Healthcare Developer**") in

accordance with the following requirements and with the prior written consent of the City, which may be granted or denied in the sole discretion of the City:

(i) The City shall have provided its prior written approval, in its sole discretion, to one or more Persons proposed as Healthcare Developer ("**Approved Healthcare Developer**"), and to the extent the proposed Transferee has not previously been approved by the City prior to the Effective Date, in order to provide the City with information necessary to inform its right to consent to a Transfer of the foregoing interests to a Healthcare Developer, Developer and the proposed Healthcare Developer shall provide to the City, not less than twenty (20) Business Days prior to the date of the proposed Transfer, the biographies of the principals of the proposed Healthcare Developer, the information described in Section 2.2.3(a)(ii)(A) through (F) with respect to the proposed Healthcare Developer and the information required by Sections 4.6.4, 4.6.5 and 4.6.8;

(ii) The City's approval rights with respect to each proposed Healthcare Developer and the proposed Transfer to such Person shall include the rights to:

(A) Assure that the Healthcare Property Transferor and the proposed Healthcare Developer have met all requirements of this Agreement with respect to such Transfer, including execution of the HCD Agreements and the HCD Assignment;

(B) Confirm the financial capacity of the proposed Healthcare Developer and the HCD Guarantors;

(C) Approve the Healthcare Financing Plan and all information provided by the proposed Healthcare Developer pursuant to Sections 4.6.4, 4.6.5 and 4.6.8;

(D) Approve the Healthcare Guarantor(s) and the HCD Guaranty pursuant to Sections 4.6.5 and 4.6.7; and

(E) Approve the terms of the Transfer, including the terms of the HCD Agreements and all documents executed in connection therewith by the proposed Healthcare Property Transferor and Healthcare Developer and to assure that the same are consistent with the Financing Plan and Healthcare Financing Plan approved by the City in accordance with Section 4.6 and the requirements of this Section 2.2.3(b).

(iii) The entirety of Developer's interest in this Agreement with respect to the Healthcare Project shall be concurrently Transferred to one or more Approved Healthcare Developer(s), together with all right, title and interest of Developer in and to the Healthcare Project.

(iv) The Parties agree that Healthcare Property Transferor shall assign and Healthcare Developer shall assume all rights and obligations of Developer related to the Healthcare Project existing or to be constructed thereon including the development of Healthcare Vertical Improvements on the Healthcare Parcel, and those additional corresponding rights and obligations under this Agreement and the Other Agreements, including the following:

(A) Healthcare Developer, by HCD Assignment acknowledged and Recorded, shall assume from and after the date of such Transfer the rights and obligations of the Developer under this Agreement and the Other Agreements with respect to the Healthcare Project, the Healthcare Property and the Improvements thereon including: (i) the obligations to construct and Complete the Healthcare Horizontal Improvements and the Minimum Healthcare Vertical Improvements on the Healthcare Parcel, and (ii) the obligations retained by the Healthcare Property Transferor with respect to the construction and Completion of the Minimum Horizontal Improvements on the Healthcare Parcel and construction and of the work described in the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, which the Healthcare Developer shall be obligated to carry out only to the extent Developer fails to perform such obligations in a timely manner accordance with the Schedule of Performance, and with respect to the foregoing, shall be subject to all of the other terms and conditions of this Agreement, as further provided in such HCD Assignment;

(B) Healthcare Developer shall have agreed in writing for the benefit of the Healthcare Property Transferor and the City that Healthcare Developer's development of the Healthcare Property shall be in full compliance with the then-existing Entitlements and the Approved Plans;

(C) as a condition precedent to the Healthcare Property Close of Escrow and to each subsequent Transfer to a Healthcare Developer, the Controlling Person of the Approved Healthcare Developer or, if such Controlling Person is not approved by the City as the Healthcare Guarantor, another Person approved by the City in its sole discretion as the Healthcare Guarantor in accordance with Section 4.6, shall deliver to the City an HCD Guaranty.

(D) for avoidance of doubt, unless otherwise agreed by the City in its sole discretion, upon the execution and delivery of the HCD Assignment, Healthcare Developer shall be deemed to have assumed and shall be obligated to comply with and perform: (1) all obligations of Healthcare Developer under this Agreement and the Other Agreements, (2) all obligations of Developer under this Agreement and the Other Agreements with respect to the Healthcare Property, the Healthcare Project and the Improvements thereon, including all requirements of each of the provisions of this Agreement and the Other Agreements that are expressly imposed only upon Developer, but apply with respect to the Healthcare Property, the Healthcare Project and/or the Improvements thereon, but in such event only with respect to the Healthcare Project, the Healthcare Property and the Improvements existing or to be constructed thereon.

(v) Upon the Healthcare Property Close of Escrow and the subsequent Transfer of the Healthcare Property to an Approved Healthcare Developer, the execution and delivery of the HCD Assignment, and delivery of the HCD Guaranty (which are intended to take place substantially concurrently with the Healthcare Property Close of Escrow), the Healthcare Property Transferor shall automatically be deemed to be released from the obligations of Developer under this Agreement and the Other Agreements with respect to construction and Completion of the Healthcare Vertical Improvements and with respect to the other obligations expressly assumed by the Healthcare Developer under the assignment

instrument; provided that, notwithstanding the foregoing or the assumption of obligations by the Healthcare Developer:

(A) Developer shall not be relieved of any of its other obligations under this Agreement and the Other Agreements and specifically, and without limitation shall not be relieved or released from the Ongoing Matters and/or, in its capacity as Healthcare Property Transferor, from the Healthcare Transferor Obligations;

(B) the Healthcare Transferor Obligations shall remain the obligations of Healthcare Transferor and each Successor Owner of the Retail Parcels that is not an End User unless and until such Person is expressly released in writing by the City;

(C) nothing in this Section 2.2.3 shall limit Developer's liability during any applicable Additional Liability Period; and

(D) after Healthcare Property Transferor has Transferred the Healthcare Property to a Healthcare Developer, Healthcare Developer has delivered the HCD Guaranty and the Minimum Horizontal Improvements have been completed, other than the Ongoing Matters and the remaining Healthcare Transferor Obligations, Developer shall not have any liability for any breach of this Agreement by Healthcare Developer or otherwise relating to the Healthcare Property.

(vi) Notwithstanding anything in this Agreement to the contrary, the City shall have the right to condition its approval of there being more than one Healthcare Developer upon the City's right to approve, in its sole discretion, the manner in which the obligations created by this Agreement and the Other Agreements, including without limitation, the obligation to construct the Minimum Healthcare Improvements and the financial capability of the Persons proposed as such Healthcare Developer, are allocated between each Healthcare Developer.

(c) **Transfer to End Users**. With respect to Transfers of Building Pads to End Users (whether by sale or Ground Lease) prior to the Transfer Approval End Date (but specifically excluding a Transfer of the entirety of the Property, of the Retail Parcel or of the Healthcare Parcel pursuant to Section 2.2.3(a) or the Transfer to the Healthcare Developer pursuant to Section 2.2.3(b) of this Agreement) for the applicable Parcel, the following covenants and restrictions shall apply:

(i) The City shall have the right, in its sole discretion:

(A) to approve any Transferee with respect to the Retail Parcel that is not a Pre-Approved Tenant, provided that the City shall not have a right to approve the Transferee if at the time of the proposed Transfer, Developer has previously entered into approved Ground Leases or sales in accordance with this Agreement for each of a grocery store and a drug store and additional uses (excluding day care and car wash uses) together comprising not less than 53,000 GBA;

(B) to approve any Transferee with respect to the Healthcare Parcel; and

(C) in the case of any Transfer pursuant to this Section 2.2.3(c), to approve: (1) the terms of the Ground Lease or conveyance documents and all other Transfer documents proposed to be executed by Developer and Pad Transferee, to confirm that they comply and do not conflict with the terms and requirements of this Agreement and the Other Agreements, and (2) the building type, size and use of the Vertical Improvements to be constructed on the Building Pad, in accordance with Sections 8.4.5 and 8.4.6.

(ii) In order to provide the City with information necessary to inform its right to consent to a Transfer to an End User with respect to a Building Pad ("**Pad Transferee**"), unless the Pad Transferee is a Pre-Approved Tenant, Developer or Healthcare Developer, as applicable, shall provide to the City at least fifteen (15) Business Days prior to the date of any such proposed Transfer the following:

(A) the name of the proposed Pad Transferee;

(B) current audited financial statements of the proposed Pad Transferee or financial statements certified by an officer of the proposed Pad Transferee if the proposed Pad Transferee does not have audited financial statements or a net worth letter from the certified public accountant from the proposed Pad Transferee;

(C) the name of the proposed initial End User of such Building Pad; and

(D) such other relevant information as the City may reasonably request in connection with its consent rights under this Agreement to the extent necessary to evidence that the proposed Pad Transferee has sufficient financial capacity to construct the Vertical Improvements, if applicable, and to operate a business that is not a Prohibited Use, and to perform those obligations of Developer or Healthcare Developer, as applicable, under this Agreement assigned to the Pad Transferee with respect to the Building Pad;

(iii) Pad Transfers to Pad Transferees shall not be valid or of force or effect unless:

(A) the City has provided its prior written consent to those items and Transferees for which it has the right of consent pursuant to this Section 2.2.3(c);

(B) the sale agreement or Lease with the Pad Transferee prohibits use of the Building Pad for Prohibited Uses;

(C) if requested by Developer or the Pad Transferee, the Pad Transferee and Developer shall have executed in favor of the City a written agreement substantially in the form and substance of the City Non-Disturbance and Attornment Agreement attached hereto as Attachment 22A (or in other form agreed to by the City in its sole discretion) which shall, among other things, acknowledge the City's rights under this Agreement; and

(D) the Transfer agreement shall include the provisions required by clauses 2.2.3(c)(v) through (viii) below; and

(iv) Provided that each of the conditions in Sections 2.2.3(c)(i) through (iii) are satisfied, then at the request of Pad Transferee: (A) prior to execution by Developer and the Pad Transferee of a Ground Lease or sale contract, the Pad Transferee and the City shall, at the request of either such party, enter into a letter agreement attaching the City Non-Disturbance and Attornment Agreement and (B) the City shall, upon execution and delivery of such City Non-Disturbance and Attornment Agreement by Pad Transferee and Developer or Healthcare Developer, as applicable, execute such agreement; provided that in each case, the City Non-Disturbance and Attornment Agreement shall not be effective until the date of legal Transfer of the Building Pad by Developer to the Pad Transferee.

(v) Developer and Healthcare Developer shall each retain all their respective obligations under this Agreement relating to the Transferred Building Pad and the construction of the Improvements, payment of all Development Costs and performance of the maintenance and indemnity obligations set forth in this Agreement with respect to such Building Pad, and all Ongoing Matters; provided that Developer or Healthcare Developer, as applicable, may assign to the Pad Transferee its obligation to construct the Retail Vertical Improvements or the Healthcare Vertical Improvements, as applicable, on the Building Pad and, in accordance with Section 12.2.2, the maintenance obligations for such Building Pad; provided that such Developer shall not be relieved of such obligations due to any assignment.

(vi) Developer shall use its commercially reasonable efforts to cause the agreements related to the Transfer from either Developer and Healthcare Developer to a Pad Transferee to include the following provisions (which shall be subject to modifications reasonably requested by Developer or Healthcare Developer, as applicable, and Pad Transferee provided that such modifications do not have a material adverse effect on the City as determined by the City in its sole discretion) as remedies in favor of Developer or Healthcare Developer, as applicable, in the event that any Pad Transferee or any successor in interest to all or any portion of such Pad Transferee's rights with respect to the Building Pad shall: (A) default under the covenants, conditions and restrictions set forth in the applicable Quitclaim Deed, the Special Restrictions or the CC&Rs or (B) fail, on or before the earlier of (1) the date that is twenty-four months after the delivery of the applicable Building Pad, or (2) the date set forth in the respective agreements related to such transfer, subject to Force Majeure Delay, to Complete the Vertical Improvements on its Building Pad and fully stock and open for a minimum of one (1) day as a retail establishment operated by an End User meeting the requirements set forth in Section 12.1;

(vii) If the Pad Transferee holds: (A) a leasehold interest in the Building Pad, Developer shall use its reasonable efforts to cause the Ground Lease to include a right of Developer or Healthcare Developer, as applicable, either (1) to terminate the applicable Ground Lease or (2) to buy out such leasehold interest (provided that such lease may include one or both of the foregoing remedies, in Developer's or Healthcare Developer's discretion) or (B) the fee interest in such Building Pad, Developer or Healthcare Developer, as applicable, shall use its reasonable efforts to have (1) a written option or (2) other legally enforceable right to purchase such fee interest;

(viii) Developer agrees to use its commercially reasonable efforts to enforce such terms in a Ground Lease or sale contract to the extent Developer has the right to enforce the same pursuant to the applicable Ground Lease or sale contract and to use

commercially reasonable efforts to mitigate the effect of any default by a Transferee thereunder; provided, however, the City may exercise its rights under this Agreement without waiting for Developer to enforce such rights or remedies, and provided further that nothing in this Agreement, the Other Agreements, the Ground Lease, sale contract or the City Non-Disturbance Agreement is intended to or shall limit the City's rights with respect to Developer or Healthcare Developer. The City shall have the express right (but not the obligation) to seek specific performance: (A) against Developer or Healthcare Developer, as applicable, requiring such Party to exercise its rights and remedies under agreements with the Pad Transferee or its successor in interest (but in such circumstance the City and Developer or Healthcare Developer, as applicable, shall agree upon an extension of the Schedule of Performance with respect to Developer's or Healthcare Developer's, as applicable, obligation to Complete the Vertical Improvements on such Building Pad in order to permit Developer or Healthcare Developer, as applicable, to seek an appropriate Pad Transferee approved by the City for such Building Pad) and (B) against Developer or the Healthcare Developer, as applicable, the Pad Transferee or its successor in interest including the City's Right of Repurchase or Right of Reversion contained in this Agreement with respect to property Transferred to the Pad Transferee without having any obligation to wait for Developer or Healthcare Developer, as applicable, to enforce its rights;

(d) **Space Lease Transfers**. With respect to all Space Lease Transfers, Developer shall retain all of the obligations under this Agreement relating to such Building Pad and Improvements thereon, including construction of the Improvements, payment of all Development Costs, and the performance of Developer's maintenance obligations and all indemnity obligations of Developer set forth in this Agreement with respect to such Building Pad and Improvements thereon and Developer shall not have the right to assign such obligations to the Tenant, including no right to assign the obligation to carry out construction of the Vertical Improvements (but Developer may transfer the obligation to construct interior tenant improvements without relieving Developer of any of its obligations under this Agreement). Further:

(i) the rights of the Tenant to its respective portion of the Property shall be "subject to" the use limitations contained in this Agreement, the Special Restrictions, and the CC&Rs; and

(ii) upon request of Developer, the City shall enter into a City Non-Disturbance and Attornment Agreement with Developer and a Tenant under a Space Lease substantially in the form and substance of Attachment 22B (or in other form agreed to by the City in its sole discretion).

2.2.4 **No Mortgages without Consent**. Prior to the Transfer Approval End Date for the Retail Parcel, Developer shall not encumber the Retail Parcel or any portion thereof with any Mortgage without the prior written consent of the City, which approval may be granted or withheld in the sole discretion of the City. Prior to the Transfer Approval End Date for the Healthcare Parcel, Healthcare Developer shall not encumber the Healthcare Parcel or any portion thereof with any Mortgage except in strict compliance with this Agreement, including Sections 2.2.3(b), 4.6.4(c) and 17. Any encumbrance of the Development Parcels, or any portion thereof, in violation of this Section 2 shall be a prohibited Transfer or Transfer of Control and a Material Default by Developer, and shall

be subject to the provisions of Section 14.2.3. The City shall have no right to approve or disapprove a Mortgage with respect to a Development Parcel or any Improvements thereon after the Transfer Approval End Date for that Development Parcel.

2.2.5 **Bankruptcy**. The following shall be considered Transfers which are prohibited without consent from the City, which may be granted or withheld in the City's sole discretion (herein, a "**Developer Insolvency Event**"):

(a) If Developer is or becomes bankrupt, or insolvent or if any involuntary proceeding is brought against Developer (unless, in the case of a petition filed against Developer, the same is dismissed within ninety (90) calendar days), or Developer makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of federal or State bankruptcy or insolvency laws, including the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(b) If a writ of attachment or execution is levied on this Agreement or on any Development Parcel, or on any portion thereof, where such writ is not discharged within ninety (90) calendar days; or

(c) If, in any proceeding or action in which Developer is a party, a receiver is appointed with authority to take possession of a Development Parcel, or any portion thereof, where possession is not restored to Developer within ninety (90) calendar days.

2.2.6 **City Estoppel**.

(a) From time to time (but in no event more than quarterly or in connection with a Permitted Transfer or a Transfer or Transfer of Control consented to by the City in accordance with this Agreement) within twenty (20) calendar days of the City's receipt of a written request therefor, the City shall execute and deliver to Developer and the applicable Transferee, and if applicable, the Permitted Mortgagee, a City Estoppel, substantially in the form and substance of the City Estoppel attached hereto as Attachment 6 but with such modifications as are necessary in the City's sole discretion to ensure the accuracy of the statements made therein.

(b) Developer shall promptly pay to the City all of the City's expenses, including legal fees and staff costs, incurred with respect to the preparation, review, and delivery of each City Estoppel and with respect to the City's review and approval (or disapproval) of each Transfer or Transfer of Control, not to exceed One Thousand Dollars ($1,000) per estoppel; provided, however, such cap shall not be applicable if Developer proposes any material changes to the City Estoppel, or Developer is in default under this Agreement or any of the Other Agreements at such time. The City costs incurred pursuant to this Section shall be DDA Transaction Expenses.

2.3 Remedies for Improper Transfers or Transfers of Control.

Without limiting the generality of the foregoing, a failure (a) by Developer to comply with the requirements of this Section 2 with respect to any Transfer or Transfer of Control or (b) by any Transferee, including Healthcare Developer, to execute an Assignment, an HCD

Assignment or a City Non-Disturbance and Attornment Agreement, as applicable, pursuant to Section 2.2.2 or 2.2.3, which if not promptly cured after Developer receives written notice of the same from the City shall in each case be a Material Default under this Agreement and subject to the provisions of Section 14.2.3, and, in such event, the City shall have all remedies available to it at law and in equity with respect to the portion of the Project owned by the Developer or the respective Transferee, including those specified in this Agreement and specifically including the right to exercise the Right of Repurchase and/or the Right of Reversion, as applicable, in accordance with Section 16 of this Agreement.

2.4 Changes.

Developer shall promptly notify the City in the event that any of the Key Employees cease to be involved with the development of the Project.

3. Representations and Warranties.

3.1 Developer's Representations and Warranties.

As an inducement to the City to enter into this Agreement and to perform its obligations hereunder, Developer represents and warrants to the City as follows:

3.1.1 Developer has the necessary expertise, experience, financial experience and qualifications and legal status necessary to perform as Developer pursuant to this Agreement and to construct and complete the Project, and, without limiting the foregoing, Developer is experienced in the development, management, and leasing of commercial projects of the size and type described in this Agreement and understands the process and requirements associated with projects such as the Project described herein.

3.1.2 Developer's acquisition of the Property, development of the Project and its other undertakings pursuant to this Agreement are for the purpose of timely development of the Development Parcels in accordance with the Retail Schedule of Performance attached to this Agreement and not for speculation or land holding.

3.1.3 Developer is a limited liability company, duly organized, and validly existing and in good standing under the laws of the State of Florida, is duly qualified to do business and in good standing in the State and in each other jurisdiction where the operation of its business or its ownership of property or the performance of Developer's obligations under this Agreement make such qualification necessary.

3.1.4 Subject to all of the conditions set forth in this Agreement for the benefit of Developer, Developer has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

3.1.5 Developer has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which Developer is or shall be a party and the consummation of the transactions contemplated hereby.

3.1.6 The individuals executing this Agreement and the individuals that will execute the instruments referenced in this Agreement on behalf of Developer have, or will have upon execution thereof, the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

3.1.7 This Agreement has been duly authorized, executed and delivered by Developer and all documents required in this Agreement to be executed by Developer pursuant to this Agreement shall be, at such time as they are required to be executed by Developer, duly authorized, executed and delivered by Developer and are or shall be, at such time as the same are required to be executed hereunder, valid, legally binding obligations of and enforceable against Developer in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

3.1.8 Neither the execution or delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions in this Agreement contemplated, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law or any order of any court or Governmental Authority to which Developer is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan partnership agreement, lease or other agreements or instruments to which Developer or any of its members are a party and which affect the Property or the transactions contemplated by this Agreement.

3.1.9 No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to the best of Developer's knowledge, threatened against Developer or its members.

3.1.10 Developer is relying solely upon its own inspections and investigations in proceeding with this Agreement and the transactions contemplated hereby, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation or on the non-disclosure of any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Agreement. In making such investigation and assessment, Developer has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the

generality of the foregoing provisions, Developer acknowledges that the City has not made and will not make any representations or warranties concerning the condition of the Property, the compliance or non-compliance of the Property or any portion thereof with Environmental Laws or the existence or non-existence of Hazardous Materials in relation to the Property or any portion thereof or otherwise.

3.1.11 To Developer's knowledge, except as described on Attachment 4, there are no adverse conditions or circumstances, no pending or threatened litigation, governmental action, or other condition which could prevent or materially impair Developer's ability to develop the Property and the Project as contemplated by the terms of this Agreement.

3.1.12 Except as set forth in this Agreement and the ENA, Developer has not paid or given, and will not pay or give, any third Person any money or other consideration for obtaining this Agreement, other than the normal cost of conducting business and cost of professional services such as architects, engineers and attorneys.

3.1.13 All reports, documents, instruments, information and forms of evidence delivered by Developer to the City concerning or related to this Agreement and the transactions contemplated hereby are, to the best of Developer's knowledge, accurate and correct and sufficiently complete at the time of submission to give the City true and accurate knowledge of the subject matter, and do not contain any misrepresentation or omission.

3.1.14 Prior to the Effective Date, Developer has delivered a copy of the Initial Retail Equity Funding Letter to the City. The Initial Retail Equity Funding Letter is in full force and effect and has not been amended or modified. Based on the Initial Retail Equity Funding Letter, Developer has, as of the Effective Date, the equity capital and financial capacity, without requirement of third party financing other than as set forth in the Initial Retail Equity Funding Letter, sufficient to obtain the Applicable Approvals and Development Permits. Prior to the Close of Escrow, Developer shall deliver to the City an additional equity funding letter in accordance with Section 4.6.2 below and comply with the other obligations of Developer under this Agreement required to be satisfied prior to the Healthcare Property Close of Escrow or the Retail Property Close of Escrow.

3.1.15 Prior to the Effective Date, Developer and SN, as a proposed Healthcare Developer, have executed and delivered the SN PSA, a copy of which has been delivered by Developer to the City. The SN PSA: (a) is in full force and effect and has not been amended or modified, (b) will not be further modified, amended or terminated by Developer without the prior consent of City, and (c) provides for the further amendment of the SN PSA in order to address the requirements of this Agreement which amendment will (i) provide an assignment to Hoag of SN's right to acquire the Medical Office Parcel and the Healthcare Provisions related thereto and (ii) provides for a termination of the SN PSA in the event that the City, prior to the Healthcare Property Close of Escrow, determines that (1) it does not approve SN or Hoag as Healthcare Developer or the Healthcare Guarantor(s) of SN or Hoag or (2) SN, Hoag or the Healthcare Guarantors do not meet the other requirements or conditions of this Agreement, including the financial standards and

guarantees required by the City. Upon satisfaction of the conditions precedent set forth in Section 7.2.1 and without any other requirement or condition except pursuant to the terms of the SN PSA or any other HCD Agreement entered into by SN, Hoag and Developer (and in all events subject to the City's approval or disapproval of SN and Hoag as the Approved Healthcare Developer in the City's sole discretion in accordance with Section 2.2.3(b) and Section 4.6), Developer is, and as of the Healthcare Property Close of Escrow shall be, obligated to sell to SN, and SN has agreed to acquire, all right, title and interest of Developer under this Agreement with respect to the Healthcare Property and the development thereof, and as of the Healthcare Property Close of Escrow shall be obligated to assume and comply with the obligations of Healthcare Developer and other obligations of Developer under this Agreement (including execution of the HCD Assignment, the HCD Guaranty and the HCD Agreements, if any, required to comply with the terms of this Agreement) required to be satisfied with respect to the Healthcare Developer and/or the Healthcare Property, whether prior to or following the Healthcare Property Close of Escrow. Developer acknowledges that, notwithstanding the execution by SN and Developer of the SN PSA, the City has the right, in its sole discretion, to approve and/or disapprove SN and Hoag as Healthcare Developer, the SN PSA and any future HCD Agreements with SN or Hoag, as further set forth in Section 2.2.3(b) and/or Section 4.6.

3.1.16 Developer does not have any contingent obligations or any other contracts the performance or nonperformance of which could affect the ability of Developer to carry out its obligations hereunder. Developer has not and shall not undertake such additional projects as could reasonably be expected to jeopardize the sufficiency of such equity, capital and firm and binding commitments for the purposes expressed in Section 3.1.14 above and in the preceding sentence.

3.1.17 There are no legal proceedings either pending or, to the best of Developer's knowledge, threatened, to which Developer is or may be made a party, or to which any of Developer's property, or the Property, is or may become subject, which has not been fully disclosed in the documents submitted to the City and which could materially affect the ability of Developer to carry out its obligations hereunder.

Subject to Section 7.2.2(b)(viii) and 7.3.2(b)(vii), Developer's representations and warranties set forth in this Section 3.1 shall be deemed to be restated at each Close of Escrow, and shall survive each Close of Escrow until the termination of this Agreement and shall not be merged with any Quitclaim Deed. As used in Section 3, "**to Developer's knowledge**" and similar phrases means, with respect to the Initial Developer, any knowledge of John Mehigan and Luis Gomez and with respect to any subsequent Developer or Healthcare Developer, those Persons having knowledge of the transactions and Transferee and accepted by the City, in each case without any duty of inquiry (collectively, the "**Developer Knowledge Parties**"). Notwithstanding anything to the contrary contained herein, (a) none of the Developer Knowledge Parties shall be personally liable for any inaccuracy or breach by Developer of Healthcare Developer of the representations and warranties contained in Section 3.1 or elsewhere in this Agreement and/or any of the Other Agreements, and (b) the City shall not be entitled to make a claim for a breach of Developer's or Healthcare Developer's representations and warranties if Developer or Healthcare Developer, as applicable, had disclosed in writing facts to the City indicating that the applicable representation and warranty was incorrect prior to (i) the

execution of this Agreement and the City proceeded with the execution of this Agreement, or (ii) the relevant Close of Escrow and the City proceeded with such Close of Escrow, in either case in spite of such inaccuracy.

3.2 Developer Covenants Regarding Representations and Warranties.

Developer or Healthcare Developer, as applicable, shall promptly advise the City in writing if any of the Developer Knowledge Parties becomes aware (without any duty of inquiry) that any representation or warranty made by Developer or Healthcare Developer in or pursuant to Section 3.1 is or becomes untrue in any material respect prior to each Close of Escrow.

3.3 City Representations and Warranties.

As an inducement to Developer to enter into this Agreement and perform its obligations hereunder, the City represents and warrants to Developer as follows:

3.3.1 The City is a municipal corporation incorporated within and existing pursuant to the laws of the State of California.

3.3.2 Subject to all of the conditions set forth in this Agreement for the benefit of the City, the City has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

3.3.3 The City has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Agreement or any Other Agreements) all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which the City is or shall be a party and the consummation of the transactions contemplated hereby.

3.3.4 The individual executing this Agreement and the individual that will execute the instruments referenced in this Agreement on behalf of the City have, or will have upon execution thereof, the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof.

3.3.5 This Agreement is duly authorized, executed and delivered by the City and all documents required in this Agreement to be executed by the City pursuant to this Agreement shall be, at such time as they are required to be executed by the City, duly authorized, executed and delivered by the City and are or shall be, at such time as the same are required to be executed hereunder, valid, legally binding obligations of and enforceable against the City in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

3.3.6 Neither the execution or delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement, and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions in this Agreement contemplated, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law, any order of any court or Governmental Authority or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which the City is a party or which affect any of the Property or the transactions contemplated by this Agreement, except as set forth on Attachment 4.

3.3.7 Except as set forth on Attachment 4, there are no legal proceedings either pending or, to the knowledge of the City Representatives, threatened, to which the City is or may be made a party, or to which the Property, is or may become subject, which has not been fully disclosed in the documents submitted to Developer and which could reasonably affect the ability of the City to carry out its obligations hereunder or which would affect the Property after each Close of Escrow.

Subject to Section 7.2.1(a)(viii) and 7.3.1(a)(viii), City's representations and warranties set forth in this Section 3.3 shall be deemed to be restated at each Close of Escrow, and shall survive each Close of Escrow until the termination of this Agreement and shall not be merged with any Quitclaim Deed. As used in Section 3, "**to City's knowledge**" and similar phrases means any knowledge of Jeffrey Parker, David Kendig and John Buchanan (the "**City Representatives**") without any duty of inquiry. Notwithstanding anything to the contrary contained herein, (a) none of the City Representatives shall be personally liable for any inaccuracy or breach by the City of the representations and warranties contained in Section 3.3 or elsewhere in this Agreement, any of the Other Agreements, and (b) neither Developer nor any other Party shall be entitled to make a claim for a breach of the City's representations and warranties if the City had disclosed in writing facts to Developer indicating that the applicable representation and warranty was incorrect prior to (i) the execution of this Agreement and Developer proceeded with the execution of this Agreement, or (ii) the relevant Close of Escrow and Developer or Healthcare Developer, as applicable, proceeded with such Close of Escrow, in either case in spite of such inaccuracy.

3.4 City Covenants Regarding Representations and Warranties.

The City shall promptly advise Developer in writing if any of the City Representatives becomes aware (without any duty of inquiry) that any representation or warranty made by the City in Section 3.3 is or becomes untrue in any material respect prior to any Close of Escrow.

4. Conveyance of Property from City to Developer.

4.1 Conveyance of Property.

Subject to the terms and conditions set forth in this Agreement, including the satisfaction of the Closing Conditions set forth in Section 7 or elsewhere in this Agreement, the City agrees

to sell to Developer and Developer agrees to purchase from the City the Development Parcels, together with all existing improvements, if any, presently located on the Development Parcels, all appurtenances pertaining to the Development Parcels or such improvements and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection with the Development Parcels (collectively referred to in this Agreement as the "**Property**"), subject to all Permitted Exceptions. At the Retail Property Close of Escrow, the City shall cause the Special Restrictions to be Recorded and thereafter shall convey to Developer by Quitclaim Deed fee title to the Property to be conveyed at such Close of Escrow. Notwithstanding the foregoing:

(a) the term "**Property**" (and the terms "**Healthcare Property**" and "**Retail Property**") shall exclude the following rights and interest which shall be explicitly reserved to the City:

(i) Any and all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbon by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Development Parcels together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Development Parcels or any other land, including the right to whipstock or directionally drill and mine from lands other than the Development Parcels, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Development Parcels and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels; and

(ii) Any and all water, water rights or interests therein appurtenant or relating to the Development Parcels or owned or used by the City in connection with or with respect to the Development Parcels no matter how acquired by the City, whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the perpetual right and power to explore, drill, re-drill and remove the same from or in the Development Parcels, to store the same beneath the surface of the Development Parcels and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by the City; but without, however, the right to enter upon or use the surface of the Development Parcels in the exercise of such rights or otherwise adversely affect the use or operation of the Development Parcels as anticipated by this Agreement or the structural integrity of any improvements on the Development Parcels;

(b) the reservation by the City of the rights and interests in this Section 4.1 shall not be deemed to limit Developer's right to construct foundations and other subsurface improvements for the purpose of constructing Buildings, and otherwise engage in subsurface construction activity in connection therewith; and

(c) Notwithstanding anything in this Agreement to the contrary, Developer shall have the right to acquire the Healthcare Parcel and the other Development Parcels in two separate closings. If Developer provides written notice of its intent to acquire the Property in

separate closings, then Developer shall acquire the Healthcare Property upon the Healthcare Property Closing Date, which shall occur no later than the Healthcare Property Outside Closing Date, and shall acquire the Retail Property upon the Retail Property Closing Date, which shall occur no later than the Retail Property Outside Closing Date. If Developer elects to provide such notice, then each reference in this agreement to "Close of Escrow" shall be deemed to refer to the Close of Escrow for each Parcel.

(d) Developer acknowledges and agrees that the City shall have no requirement to convey the Healthcare Property to Developer unless Developer is prepared to convey the Healthcare Property to an Approved Healthcare Developer and the City has approved a Healthcare Developer, and Developer has agreed to Transfer its interests with respect to the Healthcare Property to such Healthcare Developer concurrently with the Healthcare Property Close of Escrow in accordance with the requirements of Section 2.2.3(b).

4.2 Purchase Price.

4.2.1 **Base Purchase Price**. As consideration for the sale of the Property by the City to Developer, Developer shall pay to the City an amount equal to Eighteen Million Eight Hundred Thousand Dollars ($18,800,000.00) which shall be payable as follows: (a) at the Healthcare Property Close of Escrow, Developer shall pay Ten Million Five Hundred and Five Thousand Five Hundred and Twenty-Six Dollars ($10,505,526.00) (the "**Healthcare Property Purchase Price**") this number is inclusive of a Project Fair Share Contribution of Four Million Seven Hundred Fifty-Four Thousand Seven Hundred Seventy-One Dollars ($4,754,771.00), and (b) at the Retail Property Close of Escrow, Developer shall pay Eight Million Three Hundred Thousand Ninety-One Dollars ($8,300,091.00) (the "**Retail Property Base Purchase Price**") this number is inclusive of a Project Fair Share Contribution of Five Million Five Hundred Fifty Thousand Eight Hundred Forty-Six Dollars ($5,550,846.00); (collectively with the Healthcare Property Purchase Price, the "**Base Purchase Price**").

4.2.2 **Additional Purchase Price**. If Developer consummates the sale of the Healthcare Parcel to the Healthcare Developer, then, as additional consideration for the sale of the Property by the City to the Developer, in addition to the Base Purchase Price, Developer shall pay to the City an additional Five Hundred Thousand Dollars ($500,000.00) (the "**Additional Purchase Price**") within thirty (30) days after the date upon which the first of the following occurs: (a) a single grocery store of not less than 40,000 GBA and a drug store on the Retail Parcel are fully stocked and open for a minimum of one (1) day as a retail establishment or (b) Tenants occupying at least 53,000 GBA on the Retail Parcel are fully stocked and open for a minimum of one (1) day as a retail establishment. The Additional Purchase Price shall be secured by the REG Guaranty.

4.3 Payment of Purchase Price; Healthcare Property Option Payment.

4.3.1 **Purchase Price Deposit**. Upon the Opening of Escrow, Developer shall deliver an earnest money deposit ("**Purchase Price Deposit**") of Three Hundred and Fifty Thousand Dollars ($350,000.00) to Escrow Holder within five (5) Business Days of the City's and Developer's execution of this Agreement and as a

condition to the effectiveness of this Agreement; provided, however, that Developer may elect to apply any unapplied portion of the City Costs Deposit held by the City at such time to the Purchase Price Deposit. The Purchase Price Deposit shall constitute security to the City for the Retail Property Close of Escrow.

4.3.2 **Application of Purchase Price Deposit**. After expiration of the Due Diligence Period, the Purchase Price Deposit shall be nonrefundable except as otherwise expressly provided in Section 15.1.3 and 15.4.3 and shall be applied only to the Retail Property Purchase Price as set forth in Section 4.3.4 below, or shall be liquidated damages to the City in the event of certain Defaults by Developer as further set forth in Section 15.2 of this Agreement.

4.3.3 **Healthcare Property Option Payment.** Provided that the Healthcare Property Close of Escrow does not occur concurrently with the Retail Property Close of Escrow, in order to secure the Option as defined in Section 7.1.1(b) below, which Developer may elect to do (or not do) in its sole discretion, Developer shall deposit with the City the First Option Payment as defined in Section 7.1.1(b) below which shall be delivered to the City in accordance with this Agreement upon the Retail Property Close of Escrow. The Healthcare Property Option Payment shall be nonrefundable except in the event of the City's Default in accordance with Section 15.4 below and shall be applied to the Healthcare Property Purchase Price as set forth in Section 4.3.4 below or shall be liquidated damages to the City as set forth in Section 15.3 of this Agreement.

4.3.4 **Payment of the Balance of the Base Purchase Price and Other Amounts Due at Close of Escrow**. No later than one (1) Business Day prior to the relevant Close of Escrow, Developer shall deposit the following amounts with Escrow Holder:

(a) in the case of the Retail Property Close of Escrow, the "Retail Property Closing Payment" which shall be equal to (i) the Retail Property Base Purchase Price less the Purchase Price Deposit and less the ENA Applicable Deposit; plus (ii)any additional amount as is necessary to cover any outstanding City Transaction Expenses incurred by the City through the Retail Property Close of Escrow plus (iii) all closing costs to be paid by Developer pursuant to Sections 7.5.1(b), 7.5.1(c) and 7.5.4, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Sections 7.5.1(a), 7.5.1(c) and 7.5.4; and

(b) in the case of the Healthcare Property Close of Escrow, the "Healthcare Property Closing Payment", which shall be equal to (i) the Healthcare Property Purchase Price less the Healthcare Property Option Payment (as defined in Section 7.1.1(b) below) if, and only to the extent, previously paid by Developer to the City; plus (ii) subject to the City Expense Cap, such additional amount as is necessary to cover any outstanding City Transaction Expenses incurred by the City through the Healthcare Property Close of Escrow *plus* (iii) all closing costs to be paid by Developer pursuant to Sections 7.5.1(b), 75.1(c) and 7.5.4, as adjusted for any net credits or debits to the City for closing costs and/or prorations in accordance with Section 7.5.1(a) and (c) and Section 7.5.4.

4.3.5 **Payments in Immediately Available Funds**. Funds delivered to the City or Escrow Holder under this Agreement shall be in the form of cash, wire transfer (to such account as the City or Escrow Holder notifies Developer in writing), or by cashier's check drawn on good and sufficient funds on a federally chartered bank and made payable to the order of City or Escrow Holder, as the case may be.

4.4 Escrow and Joint Escrow Instructions.

Upon execution of this Agreement by Developer and the City, Developer and the City shall each deliver three executed original counterparts of this Agreement to Escrow Holder. For purposes of this Agreement, the "**Opening of Escrow**" shall be the date that Escrow Holder receives executed original counterparts to this Agreement signed by Developer and the City. Upon the written acceptance of this Agreement by Escrow Holder, this Agreement shall constitute the joint escrow instructions of Developer and the City to Escrow Holder to open an escrow (the "**Escrow**"). Upon Escrow Holder's receipt of the Purchase Price Deposit and Escrow Holder's written acceptance of this Agreement, Escrow Holder is authorized to act in accordance with the terms of this Agreement. Developer and the City shall execute Escrow Holder's general escrow instructions upon request, with such modifications thereto as Developer and the City may reasonably require; provided, however, if there is any conflict or inconsistency between such general escrow instructions and this Agreement, this Agreement shall control. Escrow Holder shall not prepare any further escrow instruction restating or amending this Agreement unless specifically so instructed by the City and Developer in writing. Any supplemental escrow instructions must be in writing and signed by the City and Developer and accepted by the Escrow Holder to be effective.

4.5 Investigation; Property Conveyed "As-Is."

4.5.1 **Investigation**.

(a) **Due Diligence Review**. Developer shall have the right to conduct Developer's own investigation of the Property pursuant to Section 5.1 of this Agreement. If Developer proceeds to the Retail Property Close of Escrow, Developer represents and warrants to the City that Developer will have satisfied itself that it has determined that all matters related to the Property and the Project are acceptable to Developer, including, the state of title (subject only to the Permitted Exceptions), the physical condition thereof, the physical condition of structures, if any, located upon the Development Parcels and, as applicable, the accessibility and location of utilities, and all mechanical, plumbing, sewage, and electrical systems located therein, suitability of soils, environmental and other investigations regarding the Property. Prior to the expiration of the Due Diligence Period, Developer will have reviewed all items that in Developer's sole judgment affect or influence Developer's purchase and use of the Property and Developer's willingness to consummate the transactions described by this Agreement.

(b) **Opportunity to Evaluate**. Developer acknowledges and agrees that, as of each Close of Escrow:

(i) Its determination to enter into this Agreement constitutes Developer's agreement that Developer, in consummating the transactions described in this Agreement:

(A) has been given the opportunity to inspect the Property and to review the information and documentation provided by the City to Developer and affecting the Property, including the environmental condition of the Property, or otherwise obtained by Developer in connection with its due diligence of the Property, and is relying solely on its own investigation of the Property, including such investigation prior to execution of this Agreement, and review of such information and documentation in determining the physical, economic and legal condition of the Property, and not on any information, representation or warranty provided by the City or any agents or representatives of the City;

(B) has performed its own assessment of the Property, including the environmental condition of the Property, the presence of Hazardous Materials on the Property, the suitability of the soil for improvements to be constructed, the implications of land use restrictions on the development plan for the Project and the Property and the consequences of any subsequently discovered contamination on or adjacent to the Property, and

(C) has been provided with access to all information in the possession of the City which it has requested.

(ii) Information provided to Developer by or on behalf of the City with respect to the Property was obtained from a variety of sources and that the City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information; and Developer is satisfied with the nature and extent of its permissible investigation of the physical condition and other matters relating to the Property and is willing to consummate the transactions described by this Agreement.

(iii) Without limiting the generality of the foregoing, Developer acknowledges and agrees that: (A) it has been provided with access to (x) all environmental reports and statements listed on Attachment 10 and all reports either attached to or referenced in the Memorandum of Agreement and Federal Deed, (y) the FOST and (z) the Environmental Baseline Survey (the "**EBS**") which is incorporated into the FOST by reference; (B) it shall perform its own assessment of the environmental condition of the Property, the presence of Hazardous Materials on the Property, the suitability of the soil for improvements to be constructed, the implications of the land use restrictions on the development plan for the Project and the Property and the consequences of any subsequently discovered contamination on the Property; and (C) it shall review the Navy produced or identified documentation, including that listed on Attachment 10, reflecting the Navy's knowledge of the environmental condition of the Property.

4.5.2 **AS-IS; WHERE-IS**.

(a) **No Representations or Warranties**. Developer recognizes that the City would not sell the Property except on an "AS, IS, WHERE IS, WITH ALL FAULTS"

basis, and Developer acknowledges that the City has made no representations or warranties of any kind whatsoever (excepting only those representations and warranties of the City expressly set forth in Section 3.3 of this Agreement), either express or implied in connection with any matters with respect to the Property or any portion thereof.

(b) **Acknowledgement**. Developer's determination to enter into this Agreement constitutes Developer's agreement that Developer, in consummating the transactions described in this Agreement is buying the Property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, if any. Without limiting the generality of the foregoing provisions, Developer further acknowledges and agrees that, except as otherwise specifically provided in Sections 3.3 and 18.12 of this Agreement, City makes no representations, warranties, or guaranties of any kind or character in connection with the transaction contemplated by this Agreement, whether express or implied, oral or written, past, present or future, whether by the City or any of its agents, elected or appointed officials, representatives or employees, of concerning or with respect to:

(i) the value of the Property or the income to be derived from the Property;

(ii) the existence or nonexistence of any liens, easements, covenants, conditions, restrictions, claims or encumbrances affecting the Property (including any of the foregoing arising from or related to the Entitlements or any of the Other Agreements);

(iii) the suitability of the Property for any and all future development, uses and activities which Developer may conduct thereon, including the development of the Project described in this Agreement and the Other Agreements;

(iv) the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan, the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authority;

(v) the compliance with or enforcement of the Reuse Plan, the General Plan, the Specific Plan, the Special Restrictions, the CC&Rs, the Tustin Legacy Backbone Infrastructure Program or any other agreement or governmental restriction or plan affecting Tustin Legacy by the City or any third party;

(vi) the habitability, merchantability or fitness for a particular purpose of the Property;

(vii) the manner, quality, state of repair or lack of repair of the Property;

(viii) the nature, quality or condition of the Property including water, soil and geology;

(ix) the compliance of or by the Property and/or its operation in accordance with the Entitlements or any Governmental Requirement, including the National Environmental Policy Act, CEQA and the Americans with Disabilities Act of 1990;

(x) the manner or quality of the construction or materials, if any, incorporated into the Property;

(xi) the presence or absence of Hazardous Materials, including asbestos or lead paint at, on, under, or adjacent to the Property or any other portion of the Development Parcels or Tustin Legacy;

(xii) the content, completeness or accuracy of the information, documentation, studies, reports, surveys and other materials, delivered to Developer in connection with the review of the Property and the transactions contemplated in this Agreement and the Other Agreements;

(xiii) the conformity of the existing improvements on the Property and/or at Tustin Legacy, if any, to any plans or specifications therefor;

(xiv) compliance of the Property with past, current or future Governmental Requirements relating to zoning, subdivision, planning, building, fire, safety, health or environmental matters and/or covenants, conditions, restrictions or deed restrictions;

(xv) the deficiency of any undershoring or of any drainage to, on or from the Development Parcels or any other portion of Tustin Legacy;

(xvi) the condition of any adjoining land owned by the City, including the Slope Parcel and any improvements thereon;

(xvii) the fact that all or a portion of the Property may be located on or near an earthquake fault line or falls within an earthquake fault zone established under the Alquist-Priolo Earthquake Zone Act, California Public Resources Code Sections 262 1-2630 or within a seismic hazard zone established under the Seismic Hazards Mapping Act, California Public Resources Code, Sections 2690-2699.6 and Sections 3720-3725;

(xviii) the existence or lack of vested land use, zoning or building entitlements affecting the Property;

(xix) the construction or lack of construction of Tustin Legacy or if constructed, the construction of Tustin Legacy in accordance with design guidelines, plans and specifications previously or to be prepared therefor;

(xx) the conditions, covenants and restrictions imposed or to be imposed upon the Property or any portion thereof under this Agreement, the Other Agreements, or the Entitlements;

(xxi) the contents of the Memorandum of Agreement, the Federal Deed, the Base Closure Law and the FOST; and

(xxii) any other matters.

(c) **Environmental Condition of the Property; Restrictions**. Without limiting the generality of the foregoing provisions, the City makes no representation or warranty as to the environmental condition of the Property or any portion thereof, the Navy's obligations with respect to the environmental condition of the Property or the adequacy or accuracy of any environmental report that has been rendered. Developer acknowledges and agrees that (i) there may be some residual contamination on the Property as a result of Navy historic activities; (ii) the Navy has agreed to accept certain limited responsibility for any contamination it caused, including any contamination discovered after transfer from the Navy, in accordance with existing Governmental Requirements including the National Defense Authorization Act For Fiscal Year 1993 as amended (Public Law No. 102-434) Section 330 and Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9620(h); and (iii) the deed restrictions contained in the Federal Deed are binding upon successors and assigns of the City and are enforceable by DTSC pursuant to a conveyed property right from the Navy to DTSC.

(d) **Federal Deed and Memorandum of Agreement**. Developer acknowledges and agrees that the purchase of the Property is subject to the terms and conditions expressly set forth in the Memorandum of Agreement, the Federal Deed and the Permitted Exceptions. From and after each Close of Escrow, Developer agrees, to assume and faithfully perform any covenants running with the land and obligations set forth in the Federal Deed as obligations to be performed by "Grantee or its successors or assigns" with respect to the Property acquired by Developer and such obligations shall run with the land and be binding upon Developer and each Successor Owner for the period of their ownership and for the Additional Liability Period.

(e) **No Unauthorized Representations**. No Person acting on behalf of the City is authorized to make, and by execution hereof, Developer acknowledges that no Person has made, any representation, agreement, statement, warranty, guarantee or promise regarding the Property, the Project or the transactions contemplated in this Agreement or the past, present or future zoning, land use entitlements, construction, physical condition, presence or extent of Hazardous Materials or other status of the Property except as may be expressly set forth in this Agreement or in any of the Other Agreements. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any Person acting on behalf of the City that is not contained in this Agreement or in any of the Other Agreements will be valid or binding on the City. Nothing in this Section is intended to affect in any manner the validity of the Entitlements and Development Permits obtained by Developer with respect to the Property.

(f) **Release**. Developer, on behalf of itself and each Successor Owner and every Person claiming by, through or under Developer or any Successor Owner (each a "**Releasing Party**"), hereby waives, as of the Effective Date, and agrees to waive, as of each Close of Escrow, the right of each Releasing Party to recover from, and fully and irrevocably releases, the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns (individually, a "**Released Party**" and collectively, the "**Released Parties**") from any and all Claims that Developer or any Releasing Party may now have or hereafter suffer or acquire arising from or related to: (i) any Due

Diligence Information, (ii) any condition of the Property or any current or future improvement thereon, known or unknown by any Releasing Party or any Released Party, including as to the extent or effect of any grading of the Development Parcels; (iii) any construction defects, errors, omissions or other conditions, latent or otherwise, including environmental matters, as well as economic and legal conditions on or affecting the Property, or any portion thereof; (iv) the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof; (v) Claims of or acts or omission to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from, about, or adjacent to the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; and/or (vi) arising from or related to the Tustin Legacy Backbone Infrastructure Program, any community facilities district or the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district assessment against the Property, Development Parcels and/or Improvements described in this Agreement; provided that the foregoing release by the Releasing Parties shall not extend to (A) any breach by the City of any of the representations or warranties of the City set forth in Sections 3.3 or 18.12 of this Agreement, (B) any breach by the City of any of the covenants or obligations set forth in this Agreement or any Other Agreement, (C) any Claim that is the result of the gross negligence or willful misconduct of the City, or (D) any actions of the City or any of the Released Parties affecting a portion of the Property which occur following the Close of Escrow with respect to such portion of the Property. This release includes Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released Parties. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

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

In this connection and to the extent permitted by law, Developer on behalf of itself, and the other Releasing Parties hereby agrees, represents and warrants, which representation and warranty shall survive each Close of Escrow and the termination of this Agreement and shall not be merged with any Quitclaim Deed, that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected, (y) the waivers and releases in this Section 4.5.2(f) have been negotiated and agreed upon in light of that realization and (z) Developer, on behalf of itself and the other Releasing Parties, nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown Claims and controversies to the extent set forth above which might in any way be included as a material portion of the consideration given to the City by Developer in exchange for the City's performance hereunder.

BY INITIALING BELOW, DEVELOPER ACKNOWLEDGES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

CITY'S INITIALS DEVELOPER'S INITIALS

From and after the Retail Property Close of Escrow with respect to the Retail Property and from and after the Healthcare Property Close of Escrow with respect to the Healthcare Property, this release shall be an equitable servitude and a covenant running with the land comprising each such Development Parcel for the benefit of the City Benefited Property and the City and each Successor Owner owning all or any portion of such City Benefited Property burdening each such Development Parcel and Developer and the Successor Owners owning all or any portion of each such Development Parcel and all Persons claiming by, through or under Developer or any Successor Owner of each such Development Parcel or any portion thereof for the period of such Person's interest in the applicable Development Parcel or any portion thereof and for the Additional Liability Period, if any, applicable to such Person and to further evidence its effectiveness with respect to Developer and the Successor Owners of the Development Parcels, shall be included in each Quitclaim Deed.

4.6 Covenants; Preconditions to Close of Escrow.

The following are covenants of Developer for the benefit of the City and conditions precedent to the Healthcare Property Close of Escrow and the Retail Property Close Escrow, as further described in this Section and in Sections 7.2.2 and 7.3.2, as applicable, and shall for the benefit of the City be satisfied by Developer or Healthcare Developer, if applicable, not later than the times specified for such conditions below or in the applicable Schedule of Performance.

4.6.1 **Developer Financing Plan**. As of the Effective Date, Developer has provided the City with a Financing Plan (the "**Financing Plan**") containing: (a) a financial pro forma and development budget for the Retail Project and the Minimum Horizontal Improvements setting forth a cash flow projection for operation of the Retail Project and the Minimum Horizontal Improvements and sources and uses of funds and evidencing that Developer has the equity available to construct and operate the Retail Project and to meet its other obligations under this Agreement; (b) a cost breakdown for all Development Costs anticipated to be incurred for the development of the Retail Project and the Minimum Horizontal Improvements based upon government permits and approvals and any design documents. Prior to the Retail Property Close of Escrow, Developer shall provide an update to the Financing Plan containing any revisions to the information previously provided and shall certify to the City either that the Financing Plan remains true and correct or, as modified to reflect Developer's expectation as to available funding and costs, remains sufficient to pay through issuance of the Certificate of Compliance all Development Costs of the Project and all other costs for the construction, marketing and

BY INITIALING BELOW, DEVELOPER ACKNOWLEDGES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

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CITY'S INITIALS DEVELOPER'S INITIALS

From and after the Retail Property Close of Escrow with respect to the Retail Property and from and after the Healthcare Property Close of Escrow with respect to the Healthcare Property, this release shall be an equitable servitude and a covenant running with the land comprising each such Development Parcel for the benefit of the City Benefited Property and the City and each Successor Owner owning all or any portion of such City Benefited Property burdening each such Development Parcel and Developer and the Successor Owners owning all or any portion of each such Development Parcel and all Persons claiming by, through or under Developer or any Successor Owner of each such Development Parcel or any portion thereof for the period of such Person's interest in the applicable Development Parcel or any portion thereof and for the Additional Liability Period, if any, applicable to such Person and to further evidence its effectiveness with respect to Developer and the Successor Owners of the Development Parcels, shall be included in each Quitclaim Deed.

4.6 Covenants; Preconditions to Close of Escrow.

The following are covenants of Developer for the benefit of the City and conditions precedent to the Healthcare Property Close of Escrow and the Retail Property Close Escrow, as further described in this Section and in Sections 7.2.2 and 7.3.2, as applicable, and shall for the benefit of the City be satisfied by Developer or Healthcare Developer, if applicable, not later than the times specified for such conditions below or in the applicable Schedule of Performance.

4.6.1 **Developer Financing Plan**. As of the Effective Date, Developer has provided the City with a Financing Plan (the "**Financing Plan**") containing: (a) a financial pro forma and development budget for the Retail Project and the Minimum Horizontal Improvements setting forth a cash flow projection for operation of the Retail Project and the Minimum Horizontal Improvements and sources and uses of funds and evidencing that Developer has the equity available to construct and operate the Retail Project and to meet its other obligations under this Agreement; (b) a cost breakdown for all Development Costs anticipated to be incurred for the development of the Retail Project and the Minimum Horizontal Improvements based upon government permits and approvals and any design documents. Prior to the Retail Property Close of Escrow, Developer shall provide an update to the Financing Plan containing any revisions to the information previously provided and shall certify to the City either that the Financing Plan remains true and correct or, as modified to reflect Developer's expectation as to available funding and costs, remains sufficient to pay through issuance of the Certificate of Compliance all Development Costs of the Project and all other costs for the construction, marketing and

lease of the Improvements as described in the Scope of Development. As a condition to each Close of Escrow for the benefit of the City, the City shall have the right to approve or disapprove the updated Financing Plan, in it is sole discretion, if the updated Financing Plan evidences any material adverse change in the financial capacity of Developer, the availability or terms of the sources of funding identified or the Development Costs of the Project. Any modification, amendment or termination of the Retail Equity Funding Letter or the funding approval of the REG capital allocation committee (or equivalent) described therein without the consent of the City in its sole discretion (as further described in Section 4.6.2(b)) shall be a Potential Default by Developer hereunder; provided, however, that nothing in this sentence shall prohibit Developer from modifying the terms of the Retail Equity Funding Letter prior to the Retail Property Close of Escrow to reflect Developer's actual development costs nor shall it prohibit Developer from terminating the DDA prior to the expiration of the Due Diligence Period as set forth in Section 5.1.

4.6.2 **Additional Assurances of Developer; Equity Funding Letter**. Substantially concurrently with the execution of this Agreement, but in all events on or before the Effective Date, Developer shall have caused REG to provide the City with:

(a) a fully executed copy of an equity funding letter in form and substance approved by the City in its sole discretion dated as of or prior to the Effective Date (the "**Retail Equity Funding Letter**"), which shall evidence that REG has agreed to fund in its entirety, and without requirement for third party financing other than as set forth in the Equity Funding Letter:

(i) Developer's costs and expenses necessary to obtain the Applicable Approvals and Development Permits and to comply with the other obligations of Developer under this Agreement required to be satisfied prior to the Retail Property Close of Escrow,

(ii) acquisition of the Property,

(iii) all costs of development of the Project and the construction, marketing and sale or Lease of all Improvements as further described in the Scope of Development through Recording of a Certificate of Compliance, and

(iv) Developer's costs and expenses to perform and satisfy all the covenants of the Developer contained in this Agreement;

(b) a certification in favor of the City from REG's vice president of financial services or other appropriate corporate officer (the "**Original REG Certificate**") confirming that REG has committed to fund the development of the Project in accordance with the Retail Equity Funding Letter and that the Retail Equity Funding Letter is in full force and effect and has not been modified, and will not be modified, amended or terminated without the prior consent of the City in its sole discretion; and further, that the approval of REG's capital allocation committee as described in the certain Letter from Laura Clark, Vice President, Financial Services of REG, dated September 8, 2015 re: The Village at Tustin Legacy Development of Tustin Legacy Parcel 1C Tustin, CA, which comprises the Retail Equity

Funding Letter from REG, will not be modified, amended or terminated without the prior consent of the City in its sole discretion; and certifying as the authority of REG's corporate officer to bind REG and authorization to execute the Retail Equity Funding Letter and to the accuracy and correctness of and attaching the following:

(i) A certificate of formation and California foreign entity registration for REG;

(ii) Evidence of authority of the individual(s) executing the Equity Funding Letter to bind REG and to execute Equity Funding Letter;

(iii) Copies of all resolutions or other necessary actions, if any, taken by REG to authorize the execution of the Retail Equity Funding Letter; and

(iv) Certificates of good standing and tax good standing issued by the Florida Secretary of State and by the California Secretary of State within thirty (30) calendar days of the Effective Date.

(c) Notwithstanding anything to the contrary contained herein, as an alternative to providing one Retail Equity Funding Letter, Developer may provide the City with an "**Initial Retail Equity Funding Letter**" on or before the Effective Date that addresses the funding provided for in only Section 4.6.2(a)(i) above and a "**Closing Retail Equity Funding Letter**" prior to the Retail Property Close of Escrow that addresses the funding provided for in Sections 4.6.2(a)(ii) through (iv).

4.6.3 **Guaranty of Developer Obligations; REG Guaranty**.

(a) Substantially concurrently with, but in all events prior to the Retail Property Close of Escrow, Developer shall cause REG to deliver to the City:

(i) A fully executed and effective guaranty in substantially the form and substance of the guaranty set forth in Attachment 14A or as otherwise acceptable to the City in its sole discretion (the "**REG Guaranty**") which shall remain in effect until the Recording of the Certificate of Compliance for the Retail Project and shall guarantee, among other things:

(A) Upon the Retail Property Close of Escrow, payment of all Development Costs for the Completion of the Minimum Retail Improvements that are to be constructed or caused to be constructed by Developer (i.e., excluding any Buildings to be constructed by any Pad Transferee) and any additional Improvements upon the Retail Parcel for which construction has been commenced or caused to be commenced by Developer (i.e., excluding any Improvement to be constructed by Pad Transferees and any obligation to remove any such improvements, including the Improvements, which are not completed and/or are abandoned);

(B) Upon the Retail Property Close of Escrow, payment of all Development Costs for the Completion of the Minimum Horizontal Improvements to be constructed or caused to be constructed by Developer upon the Healthcare Parcel (i.e., excluding

any Improvement to be constructed by Healthcare Developer or any Pad Transferee and any obligation of Developer to remove such improvements, including the Improvements, which are not completed and or are abandoned);

(C) Upon the Retail Property Close of Escrow, payment of all Development Costs for Completion of the Minimum Horizontal Improvements;

(D) Compliance with the Healthcare Transferor Obligations and Developer's obligations with respect to the Ongoing Matters;

(E) Payment of the Additional Purchase Price;

(F) The indemnities and other obligations of Developer pursuant to Sections 4.6.4(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.12.1 of this Agreement;

(G) The costs and expenses incurred by the City, if any, in enforcement by the City of its rights and/or remedies under this Agreement with respect to non-performance by Developer of its obligations under this Agreement and the Other Agreements, including the exercise by the City of the Right of Repurchase or Right of Reversion with respect to the Retail Parcels or any portion thereof (and following acquisition of the Healthcare Property by Developer, but prior to Transfer of the Healthcare Property to Healthcare Developer, the Healthcare Parcels not then conveyed to Healthcare Developer), but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Developer, or by REG pursuant to the REG Guaranty; and

(H) Attorneys' fees and costs incurred by the City in connection with the enforcement of the Guaranty; and

(ii) REG's most recent annual 10-K report;

(iii) An updated certification in favor of the City by REG's vice president of financial services (the "**Updated REG Certificate**") certifying as to the accuracy and correctness of the Original REG Certificate and attaching copies of the following: (w) a certificate of formation and California foreign entity registration for REG; (x) evidence of authority of the individual(s) executing the REG Guaranty to bind REG and to execute the REG Guaranty, (y) copies of resolutions or other necessary actions taken by REG to authorize the execution of the REG Guaranty, if any; and (z) certificates of good standing and tax good standing issued by the Florida Secretary of State and by the California Secretary of State within thirty (30) calendar days of the Retail Property Close of Escrow.

(b) Upon each subsequent Transfer to a Developer prior to the Retail Approval End Date for which Developer desires to replace the REG Guaranty as permitted by Section 2.2.3(a)(iv), and as a condition to City review and approval, in its sole discretion, of the proposed guarantors and proposed Guaranty, Developer shall cause the proposed guarantors to deliver evidence of the financial capacity of the proposed guarantors, authority of the proposed

guarantors to provide the Guaranty, and copies of all documents evidencing formation, good standing and authority requested by the City.

(c) Upon delivery to the City of a fully executed REG Guaranty, REG and Developer shall have the right to terminate the Retail Equity Funding Letter without further action or consent of the City

(d) In the event of a Transfer by Initial Developer of all of its interests in this Agreement pursuant to Section 2.2.3(a), the obligations imposed upon REG as guarantor hereunder and under any REG Guaranty shall, as a condition to such Transfer, be, either retained in full by REG or assumed by a guarantor meeting the requirements of Section 2.2.3(a)(iv)(B) and approved by the City in its sole discretion. If the City is not satisfied with the financial status of the proposed guarantor, the City shall be entitled to obtain the financial information of other members and/or partners of the proposed development entity (and their respective members, partners, shareholders and/or other owners at each tier until substantial assets are identified) and such other financial information as the City may request to demonstrate such guarantor's and Developer's financial capacity and capability to perform its obligations under this Agreement.

4.6.4 **Healthcare Developer Financing Plan**.

(a) If Healthcare Developer has not been approved by the City prior to the Effective Date, then upon the earlier of (i) ninety (90) calendar days prior to the Healthcare Property Close of Escrow and (ii) twenty (20) Business Days prior to a proposed Transfer pursuant to Section 2.2.3(b), Developer shall cause Healthcare Developer to provide the City with the information required by Section 2.2.3(b)(i) and (ii) for the purposes of confirming that Healthcare Developer has sufficient funds for construction of the Minimum Healthcare Improvements and for operation of such facilities consistent with the terms of this Agreement and the following additional information: (A) a development budget for the Healthcare Project setting forth a cash flow projection for operation of the Healthcare Project and sources and uses of funds and evidencing that Healthcare Developer has the equity available to construct and operate the Healthcare Project and to meet its other obligations under this Agreement; (B) a cost breakdown for all Development Costs anticipated to be incurred for the development of the Healthcare Project based upon government permits and approvals and any design documents; (C) a true copy of a commitment and, if within ninety (90) calendar days from the Healthcare Property Close of Escrow, draft transaction documents from a Qualified Institutional Lender with respect to any Construction Loan proposed to be utilized by Healthcare Developer on the Other Healthcare Parcels only (and specifically excluding the Medical Office Parcel); and (D) evidence reasonably satisfactory to the City (including an HCD Equity Funding Letter as further described in Section 4.6.4(b)) that Healthcare Developer has sufficient additional funds available and is able to commit such funds to meet its obligations under this Agreement and the Other Agreements (and referred to as the "**Healthcare Financing Plan**").

(b) As of the Healthcare Property Close of Escrow, Healthcare Developer, pursuant to an equity funding letter with respect to the Healthcare Project ("**HCD Equity Funding Letter**"), or through other means acceptable to the City in its sole discretion, shall certify or shall cause the Healthcare Controlling Person or the Healthcare Guarantor

approved by the City to certify, as of the Healthcare Property Close of Escrow, that Healthcare Developer will have the equity capital and financial capacity, without requirement of third party financing other than as set forth in a Permitted Mortgage approved by the City in accordance with Sections 2, 4.6.4(c) and 17 of this Agreement, to: (i) acquire the Healthcare Property; (ii) pay, through Recording of a Certificate of Compliance for the Healthcare Parcel, all costs of development of the Healthcare Project on the Healthcare Parcel, including all Healthcare Horizontal Improvements and the construction, marketing and sale or lease of all Healthcare Vertical Improvements upon the Healthcare Parcel as further described in the Scope of Development; and (iii) enable the Healthcare Developer to perform and satisfy all the covenants of the Healthcare Developer contained in this Agreement. Such HCD Equity Funding Letter shall be accompanied by a certification in favor of the City from the Person delivering such letter in the form of Attachment 13B or Attachment 13C, as applicable, and further certifying that such Person has committed to fund the development of the Project in accordance with the HCD Equity Funding Letter and that the HCD Equity Funding Letter is in full force and effect and has not been modified, and will not be modified, amended or terminated without the prior consent of the City in its sole discretion; and further, that the approval of such Person's capital allocation committee (or equivalent) as described in the HCD Equity Funding Letter will not be modified, amended or terminated without the prior consent of the City in its sole discretion; and certifying as the authority of such Person's corporate officer to bind such Person. Any modification, amendment or termination of the Healthcare Equity Funding Letter or the approval of the capital allocation committee (or equivalent) of the Controlling Person of Healthcare Developer or HCD Guarantor without the consent of the City in its sole discretion shall be a Potential Default by Healthcare Developer hereunder; provided, however, that nothing in this sentence shall prohibit Healthcare Developer from modifying the terms of the HCD Equity Funding Letter prior to the Healthcare Property Close of Escrow to reflect Healthcare Developer's actual development costs nor shall it prohibit Developer from terminating the DDA prior to the expiration of the Due Diligence Period as set forth in Section 5.1.

(c) With respect to the Other Healthcare Parcels only (and specifically excluding the Medical Office Parcel), the City will accept: (i) one (1) Construction Loan provided by a Permitted Mortgagee procured by a Healthcare Developer which is on terms not materially different than the financing terms set forth on the Healthcare Financing Plan; (ii) as a Permitted Mortgagee any lender that is a Qualified Institutional Lender, or any lender that is not a Qualified Institutional Lender so long as such lender is specifically identified in the Healthcare Financing Plan approved by the City prior to the Healthcare Property Close of Escrow or as otherwise agreed by the City in its sole discretion.

(d) Prior and as a condition precedent to the Healthcare Property Close of Escrow for the benefit of the City, Healthcare Developer shall provide an update to the Healthcare Financing Plan containing any material revisions to the information previously provided and shall certify to the City either that the Healthcare Financing Plan remains true and correct or, as modified to reflect Healthcare Developer's expectation as to available funding, financing terms and costs, remains sufficient to pay through Recording of the Certificate of Compliance all Development Costs of the Healthcare Project and all other costs for the construction, marketing and lease of the Improvements as described in the Scope of Development for the Healthcare Project, which shall be satisfactory to the City in its sole discretion. If the City is not satisfied with the financial status of Healthcare Developer following

review of the Healthcare Financing Plan and the financial capacity of the Healthcare Guarantors, the City shall be entitled to obtain the financial information of other members and/or partners of the proposed development entity (and their respective members, partners, shareholders and/or other owners at each tier until substantial assets are identified) and such other financial information as the City may request to demonstrate Healthcare Developer's financial capacity and capability to perform its obligations under this Agreement. The City shall have the right to disapprove the updated Healthcare Financing Plan, in its sole discretion, if in the determination of the City the updated Healthcare Financing Plan provided by Healthcare Developer evidences any material adverse change in the financial capacity of Healthcare Developer or the Permitted Mortgagee, the availability or terms of the Construction Loan or other sources of funding identified or the Development Costs of the Healthcare Project.

(e) Developer shall incorporate into the HCD Agreements (including the SN PSA, if applicable) the automatic termination of such agreement in the event that the City, prior to the Healthcare Property Close of Escrow, shall determine that it does not approve the Healthcare Developer or the Healthcare Guarantor(s) or such Healthcare Developer or Healthcare Guarantors do not meet the other requirements or conditions of this Agreement, including the financial standards and guarantees required by the City. The effectiveness of any HCD Agreements shall be conditioned on (i) the approval by the City of the Healthcare Developer and the Healthcare Guarantors, and (ii) the satisfaction of the conditions set forth in Section 2.2.4, and this Section 4.6.4. For avoidance of doubt, as further set forth in Section 18.21, Healthcare Developer shall obtain no rights under this Agreement and shall not be a third-party beneficiary before the occurrence of the Healthcare Property Close of Escrow.

(f) Developer shall indemnify, protect, defend, assume all responsibility for and hold harmless the City and the City Indemnified Parties with counsel reasonably acceptable to the City, from and against any and all Claims arising from or relating to the negotiations between Developer and any proposed or approved Healthcare Developer, the HCD Agreements, the HCD Assignment or any other agreement between a proposed or approved Healthcare Developer and Developer.

4.6.5 **HCD Guaranty**.

(a) As a condition precedent to the Healthcare Property Close of Escrow, Healthcare Developer shall cause the Controlling Person of Healthcare Developer or other guarantors of Healthcare Developer acceptable to the City in its sole discretion (each, a "**Healthcare Guarantor**" and collectively the "**Healthcare Guarantors**") to provide to Developer and the City:

(i) a fully executed and effective HCD Guaranty in substantially the form and substance of the guaranty set forth in Attachment 14B or as otherwise acceptable to the City in its sole discretion which shall remain in effect until the Recording of the Certificate of Compliance for the Healthcare Project and shall guarantee, among other things:

(A) upon the Healthcare Property Close of Escrow, payment of all Development Costs and the Completion of the Minimum Healthcare Improvements that are to be constructed, or caused to be constructed, by Healthcare Developer

(i.e., excluding any Buildings to be constructed by Pad Transferees) and any additional Improvements upon the Retail Parcel for which construction has been commenced or caused to be commenced by Developer (i.e., excluding any Improvement to be constructed by End Users) and Development Costs to remove any such improvements, including the Improvements, which are not completed and/or are abandoned;

(B) the indemnities and other obligations of Healthcare Developer pursuant to Sections 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.12.1 of this Agreement, and

(C) the costs and expenses incurred by the City, if any, in enforcement by the City of its rights and/or remedies with respect to non-performance by Healthcare Developer of its obligations under this Agreement and the Other Agreements, including the exercise by the City of the Right of Repurchase or Right of Reversion with respect to the Healthcare Parcel or any portion thereof, but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Developer, Healthcare Developer, REG or HCD Guarantor pursuant to the HCD Guaranty; and

(D) Attorneys' fees and costs incurred by the City in connection with the enforcement of the HCD Guaranty; and

(ii) a certification in favor of the City from an officer of each of the Healthcare Guarantors in the form of the Certificate attached as Attachment 13B (the "**Healthcare Guarantor Certificate**") and to the accuracy and correctness of and attaching copies of the following: (w) a certificate of formation and California foreign entity registration for Healthcare Guarantors; (x) evidence of authority of the individuals executing the HCD Guaranty to bind Healthcare Guarantor(s) and to execute the HCD Guaranty, (y) copies of all resolutions or other necessary actions taken by Healthcare Guarantor(s) to authorize the execution of the HCD Guaranty; (z) certificates of good standing and tax good standing issued by the Secretary of State of the state of formation or incorporation of the HCD Guarantors and by the California Secretary of State within thirty (30) calendar days of the Effective Date.

(b) Upon each subsequent Transfer of the Healthcare Property to a Healthcare Developer prior to the Recording of the Certificate of Compliance with respect to the Healthcare Parcel and for which Healthcare Developer desires to replace the HCD Guaranty as permitted by Section 2.2.3(b), and as a condition to City review and approval, in its sole discretion, of the proposed guarantors and proposed HCD Guaranty, Healthcare Developer shall cause the proposed guarantors to deliver evidence of the financial capacity of the proposed guarantors, authority of the proposed guarantors to provide the Guaranty, and copies of all documents evidencing formation, good standing and authority requested by the City.

4.6.6 **City Approvals**. Developer shall have applied for all Applicable Approvals by the time provided in the applicable Schedule of Performance. Developer's application for the Applicable Approvals shall be consistent with the Scope of

Development and the terms and conditions of this Agreement. Nothing contained in this Agreement shall relieve Developer from any obligations imposed by the City on Developer in connection with recording the Parcel Map including any bonding requirements related thereto.

4.6.7 **Insurance**. Prior to or concurrently with the execution of this Agreement by Developer, Developer shall have obtained and delivered to the City a binder or certificate evidencing the insurance required by Article 11 effective upon the mutual execution of this Agreement by Developer and the City.

4.6.8 **Declaration of Ownership; Additional Documentation**. Developer, prior to the Effective Date, Developer or Healthcare Developer prior to or concurrently with each respective Close of Escrow, and each Transferee or Controlling Party, prior to or concurrently with the Transfer or Transfer of Control, as applicable, shall provide to the City: (a) a declaration certified by an officer authorized to execute documents on behalf of Developer, Healthcare Developer, Transferee or Controlling Party, as applicable and generally in the form of Attachments 13A 13B, 13C, 18A or 18B, as applicable, that the following documentation submitted by such entity to the City is true and correct and attaching: copies of (i) a certificate of formation, California foreign entity registration, and a fully executed limited liability company agreement (including any amendments thereto) articles of incorporation or bylaws of such entity or other formation documents, as applicable; (ii) copies of all resolutions or other necessary actions taken by such entity to authorize the execution of this Agreement, if applicable, and any other documents or instruments required by this Agreement; (iii) certificates of good standing issued by the Secretary of State in the state in which Developer (or Transferee, as applicable) is formed or incorporated and by the California Secretary of State within thirty (30) calendar days prior to the Effective Date or the proposed date of the Transfer, as applicable; and (iv) a copy of any Fictitious Business Name Statement if any, as published and filed with the Clerk of Orange County; and (b) a certification by such entity that the Financing Plan or the Healthcare Financing Plan, as applicable, as the same may have been updated in accordance with the requirements of Section 4.6.1 or 4.6.4 remains true and correct and the Project budget for the Minimum Improvements remains a reasonable budget.

5. Developer's Due Diligence Investigation.

5.1 Due Diligence Period.

Developer acknowledges that while the City has been negotiating this Agreement with Developer, Developer has had extensive access to the Property within which to undertake such physical inspections and other investigations of, and inquiries concerning, the Property as may be necessary to allow Developer to evaluate the physical characteristics of the Property, as well as such other matters as may be deemed by Developer to be reasonably necessary to generally evaluate the Property and determine the feasibility and advisability of Developer's purchase and redevelopment of the Property with the Project. In addition to the due diligence investigation previously conducted by Developer, Developer shall have an additional period of time as identified herein to undertake specific additional inspections and investigations as are necessary

and specifically permitted herein to allow Developer to continue to evaluate the feasibility and advisability of Developer's purchase of the Property. Developer's obligation to consummate this transaction shall be contingent upon Developer's express written approval, in Developer's sole discretion, of the results of such inspection, examination and other due diligence with regard to the Property and its suitability for construction of the Project as Developer may elect to conduct during the period commencing on the Effective Date and ending on the date which is sixty (60) calendar days following the Effective Date at 4:00 P.M. Pacific Time (the "**Due Diligence Period**"). Developer acknowledges and agrees that the Due Diligence Period is adequate time to complete such investigation. As further described in Section 5.3 of this Agreement, Developer may give City written notice (the "**Diligence Termination Notice**") on or before the end of the Due Diligence Period stating whether Developer elects to terminate this Agreement or waive its due diligence contingency and proceed to the Close of Escrow with respect to the Project, subject to the other terms and conditions set forth in this Agreement. Although Close of Escrow with respect to the Property may occur concurrently or in two separately timed closings, any waiver of due diligence contingency or Diligence Termination Notice under this Section shall apply to the entirety of the Property.

5.2 No Financing Contingency.

Developer represents and warrants that it has examined its ability to purchase the Property and to develop the Project, including Developer's ability to finance such construction without the requirement for any Mortgage. Accordingly, Developer acknowledges and agrees that Developer's purchase of the Property is subject to no financing contingency whatsoever with respect to either private or public financing and that its acquisition of third party financing for the Project is not a condition precedent to Developer's obligation to purchase the Property or of its ability to fund construction of the Project.

5.3 Termination of Agreement.

If Developer elects to terminate this Agreement on or before the end of the Due Diligence Period pursuant to its termination rights set forth in Section 5.1 or 6.3, this Agreement shall automatically terminate on the date of such election or deemed election, as applicable, and thereafter, neither Party shall have any further obligations under this Agreement (subject to the provisions that expressly survive the termination of this Agreement); provided, however that, Escrow Holder shall return the Purchase Price Deposit to Developer, less Developer's share of any title and escrow cancellation fees of Escrow Holder and outstanding City Transaction Expenses to the extent not covered by the City Costs Deposit, if any. If Developer fails to give the Diligence Termination Notice on or before the end of the Due Diligence Period, then Developer will be deemed to have disapproved the Due Diligence matters and shall be deemed to have delivered a Diligence Termination Notice and elected to terminate this Agreement pursuant to Section 5.1. The termination of this Agreement pursuant to this Section 15.4 shall constitute a waiver of any and all rights and Claims either Party may have against the other, except as expressly provided above.

5.4 Limited License.

The City grants to Developer for use by Developer, and the Developer Representatives, which prior to Transfer to the Healthcare Developer pursuant to Section 2.2.3(b) shall include any proposed Healthcare Developer, a limited and revocable license to enter upon the Development Parcels for purposes of (a) conducting Developer's due diligence inspection and/or (b) obtaining data and making surveys and tests necessary to carry out this Agreement, provided that, prior to the effectiveness of such license, Developer shall: (i) deliver to the City written evidence that Developer has procured the insurance required under Section 11.1; (ii) give the City twenty-four (24) hours telephonic, electronic mail or written notice of any intended access which involves work on the Development Parcels or may result in any impairment of the use of the Property or any portion thereof or any adjacent property by any then-current owners, occupants, or contractors; (iii) access the Property in a safe manner; (iv) conduct no environmental testing, sampling, invasive testing, or boring without the written consent of the City; (v) allow no dangerous or hazardous condition to be created or caused on the Property; (vi) comply with all Governmental Requirements and obtain all permits required in connection with such access; and (vii) conduct inspections and testing during normal business hours and only after obtaining the City's prior consent, which shall not be unreasonably withheld. This limited license shall commence on the Effective Date, may be revoked by the City during the continuation of any Default by Developer, or upon termination of this Agreement by any Party, and shall be automatically revoked and terminated upon the earlier to occur of (a) a delivery or deemed delivery by Developer of a Diligence Termination Notice, (b) termination of this Agreement, (c) upon the Retail Property Outside Closing Date if the Retail Property Close of Escrow has not then occurred, and (d) as to the Healthcare Property, if the Retail Property Close of Escrow has previously occurred, upon the earlier of the Healthcare Property Outside Closing Date or the Healthcare Property Close of Escrow, provided that this limited license shall not be used for construction purposes, and a license meeting the requirements of Section 8.2.5 shall be required for construction of the Minimum Horizontal Improvements on the Healthcare Parcel prior to the Healthcare Property Close of Escrow.

5.5 Indemnity.

Developer, on behalf of itself and its successors and assigns, including Healthcare Developer, hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all Claims to the extent arising from or related to: (a) the acts and omissions of Developer and/or the Developer Representatives arising from or related to the presence, activities or work on or use of the Development Parcels or from the exercise of the license provided in Section 5.4 by Developer or the Development Representatives, including with respect to any inspections, surveys, tests, Investigations and studies carried out by Developer or the Developer Representatives on or adjacent to the Development Parcels, (b) entry onto the Development Parcels by Developer or the Developer Representatives in connection with this Agreement, and (c) bodily injury to or death of any person (including any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of Developer or any Developer's Representative, and in each case whether occurring prior to or following the Effective Date; provided that the foregoing indemnity shall not apply to the extent of (i) the gross negligence or willful misconduct of the City or any City Indemnified Party, (ii) Hazardous Materials existing on the Development

Parcels prior to Close of Escrow unless such Hazardous Materials condition is exacerbated by, or any Release caused by, negligent acts of Developer or any Developer's Representatives. Developer shall keep the Development Parcels free and clear of any mechanics' liens or materialmen's liens related to Developer's inspection and/or Investigation of the Property. The indemnification by Developer set forth in this Section 5.5 shall survive (A) each Close of Escrow and shall not be merged into any Quitclaim Deed, and (B) any termination of this Agreement prior to the occurrence of the Second Close of Escrow.

5.6 Review of Certain Records and Materials.

The City shall, within ten (10) Business Days of the Effective Date provide Developer with copies of all City-produced plans, reports, studies, investigations and other materials the City may have in its possession that are pertinent to the Property and/or development of the Project; provided that the City makes no representation, warranty or guaranty regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials. Developer shall also have the right to enter the City's offices to review files and materials, including the right to examine those books, records and files of the City relating to the environmental and other condition of the Property which the City determines in its sole discretion are not subject to attorney-client privilege or other privilege or disclosure rules. The City agrees to make all such books, records, and files available to Developer and Developer's attorneys, accountants, and other representatives at City Hall any time during business hours on Business Days upon reasonable notice from Developer.

5.7 Communications with City and Third Parties.

From and after the Effective Date, the Developer and the Developer Representatives communications with the City shall be directly with the City Manager, who shall be the administrator of this Agreement on behalf of the City, and such other employees, consultants, and attorneys of the City from time to time as the City Manager may designate. In addition, Developer shall have the right to communicate with staff of other public agencies; and with third parties to all agreements affecting the Property in connection with the Developer's proposed purchase of the Property, and Developer's development of the Project. The City staff shall have the right, but not the obligation, to attend and participate in any and all meetings with other public agencies, with regards to the Project. Upon request of the City, the Developer shall promptly provide the City with a copy of each material item of correspondence (including emails, letters, facsimiles, and any enclosures and attachments) sent to or received by the Developer from third parties in connection with entitlement, community, or governmental approval of the Project, provided, however, that Developer shall not be obligated to deliver any such materials that based upon advice of counsel are determined to be subject to attorney-client or other privilege.

6. Title; Survey.

6.1 Survey by Developer.

Prior to the end of the Due Diligence Period, Developer, at Developer's sole expense, shall have obtained a survey for the Property ("**Survey**") prepared by a licensed surveyor

("**Surveyor**"), which Survey shall be certified by the Surveyor to the City, Developer and the Title Company. The Survey shall depict: (a) the boundaries of each of the proposed Development Parcels (which boundaries shall be finalized pursuant to application by Developer for the Parcel Map), (b) the location of all existing improvements (if any), existing perimeter improvements (if any), and easements, roads, rights-of-way and encroachments located within twenty (20) feet of the boundary of the Development Parcels, (c) all other Permitted Exceptions susceptible to depiction on a map or survey identified by reference to the recording information applicable to the documents creating them, and (d) any portion of the Development Parcels lying within a flood hazard area.

6.2 Permitted Exceptions.

Developer, at Developer's sole cost and expense, has caused the Title Company to prepare and deliver to Developer and the City with respect to the Development Parcels the preliminary title reports attached as Attachment 4 and may cause the Title Company to issue additional preliminary title reports (collectively, the "**Preliminary Title Reports**") based upon which the Title Company may issue an extended American Land Title Association Owner's Policy for each Parcel (collectively, the "**ALTA Policy**") to Developer in the amount of the Base Purchase Price of the applicable Parcel and such additional amounts as Developer may request of Title Company. During the Due Diligence Period, Developer shall review the Preliminary Title Reports and the other relevant documents referenced below, and may object to matters set forth in the Preliminary Title Reports and request that the Title Company and/or the City remove from the Title Policy those exceptions to title disapproved by Developer in the Preliminary Title Reports. The "**Permitted Exceptions**" to title shall include the following: (a) as of the last day of the Due Diligence Period, all matters set forth on the Preliminary Title Reports, set forth on the Survey, and not otherwise deleted from the Preliminary Title Reports nor endorsed over by the Title Company; (b) the Other Agreements that are to be recorded pursuant to Section 7.5.5(b); and (c) all covenants, restrictions and encumbrances, liens, exceptions, leases, restrictions, deed restrictions and qualifications expressly set forth in or permitted or contemplated by this Agreement or the Other Agreements. Notwithstanding anything to the contrary in this Agreement, the City shall (x) remove from title all exceptions created by the City that are not Permitted Exceptions and (y) deliver the Property to Developer free and clear of all monetary liens other than (i) liens for real property taxes that are not yet delinquent and (ii) liens caused by or arising from or related to work performed by Developer or Healthcare Developer upon the Property.

6.3 Supplemental Title Reports.

If, after the end of the Due Diligence Period, the Title Company discloses additional matters that affect title to either Parcel, then within ten (10) calendar days after Developer's receipt of any report issued by the Title Company concerning the Property (a "**Supplemental Title Report**"), Developer shall provide the City a copy of such Supplemental Title Report and shall specify in writing Developer's disapproval of any item or exception shown on such Supplemental Title Report not previously included in the Preliminary Title Reports and that is not acceptable to Developer ("**Disapproved Exception**"), together with Developer's suggested cure thereof; provided, that Developer shall not have the right to disapprove any item or exception specifically consented to by Developer, including all exceptions arising pursuant to

this Agreement and all matters appearing on the Preliminary Title Report. If Developer designates a Disapproved Exception, the City shall use commercially reasonable efforts to remove the same if it was caused or permitted by the City subsequent to the Effective Date. If the City is not able to remove such Disapproved Exception (notwithstanding the use of such efforts), then the City may, subject to the last sentence of Section 6.2, elect not to cure such Disapproved Exception. Developer's exclusive remedy with respect to a Disapproved Exception shall be: (a) if such Disapproved Exception was caused or permitted by the City, then, to accept such Disapproved Exception and proceed to take title to the Property in the manner set forth in this Agreement and with a reduction in the Base Purchase Price applicable to such Parcel in an amount reasonable necessary (as determined by the City and Developer in their respective reasonable discretion) to compensate Developer for the cost to remove, or the diminution in the value of the Property caused by, the Disapproved Exceptions, provided that such reduction shall not exceed One Hundred Thousand Dollars ($100,000.00), or if otherwise, to accept such Disapproved Exception and proceed to take title to the Property in the manner set forth in this Agreement without reduction in the Base Purchase Price applicable to such Parcel, in each case, without cause of action hereunder against the City, or (b) to provide written notice to the City within five (5) calendar days after the City's election or deemed election, of Developer's election to terminate the applicable Escrow, in which case, (i) if the Retail Property Close of Escrow shall not have occurred prior to issuance of the relevant Supplemental Title Report, the Purchase Price Deposit, to the extent previously paid by Developer shall be refunded to Developer in accordance with Section 5.3 and this Agreement shall terminate or (ii) if the Retail Property Close of Escrow shall have occurred prior to issuance of a Supplemental Title Report for the Healthcare Parcel, then upon exercise by the Developer of its rights under this clause (b), this Agreement shall terminate only as to the Healthcare Parcel, and the Agreement shall remain in full force and effect with respect to the Parcel and Improvements conveyed to Developer. In the event Developer shall not have terminated the applicable Escrow under clause (b) of the preceding sentence, then all matters and exclusions or exceptions from title insurance coverage shown in such Supplemental Title Report which Developer shall have accepted (or been deemed to have accepted) pursuant to this Section 6.3 (other than those which the City caused or permitted or has agreed to cure as provided in this Section 6.3), together with all Permitted Exceptions described in Section 6.2 shall be deemed "**Permitted Exceptions**".

6.4 ALTA Policy; Endorsements.

It shall be a condition precedent to Developer's obligation to close Escrow that the Title Company issue the ALTA (Extended Coverage) Policy with policy amount equal to the Base Purchase Price for the Property being acquired and subject only to the Permitted Exceptions. Developer shall have the right, at its sole expense, to request and obtain additional ALTA coverage for the value of the development cost of the Project and any title endorsements as Developer deems necessary (the "**Developer Title Endorsements**"); provided that the issuance of such additional ALTA Coverage and the Developer Title Endorsements shall not delay any Close of Escrow and shall not be a condition precedent to any Close of Escrow. Developer shall pay for all costs attributable to (a) the ALTA Policy other than the premium attributed to so-called standard coverage in the amount of the Base Purchase Price for the Property being acquired, (b) the cost of all Developer Title Endorsements, and (c) the cost of a lender's policy of title insurance, if any.

7. **Close of Escrow.**

7.1 Time and Place of Close of Escrow.

7.1.1 **Healthcare Property Close of Escrow.**

(a) Provided that Developer elects to acquire the Option (as defined in Section 7.1.1(b) below), then, subject to the terms of Section 7.1.1(b) below, the Healthcare Property Close of Escrow shall take place on that date which is twenty (20) Business Days following the last to occur of the satisfaction of the Developer Healthcare Property Closing Conditions set forth in Sections 7.2.1(c) through (h) hereof and the City Healthcare Property Closing Conditions set forth in Section 7.2.2(c) through (l) hereof (or the waiver thereof by the applicable Party) (the "**Healthcare Property Closing Date**") but in no event prior to the Retail Property Close of Escrow nor later than sixty (60) days after the last day of the Option Term (as defined below) (as the same may be extended pursuant to Section 7.1.3, the "**Healthcare Property Outside Closing Date**"), which date shall not be subject to extension due to Force Majeure Delay. The Healthcare Property Close of Escrow shall be subject to the satisfaction (or waiver by the Party benefited by such condition) of all of the conditions set forth in Section 7.2, and shall take place at the offices of Escrow Holder, or at such other place as the City selects.

(b) If, by the Retail Property Close of Escrow, Developer has not entered into the HCD Agreements with a Healthcare Developer approved by the City in its sole discretion in accordance with this Agreement, to acquire the Healthcare Parcel and to assume the obligations of Healthcare Developer under this Agreement, or the City has not approved SN or Hoag as Healthcare Developer, or the Approved Healthcare Developer otherwise fails to consummate the acquisition of the Healthcare Property concurrently with the Retail Property Close of Escrow for any reason, then, Developer shall have the right to seek an alternate Healthcare Developer, the Healthcare Property Closing Date shall be postponed as set forth below, and provided that Developer delivers to the City the First Option Payment (as defined below) Developer shall have the right (but not the obligation) to acquire the Healthcare Property (the "**Option**") at any time prior to the first (1st) anniversary of the Retail Property Close of Escrow (the "**First Option Term**"). As consideration for the Option, Developer shall pay the City Two Hundred Fifty Thousand Dollars ($250,000.00) (the "**First Option Payment**"). If Developer does not exercise the Option during the First Option Term, then, provided that (i) to the satisfaction of the City in its sole discretion, (A) Developer is diligently working to identify and enter into an agreement with an alternate Healthcare Developer and (B) if Developer has identified an alternate Healthcare Developer, Developer is diligently working to obtain the City's approval of such alternate Healthcare Developer in accordance with this Agreement, and (ii) Developer delivers an additional Two Hundred Fifty Thousand Dollars ($250,000.00) to the City (the "**Second Option Payment**"), then, Developer shall have the right to exercise the Option at any time prior to the second (2nd) anniversary of the Retail Property Close of Escrow (the "**Second Option Term**" and collectively with the First Option Term, the "**Option Term**"). Both the First Option Payment and the Second Option Payment (collectively, the "**Healthcare Property Option Payment**") shall be credited against the Healthcare Property Purchase Price and shall be non-refundable to Developer except in the event of City's default or as otherwise set forth in the Agreement.

(c) If Developer does not deliver the First Option Payment to the City concurrently with the Retail Property Close of Escrow, then (1) the terms of this Agreement regarding Developer's acquisition of the Healthcare Parcel and the Healthcare Provisions shall be deemed terminated, and (2) the City shall be released from its obligation hereunder to sell the Healthcare Property to the Developer and thereafter the Healthcare Property shall not be encumbered by this Agreement; provided, however, that Developer shall continue to have the obligation to perform the Minimum Horizontal Improvements, provided that the Minimum Horizontal Improvements on the Healthcare Property shall be limited to the Healthcare Rough Grading and the Healthcare Perimeter Landscaping.

(d) During the Option Term, Developer may exercise the Option by providing the City with no less than sixty (60) days prior written notice of its election to acquire the Healthcare Property provided that the City has previously approved (1) the proposed Healthcare Developer as the Approved Healthcare Developer and (2) the Transfer to the Approved Healthcare Developer in accordance with this Agreement or that Developer concurrently with such notice provides to the City, for City approval, the documentation required pursuant to Section 2.2.3(b) and 4.6 for City approval of such proposed Healthcare Developer and of the terms of the Transfer to such Person. Developer's acquisition shall be in accordance with, and subject to, the terms of this Agreement.

7.1.2 **Retail Property Close of Escrow**. The Retail Property Close of Escrow shall take place on that date which is twenty (20) Business Days following the last to occur of the satisfaction of the Developer Retail Property Closing Conditions set forth in Sections 7.3.1(c) through (i) hereof and the City Retail Property Closing Conditions set forth in Section 7.3.2(c) through (h) hereof (or the waiver thereof by the applicable Party) (the "**Retail Property Closing Date**"), but in no event later than December 16, 2016 (as the same may be extended pursuant to Section 7.1.3, the "**Retail Property Outside Closing Date**"), which date shall not be subject to extension due to Force Majeure Delay. The Retail Property Close of Escrow shall be subject to the satisfaction (or waiver by the Party benefited by such condition) of all of the conditions set forth in Section 7.3, and shall take place at the offices of Escrow Holder, or at such other place that the City selects.

7.1.3 **Extension of Closing Dates; Termination**. If Developer intends to have the Retail Property Close of Escrow and the Healthcare Property Close of Escrow occur concurrently, then the Healthcare Property Closing Date and the Retail Property Closing Date (and the Healthcare Property and Retail Property Outside Closing Date(s)) may be each extended by Developer (a) for up to ninety (90) days if Developer is seeking a specific plan amendment for the development of either Property; or (b) upon mutual written agreement of the Parties; provided, that except through exercise of the Option as described in Section 7.1.1(b), in no event shall the Healthcare Property Outside Closing Date be extended beyond the earlier of the Retail Property Close of Escrow or the Retail Property Outside Closing Date. In the event that the Retail Property Close of Escrow does not occur on or prior to the Retail Property Outside Closing Date, then, subject to the provisions of Section 15 or any agreement by the Parties (each in its sole discretion) to extend the Retail Property Outside Closing Date, this Agreement shall terminate in its entirety as of the Retail Property Outside Closing Date. In the event that the Healthcare Property Close of Escrow does not occur on or prior to the Healthcare

Property Outside Closing Date, then, subject to the provisions of Section 15, this Agreement shall terminate as of the Healthcare Property Outside Closing Date solely as to the Healthcare Property, Healthcare Developer and Healthcare Project.

7.2 Conditions Precedent to Healthcare Property Close of Escrow.

7.2.1 **Developer Healthcare Property Closing Conditions.** Developer's obligation (and if the Healthcare Property Close of Escrow does not occur concurrently with the Retail Property Close of Escrow, the terms hereof shall be subject to Developer exercising the Option) (a) to purchase the Healthcare Property and (b) to complete all requirements for the Healthcare Property Close of Escrow is subject to and conditioned upon the satisfaction of, or Developer's express written waiver of, each of the following conditions to the Healthcare Property Close of Escrow ("**Developer Healthcare Property Closing Conditions**") on or before the Healthcare Property Closing Date.

(a) Document Deliveries. Not later than two (2) Business Days prior to the Healthcare Property Close of Escrow, the City shall have executed and delivered to Escrow Holder the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion:

(i) if not previously Recorded, the Memorandum of DDA, acknowledged and in Recordable form;

(ii) if not previously Recorded, the Special Restrictions, acknowledged and in Recordable form;

(iii) a Quitclaim Deed for the Healthcare Property, acknowledged and in Recordable form;

(iv) any instrument requested by a Party and agreed upon by the other Parties, to confirm and/or re-grant the easements, conditions, covenants and restrictions set forth in Slope Parcel Easement and Landscape Installation and Maintenance Agreement with respect to the Healthcare Property, as further described therein and in Section 12.4 of this Agreement ("**Slope Parcel Agreement Confirmation**"), acknowledged and in Recordable form;

(v) if not previously Recorded, the CC&Rs, acknowledged and in Recordable form;

(vi) a federal "FIRPTA" Affidavit executed by the City;

(vii) California's Real Estate Withholding Exemption Certificate Form 593-C;

(viii) a reaffirmation of the City's representations and warranties set forth in Sections 3.3 and 18.12, in the form attached hereto as Attachment 17, which

reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of the Healthcare Property Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to Developer or the Healthcare Property, as determined by Developer in Developer's reasonable business judgment, constitute the non-fulfillment of the condition set forth in Section 7.2.1(h), unless such matter is cured at least one (1) Business Day prior to the Healthcare Property Close of Escrow. If, despite changes or other matters described in the City's reaffirmation certificate, the Healthcare Property Close of Escrow occurs, the City's representations and warranties set forth in Sections 3.3 and 18.12 of this Agreement shall be deemed to have been modified by all statements made in such certificate;

(ix) City consent to the HCD Assignment between Developer and Healthcare Developer, acknowledged and in Recordable form;

(x) such proof of the City's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of the City to act for and/or bind the City as may be reasonably required by Title Company and/or Developer; and

(xi) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(b) Title Policy. Subject to Section 6.3, the Title Company shall be unconditionally prepared to issue the ALTA Policy to Developer for the Healthcare Property in the amount of the Healthcare Property Purchase Price and subject only to the Permitted Exceptions.

(c) Pre-Existing Obligations. Except as approved by Developer in writing or constituting a Permitted Exception, there shall exist no leases, contracts or rights of occupancy or other agreements or contracts with respect to the Healthcare Property (but excluding the provisions of the Federal Deed and the Memorandum of Agreement) entered into by the City that shall survive the Healthcare Property Close of Escrow.

(d) Applicable Approvals; Parcel Map. The Applicable Approvals shall have been issued and shall not have expired, the Entitlement Approval Date shall have occurred and the Parcel Map shall have been recorded.

(e) Grading and Building Permits. Provided that Developer has submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough grading permits in accordance with the Approved Plans for the Grading Work and (b) all building permits for the Minimum Healthcare Improvements, then, and only then, as a condition to Close of Escrow, City shall be prepared to issue such permits, subject only to the payment of

applicable fees required in connection with the issuance of such permits and to Healthcare Developer acquiring title to the Healthcare Property.

(f) No Casualty or Condemnation. There shall not have occurred any material casualty or condemnation with respect to the Healthcare Property and no material condemnation shall be threatened with respect to the Healthcare Property.

(g) No Litigation. No litigation shall be threatened or pending which seeks to prevent the development or operation of the Healthcare Project, or any part thereof, according to the terms of this Agreement and the Other Agreements.

(h) . Representations and Warranties. Subject to Section 7.2.1(a)(viii), the City's representations and warranties set forth in Sections 3.3 and 18.12 shall be true and correct as of the Healthcare Property Close of Escrow.

(i) Default. The City shall not be in Material Default of any covenant or agreement to be performed by the City under this Agreement.

7.2.2 **City Closing Conditions**. The City's obligation to deliver the Quitclaim Deed for the Healthcare Property and to complete all requirements for the Healthcare Property Close of Escrow is subject to and conditioned upon the satisfaction of, or the City's written waiver of, each of the following conditions to the Healthcare Property Close of Escrow ("**City Healthcare Property Closing Conditions**") on or before the Healthcare Property Closing Date.

(a) Payments. Not later than one (1) Business Day prior to the Healthcare Property Close of Escrow, Developer shall deliver to Escrow:

(i) the Healthcare Property Closing Payment;

(ii) if not previously paid at the Retail Property Close of Escrow, the $50,000 marketing fee described in Section 8.7.4; and

(iii) any other costs explicitly set forth in this Agreement as costs to be paid by Developer at the Healthcare Property Close of Escrow.

(b) Document Deliveries. Developer's execution and delivery to Escrow Holder of the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion, which documents Developer shall deliver to the Escrow not later than two (2) Business Days prior to the Healthcare Property Close of Escrow:

(i) if not previously Recorded, the Memorandum of DDA, acknowledged and in Recordable form;

(ii) if not previously Recorded, acceptance of the Special Restrictions, acknowledged and in Recordable form;

(iii) acceptance of the Quitclaim Deed for the Healthcare Property, acknowledged and in Recordable form;

(iv) if requested by any Party, the Slope Parcel Agreement Confirmation, acknowledged and in Recordable form;

(v) if not previously Recorded, the CC&Rs, acknowledged and in Recordable form;

(vi) if not previously delivered, a REG Guaranty executed by REG in substantially the form and substance of that attached hereto as Attachment 14A or as otherwise agreed by REG and the City, each in its sole discretion;

(vii) an HCD Guaranty executed by the Healthcare Guarantor(s) in substantially the form and substance of that attached hereto as Attachment 14B or as otherwise agreed by the City, HCD Developer and the Healthcare Guarantor(s), each in its sole discretion;

(viii) a reaffirmation of Developer's representations and warranties set forth in Sections 3.1 and 18.12 in the form attached hereto as Attachment 18A, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Developer be liable to the City for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Healthcare Property Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Developer to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to the City, as determined by the City in the City's reasonable business judgment, constitute the non-fulfillment of the condition set forth in Section 7.2.2(j), unless such matter is cured at least one (1) Business Day prior to the Healthcare Property Close of Escrow. If, despite changes or other matters described in Developer's reaffirmation certificate, the Healthcare Property Close of Escrow occurs, Developer's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate;

(ix) a declaration certified by an officer of REG in the form of the Updated REG Certificate and further certifying that the Original REG Certificate provided by the officer of REG pursuant to Section 4.6.3(a)(iii) is true and correct in all material respects as of the Healthcare Property Close of Escrow, which declaration shall be in the form attached hereto as Attachment 13A;

(x) a Healthcare Guarantor Certificate, which declaration shall be in the form attached hereto as Attachment 13B;

(xi) a declaration certified by an officer of Developer in the form attached hereto as Attachment 18A that the documentation submitted by Developer to the City pursuant to Section 4.6 prior to the Effective Date is true and correct in all material respects as of the Healthcare Property Close of Escrow together with certificates of good standing of

Developer, issued by the California Secretary of State within thirty (30) calendar days of the Closing Date;

(xii) the HCD Assignment between Developer and Healthcare Developer and executed by each, acknowledged and in Recordable form;

(xiii) a declaration certified by an officer of Healthcare Developer in the form attached hereto as Attachment 18B (or, if previously delivered, an update thereto in the form of Attachment 18A) and attaching the required information, which if comprised of certificates of good standing shall have been issued within thirty (30) calendar days of the Closing Date and if requested by the City, a declaration certified by an officer of the Controlling Person of Healthcare Developer in the form attached hereto as Attachment 13C (or if either of such declarations has previously been delivered, a declaration that the documentation submitted by Healthcare Developer or such Controlling Person to the City pursuant to such prior declaration is true and correct in all material respects as of the Healthcare Property Close of Escrow together with certificates of good standing of Healthcare Developer or Controlling Person, as applicable, issued by the California Secretary of State within thirty (30) calendar days of the Closing Date);

(xiv) with respect to a Construction Loan for the Other Healthcare Parcels or any portion thereof that is a Permitted Mortgage with a Permitted Mortgagee as set forth in the Healthcare Financing Plan, a Healthcare Subordination Agreement in substantially the form and substance attached hereto as Attachment 23, or as otherwise agreed by the Parties in their sole discretion, executed and acknowledged by Healthcare Developer and Permitted Mortgagee and in Recordable Form;

(xv) such proof of Developer's and Healthcare Developer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Developer to act for and/or bind Developer as may be reasonably required by Title Company and/or the City; and

(xvi) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(c) Parcel Map and Construction Bond. The Parcel Map shall be Recorded, and if not previously delivered in connection with such Recording or required pursuant to then effective subdivision improvement agreement with respect to the Parcel Map, a Construction Bond with respect to the Minimum Horizontal Improvements and the Retail Horizontal Improvements insuring the Completion of such Horizontal Improvements shall be delivered.

(d) Applicable Approvals. The Applicable Approvals shall have been issued and shall not have expired, the Entitlement Approval Date shall have occurred and the Parcel Map shall have been recorded.

(e) HCD Agreements and HCD Assignment. Developer and Healthcare Developer shall have fully executed and delivered the HCD Agreements and HCD

Assignment each in form and substance reviewed and approved by the City pursuant to Section 2.2.3(b) and with no contingencies to completion of the Transfer described therein other than the occurrence of the Healthcare Property Close of Escrow and Developer and each and every Approved Healthcare Developer shall (i) be prepared immediately upon the Healthcare Property Close of Escrow to close escrow upon the portion of the Healthcare Property that such Approved Healthcare Developer has been approved by the City to acquire and (ii) shall have delivered written notice to the City that all closing conditions with respect to such closing have been satisfied or waived by the applicable parties, including delivery to Escrow Holder of all documents and funds required to achieve such closing and there remain no contingencies to such Close of Escrow other than the acquisition of the Healthcare Property by Developer from the City.

(f) Grading and Building Permits. Developer shall have submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough grading permits in accordance with the Approved Plans for the Grading Work and (b) all building permits for the Minimum Healthcare Improvements, and City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Healthcare Developer acquiring title to the Healthcare Property.

(g) Insurance. Developer shall have provided to the City evidence of insurance as and to the extent required by Section 11.

(h) Financial Capability. Developer and Healthcare Developer shall have satisfied the conditions precedent to the Healthcare Property Close of Escrow set forth in Section 4.6 and shall be in compliance with the requirements of Section 8.5.2, and there shall have been (i) no material adverse changes (as determined by the City in accordance with Section 4.6 of this Agreement) in the financial condition of the Healthcare Developer or the Healthcare Guarantor since the City approved the same; (ii) no change in ownership of Healthcare Developer or Healthcare Guarantor since the City approved the same, or if there are changes, then except as permitted by Section 2.2.2, such changes shall have been approved by the City in accordance with Section 2.2.3 and (iii) no change to the form and substance of the HCD Agreements, including, if applicable, the SN PSA without the prior written consent of the City thereto.

(i) Construction Loan Closing. The Permitted Mortgagee for the Construction Loan and Healthcare Developer shall be prepared to close the Construction Loan substantially concurrently with the Healthcare Property Close of Escrow, and Developer shall have provided to the City written verification from Escrow confirming that the deed of trust to be recorded in conjunction with the closing of the Construction Loan, if any, has been fully executed and acknowledged and in Recordable form and deposited into Escrow by the Permitted Mortgagee for the Construction Loan, substantially in the amount set forth in the Financing Plan approved by the City pursuant to Section 4.6.4.

(j) Representations and Warranties. Subject to Section 7.2.2(b)(viii), Healthcare Developer's representations and warranties set forth in the Healthcare Developer Certificate in Attachment 18B and in the HCD Assignment and

Developer's representations and warranties set forth in Sections 3.1 and 18.12 shall be true and correct as of the Healthcare Property Close of Escrow.

(k) Approval of Healthcare Developer. The City shall have approved the proposed Healthcare Developer as an Approved Healthcare Developer in accordance with Sections 2.2.3(b) and 4.6 and shall have approved the Healthcare Financing Plan, as the same may have been updated from time to time, in accordance with Section 4.6.4.

(l) Retail Property Close of Escrow. The Retail Property Close of Escrow shall have occurred prior to or shall take place concurrently with the Healthcare Property Close of Escrow.

(m) Default. Developer shall not be in Material Default of any material covenant or agreement to be performed by Developer under this Agreement.

7.3 Conditions Precedent to Retail Property Close of Escrow.

7.3.1 **Developer Retail Property Closing Conditions**. Developer's obligation (a) to purchase the Retail Property and (b) to complete all requirements for the Retail Property Close of Escrow is subject to and conditioned upon the satisfaction of, or Developer's express written waiver of, each of the following conditions to the Retail Property Close of Escrow ("**Developer Retail Property Closing Conditions**") on or before the Retail Property Closing Date.

(a) Document Deliveries. Not later than two (2) Business Days prior to the Retail Property Close of Escrow, the City shall have executed and delivered to Escrow Holder the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless otherwise agreed by the Parties, each in its sole discretion:

(i) if not previously recorded, the Memorandum of DDA, acknowledged and in Recordable form;

(ii) if not previously Recorded, the Special Restrictions, acknowledged and in Recordable form;

(iii) a Quitclaim Deed for the Retail Property, acknowledged and in Recordable form;

(iv) the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, acknowledged and in Recordable form;

(v) if not previously recorded, the CC&Rs, acknowledged and in Recordable form;

(vi) a federal "FIRPTA" Affidavit executed by the City;

(vii) California's Real Estate Withholding Exemption Certificate Form 593-C;

(viii) a reaffirmation of the City's representations and warranties set forth in Sections 3.3 and 18.12, in the form attached hereto as Attachment 17, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall the City be liable to Developer for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of the Retail Property Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of the City to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to Developer or the Retail Property, as determined by Developer in Developer's reasonable business judgment, constitute the non-fulfillment of the condition set forth in Section 7.3.1(i), unless such matter is cured at least one (1) Business Day prior to the Retail Property Close of Escrow. If, despite changes or other matters described in the City's reaffirmation certificate, the Retail Property Close of Escrow occurs, the City's representations and warranties set forth in Sections 3.3 and 18.12 of this Agreement shall be deemed to have been modified by all statements made in such certificate; and

(ix) such proof of the City's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of the City to act for and/or bind the City as may be reasonably required by Title Company and/or Developer;

(x) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(b) Title Policy. Subject to Section 6.3, the Title Company shall be unconditionally prepared to issue the ALTA Policy to Developer in the amount of the Retail Property Base Purchase Price for the Retail Property being acquired and subject only to the Permitted Exceptions.

(c) Pre-Existing Obligations. Except as approved by Developer in writing or constituting a Permitted Exception, there shall exist no leases, contracts or rights of occupancy or other agreements or contracts with respect to the Property (but excluding the provisions of the Federal Deed and the Memorandum of Agreement) entered into by the City that shall survive the Retail Property Close of Escrow.

(d) Applicable Approvals. The Applicable Approvals shall have been issued and shall not have expired, the Entitlement Approval Date shall have occurred and the Parcel Map shall have been recorded.

(e) Grading and Building Permits. Provided that Developer has submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough grading permits in accordance with the Approved Plans for the Grading Work and (b) all

building permits for the Minimum Retail Improvements, then, and only then, as a condition to Close of Escrow, City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Developer acquiring title to the Retail Property.

(f) Leases. Developer shall have entered into fully executed Leases or sale agreements for the Minimum Retail Vertical Improvements.

(g) No Casualty or Condemnation. There shall not have occurred any material casualty or condemnation with respect to the Retail Property and no material condemnation shall be threatened with respect to the Retail Property.

(h) No Litigation. No litigation shall be threatened or pending which seeks to prevent the development or operation of the Retail Project, or any part thereof, according to the terms of this Agreement and the Other Agreements.

(i) Representations and Warranties. Subject to Section 7.3.1(a)(viii), the City's representations and warranties set forth in Sections 3.3 and 18.12 shall be true and correct as of the Retail Property Close of Escrow.

(j) Default. The City shall not be in Default of any covenant or agreement to be performed by the City under this Agreement.

7.3.2 **City Closing Conditions**. The City's obligation to deliver the Quitclaim Deed for the Retail Property and to complete all requirements for the Retail Property Close of Escrow is subject to and conditioned upon the satisfaction of, or the City's written waiver of, each of the following conditions to the Retail Property Close of Escrow ("**City Retail Property Closing Conditions**") on or before the Retail Property Closing Date:

(a) Developer Closing Payment. Not later than one (1) Business Day prior to the Retail Property Close of Escrow, Developer shall deliver to Escrow:

(i) the Retail Property Closing Payment;

(ii) if the Healthcare Property Close of Escrow is not taking place concurrently with the Retail Property Close of Escrow, the Healthcare Property Option Payment;

(iii) if not previously paid at the Healthcare Property Close of Escrow, the $50,000 marketing fee described in Section 8.7.4; and

(iv) any other costs explicitly set forth in this Agreement as costs to be paid by Developer at such Close of Escrow.

(b) Document Deliveries. Developer's execution and delivery to Escrow Holder of the following documents, in each case (where applicable) substantially in the form and substance of the instruments attached as Attachments to this Agreement, unless

otherwise agreed by the Parties, each in its sole discretion, which documents Developer shall deliver to the Escrow not later than two (2) Business Days prior to the Retail Property Close of Escrow:

(i) if not previously Recorded, the Memorandum of DDA, acknowledged and in Recordable form;

(ii) if not previously Recorded, acceptance of the Special Restrictions, acknowledged and in Recordable form;

(iii) acceptance of the Quitclaim Deed for the Retail Property, acknowledged and in Recordable form;

(iv) if not previously Recorded, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, acknowledged and in Recordable form;

(v) if not previously Recorded, the CC&Rs, acknowledged and in Recordable form;

(vi) if not previously delivered, a REG Guaranty executed by REG in substantially the form and substance of that attached hereto as Attachment 14A or as otherwise agreed by REG and the City, each in its sole discretion;

(vii) a reaffirmation of Developer's representations and warranties set forth in Sections 3.1 and 18.12 in the form attached hereto as Attachment 18A, which reaffirmation shall identify any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Developer be liable to the City for, or be deemed to be in Default under this Agreement by reason of, any breach of representation or warranty which results from any change that (A) occurs between the Effective Date and the date of Retail Property Close of Escrow, and (B) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Developer to prevent. The occurrence of a change in a representation and warranty shall, if materially adverse to the City, as determined by the City in the City's reasonable business judgment, constitute the non-fulfillment of the condition set forth in Section 7.3.2(h), unless such matter is cured at least one (1) Business Day prior to the Retail Property Close of Escrow. If, despite changes or other matters described in Developer's reaffirmation certificate, the Retail Property Close of Escrow occurs, Developer's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate;

(viii) a declaration certified by an officer of REG in the form of the Updated REG Certificate and further certifying that the Original REG Certificate provided by the officer of REG pursuant to Section 4.6.3(a)(iii) is true and correct in all material respects as of the Retail Property Close of Escrow, which declaration shall be in the form attached hereto as Attachment 13A;

(ix) a declaration certified by an officer of Developer in the form attached hereto as Attachment 18A that the documentation submitted by Developer to the City pursuant to Section 4.6.8 prior to the Effective Date is true and correct in all material

respects as of the Retail Property Close of Escrow together with certificates of good standing of Developer, issued by the California Secretary of State within thirty (30) calendar days of the Closing Date.

(x) such proof of Developer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Developer to act for and/or bind Developer as may be reasonably required by Title Company and/or the City; and

(xi) such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated in this Agreement.

(c) Parcel Map and Construction Bond. The Parcel Map shall be Recorded, and if not previously delivered in connection with such Recording or required pursuant to then effective subdivision improvement agreement with respect to the Parcel Map, a Construction Bond with respect to the Minimum Horizontal Improvements and the Retail Horizontal Improvements insuring the Completion of such Horizontal Improvements.

(d) Applicable Approvals. The Applicable Approvals shall have been issued and shall not have expired, the Entitlement Approval Date shall have occurred.

(e) Grading and Building Permits. Developer shall have submitted complete applications (i.e., meeting all City requirements for issuance) for (a) rough grading permits in accordance with the Approved Plans for the Grading Work and (b) all building permits for the Minimum Retail Improvements, and City shall be prepared to issue such permits, subject only to the payment of applicable fees required in connection with the issuance of such permits and to Developer acquiring title to the Retail Property.

(f) Leases. Developer shall have entered into fully executed Leases or sale agreements for the Minimum Retail Vertical Improvements.

(g) Financial Capability. Developer shall have satisfied the conditions precedent to Retail Property Close of Escrow set forth in Section 4.6 and shall be in compliance with the requirements of Section 8.5.2 and there shall have been (i) no material adverse changes (as determined by the City in accordance with Section 4.6 of this Agreement) in the financial condition of the Developer, REG (or other Retail Project guarantor, if applicable) since the City approved the same; (ii) no change in ownership of Developer or the Retail Project guarantor since the City approved the same, or if there are changes, then except as permitted by Section 2.2.2, such changes shall have been approved by the City in accordance with Section 2.2.3.

(h) Representations and Warranties. Subject to Section 7.3.2(b)(vii), Developer's representations and warranties set forth in Sections 3.1 and 18.12 shall be true and correct as of the Retail Property Close of Escrow.

(i) Default. Developer shall not be in Default of any material covenant or agreement to be performed by Developer under this Agreement.

7.4 Additional Closing Requirements.

In addition to the provisions of Sections 7.2 and 7.3, upon each Close of Escrow the following shall occur:

(a) **Closing Cost Statement**. Escrow Holder shall deliver at least seven (7) Business Days prior to each Close of Escrow a statement of costs to each Party and at least two (2) Business Days prior to each Close of Escrow each of the Parties shall approve such statement as being consistent with the provisions of Section 7.5 below.

(b) Closing Certificate. Each Party shall submit to Escrow Holder a certificate stating that all applicable Closing Conditions for its benefit have been satisfied or waived.

7.5 Procedures for Conveyance.

7.5.1 **Costs and Expenses**. The costs and expenses of each Close of Escrow shall be allocated as follows:

(a) City's Costs. The City shall pay (i) the portion of the premium for the ALTA Policy attributable to the so-called standard owner's policy coverage portion thereof in the amount of the Base Purchase Price for the Property being acquired; (ii) one-half (1/2) of all Escrow fees and costs; (iii) all documentary transfer taxes, if any; and (iv) the City's share of prorations, if any.

(b) Developer's Costs. Developer shall pay (i) the entire cost of any extended coverage in excess of the premium for the standard CLTA coverage in the amount of the Base Purchase Price for the Property being acquired, any other title policy and any Developer Title Endorsements, (ii) the entire cost of the Survey and any additional land surveys obtained by Developer in connection with the foregoing; (iii) document recording charges for the Special Restrictions, the Quitclaim Deed, the Memorandum of DDA, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, the Slope Parcel Agreement Confirmation, the CC&Rs, the Healthcare Subordination Agreement, if applicable, and all other Recorded documents; (iv) one-half (1/2) of all Escrow fees and costs; and (v) Developer's share of prorations. Developer shall pay the fees of all consultants and employees (including lawyers and environmental, engineering and land use consultants) engaged by it.

(c) Other Costs. All costs and expenses related to each Close of Escrow and the transfer of the Property to Developer not otherwise allocated in this Agreement shall be allocated between the Parties in accordance with the customary practice in Orange County, California.

7.5.2 **Possession**. The City shall deliver to Developer possession of the Healthcare Property at the Healthcare Property Close of Escrow and the Retail Property at the Retail Property Close of Escrow.

7.5.3 **Deliveries to Developer Upon Close of Escrow**. The City agrees to deliver to Developer, on or prior to each Close of Escrow, outside of Escrow, the following items:

(a) Records and Plans. To the extent in the City's possession, originals or copies of those records and plans with respect to the Property conveyed that will affect such Property after the Close of Escrow.

(b) Licenses and Permits. To the extent in the City's possession, originals or copies of all licenses and permits affecting the Property conveyed.

7.5.4 **Prorations**.

(a) General. Rentals, revenues and other income, if any, from the Property conveyed shall be prorated on a cash basis as of 11:59 P.M. Pacific Time on the day preceding each Close of Escrow. Tax payments shall be prorated in accordance with Section 7.5.4(b).

(b) Taxes. Developer shall be responsible for all taxes, assessments, fees and charges imposed by any Governmental Authority with respect to the Property conveyed and all existing and future improvements thereon from and after each Close of Escrow. If, after any Close of Escrow, any real estate taxes or possessory interest taxes are assessed against any conveyed parcel pertaining to the period prior to such Close of Escrow, the City agrees to contact the applicable taxing authority and seek recognition and enforcement of its tax exemption. The provisions of this clause (b) shall survive each Close of Escrow and shall not merge into any Quitclaim Deed.

(c) Method of Proration. All prorations shall be made in accordance with customary practice in Orange County, except as otherwise expressly provided in this Agreement. Developer and the City agree to cause a schedule of prorations to be prepared prior to each Close of Escrow. Such prorations, if and to the extent known and agreed upon as of each Close of Escrow, shall be paid by Developer to the City (if the prorations result in a net credit to the City) or by the City to Developer (if the prorations result in a net credit to Developer) by increasing or reducing the cash to be paid by Developer at each Close of Escrow. Any such prorations not determined or not agreed upon as of each Close of Escrow shall be paid by Developer to the City, or by the City to Developer, as the case may be, in cash as soon as practicable following each Close of Escrow. A copy of the schedule of prorations as agreed upon by Developer and the City shall be delivered to Escrow Holder at least three (3) Business Days prior to each Close of Escrow. All prorations provided for in this clause (c) shall be on an "actual day" basis and a three hundred sixty-five (365) day year.

7.5.5 **Disbursements and Other Actions by Escrow Holder**. At each Close of Escrow and subject to the satisfaction or waiver by the benefited party of the applicable Closing Conditions to such Close of Escrow described in Sections 7.2 and 7.3, Escrow Holder shall promptly undertake all of the following in the manner indicated below:

(a) Funds. Debit or credit all matters addressed in Section 7.5.1 and prorate all matters addressed in Section 7.5.4 and disburse to the City the Base Purchase Price for the Property being acquired (as adjusted by the foregoing debits, credits and prorations) and all other sums comprising the Retail Property Closing Payment at the Retail Property Close of Escrow and the Healthcare Property Closing Payment at the Healthcare Property Close of Escrow as set forth in the Escrow closing statement approved by the Parties.

(b) Recording. Cause to be Recorded, in the following order: (i) at the Retail Property Close of Escrow, the Memorandum of DDA, the Special Restrictions, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement (which shall be Recorded against all of the Development Parcels and the Slope Parcel and Landscape Areas described therein) and the CC&Rs, which shall be Recorded against all of the Development Parcels, and (ii) **thereafter** (A) at the Healthcare Property Close of Escrow, the Special Restrictions, the Healthcare Property Quitclaim Deed, the Slope Parcel Agreement Confirmation, if applicable, and, if applicable, the HCD Assignment and the Healthcare Subordination Agreement, which shall be Recorded against the Healthcare Parcel only and (B) at the Retail Property Close of Escrow, the Retail Property Quitclaim Deed, which shall be Recorded against the Retail Parcel only and in each case, thereafter, any other documents that Developer and the City may mutually direct, or that may be required by the terms of this Agreement to be Recorded, obtain conformed copies thereof and distribute same to Developer and the City.

(c) Title Policy. Direct the Title Company to issue the ALTA Policy to Developer in the amount of the Base Purchase Price for Property being conveyed and subject only to the Permitted Exceptions. Concurrently with the issuance of the ALTA Policy, the Title Company shall provide the Developer Title Endorsements, provided that the issuance of such Developer Title Endorsements shall not be a condition to any Close of Escrow except for those endorsements that the City agreed to obtain in order to cure any Disapproved Exceptions or Survey matters.

(d) Delivery of Documents to Developer and City. Deliver to each Party original counterparts (and conformed copies, if applicable) of all then-Recorded documents, the FIRPTA Affidavit, the California Form 593-W and any other documents (or copies thereof) deposited into Escrow by Developer or the City pursuant hereto, and deliver to the Parties a certified copy of their respective Escrow closing statements.

(e) Other Actions. Take such other actions as the Parties direct pursuant to mutually executed supplemental Escrow instructions.

7.5.6 **Notice**. All communications from the Escrow Holder shall be directed to the addresses and in the manner established in Section 18.6 for notices, demands and communications between the Parties.

8. Development of the Property and Additional Covenants of Developer and City.

8.1 Scope of Development.

8.1.1 **Requirement to Develop the Project**. The Scope of Development attached to this Agreement as Attachment 8 sets forth the overall conceptual

plan for the Project and development of the Development Parcels, including design, development, and construction of the Improvements as may be required by the Entitlements and Development Permits. The Project shall be designed and constructed in a manner consistent with the Scope of Development, the Entitlements, the Site Plan attached as Attachment 3 (as the same may be modified with approval of the City Manager in his or her Proprietary Capacity and otherwise in compliance with the City Code), the Approved Plans and all Governmental Requirements, as further described below. The Parties acknowledge that the Scope of Development depicts one possible plan for development, and that Developer shall not be obligated to construct all of the improvements included within the Scope of Development, provided that, without limiting any other requirement of the Schedule of Performance: (a) Healthcare Developer shall be obligated to construct and Complete the Minimum Healthcare Improvements within the time periods set forth in the Healthcare Schedule of Performance, and (b) Developer shall be obligated within the time periods for performance set forth in the Retail Schedule of Performance: (i) to construct and Complete the Minimum Horizontal Improvements and the Minimum Retail Improvements and (ii) to use commercially reasonable efforts to attract new tenants, and upon execution of commitments therefor, shall be obligated to promptly commence, diligently pursue to Completion and Complete construction of additional Retail Vertical Improvements (up to 90,000 square feet of leasable area) and use commercially reasonable efforts to cause occupants of such Improvements to covenant to fully stock and open for business within the leased space for one (1) calendar day. Until the Recording of a Certificate of Compliance as to the applicable Parcel, no Person shall be permitted or authorized to undertake the construction of any Vertical Improvements on the Development Parcels or any portion thereof unless such Person is: (i) the Initial Developer, (ii) a Permitted Transferee; (iii) an End User, pursuant to a Transfer approved by the City to the extent the City has the right to approve the same pursuant to this Agreement, and if such End User is required by this Agreement to enter into a City Non-Disturbance and Attornment Agreement, such End User shall have satisfied such obligation; or (iv) a Person approved by the City as a Transferee pursuant to Section 2.2.3 and otherwise meeting the requirements of Section 2.2.3, including assumption in writing of all obligations of Developer under this Agreement and the Other Agreements pursuant to an Assignment; or in the case of a Healthcare Developer, including assumption in writing all obligations of Developer under this Agreement and the Other Agreements only with respect to the Healthcare Project, the Healthcare Property and the Improvements existing or to be constructed thereon pursuant to an HCD Assignment. The foregoing restriction on construction of improvements does not apply to improvements or tenant improvements constructed in a Leasable Space.

8.1.2 **Control of Site Development**. Developer shall have control over the design and layout of the Horizontal Improvements and the Vertical Improvements (including height, shape and location of the Vertical Improvements and special landscaping and art features) and over the special uses to be incorporated therein, subject to (a) the Approved Plans, Development Permits and Entitlements, including any conditional use permit necessitated by particular proposed uses or design features and (b) the design approval provisions set forth in Section 8.4 for the benefit of the City, which are undertaken by the City in its Proprietary Capacity.

8.1.3 **Project Development Costs**. Developer hereby agrees that all costs associated with planning, designing and constructing the Project, preparing the Property and constructing all Improvements thereon including all hard costs, soft costs, the cost of services, fees, assessments, exactions, dedications, cost overruns, profit, overhead, consultants' fees, legal fees, wages required to be paid to any person employed by Developer, any Transferee, contractor or subcontractor, including the costs of the Project Fair Share Contribution and Tax B (collectively, the "**Development Costs**"), shall be the responsibility of Developer without any cost or liability to the City.

8.1.4 **Compliance with Governmental Requirements and Other Requirements**. The Project shall be consistent with the development concept set forth in the Scope of Development and subject to obtaining the Entitlements, shall be developed and maintained in accordance with this Agreement and all Governmental Requirements of the City, the Specific Plan, the Entitlements, the Approved Plans, the Development Permits, the Memorandum of Agreement and the Federal Deed.

8.1.5 **Construction of Specific Project Components**.

(a) Horizontal Improvements. Developer acknowledges and agrees that it shall be responsible for design and construction of certain infrastructure to support the development of the Project to the extent described in the Scope of Development attached to this Agreement as Attachment 8 and in the depiction of Horizontal Improvements attached to this Agreement as Attachment 9 and as otherwise required by the Approved Plans, the Entitlements, the Development Permits, all Governmental Requirements and all requirements of private utility purveyors. The Horizontal Improvements shall be commenced and diligently prosecuted Completion in accordance with Schedule of Performance as further described in Section 8.2.1. Except as contemplated otherwise by the Schedule of Performance, substantial completion of the Minimum Horizontal Improvements shall be a condition precedent to commencement of construction by Developer of any Vertical Improvements on the Development Parcels.

(b) Vertical Improvements. Following the Retail Property Close of Escrow, Developer shall construct or cause the construction of the Minimum Retail Vertical Improvements and following the Healthcare Property Close of Escrow, Healthcare Developer shall construct or cause the construction of the Minimum Healthcare Vertical Improvements, in each case, in accordance with the respective Schedule of Performance, the Scope of Development, the Approved Plans or other plans and specifications prepared by Developer and approved by the City, the Entitlements, the Development Permits and all other Governmental Requirements.

8.2 Timing and Conditions of Project Development.

8.2.1 **Schedule of Performance**. The Schedule of Performance attached as Attachment 7 sets forth the schedule for submissions, approvals and actions, including the design and development of the Project and construction of the Improvements. The Parties acknowledge and agree that, subject to Section 18.7, time is of the essence with respect to the dates set forth in the Schedule of Performance. Accordingly, subject to Force Majeure Delay, following conveyance of any portion of the Property by the City,

Developer shall promptly begin and thereafter diligently prosecute to completion within the time specified in the Schedule of Performance all steps required by the Schedule of Performance applicable to the Property so acquired, including design, construction and development of the Improvements. Without limiting the generality of the foregoing:

(a) Developer shall, following the Retail Property Close of Escrow, commence, or cause commencement of, construction and Complete of the Minimum Horizontal Improvements, the Retail Horizontal Improvements and the Minimum Retail Vertical Improvements; provided that: (i) until such time as the Healthcare Property Close of Escrow occurs, the scope of the Minimum Horizontal Improvements to be performed by Developer on the Healthcare Parcel shall be limited to the Healthcare Rough Grading and the Healthcare Perimeter Landscaping; (ii) such limitation shall only apply to the Minimum Horizontal Improvements on the Healthcare Parcel and shall not limit Developer's other obligations to carry out and Complete the Minimum Horizontal Improvements on the Retail Parcel; and (iii) upon acquisition by Developer of the Healthcare Property, Developer shall promptly commence and complete the entirety of the remaining Minimum Horizontal Improvements applicable to the Healthcare Parcel; and

(b) Healthcare Developer shall, following the Healthcare Property Close of Escrow, commence or cause commencement of and Complete the Minimum Horizontal Improvements to the extent not constructed by Developer within the period set forth in the Schedule of Performance, including if not then previously carried out, the Healthcare Rough Grading, the Healthcare Perimeter Landscaping, the Healthcare Horizontal Improvements and the Minimum Healthcare Vertical Improvements.

8.2.2 **Extensions**. Subject to Section 18.7, the City may, in its sole discretion and upon written request from Developer, extend the time specified in the Retail Schedule of Performance. Any such agreed upon changes shall be within the limitations of the Specific Plan, the Entitlements, and all other Governmental Requirements. To be effective, any extensions shall be requested in writing by Developer and evidenced by written notice from the City Manager or designee.

8.2.3 **Project Phases**. The City acknowledges and agrees that the Project may be constructed and Completed in two Phases, comprising the Retail Project and the Healthcare Project. Each Phase shall be commenced and Completed in accordance with the Schedule of Performance and upon Completion thereof, each Phase shall comply with all Governmental Requirements, including all Specific Plan requirements and Entitlement conditions of approval for development on the Property, without reliance upon Improvements to be constructed in future Phases. The conditions of City approval may require certain additional Improvements to be constructed and Completed as part of each Phase of the Project. Subject to the foregoing, the City agrees to cooperate in good faith with Developer to implement this Agreement, so as to permit development of the Project in two phases, including by providing Developer with a license, or other right of access, for the purpose of performing construction, including the installation of utilities and the performance of grading on any portion of the Development Parcels or adjacent land owned by the City as set forth in Section 8.2.5 below.

8.2.4 **Building Pad Construction**. The Vertical Improvements on Building Pads may be constructed and Completed by each corresponding Pad Transferee but subject to the time limits for such construction set forth in the Schedule of Performance for the Phase in which the Building Pad is located or such additional time as set forth in any City Non-Disturbance and Attornment Agreement executed by the City and such Pad Transferee.

8.2.5 **Limited License**. The City and Developer shall enter into a license agreement in substantially the form and substance of the License Agreement attached as Attachment 27 or as otherwise approved by the City and Developer each in its sole discretion pursuant to which the City shall grant to Developer a limited and revocable license to enter upon the portions of the Development Parcels continued to be owned by the City following the Retail Property Close of Escrow for the purposes of carrying out the construction of the Minimum Horizontal Improvements.

8.2.6 **Restriction on Commencement of Construction on Other Healthcare Parcels**. The City's primary goal in entering into this Agreement for the Healthcare Parcels is to assure development at Tustin Legacy of a Medical Office Building on the Medical Office Parcel and Developer (and each Healthcare Developer) recognize that development on the Other Healthcare Parcels is ancillary to the development of the Medical Office Parcel and assumes the risk that development of the Healthcare Vertical Improvements on the Other Healthcare Parcels may not be carried out if the Medical Office Parcel are not developed. Accordingly, in the event that the Medical Office Parcel are conveyed separately from the Other Healthcare Parcels, the Healthcare Developer owning the Other Healthcare Parcels shall be prohibited from commencing construction of the Healthcare Vertical Improvements or any portion thereof on the Other Healthcare Parcel unless and until the Healthcare Developer owning the Medical Office Parcel shall have Commenced Construction of the Healthcare Vertical Improvements comprising the Medical Office Building. In furtherance of this requirement, Developer (and each Healthcare Developer) acknowledges and agrees that pursuant to the terms of this Agreement, the DA and the Entitlements, the City shall not issue building permits for Healthcare Vertical Improvements upon the Other Healthcare Parcels until the following has occurred: (a) a building permit has been issued for the Medical Office Building and (b) Healthcare Developer shall have "Commenced Construction" of the Medical Office Building and accordingly, the obligation of the HCD Guarantor for the Medical Office Parcel to Complete such construction shall be effective.

8.3 Land Use Matters.

8.3.1 **Subdivision**. Developer at its sole cost and expense shall use its reasonable efforts to (a) cause the Parcels and Building Pads to be legally described and (b) to the extent required by the Subdivision Map Act and the City Code, to create separate legal parcels for each Parcel and Building Pad. Accordingly Developer has submitted for City approval, as part of the Applicable Approvals, a Parcel Map, which shall be Recorded prior to the Retail Property Close of Escrow.

8.3.2 **Required Entitlements**. Developer shall, at its sole cost and expense, use its commercially reasonable efforts to process, obtain, and maintain all Entitlements to assure that the design, construction, use, operation, maintenance, repair and replacement of the Improvements is carried out in accordance with the provisions of this Agreement, and is permitted by the Entitlements and all other Governmental Requirements. Developer's application for Entitlements shall reflect the terms of this Agreement, and shall not exceed the trip allocation assigned by the City to the applicable uses contemplated for the Property as set forth in Attachment 26 unless otherwise agreed by the City in its sole discretion (which shall require City approval in both its Proprietary Capacity and Governmental Capacity.) Development of the Project shall require and be subject to the review processes of the City in its Governmental Capacity with respect to the specific approvals listed on Attachment 28 ("**Applicable Approvals**"). Without limiting the foregoing, in developing and constructing the Project, Developer shall ensure that the Project complies with all applicable development standards in the Specific Plan, the City Code and with all building codes, landscaping, signage and parking requirements, except as may be permitted through conditional use permits, variances and modifications. Developer acknowledges that the Specific Plan establishes a non-residential total trip estimate for the Property and that the Project shall be required to comply with such estimate. Developer shall use its commercially reasonable efforts to timely submit all applications and materials required by the City to deem the Applicable Approvals applications "complete" and shall use its commercially reasonable efforts to timely process and obtain all of the Applicable Approvals required for the Project and to cause the Entitlement Approval Date to occur in accordance with the Retail Schedule of Performance.

8.3.3 **Development Permits**. Developer, at its sole cost and expense, shall process, obtain, and maintain all Development Permits required for the construction and use of the Horizontal Improvements and all Vertical Improvements on the Retail Property and shall maintain all Entitlements and Development Permits; provided that, as a condition to any Transfer to a Healthcare Developer, Developer shall cause the Healthcare Developer to acknowledge that it is obligated to maintain all Entitlements and Development Permits required for the construction and use of the Healthcare Horizontal Improvements and the Healthcare Vertical Improvements on the Healthcare Parcel.

8.3.4 **Agreement Does Not Grant Entitlements**. Nothing in this Agreement shall be construed or interpreted as committing the City to approve or undertake any action or review process or activities that require the independent exercise of discretion by the City in its Governmental Capacity, including any approval of any Entitlement or Development Permit application for which Developer applies for after the date of this Agreement. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in its Governmental Capacity or in connection with Entitlement for the Project or the Property (including approval of the City in its Governmental Capacity of any conditional use permit review which may be necessitated by particular proposed uses or design features of End Users or Pad Transferees), (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any Governmental Requirements of the City. The issuance or approval of any Entitlement not issued or approved on or prior to the Effective Date or any Development Permit described in this Agreement shall be done by

the City in its Governmental Capacity. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity with respect to the consideration and approval of the Entitlements and all other permits, licenses and approvals requested by Developer from time to time in connection with the Project nor shall it entitle Developer to any Entitlement, Development Permit or other City approval necessary for the development of the Project, or to the waiver of any applicable City requirements relating thereto, and the failure of the City to issue or approve any Entitlement described in this Agreement, including to certify or approve any CEQA document, to approve any required Applicable Approval or other Entitlement or Development Permit shall not be a default of the City under this Agreement.

8.3.5 **Cooperation of City**. Consistent with this Agreement, the City agrees, without cost or other liability to the City or any commitment of the City to approve or conditionally approve any Entitlements required for the full implementation of this Agreement, to assist and cooperate with Developer in its efforts to process the Entitlements. The City will use good faith efforts to expedite review of applications for the Entitlements and the Development Permits that are to be issued by the City and other submissions made by Developer where reasonably appropriate in order to meet the deadlines set forth in the Schedule of Performance and will assist and cooperate with Developer in its efforts to process such Development Permits, Entitlements and other submissions.

8.3.6 **CEQA Requirements**. The Parties acknowledge and agree that CEQA is applicable to discretionary actions associated with the development of the Project, Developer acknowledges that the City shall prepare any supplemental environmental information, if any, as may need to be completed in order to effect compliance with CEQA, as determined by the City in its sole discretion, and Developer shall be responsible to pay all costs incurred by the City to prepare or to cause to its consultants to prepare such environmental documents and shall enter into such agreements to pay such costs as the City shall require. Developer agrees to cooperate with the City in obtaining information to determine the environmental impact of the Project, if any.

8.3.7 **Entitlement Conditions**. Developer acknowledges and agrees that the City in its Governmental Capacity may require satisfaction of certain conditions and dedication of certain property in connection with approval of any Entitlements.

8.3.8 **Payment of Fees**. Without limiting any other provision of this Agreement, Developer shall pay (a) all fees, costs and deposits normally charged by the City in connection with application for and review and approval of Development Permits and Entitlements, (b) any fees or costs incurred by the City in complying with CEQA or the State CEQA implementing regulations; (c) any costs to review or approve any Entitlement or Development Permit applications or submittals by Developer to the City in connection with the Project.

8.4 Design Approval.

8.4.1 **Design Review**. It is understood and agreed by Developer that the quality, character and uses proposed for the Project are of particular importance to the City. In furtherance of the development of the Project and the foregoing, the City, acting in its Governmental Capacity, shall require Concept Plan and Design Review approval as part of the Entitlements. In addition, in its Proprietary Capacity as the current owner of the real property that is the subject of this Agreement and of substantial portions of Tustin Legacy, the City will require review and approval of the Basic Concept Plan for the Project as further set forth in this Section 8.4. Review of design documents by the City in its Proprietary Capacity only shall be subject to time periods set forth below.

8.4.2 **Plan Development and Cost**. All plans and specifications for the Project shall be prepared by Developer at Developer's sole cost and expense and subject to the requirements set forth in this Article 8.

8.4.3 **Process for Governmental Review**. The Parties acknowledge that the City, acting in its Governmental Capacity, shall have the right to review all plans, specifications and submissions, including any changes therein, through its normal plan review and Entitlement process and that the City may exercise its governmental discretion in review of any of the plans, specifications and submissions. Developer has previously submitted to the City a preliminary site plan for the Project (the "**Site Plan**"), a copy of which is attached as Attachment 3, graphically depicting the overall plan for development of the Improvements on the Property, the Building layouts and dimensions, proposed lots and Building Pads, Common Area, parking, landscaping and access on and related to each Building Pad, floor plans, preliminary materials call-outs and conceptual Building renderings and setting forth the Phasing plan. Within the timeframe shown in the Retail Schedule of Performance, Developer shall submit for approval by the City in its Governmental Capacity, final design drawings and related documents conforming to the requirements of the City Code and including the required contents listed in Chapter 5 of the Specific Plan. The Community Development Department is authorized pursuant to City Code to approve minor changes to Building plans after approval by the City provided such changes do not significantly reduce the quality of the development concept or the design and materials to be used in enhancing the architecture and aesthetics of the Improvements.

8.4.4 **Coordination**. Developer and the Project Architect 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. During the preparation of all plans and specifications for the Project, staff of the City and Developer shall hold regular progress meetings to coordinate the preparation, submission and review of such plans. The staff of the City and Developer shall communicate and consult as frequently as necessary to facilitate prompt and speedy consideration of Developer's submittals.

8.4.5 **Proprietary Review**. On or before the date specified in the Schedule of Performance, Developer shall have caused the Basic Concept Plans to be prepared and submitted to the City for approval. The City in its Proprietary Capacity shall have the right of reasonable architectural review of all Basic Concept Plans in accordance

with Section 8.4.6, including with respect to exterior elevations, exterior materials (including selections and colors) and the size, bulk and scale for all Buildings, the phasing of the Project and the product mix, which shall include, unless otherwise agreed by the City, Medical Uses and Healthcare Parcel Retail Uses on the Healthcare Parcel and a grocery store, drug store and other Retail Uses normally associated with a community shopping center on the Retail Parcel. Developer acknowledges and agrees that the City's Community Development Department is responsible for reviewing the working drawings and issuing recommendations with respect to the appropriate Entitlements. The exercise by the City Manager's office of its right to inspect or review the concept plans, drawings and related documents for development of the Project: (a) shall be an exercise of the City's Proprietary Capacity and not its Governmental Capacity; (b) shall not constitute an approval by the City of any Entitlements; (c) shall not constitute a determination by the City of the engineering or structural design, sufficiency or integrity of the improvements contemplated by such plans, drawings and related documents, and (d) shall not constitute a determination by the City of the compliance of such plans, drawings and related documents with any applicable building codes, safety features and standards. Any inspection or approval of plans and drawings made or granted pursuant to this Agreement shall not constitute an inspection or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Developer acknowledges and agrees that the City in its Proprietary Capacity may approve or disapprove Basic Concept Plans and design review plans in order to satisfy the City's obligation to promote the sound development and redevelopment of land, to promote a high level of design that will impact development surrounding the Project, and to provide an environment for the social, and economic well-being of the citizens of the City and that the City is not constrained or limited to act solely within its governmental discretion, authority, or capacity. Developer shall not be entitled to damages or compensation as a result of the City's disapproval, conditional approval, or failure to approve or disapprove Basic Concept Plans in its Proprietary Capacity.

8.4.6 **Process for Proprietary Review**. Developer shall submit two sets of Basic Concept Plans for the Improvements to the City. Such sets of Basic Concept Plans shall be submitted in writing over the signature of Developer or a representative duly authorized by Developer in writing. If the City approves such Basic Concept Plans, the City shall endorse its approval on one set of such Basic Concept Plans and return them to Developer. The City shall conclusively be deemed to have given its approval to such sets of Basic Concept Plans unless, prior to fifteen (15) Business Days after the City's receipt of such sets of Basic Concept Plans, the City gives written notice of disapproval to Developer specifying in reasonable detail each item that the City disapproves and the reasons for such disapproval. If necessary, Developer shall make changes in response to the City's notice of disapproval and resubmit such Basic Concept Plans to the City for review and approval in accordance with the provisions of this Section 8.4.6 (and in such case the City's review period shall be ten (10) Business Days).

8.4.7 **Approved Plans**. Upon (a) approval by the City in its Governmental Capacity of the Applicable Approvals as described in this Article 8, (b) approval by the City in its Proprietary Capacity of the Basic Concept Plan under Section 8.4, and (c) approval of construction level drawings by the City in its

Governmental Capacity, then such approved plans and drawings (collectively the "**Approved Plans**") shall govern development of the Improvements on the Development Parcels. In addition to any other rights to approve or disapprove the construction level drawings in its Governmental Capacity, the City may disapprove such documents if they are not consistent with the Entitlements and the Basic Concept Plan previously approved, do not represent a logical or commercially reasonable implementation thereof, and/or do not provide for construction of the same square footage as set forth therein. Developer shall not construct any Improvements on the Property unless the same are shown in the Approved Plans or unless the prior written consent of the City in its Proprietary Capacity and, if necessary, the approval of the City in its Governmental Capacity are obtained to any modification thereof. To the extent of any inconsistencies between the plans identified in the Scope of Development or the Site Plan and the Approved Plans, the Approved Plans shall govern and control as to the development of the Property.

8.5 Financial Status.

8.5.1 **Financial Capability**. After the Retail Property Close of Escrow, and thereafter until Recording of the Certificate of Compliance for each Parcel, Developer and Healthcare Developer shall each continue to be responsible for demonstrating to the City their financial capacity and capability to perform their respective obligations under this Agreement. In addition to the requirements set forth in Section 4.6.1, 4.6.2 and 4.6.4, as applicable, following Close of Escrow for each Parcel, until Recording of a Certificate of Compliance for such Parcel, Developer and Healthcare Developer each shall submit annually, on the anniversary of the applicable Closing Date, a date-down of the Financing Plan and Healthcare Financing Plan, respectively, and shall include therein any modifications required to reflect changes to the Project during such period.

8.5.2 **Guaranty; No Mortgage or Construction Loan**. Developer, on behalf of itself and each Successor Owner, hereby agrees that (a) the REG Guaranty (or, if applicable, any replacement Guaranty provided and approved by the City pursuant to this Agreement) shall not be amended, modified or terminated prior to (i) completion of the Minimum Horizontal Improvements and (ii) the Recording of a Certificate of Compliance for the Retail Parcel and (b) the HCD Guaranty (or, if applicable, any replacement Guaranty provided and approved by the City pursuant to this Agreement) shall not be amended, modified or terminated prior to the Recording of a Certificate of Compliance for the Healthcare Parcel, in each case without the prior written consent of the City in its sole discretion. Further, in light of Developer's representations set forth in Section 3.1.14, Developer, on behalf of itself and each Successor Owner of the Retail Property, hereby waives its rights to require or utilize third party financing with respect to Developer's acquisition or development of the Retail Parcel or any portion thereof or the Medical Office Parcel or any portion thereof, or to Transfer such Parcels or any portion thereof to a Mortgagee or to execute or Record a Mortgage against the Retail Parcel or against the Medical Office Parcel prior to the Transfer Approval End Date applicable to such Parcel, unless otherwise agreed by the City in its sole discretion; provided, however, nothing contained herein shall limit the right of any tenant or End User from obtaining financing secured by its leasehold interest and subordinate to this Agreement, including the Right of

Repurchase and Right of Reversion, and the Other Agreements, and the City hereby consents to the same. The representations, warranties and covenants of Developer pursuant to this Section 8 and Section 3.1.14 represent material consideration to the City, and shall be binding on Developer.

8.6 Project Budget Statement.

Developer understands and agrees that the City reserves the right to reasonably request at any time prior to the Recording of a Certificate of Compliance for a Parcel (but not more frequently than quarterly) a Project Budget Statement with respect to the Project to be constructed on such Parcel. If requested by the City, Developer, or Healthcare Developer, as applicable, shall submit such Project Budget Statement within thirty (30) calendar days following the later of Developer's, or Healthcare Developer's, receipt of the City's request therefor and the expiration of the applicable quarter. Notwithstanding the foregoing, the delivery of such Project Budget Statement shall be for informational purposes only and in no event shall the City be entitled to declare a Potential Default or Material Default, or exercise any of its remedies pursuant to this Agreement, based on the contents of such Project Budget Statement absent an actual Potential Default or Material Default under one of the other covenants or obligations of Developer set forth in this Agreement.

8.7 Backbone Infrastructure Improvements.

8.7.1 **Developer Acknowledgements.** Developer acknowledges and agrees that: (a) the development of the Project, together with the development of the remainder of Tustin Legacy, will contribute to the need for Tustin Legacy backbone infrastructure located off of the Development Parcels, including Tustin Legacy roadway improvements; traffic and circulation mitigation to support the Tustin Legacy project; domestic and reclaimed water; sewer; telemetry; storm drains and flood control channels; utilities backbone (electricity, gas, telephone, cable, telecommunications, etc.) (as such program is in effect as of the Effective Date, the "**Tustin Legacy Backbone Infrastructure Program**"); (b) a portion of the Base Purchase Price will be allocated to development by the City of the Tustin Legacy Backbone Infrastructure Program on behalf of the Project, as further described below; (c) Developer has had an opportunity to review the budgets, plans and projections developed by the City in connection with the Tustin Legacy Backbone Infrastructure Program and the studies prepared by the City in connection therewith; (d) there is an essential nexus between the imposition on the Project of the Project Fair Share Contribution and a legitimate governmental interest; and (e) the Project Fair Share Contribution is roughly proportional to and reasonably and rationally related to the impacts that will be caused by development of the Project.

8.7.2 **Project Fair Share Contribution.** The Base Purchase Price is inclusive of the obligation to pay the fair share of the Tustin Legacy Backbone Infrastructure Program (the "**Project Fair Share Contribution**") to be contributed by Developer with respect to the Project and no further obligation shall be imposed on Developer of the Project in connection with the Project Fair Share Contribution. Developer waives its right to fund all or any portion of such contribution pursuant to Special Tax "A" for the development of facilities within the Tustin Legacy Backbone Infrastructure Program

("**Tax A**") or pursuant to other community facilities district, and the City agrees that Tax A shall not be applicable to the Property or the Improvements thereon and Developer shall have no obligation or liability on account thereof. Developer acknowledges and agrees that its development plan for the Project will not require use of community facility district proceeds and that neither assessment district nor community facilities district proceeds will be used to reimburse Developer for its Development Costs, including Project Fair Share Contribution or Project specific infrastructure costs.

8.7.3 **CFD for Services**. Developer acknowledges that the City has formed a community services district for services to fund a portion of the City essential services, including 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**"). Tax B shall be in lieu of any other assessments, special taxes, fees or charges that may otherwise be charged on account of the types of services covered thereby. Notwithstanding the foregoing sentence, the City shall not be prohibited by the terms of this Agreement from subjecting the Development Parcels and/or the Improvements thereon to any increase in ad valorem real property tax pursuant to a City of Tustin-wide election, provided that nothing herein shall be construed to constitute a waiver by Developer of its right or ability to dispute or oppose passage of a City of Tustin-wide bond or tax, the proposed formation of any special district or taxing authority in connection therewith, or the imposition of any such tax, or its right to dispute any Development Parcel's assessed value. Developer acknowledges and agrees that the term of Tax B imposed upon the Property and the Improvements thereon shall be perpetual and shall not be time limited in any manner unless determined by the City in its sole discretion.

8.7.4 **Master Marketing Program Fees**. Developer acknowledges that the City (in its Proprietary Capacity) requires that all builders within Tustin Legacy contribute a master marketing fee towards the marketing of Tustin Legacy by the City. In complete satisfaction of such obligation by Developer, Developer shall pay to the City through Escrow Holder at the Retail Property Close of Escrow a one-time master marketing fee of Fifty Thousand Dollars ($50,000.00). The City acknowledges and agrees that this payment shall satisfy all obligations of Developer to contribute to the master marketing program or any future master marketing program and that Developer shall have no additional obligations on account thereof after the payment of such fee.

8.7.5 **Other Fees and Assessments**. Developer acknowledges and agrees that in addition to City fees, fees may be imposed by other Governmental Authorities with jurisdiction over the Project and/or the Property and payment of any such fees and assessments shall be at Developer's sole cost, including the Foothill/Eastern Corridor Fee, the Santa Ana/Tustin Transportation System Improvement Area (TSIA) fee, state-mandated school impact fees by the Tustin Unified School District, Orange County School Facility Bonds (Measure G and Measure L), utility meter and connection fees. Developer also acknowledges that the Development Parcels 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.

8.8 Development Covenants.

Developer, on behalf of itself and Successor Owners, hereby covenants and agrees as follows provided, however, except with respect to the Healthcare Transferor Obligations and the Ongoing Matters, Developer shall not have any obligations under this Section 8.8 with respect to the Healthcare Property after the conveyance of the Healthcare Property to Healthcare Developer, and Healthcare Developer and each of its Successor Owners shall, upon its acquisition of the Healthcare Property, assume all of the obligations of Developer under this Section 8.8 with respect to the Healthcare Property and the Healthcare Project (except for Developer's obligation to complete the Minimum Horizontal Improvements):

8.8.1 Developer shall maintain throughout the term of this Agreement, sufficient equity, capital and firm binding commitments for financing necessary to (a) pay through Completion, all costs of development, construction, marketing, sale and/or leasing, operation and management of all the Improvements as defined in the Scope of Development without Mortgage or Construction Loan except as set forth in Section 2.2.3(b) or Section 17 with respect to the Other Healthcare Parcels and the Healthcare Vertical Improvements proposed to be constructed thereon only (and specifically excluding the Medical Office Parcel); and (b) enable Developer to perform and satisfy all the covenants of Developer contained in this Agreement and the Other Agreements.

8.8.2 The development of the Project shall be done in a professional and competent manner. Developer shall perform, and shall cause all others carrying out work on the Development Parcels to perform, all work required to construct and Complete the Improvements and the Project and related work in accordance with the Approved Plans, the Entitlements, the Development Permits and all Governmental Requirements and at the level of quality set forth in the Scope of Development.

8.8.3 Developer shall be responsible for the timeliness and quality of all work performed and materials and equipment furnished in connection with the Property and the Minimum Horizontal Improvements, whether the work, materials and equipment are performed and furnished by Developer or through contractors or subcontractors (of all tiers) and suppliers.

8.8.4 Developer shall not place, or allow to be placed, on its interests in the Property, Improvements, or any portion thereof, any Mortgage or encumbrance of lien not authorized by this Agreement.

8.8.5 Developer shall, within thirty (30) calendar days following receipt of notice thereof, cause to be removed or bonded against (such bonding to be by the provision of bonds satisfying California statutory requirements) any and all mechanic's liens, stop notices and/or bonded stop notices that are recorded and/or served by contractors, subcontractors (of all tiers) and suppliers in connection with the portion of the

Project owned by it and those other portions of the Property and adjoining City-owned Property, including the Slope Parcel, upon which Developer is performing work or carrying out construction or causing either of the foregoing to be carried out. Notwithstanding the foregoing, Developer may contest the amount, validity or application, in whole or in part, of any such mechanic's liens, stop notices and/or bonded stop notices; subject, however, to the further requirement that neither the Property nor any Improvements nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings. If any such contest is finally resolved against Developer, Developer shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon. Developer hereby agrees to indemnify, defend and hold the City Indemnified Parties free and harmless from and against any and all Claims arising from or related to failure to pay for construction of Improvements or other work related to the Project including costs to remove or bond mechanic's liens, stop notices and/or bonded stop notices that are recorded and/or served by contractors, subcontractors (of all tiers) and suppliers with respect to construction of Improvements or performance of work with respect to the Project. The indemnity set forth in this Section shall survive the termination of this Agreement.

8.9 City Rights of Access.

In addition to any rights it may have in its Governmental Capacity, representatives of the City shall have the reasonable right of access to all portions of the Property, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including the inspection of the work being performed in constructing the Improvements. The City agrees to indemnify, defend and hold Developer harmless for any and all Claims arising out of any such non-governmental inspection or other activity on the Property or the Project by the City, or its agents, employees or contractors permitted pursuant to this Section 8.9, except to the extent caused by the gross negligence or willful misconduct of Developer.

8.10 Disclaimer of Responsibility by City and Exculpation.

8.10.1 **Disclaimer of Responsibility**. The City neither undertakes nor assumes nor will have any responsibility or duty to Developer, any Successor Owner or to any other third party to review, inspect, supervise, pass judgment upon or inform Developer, any Successor Owner or any third party of any matter in connection with the development or construction of Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished for development of the Project, any Person furnishing same, or otherwise. Developer, any Successor Owner and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer, any Successor Owner or to any third party by the City in connection with such matter is for the public purpose of developing the Project, and neither Developer nor any Successor Owner nor any third party is entitled to rely thereon.

8.10.2 **Exculpation**. The City shall not be liable in damages to Developer or to any owner, lessee, any licensee or other Person, on account of (a) any

approval or disapproval by the City, including by the City Manager or designee whether made in the Governmental Capacity or Proprietary Capacity of the City of any design documents, including any Basic Concept Plans, whether or not defective or whether or not in compliance with applicable laws or ordinances; (b) any construction, performance or nonperformance by Developer or any owner, lessee, licensee or other Person of any work on the Property, whether or not pursuant to Approved Plans or whether or not in compliance with applicable laws or ordinances; (c) any mistake in judgment, negligence, action or omission in exercising its rights, powers and responsibilities hereunder; and/or (d) the enforcement or failure to enforce any of the provisions of this Agreement. Every Person who makes design submittals for approval agrees by reason of such submittal, and Developer and every Successor Owner of the Property or any portion thereof agrees by acquiring title thereto or an interest therein, not to bring any suit or action against the City seeking to recover any such damages and expressly waives any such claim or cause of action for such damages which it would otherwise be entitled to assert. The review of any design submittals shall not constitute the assumption of any responsibility by, or impose any liability upon, the City as to the accuracy, efficacy, sufficiency or legality thereof nor decrease or diminish any liability, duties, responsibilities, or obligations of Developer under this Agreement or otherwise.

8.10.3 **No Supervision or Control**. The City (whether acting in its Governmental Capacity or its Proprietary Capacity) does not have any right, and hereby expressly disclaims any right, of supervision or control over the architects, designers, engineers or persons responsible for drafting or formulating of the plans, drawings and related documents of Developer.

8.10.4 **Graded Condition of the Development Parcels**. The City has previously caused its contractor to rough grade the Development Parcels and such Development Parcels have been certified by NMG Geotechnical, Inc. on September 26, 2012 (Project No. 10151-02). Developer acknowledges that the City is delivering the Development Parcels as-is, and does not certify in any manner the grading or condition of the Property. Developer shall look solely to the engineers, consultants and contractors and their respective certifications and not to the City for all purposes related to the grading work performed, including the adequacy of the work and the certification(s).

8.10.5 **Survival**. The provisions of this Section 8.10 shall survive the termination of this Agreement.

8.11 Local, State and Federal Laws.

Developer shall carry out the construction of the Project, including all Improvements, subject to Section 8.1.4 and in conformity with all Governmental Requirements including all applicable federal and State labor laws and regulations and shall investigate the applicability of and, if and to the extent applicable, pay prevailing wages meeting the requirements of such laws and regulations; provided that Developer reserves the right to reasonably contest such laws and regulations. Developer hereby agrees that, with respect to the Project, Developer shall be fully responsible for determining whether the foregoing wage requirements are applicable and agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents,

attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising from or related to compliance by Developer or Developer's officers, directors, employees, agents, representatives, consultants and/or contractors (at every tier) in construction of the Project with the prevailing wage requirements imposed by any applicable federal and State labor laws.

8.12 Liens, Taxes and Assessments.

Developer shall pay when due and prior to delinquency all real estate taxes and assessments assessed and levied on or against all portions of the Property subsequent to the conveyance thereof by the City to Developer. Developer shall remove, or shall have removed, any levy or attachment made on its interests in the Property (or any portion thereof), or shall assure the satisfaction thereof within thirty (30) calendar days following receipt of notice thereof. Nothing contained in this Agreement shall be deemed to prohibit Developer from contesting the validity or amount of any tax or assessment or to limit the remedies available to Developer in respect thereto. Developer hereby agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all Claims arising with respect to or related to payment of taxes and assessments assessed or levied against the Property. The indemnity set forth in this Section 8.12 shall survive the termination of this Agreement.

9. Certificate of Compliance.

9.1 Certificate of Compliance Defined.

Upon satisfaction of the Conditions Precedent set forth in Sections 9.2 and 9.3, as applicable, and upon written request therefor from Developer setting forth evidence of satisfaction of such conditions, the City shall deliver to Developer, or Healthcare Developer with respect to the Healthcare Property, or its respective Successor Owner owning fee title to the relevant Parcel a "**Certificate of Compliance**" for the Project constructed upon such Parcel. Each Certificate of Compliance shall be substantially in the form and substance of the Certificate of Compliance set forth on Attachment 15 and in such form as to permit it to be Recorded.

9.2 Conditions Precedent for Healthcare Parcel Certificate of Compliance.

The City shall issue a Certificate of Compliance for the Healthcare Parcel when each of the following has occurred and Developer or, if a Transfer to a Healthcare Developer has occurred, Healthcare Developer has certified in writing, for the benefit of the City, as to the occurrence, truth and correctness of each item:

(a) Completion of each of the following (collectively, the "**Minimum Healthcare Improvements**"): (i) the Minimum Horizontal Improvements, (ii) the Healthcare Horizontal Improvements required for construction of the Minimum Healthcare Vertical Improvements, and (iii) the Minimum Healthcare Vertical Improvements;

(b) Issuance of a certificate of substantial completion for the Minimum Healthcare Vertical Improvements by the Project Architect(s) for such Improvements;

(c) Final inspection of the Minimum Healthcare Improvements by or on behalf of the City and determination by the City that such Improvements have been Completed in conformance with this Agreement, including the Approved Plans and all Governmental Requirements;

(d) Issuance of certificates of occupancy or the equivalent sign-off for a Building shell by the City for the Buildings comprising the Minimum Healthcare Vertical Improvements; provided that nothing contained in this Agreement shall require that any interior tenant improvements to be constructed by a Tenant under any Lease be completed in order to satisfy the terms of this Section 9.2 or as a condition to Recording of a Certificate of Compliance. The City shall issue a Certificate of Compliance notwithstanding that any interior tenant improvements to be constructed by third-party tenants have not been completed;

(e) Release or bonding in accordance with California law of all liens or rights to record liens against the Healthcare Parcel and, if applicable, the Retail Parcel from the general contractor and all subcontractors (at all tiers) constructing the Minimum Healthcare Improvements having served valid preliminary 20-day notices, and the statutory period for filing liens having expired;

(f) Payment by Developer or, if a Transfer to a Healthcare Developer has occurred, by Healthcare Developer to the City of all funds then owing to the City under this Agreement and, if applicable, the Other Agreements; and

(g) No Potential Default or Material Default by Developer or, if a Transfer to a Healthcare Developer has occurred, by Healthcare Developer under this Agreement shall have occurred and be continuing.

9.3 Conditions Precedent for Retail Parcel Certificate of Compliance.

The City shall issue a Certificate of Compliance for the Retail Parcel when each of the following has occurred and Developer has certified in writing, for the benefit of the City, as to the occurrence, truth and correctness of each of the following:

(a) Completion of each of the following (the "**Minimum Retail Improvements**"): (i) the Minimum Horizontal Improvements, (ii) the On-Lot Horizontal Improvements required for construction and operation of the Minimum Retail Vertical Improvements, and (iii) the Minimum Retail Vertical Improvements;

(b) Omitted;

(c) Issuance of a certificate of substantial completion for the Minimum Retail Vertical Improvements and for any additional Retail Vertical Improvements then constructed on the Retail Parcel by the Project Architect(s) for such Improvements;

(d) Final inspection of the Minimum Retail Improvements by or on behalf of the City and determination by the City that such Improvements have been Completed in conformance with this Agreement, including the Approved Plans and all Governmental Requirements;

(e) Issuance of certificates of occupancy or the equivalent sign-off for a Building shell by the City for the Buildings comprising the Minimum Retail Vertical Improvements provided that nothing contained in this Agreement shall require that any interior tenant improvements to be constructed by a Tenant under any Lease, be completed in order to satisfy the terms of this Section 9.3 or as a condition to Recording of a Certificate of Compliance. The City shall issue a Certificate of Compliance notwithstanding that any interior tenant improvements to be constructed by third-party tenants have not been completed;

(f) Release or bonding in accordance with California law of all liens or rights to record liens against the Healthcare Parcel only with respect to any work performed by Developer on the Healthcare Parcel and the Retail Parcel from the general contractor and all subcontractors (at all tiers) constructing the Minimum Retail Improvements having served valid preliminary 20-day notices, and the statutory period for filing liens having expired from the general contractor and all subcontractors (at all tiers);

(g) Developer shall have paid the Additional Purchase Price in full, without offset, dispute or challenge;

(h) Payment by Developer to the City of all funds then owing to the City under this Agreement and, if applicable, the Other Agreements; and

(i) No Potential Default or Material Default by Developer under this Agreement shall have occurred and be continuing.

9.4 Conclusive Presumption.

Each Certificate of Compliance shall be, and shall so state, conclusive determination of satisfactory completion of the obligations of Developer to construct pursuant to this Agreement the portions of the Project on the Parcel to which such Certificate pertains.

9.5 Not Evidence.

Issuance by the City of a Certificate of Compliance is not notice of completion as referred to in Section 3093 of the California Civil Code.

9.6 City Obligations.

The City shall not unreasonably withhold or delay issuance of any Certificate of Compliance when all the Conditions Precedent thereto are satisfied. If the City refuses or fails to issue such Certificate of Compliance after written request from Developer, provided each of the conditions established in Section 9.2 or 9.3, as applicable, have been satisfied, the City shall, within ten (10) Business Days of the written request, provide a written statement which details the reasons the City refused or failed to issue such Certificate of Compliance. The statement shall also contain a statement of the actions that Developer must take to obtain a Certificate of Compliance, as the case may be. Upon issuance of any Certificate of Compliance, the City shall promptly cause it to be Recorded.

9.7 Effect of Certificate of Compliance; Termination of Agreement.

Except as set forth in this Section 9.7 and the Certificate of Compliance, after the Recording of a Certificate of Compliance, as the case may be, any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Parcel subject to the Certificate of Compliance or the Improvements thereon shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such Improvements, except that such Party shall continue be bound by the Special Restrictions, the CC&Rs, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement and the applicable Quitclaim Deed to the extent set forth therein. Issuance of the Certificate of Compliance shall not waive any rights or claim that the City may have against any party for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to others not a party to this Agreement. The Certificate of Compliance shall be in such form as to permit it to be Recorded. Upon Recording of the Certificate of Compliance, this Agreement shall terminate in its entirety with respect to the Project and Property to which such Certificate of Compliance applies, except that:

(a) the provisions of Section 4.5.2, including the release set forth therein, shall survive in perpetuity as further set forth in the Quitclaim Deed for such Property;

(b) the provisions of Section 11.1.4 shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby.

(c) the indemnities set forth in Sections 4.6.4(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.12.1 shall remain in effect and shall bind the indemnifying party and its successors and assigns to the extent set forth in the Special Restrictions or Other Agreements for such Property; and

(d) any and all obligations contained in the Federal Deed shall survive in perpetuity to the extent set forth therein, unless such obligations are released by the Federal Government.

10. Indemnification and Environmental Provisions.

10.1 Developer's Indemnification.

As a material part of the consideration for this Agreement, to the maximum extent permitted by law, until the date that is the tenth (10^{th}) anniversary of the Recording of the respective Certificate of Compliance each Developer, on behalf of itself and each Successor Owner, hereby agrees that during the period that Developer or a Successor Owner owns a portion of the Property and for the Additional Liability Period, such party shall indemnify, protect, defend, assume all responsibility for and hold harmless the City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors, consultants, and representatives (collectively referred to as the "**City Indemnified Parties**"), with counsel reasonably acceptable to the City, from and against any and all Claims resulting or arising from or in any way related to the following:

(a) The marketing, sale or use of the Property owned by such party in any way;

(b) All acts and omissions of Developer, any of the Developer Representatives or Developer's Tenants under any Ground Lease or Space Lease in connection with the Project, the Property, or any portion of any of the foregoing;

(c) Any plans or designs for Improvements prepared by or on behalf of Developer or its Ground Lessees or Space Tenants including any errors or omissions with respect to such plans or designs;

(d) Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer or resulting from any Default, including Material Default, by Developer under this Agreement;

(e) The non-performance or breach by Developer, the Developer Representatives or Developer's Tenants under any Ground Lease or Space Lease of any term or condition of this Agreement; and

(f) Any development or construction of any Improvements by Developer, the Developer Representatives, or Developer's Tenants under any Ground Lease or Space Lease whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any Person furnishing the same, or otherwise.

10.2 Developer's Environmental Indemnification.

As a material part of the consideration for this Agreement, and effective as to the Property upon Developer's acquisition of fee title to all or any portion thereof, Developer on behalf of itself and Successor Owners and each and every Person claiming by, through or under Developer or any Successor Owner, hereby agrees that Developer and each Successor Owner shall, to the maximum extent permitted by law, indemnify, protect, defend (with counsel reasonably acceptable to the City), assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Claims resulting or arising from or in any way related to the existence, Release, threatened Release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials on, in, under, from, about or adjacent to any portion or portions of said lands, regardless whether any such condition is known or unknown now or upon acquisition and regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring and regardless of how or by whom caused; provided that neither Developer nor any Successor Owner shall be responsible (and such indemnity shall not apply) to the extent of (a) the gross negligence, fraud or willful misconduct of the City Indemnified Parties, or (b) to the extent of the active negligence or willful misconduct of the City or any City Indemnified Parties with respect to Hazardous Materials occurring prior to the Close of Escrow for a Parcel with respect to work performed on such Parcel. This environmental indemnity shall be included in the Quitclaim Deed for each component of the Property provided that such indemnity (x) shall not be binding upon Tenants who are End Users under Ground Leases or Space Leases and (y) shall not be deemed to limit in any manner the rights and/or

remedies that Developer may have against the Federal Government. Without limiting Developer's obligations under this Section 10.2, Developer agrees to use its commercially reasonable efforts to include within any Ground Leases or Space Leases for the Retail Parcel, or to cause Healthcare Developer to include within any Ground Leases or Space Leases for the Healthcare Parcels, an indemnification from the lessee under Ground Leases or such Space Leases for Developer's and the City's benefit pursuant to which such lessee will indemnify, defend and hold harmless Developer and the City with respect to the Release of any Hazardous Materials during its Lease term.

10.3 Duration of Indemnities.

The indemnities set forth in this Section 10 shall run with the land and shall bind Developer and each and every Successor Owner while such Person owns any portion of the Project and during the Additional Liability Period applicable to such Person, with respect to such owned portion of the Project, shall survive each Close of Escrow, shall not be merged into any Quitclaim Deed and shall be set forth in their entirety in the Special Restrictions.

10.4 Claim Response.

In the event that following the Retail Property Close of Escrow, any Environmental Agency or other third party brings, makes, alleges, or asserts a Claim, arising from or related to any actual, threatened, or suspected presence or Release of Hazardous Materials on or about the Property or Parcel or any Improvements thereon, including any Claim for Investigation or Remediation on the Property or such Improvements, or such Environmental Agency or other third party orders; demands, or otherwise requires that any Investigation or Remediation be conducted on the Property or Parcel or with respect to Improvements thereon, Developer shall promptly upon its receipt of notice thereof, notify the City in writing and thereafter shall promptly and responsibly evaluate and respond to such Claim as provided in Section 10.5 below. Further, upon receipt of such Claim, order, demand or requirement, Developer shall take such reasonable measures, as necessary or appropriate, to reasonably dissuade such Environmental Agency or other third party from bringing, making, alleging, or asserting any Claim against the City arising from or related to the presence or any actual, threatened, or suspected Release of Hazardous Material on or about the Property, Parcel or such Improvements, including any Claim for Investigation or Remediation on the Property, Parcel or Improvements; provided, however, that such obligation shall not apply to those excluded Claims identified in clauses (a) and (b) in Section 10.2.

10.5 Release Notification and Remedial Actions.

If, after the Close of Escrow with respect to a component of the Property or the Development Parcels, there presence or any Release of a Hazardous Material is discovered on such Property or Parcel or any Improvements thereon, and regardless of the cause, Developer shall with respect to the Property, Parcel and/or Improvements promptly provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such Release to the City. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate any pre-existing condition or Release and the Developer acknowledges that it is obligated to assume responsibility or indemnify the City with respect to such Release pursuant

to Section 10.2 or there is a good faith dispute between the City and Developer as to whether Developer is obligated to assume responsibility or indemnify the City with respect to such condition or Release pursuant to Section 10.2, then Developer shall (a) Remediate the condition or Release in compliance with and to the extent required by Environmental Laws and such Environmental Agency, or if such removal is prohibited by any Environmental Laws, take whatever action is required by any Environmental Law and such Environmental Agency; (b) take such other reasonable action as is necessary to have the full use and benefit of the Property as contemplated by this Agreement; and (c) provide the City with satisfactory evidence of the actions taken as required in this Section. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such condition Release and the City acknowledges that Developer is not obligated to assume responsibility or indemnify the City with respect to such condition or Release pursuant to Section 10.2 or no Environmental Agency (other than the City) is requiring that the City Remediate such condition or Release, then (as between Developer and the City under this Agreement) Developer may elect in its sole discretion whether to Remediate such condition or Release and/or pursue any rights that Developer has against any Person (including the Federal Government and the City) with respect to such condition or Release. The foregoing shall be without prejudice to Developer's or the City's rights against any responsible party or against the Federal Government pursuant to the Navy Responsibilities and without compromising the applicability of any insurance coverage in regard to such Release. The City and Developer will coordinate any remediation action with appropriate environmental insurance carriers so as not to compromise coverage for the costs of such actions. Nothing set forth herein requires Developer to perform any obligation of the Federal Government and nothing set forth herein shall be deemed to limit or impair (or take any action that might limit or impair) in any manner the rights and/or remedies that Developer or City may have against the Federal Government or any other rights and/or remedies of Developer.

10.6 Conflict with Section 330 and Other Federal Government Obligations.

Notwithstanding anything to the contrary contained in this Section 10, in the event that any actions required to be taken by Developer pursuant to this Section 10 could potentially result in Developer losing rights, or are contrary to any rights, which it otherwise would have pursuant to Section 330, Fiscal Year 1993, National Defense Authorization Act Public Law 102-484 or otherwise against the Federal Government, then the City and Developer shall meet in order to determine the proper course of action to be taken by Developer. The course of action to be agreed upon shall protect the City's interest in the Project and Tustin Legacy, while retaining for Developer its rights pursuant to Section 330 or otherwise against the Federal Government to the maximum extent reasonable under the circumstances. Notwithstanding the foregoing, nothing set forth in this Section 10.6 relieves Developer with respect to Developer's environmental responsibilities and obligations and environmental indemnification of Developer to the City in this Agreement.

10.7 Insurance and Indemnification.

Notwithstanding anything contained herein and without limiting or relieving Developer or any Successor Owner of its obligations to indemnify, defend and hold harmless the City Indemnified Parties under this Agreement, the City agrees that with respect to any Claims tendered by any one (1) or more of the City Indemnified Parties under this Agreement for which

Developer has the obligation to indemnify the City pursuant to the terms of this Agreement, the City Indemnified Parties shall, to the extent such insurance could reasonably be determined to be applicable to the type, extent, value and/or location of the Claim being made, tender such Claim concurrently with the insurer with respect to the environmental insurance policy required pursuant to Section 11.1.4 of this Agreement and shall thereafter use reasonable commercial efforts to prosecute its Claim for coverage with such insurer. To the extent that insurance is determined by the City not to be reasonably applicable to the Claim or, if after six (6) months, despite such efforts, insurance proceeds are not available to cover all or a portion of the Claim or if such Claim is earlier denied by the insurance carrier, Developer shall promptly pay to the City Indemnified Parties the Claim amounts not then covered by the environmental insurance policy. Developer shall assist and cooperate with the City in its tender of Claims as required by this Section and shall pay in accordance with the indemnity obligations of Developer, all staff and third party costs incurred by the City pursuant to this Section.

11. **Insurance.**

11.1 Required Insurance.

Without limiting the City's rights to indemnification, Developer, or Healthcare Developer with respect to the Healthcare Property, shall procure and maintain, at its own cost and expense or cause any tenant under a Lease or Successor Owner to obtain (except in connection with Section 11.1.4 which Developer shall procure and maintain), 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 the respective Developer as insured and, with respect to the insurance required pursuant to Section 11.1.1 and 11.1.4 only, the City as additional insured. All insurance required below shall be kept in force with respect to each such component of the Property and the Project until Recording of a Certificate of Compliance with respect thereto except as provided otherwise in Section 11.1.4 below. Upon sale or ground lease of the Healthcare Property to a Healthcare Developer or any Building Pad to an End User, the Healthcare Developer or End User, as the case may be, may provide the insurance required by this Section (except for Section 11.1.4) with respect to the portion of the Property Leased or sold to it and the Improvements thereon and in such case Developer shall not be required to carry duplicative insurance, and Developer shall continue to maintain the insurance required by this Section with respect to all portions of the Development Parcels and Improvements not sold or leased to Healthcare Developer or an End User. Notwithstanding anything contained in Sections 11.1.1 and 11.1.2 to the contrary, each of the requirements set forth in this Section 11 may be satisfied through Developer's or an affiliated entity's umbrella insurance policies.

11.1.1 **Liability Insurance**. Commencing upon the Effective Date, 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 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 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 with respect to each Parcel until Recording of a Certificate of Compliance for such Parcel and so long thereafter as necessary to cover any claims of damages suffered by Persons or property prior to Recording of a Certificate of Compliance for the Project, 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 authorized by the Insurance Department of the State of California and rated A-/VII or better (if an admitted carrier) or A-VIII (if offered, by a surplus line broker), by the latest edition of Best's Key Rating Guide. Subject to the prior approval of the City Attorney and City Risk Manager, such insurance may be provided by an umbrella insurance policy otherwise meeting the requirements of this Section 11.

An Accord certificate evidencing the foregoing and providing the following endorsements signed by the authorized representative of the underwriter and approved by the City shall be delivered within seven (7) Business Days following the Effective Date and annually (upon request from the City) evidencing renewals of each policy until Recording of a Certificate of Compliance for the Project. The endorsements shall provide as follows: (a) designate the City, its elected and appointed officials, agents, representatives and employees as additional insureds on the commercial general liability policies; (b) the commercial general liability insurance coverage shall be primary, and not contribute with any insurance or self-insurance maintained by the City and (c) 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 Indemnified Parties as set forth herein.

11.1.2 **Workers' Compensation Insurance**. Commencing upon the Effective Date, 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 of California 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 of California 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 this Agreement carries workers' compensation insurance required by law. The insurance policy, by endorsement signed by an authorized representative of the underwriter, shall contain a waiver of subrogation. The insurance provided for under this Section 11.1.2 shall be issued by a company rated B-/VIII or better or from the State Compensation Fund.

11.1.3 **Builder's Risk Insurance**. Commencing upon the commencement of construction by Developer of any Improvements and continuing until such time as the City Records a Certificate of Compliance with respect to a Parcel, Developer shall obtain, or shall cause its contractor to obtain, and thereafter maintain a builder's risk policy with respect to the improvements constructed on such Parcel or in connection with development of such Parcel 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 Improvements to be constructed on or in connection with development of such Parcel. The insurance provided for under this Section 11.1.3 shall be provided by insurer(s) licensed to do business in the State of California and with a Best's rating of B/NR or better.

11.1.4 **Environmental Insurance**. From and after the Retail Property 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 additional insured to address pollution risks at the Property. Such policy shall include coverage relating to known pre-existing conditions, exacerbation of existing conditions, and/or conditions that are discovered during development on the Development Parcels. Notwithstanding anything herein to the contrary, Developer may satisfy its obligations under this Section 11.1.4 in connection with the Healthcare Parcel by imposing upon Healthcare Developer, upon its acquisition of the Healthcare Property the obligation to obtain and maintain the insurance required by this Section 11.1.4. 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 Five Million Dollars ($5,000,000) in coverage, subject to a maximum One Million Dollar ($1,000,000) deductible per claim, to protect against Claims and loss from liability relating to known and unknown conditions on the Property for a 5-year term with an extended reporting period of at least 24 months; and

(c) The policy shall be paid for in full at the time of issuance and shall be endorsed as non-cancelable without the written consent of Developer and the City in its sole discretion to such cancellation and, to the extent available, shall contain a waiver of subrogation for the benefit of the City. As such, Developer's obligation to maintain environmental insurance pursuant to this Section 11.1.4 shall survive the termination of this

Agreement following the Retail Property Close of Escrow for the term required for such insurance policy pursuant to Section 11.1.4(b).

11.2 General Insurance Requirements.

11.2.1 For all policies or certificates, an authorized representative of Developer, or other Person required to obtain insurance hereunder ("**Insured Party**"), or its insurance broker shall notify the City within thirty (30) calendar days after its knowledge of any cancellation, termination or modification of such policies.

11.2.2 The term "**full insurable value**" as used in this Section 11 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.

11.2.3 All insurance provided under this Section 11 shall be for the benefit of the City and any additional Parties that the Developer may require. Developer shall, and shall cause each Insured Party, (a) 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, and (b) to submit certificates evidencing such insurance to the City on an Accord form within seven (7) Business Days following the Effective Date, or, with respect to coverage required by Section 11.1.4, each Close of Escrow. Upon request by the City, within seven (7) calendar days, if practicable, after expiration of any such policy, certificates evidencing renewal policies shall be submitted to the City.

11.2.4 If Developer fails to procure or to cause any Insured Party to procure and maintain insurance as required by this Agreement, 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 insured(s).

11.2.5 Since the insurance policies required by Section 11.1.4 will not be effective until after each Close of Escrow, the evidence of insurance to be delivered by Developer to the City at each Close of Escrow shall be limited to a binder evidencing that the insurance required by Section 11.1.4 will become effective following such Close of Escrow.

12. Covenants and Restrictions.

The following covenants and restrictions shall be set forth in the Special Restrictions and shall run with the land for the duration set forth below and in the Special Restrictions for the

benefit of the City in its Proprietary Capacity. The Special Restrictions may contain additional covenants and restrictions as further set forth therein.

12.1 Use Covenants and Restrictions.

Developer covenants and agrees for itself and each Successor Owner and each and every Person claiming by through or under Developer or any Successor Owner that:

(a) The Retail Parcel and each part thereof shall be utilized only for lawful Retail Uses and only as and to the extent permitted by the Entitlements;

(b) The Healthcare Parcel and each part thereof shall be utilized only for the following lawful uses and only as and to the extent permitted by the Entitlements: (i) Medical Uses and (ii) only in the Buildings identified in the Scope of Development as "**Medical Retail**" Buildings, Healthcare Parcel Retail Uses. Neither Developer nor any Successor Owner nor any Person claiming by through or under Developer or any Successor Owner including any End User shall use the Development Parcels or any portion thereof for any Prohibited Use.

(c) The Developer and its Successor Owners and all End Users shall be subject to the covenants, conditions and restrictions set forth in the Quitclaim Deed applicable to the Property, the Special Restrictions and the CC&Rs.

12.2 Maintenance Covenant.

12.2.1 **Maintenance Standards.** Developer, on behalf of itself and each Successor Owner, hereby covenants and agrees, from and after each Close of Escrow to maintain the Development Parcels then acquired by Developer and the Improvements thereon consistent with the following requirements:

(a) Prior to commencement of construction, Developer shall be responsible, at its sole cost and expense, (i) to secure and maintain the Development Parcels in a clean, safe and secure condition, in compliance with all applicable laws, (ii) to abate weeds and other hazards and nuisances on such portion of the Development Parcels as are not then under construction, (iii) to erect and maintain barricades and fencing, and provide security, in each case with respect to the Development Parcels and as reasonably necessary to protect the public and any Improvements already constructed, and (iv) to maintain (in compliance with all Environmental Laws) erosion control on the Development Parcels.

(b) From the date of commencement and during the continuance of construction of any Improvements on the Development Parcels and until Completion thereof, Developer shall maintain the Development Parcels and the Improvements thereon then under construction consistent with normal and customary construction industry practice.

(c) From and after the issuance of a certificate of occupancy for any Improvements on the Development Parcels, while this Agreement is in effect, Developer shall maintain all Improvements on the Development Parcels not then under construction in a clean, sanitary, orderly and attractive condition, subject to reasonable wear and tear, damage by

casualty or condemnation, as further set forth in the Special Restrictions. Developer shall be required to meet the standard for the quality of maintenance of the Improvements on the Development Parcels required by this Section regardless of whether or not a specific item of maintenance is listed below, except that, in each case, and notwithstanding anything in this Section to the contrary, Developer shall not have any maintenance obligation with respect to any items owned or controlled by (or on property owned or maintained by) a utility franchisee, any lighting or landscape district or by the City. Representative items of maintenance shall include: (i) maintenance and repair on a regular schedule, consistent with Class A Standards, of Buildings and maintenance, repair and replacement on a regular schedule consistent with Class A Standards, of improvements, private streets, roads, drives, sidewalks, utilities, Common Area, landscaping, hardscaping and fountains; (ii) frequent and regular inspection for graffiti or damage or deterioration or failure, and reasonably prompt (or, in the case of graffiti, within 48 hours) repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; (iii) emptying of trash receptacles and removal of litter; (iv) regular sweeping of private streets, roadways and sidewalks throughout the Development Parcels; (v) fertilizing, irrigating, trimming and replacing vegetation as necessary; (vi) cleaning exterior windows on a regular basis; (vii) painting the Buildings on a regular program and prior to the deterioration of the painted surfaces; and (viii) conducting roof inspections on a regular basis and maintain roofs in a leak free and weather tight condition.

12.2.2 **Maintenance Responsibilities**. Developer shall have the right (a) to assign its maintenance responsibilities under this Agreement with respect to the Healthcare Parcel to Healthcare Developer. Upon such assignment, the transferor Developer shall have no further liability under this Section 12.2 with respect to maintenance of the Healthcare Parcel except as specifically set forth in the CC&Rs or the Slope Parcel Easement and Landscape Installation and Maintenance Agreement. Developer shall have the right to subcontract its maintenance responsibilities under this Agreement to a Developer Affiliate (and Healthcare Developer shall have the right to subcontract its maintenance responsibilities under this Agreement to an HCD Affiliate) or a first class property management company or other third party that has an interest in one of the Parcels, provided that such subcontracting shall not relieve Developer of any liability for its obligations under this Section 12.2.

12.2.3 **City Rights to Maintain**. In the event Developer or any Successor Owner fails to maintain the Improvements or landscaping on the Development Parcels or any portion thereof in accordance with the standard for the quality of maintenance set forth in this Section or the Special Restrictions, the City or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Developer or its Successor Owners, correct any such failure, and hold Developer, or such Successor Owner, responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the applicable portion of the Property as and to the extent described in Section 16.2.

12.3 Additional Purchase Price.

12.3.1 **Additional Purchase Price Obligation**. Developer covenants and agrees on behalf of itself and each Successor Owner of the Retail Parcel, or any portion

thereof, to pay to the City the Additional Purchase Price. The provisions of this Section 12.3 shall run with the land, shall not merge with any Quitclaim Deed and shall survive any termination of this Agreement following the Retail Property Close of Escrow until the Additional Purchase Price is paid in full.

12.3.2 **No Interest in Project**. The City's right to receive the Additional Purchase Price as set forth herein does not confer upon the City any proprietary or other interest in the Property or the Project.

12.3.3 **Secured by REG Guaranty**. The obligation of Developer to pay the Additional Purchase Price shall be secured by the REG Guaranty and by any subsequent Guaranty with respect to the Retail Parcel and Improvements provided pursuant to the terms of this Agreement.

12.4 Slope Parcel Easement and Landscape Installation and Maintenance Agreement.

Concurrently with the Close of Escrow, Developer and the City shall enter into a Slope Parcel Easement and Landscape Installation and Maintenance Agreement in substantially the form and substance of the instrument attached as Attachment 25 or otherwise as agreed by the City and Developer each in its sole discretion (the "**Slope Parcel Easement and Landscape Installation and Maintenance Agreement**") pursuant to which Developer on behalf of itself and each Successor Owner shall agree to landscape and maintain the Slope Parcel for the benefit of the City, as owner of the Slope Parcel, and its Successor Owners, and the Parties shall grant to each other various access and maintenance agreements for such purpose. If requested by any Party, the other Parties shall, at and as a condition to the Healthcare Property Close of Escrow, enter into a Slope Parcel Agreement Confirmation with respect to the Healthcare Restrictions (as defined in the Slope Parcel Easement and Landscape Installation and Maintenance Agreement) to assure the enforceability of and to effectuate the easements and Healthcare Restrictions set forth in the Slope Parcel Easement and Landscape Installation and Maintenance Agreement and to provide notice of such actions.

12.5 Duration of Covenants.

The covenants in Sections 12.1 and 12.2.2 shall be included in the Special Restrictions and shall remain in force and effect with respect to each Parcel until the date which is the twenty-fifth (25th) anniversary of the Recording of the last Certificate of Compliance for such Parcel, unless released at an earlier date by the City in writing. The covenants set forth in Section 12.2.1 shall remain in effect only until CC&Rs addressing maintenance requirements in substance substantially similar to those set forth in Section 12.2.1 are approved by the City, executed and Recorded. The covenants in Section 12.3 shall survive each Close of Escrow and shall not be merged into any Quitclaim Deed, shall survive any termination of this Agreement following the Retail Property Close of Escrow and shall remain in effect until paid in full.

12.6 Obligation to Refrain from Discrimination.

Developer covenants and agrees for itself and each Successor Owner, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex,

race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property or in development of the Project, nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or in development of the Project or any part thereof.

12.7 Deed Restrictions/Covenants Running with the Land.

The obligations of Developer set forth in this Agreement, the Special Restrictions and each Quitclaim Deed shall be covenants running with the land, shall be binding upon Developer, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner for the benefit of the City and the City Benefited Parcels.

12.8 Priority of DDA and Special Restrictions.

This Agreement, including the Lien, the Right of Repurchase and the Right of Reversion contained herein, the Memorandum of DDA, the Special Restrictions, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement and the CC&Rs shall be superior in priority to all Mortgages.

13. CC&Rs.

As a condition precedent to the Retail Property Close of Escrow, Developer shall prepare, submit to the City for approval which shall be granted or denied in the sole discretion of the City, a set of covenants, conditions and restrictions, as well as design guidelines for development of the Improvements to be constructed as part of the Project, together with other requirements included in the conditions of approval for the Parcel Map approved by the City (the "**CC&Rs**"). Among other things and without limitation, the CC&Rs shall establish (a) access and maintenance easements, including pedestrian and vehicular access by all owners and Tenants to the shared main driveway aisle from Kensington Park Drive, (b) certain use restrictions; and (c) the mechanism for sharing costs for maintenance, repair and replacement of the Common Area and Common Area Improvements between the Retail Parcel owner(s) and the Healthcare Parcel owner(s). The CC&Rs shall be Recorded against the entirety of the Development Parcels at the Retail Property Close of Escrow, but shall include the right of the City to require that the CC&Rs be amended as is necessary to accommodate the development of any portion of the Development Parcels that are not acquired by Developer on or before the Healthcare Property Outside Closing Date or are Reacquired Property acquired by the City pursuant to Section 16.3 or 16.4 of this Agreement. From and after the Retail Property Close of Escrow, Developer and each Successor Owner of the Development Parcels shall be responsible for all costs associated with maintenance and repair of the Improvements, and the City shall have no liability therefor.

14. Potential Defaults and Material Defaults.

14.1 Potential Defaults.

Except as otherwise provided in this Agreement, in the event either Party (the "**Defaulting Party**") fails to perform, or delays in the performance of, any obligation, in whole

or in part, required to be performed by the Defaulting Party as provided in this Agreement (a "**Potential Default**"), the other Party (the "**Injured Party**") may give written notice of such Potential Default to the Defaulting Party (the "**Default Notice**"), which Default Notice shall state the particulars of the Potential Default. The Parties agree to cooperate in good faith and meet and confer regarding each Potential Default.

14.2 Material Defaults.

14.2.1 **Monetary Defaults**. Notwithstanding any other provision of this Agreement, if a Party fails to pay the other Party any sum required to be paid pursuant to this Agreement and the Injured Party gives the Defaulting Party a Default Notice of such nonpayment, such nonpayment shall be a Potential Default. The Defaulting Party shall have a period of fifteen (15) calendar days after the date the Default Notice is received, or deemed to have been received, within which to cure the Potential Default by making the required payment; the period to cure such Potential Default shall not be extended by Force Majeure Delay. In the event a Potential Default for nonpayment is not cured within said fifteen (15) calendar day period, the Potential Default shall become a "**Material Default**" that shall be deemed to have occurred upon the expiration of the cure period.

14.2.2 **Non-Monetary Defaults**. With respect to non-monetary defaults under this Agreement, a Potential Default shall become a "**Material Default**" in the event the Potential Default is not cured, at the Defaulting Party's expense, (a) within thirty (30) calendar days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party, or (b) if such cure cannot be reasonably accomplished within such thirty (30) calendar day period, within ninety (90) calendar days after the date the Default Notice is received, or deemed to have been received by the Defaulting Party, but only if the Defaulting Party has commenced such cure within such thirty (30) calendar day period and diligently pursues such cure to completion, or (c) within such longer period of time as may be expressly provided in this Agreement or as mutually agreed to in writing between the Parties with respect to the Potential Default. Except as set forth in Section 14.2.3, the time periods set forth in this Section 14.2.2 to cure a Potential Default shall be extended by Force Majeure Delay. Following written notice and failure to cure within the time periods set forth above, each Potential Default shall become a Material Default that shall be deemed to have occurred upon the expiration of the applicable cure period. Notwithstanding anything in the foregoing to the contrary, the Defaulting Party may cure a Material Default at any time prior to the date the Injured Party exercises its remedy for the Material Default.

14.2.3 **Transfer Defaults**. Notwithstanding the foregoing, any Transfer or any Transfer of Control in violation of the provisions of Section 2 shall be null and void and shall in all events be a Material Default under this Agreement as of the date of the Transfer by the violating party, without notice or cure period and shall not be subject to extension for Force Majeure Delay, except that with respect to involuntary mechanics' liens for which the notice and cure periods set forth in Section 14.2.2 shall apply, in order to enable Developer to comply with the provisions of Section 8.6.

14.2.4 **Interest**. If a monetary Material Default occurs under this Agreement, then in addition to any other remedies conferred upon the Injured Party pursuant to this Agreement, the Defaulting Party shall pay to the Injured Party, in addition to all principal amounts due, interest on such principal amounts at the Default Rate, for the period from the date such payment or part thereof was due until the date the same is paid.

14.2.5 **No Waiver**. Failure or delay by an Injured Party to deliver a Default Notice shall not constitute a waiver of any Default, nor shall it change the time of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

14.2.6 **Developer and Healthcare Developer Obligations Related to Healthcare Property Transfer**. Notwithstanding anything in this Agreement to the contrary but subject to the terms of Section 2.2.3(b)(iv) and (v) hereof, following a Transfer of the Healthcare Property to a Healthcare Developer pursuant to Section 2.2.3(b) until Recording of a Certificate of Compliance for the Healthcare Parcel, Healthcare Property Transferor and Healthcare Developer shall be obligated to comply with the following:

(a) Healthcare Property Transferor covenants and agrees, notwithstanding any Transfer to Healthcare Developer: (i) to carry out the Healthcare Transferor Obligations; (ii) to construct the Minimum Horizontal Improvements upon the entirety of the Property and (iii) to enforce Healthcare Property Transferor's rights under the HCD Agreements, the HCD Assignment and the HCD Guaranty in order to ensure that the Minimum Healthcare Improvements are completed in accordance with the Scope of Development and the Healthcare Schedule of Performance, provided that the City may, at any time, and at its option, exercise its rights under the HCD Assignment, the HCD Guaranty or the REG Guaranty (but as to the REG Guaranty, only with respect to the Minimum Horizontal Improvements on the Healthcare Parcel), as applicable, with respect thereto. The obligations of Developer under this clause (a) shall not be transferable or Transferred to Healthcare Developer; provided however, that Healthcare Developer shall be obligated to construct the Minimum Horizontal Improvements upon the Healthcare Property, but only in the event that Healthcare Property Transferor fails to timely carry out such construction in accordance with the Schedule of Performance, as further set forth in Section 2.2.3(b)(iv)(A).

(b) Healthcare Property Transferor shall have the right, but not the obligation, jointly with Healthcare Developer, to cure any obligations under this Agreement or the Other Agreements assigned by Healthcare Property Transferor to Healthcare Developer. Healthcare Property Transferor, and by acceptance of the Assignment, Healthcare Developer agree that the time period for Completion of construction of the Healthcare Horizontal Improvements and the Healthcare Vertical Improvements by Healthcare Developer shall be reduced by six (6) months from the time period otherwise set forth in this Agreement for performance by Developer. Any Potential Default of Healthcare Developer shall not become a Material Default of Healthcare Developer or Healthcare Property Transferor if either cures such

Potential Default during the time period set forth in Section 14.2.1 or 14.2.2, as applicable. Following the Healthcare Property Close of Escrow and a Transfer of the Healthcare Property to a Healthcare Developer that is not a Developer Affiliate, and with respect to the Transferred Property only, Healthcare Property Transferor shall have the right, at any time prior to the earlier of exercise of the Right of Repurchase and/or Right of Reversion or the termination of this Agreement that affects the Transferred Property or any portion thereof, to cure or remedy a Default, to effect any insurance, to pay any amounts due to the City, to make any repairs or improvements, to do any other act or thing required of Healthcare Developer under this Agreement and to do any act or thing which may be necessary and proper to be done in the performance and observance of this Agreement to prevent Material Default by Healthcare Developer or the termination of this Agreement or the rights of Healthcare Developer hereunder. Any of the foregoing done by Healthcare Property Transferor shall be as effective to cure such Default or to prevent a termination of this Agreement or the exercise by the City of the Right of Repurchase or the Right of Reversion as the same would have been if done by Healthcare Developer.

(A) If either Healthcare Property Transferor and/or Healthcare Developer fail to cure any Default of Healthcare Developer within the time periods set forth in this Agreement for such cure, the City, in addition to any rights it may have with respect to Healthcare Developer, shall have the right, but not the obligation, at its option and without exclusivity, to exercise all remedies under this Agreement and/or the HCD Guaranty, including, to the extent such remedy is available pursuant to Section 16.3 or 16.4, to exercise the Right of Repurchase set forth in Section 16.3 or to exercise its Right of Reversion with respect to the Healthcare Project, the Healthcare Property and Improvements or any portion thereof and/or to terminate this Agreement with respect thereto. Healthcare Developer shall be liable for and shall pay to the City all costs and expenses incurred by the City, if any, in enforcement by the City of its remedies under this Agreement or the HCD Guaranty with respect to the Healthcare Developer, the Healthcare Project, the Healthcare Property or any Improvements thereon, including the exercise by the City of the Right of Repurchase or Right of Reversion with respect to the Healthcare Parcel or any portion thereof, but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Developer, or by REG pursuant to the REG Guaranty, Healthcare Developer or Healthcare Guarantor pursuant to the Healthcare Guaranty.

(c) In the event of any Default by Healthcare Property Transferor with respect to the Healthcare Transferor Obligations, the City shall have the right, at its option and without exclusivity, but not the obligation, to exercise all remedies under this Agreement, and the REG Guaranty, including, to the extent such remedy is available pursuant to Section 16.3 or 16.4, to exercise the Right of Repurchase set forth in Section 16.3 or to exercise its Right of Reversion with respect to the Retail Project, the Retail Property and Improvements or any portion thereof and/or to terminate this Agreement with respect thereto.

(d) Healthcare Property Transferor shall provide notice to the City of any default by Healthcare Developer under the agreements between Healthcare Property

Transferor and Healthcare Developer, concurrently with its provision of notice of such default to Healthcare Developer.

(e) In the event that Healthcare Property Transferor intends to cure the Default of Healthcare Developer pursuant to this Section 14.2.6, then Healthcare Property Transferor shall provide written notice to the City within fifteen (15) calendar days after its receipt of the Notice to Healthcare Property Transferor specifying its proposed actions, and shall thereafter provide written reports to the City on a monthly basis setting forth its actions to date and proposed actions to cure the Default of Healthcare Developer.

14.3 Due Diligence Information; Products.

14.3.1 **Destruction of Due Diligence Information**. Developer (and Healthcare Developer, if any) shall use commercially reasonable efforts to return to the City all written Due Diligence Information in Developer's possession: (a) pertaining to the Property within five (5) Business Days following (i) termination of this Agreement prior to the Retail Property Close of Escrow or (ii) the Retail Property Outside Closing Date, if the Close of Escrow for the Retail Property shall not have taken place on or before such date, or (b) pertaining to the Healthcare Property following (i) termination of this Agreement as to the Healthcare Property prior to the Healthcare Property Close of Escrow or (ii) the Healthcare Property Outside Closing Date, if the Close of Escrow for the Healthcare Property shall not have taken place on or before such date. The obligation to return Due Diligence Information to the City under this Section is without representation or warranty of any kind by Developer and/or Healthcare Developer, as applicable.

14.3.2 **Surrender of Transferable Products**. In connection with the proposed Project, Developer shall be preparing or causing to be prepared architectural and other products, surveys, plans, reports, tests, studies and investigations with respect to the Property and the proposed Project (collectively, "**Products**"). All Products shall be prepared at Developer's sole cost and expense. If (a) this Agreement is terminated for any reason other than a Material Default by the City prior to the Retail Property Close of Escrow or (b) if either the Healthcare Property Outside Closing Date or the Retail Property Outside Closing Date shall pass without the Close of Escrow for such Property having taken place and this Agreement shall terminate as to either such Property then, with respect to all Products with respect to the portion of the Property for which this Agreement has terminated, other than financial or economic estimates, projections and evaluations; studies and information related to potential tenants, lenders and investors; and any confidential or proprietary information of Developer or its equity partner(s) (the Products not subject to such exclusions are collectively the "**Transferable Products**"), the City may request that Developer, for consideration to be mutually agreed, transfer Developer's rights to any or all of the Transferable Products identified by the City, but in no event shall the cost to the City exceed Five Thousand Dollars ($5,000.00). Upon such request, Developer shall deliver to the City copies of all Transferable Products requested by the City together with a bill of sale therefor, provided that Developer makes no representation, warrantee or guarantee regarding the completeness or accuracy of the Transferable Products, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such Transferable Products 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 Transferable Products, the City shall be permitted to use, grant, license or otherwise dispose of such Transferable Products to any person or entity for development of the Project or any other purpose; provided, however, that Developer shall have no liability whatsoever to the City or any transferee or title to the Transferable Products in connection with the use of the Transferable Products.

14.3.3 **Survival**. The provisions of this Section 14.3 shall survive the termination of this Agreement in its entirety or as to any portion of the Property except that it shall terminate upon the Recording of a Certificate of Compliance therefor.

15. **Nonoccurrence of a Condition at Close of Escrow.**

The following provisions govern the failure of Close of Escrow for either the Healthcare Property or the Retail Property for reason of non-occurrence of a Closing Condition or Default by either Party. Notwithstanding any other provision of this Agreement,

(a) Any Closing Condition for the benefit of either Party to be satisfied at or prior to a Close of Escrow shall not, on its own, constitute a Default by either Party hereunto absent a Default under a separate covenant, obligation, representation or warranty set forth in this Agreement or any Other Agreement;

(b) In the event of a termination of all or a portion of this Agreement as provided in Section 15.1, 15.2 or 15.3, under no circumstances shall Developer have any right or claim to, or against, the Project or Property or any portion thereof for which this Agreement is terminated;

(c) In the event of a termination of the City's obligation to sell either the Healthcare Property or the Retail Property pursuant to this Agreement, the City shall have the right to market and sell such Property to third parties without restriction; and

(d) The termination of this Agreement or the provisions of this Agreement applicable to the Retail Project, the Retail Property and/or the Improvements thereon (the "**Retail Provisions**") or the provisions of this Agreement applicable to the Healthcare Project, the Healthcare Property and/or the Improvements thereon (the "**Healthcare Provisions**") pursuant to Section 15 shall constitute a waiver of any rights or Claims either Party may have against the other pursuant to this Agreement or against the Property or the Improvements, or portion thereof to which the termination applies, but shall not terminate or release any liability or obligations of either Party to comply with any obligations under this Agreement pursuant to this Section 15 which remain in effect or which are expressly stated to survive a termination of this Agreement.

15.1 Failure of a Condition to Retail Property Close of Escrow Absent a Default.

15.1.1 **Failure of a Condition to Retail Property Close of Escrow Generally.**

(a) If the Retail Property Close of Escrow does not occur on or before 5:00 p.m. Pacific Time on the earlier of the Retail Property Closing Date or the Retail Property Outside Closing Date, in either case, as the same may be extended, in either case because of the failure to occur of a Closing Condition for the benefit of either Party for reasons other than a Default by a Party, then the Party for whose benefit the failed Closing Condition was intended may, by delivery of written notice to the other Party and to the Escrow Holder, terminate this Agreement.

(b) It is the intent of the Parties that even if (i) the Healthcare Property Close of Escrow has not then occurred, (ii) the time period for close of escrow for the Healthcare Property has not expired, and (iii) no Party is then in Default with respect to the Healthcare Property Close of Escrow, then upon termination under Section 15.1.1(a) above, this Agreement shall terminate in its entirety as to both the Retail Project and as to the Healthcare Project.

(c) In the event either Developer or the City is in Default as of the Retail Property Closing Date, in the case of the Retail Property Close of Escrow, or as of the Healthcare Property Closing Date, in the case of the Healthcare Property Close of Escrow the Party in Default shall not have the right to terminate the Agreement pursuant to this Section 15.1.

15.1.2 **Failure of a Condition to Retail Property Close of Escrow for Litigation or Referendum**. In the event the Retail Property Close of Escrow is extended for any of the reasons set forth in this Section 15.1.2 not caused by a Material Default by either Party, then:

(a) In the event a final non-appealable decision in any litigation brought by a third party or approval of a referendum or initiative results in the inability of the City to convey all or any portion of the Retail Property to Developer, or results in the inability of Developer to perform its material obligations hereunder despite Developer's commercially reasonable efforts to do so, either Party shall have the right, upon thirty (30) calendar days' prior written notice to the other Party and the Escrow Holder, to terminate this Agreement.

(b) In the event litigation, referendum, or initiative brought by a third party remains pending on the Retail Property Outside Closing Date and (i) such ongoing challenge prevents the City from conveying all or any portion of the Property to Developer, or (ii) such ongoing challenge is the cause of Developer's inability to perform its material obligations hereunder despite Developer's commercially reasonable efforts to do so, either Party shall have the right, upon thirty (30) calendar days' written notice to the other Party and the Escrow Holder, to terminate this Agreement.

(c) In the event that the circumstances creating the right of termination in Sections 15.1.2(a)(i) or (ii) above has been cured during such thirty (30) calendar day period, the right to terminate shall likewise be extinguished. In addition, if Developer

provides the City with written notice that Developer will indemnify, defend and hold harmless the City in any litigation or will challenge such referendum or initiative identified in Section 15.1.2(a)(ii), then, the City shall not have the right to terminate this Agreement and the applicable Outside Closing Date shall be extended for as long as the Developer continues such defense or challenge.

15.1.3 **Return of Purchase Price Deposit Prior to Retail Property Close of Escrow**. Upon any termination of this Agreement or the Healthcare Provisions pursuant to Section 15.1.1(a) or 15.1.2 prior to the Retail Property Close of Escrow and provided that neither Party is then in Default under this Agreement, each Party shall pay one-half (1/2) of Escrow Holder's normal cancellation charges and Escrow Holder shall return the Purchase Price Deposit to Developer less any amounts due and owing to the City with respect to City Transaction Expenses and for which the City Cost Deposit then funded pursuant to Section 1.8 is insufficient; provided that in no event shall the City have any obligation to return the Healthcare Property Option Payment, if then paid, the Applicable ENA Deposit or the Non-Refundable ENA Deposit. The termination of the obligations of the Parties with respect to the Retail Property Close of Escrow shall relieve both parties of all of their respective liabilities and obligations with respect to this Agreement except for those obligations and liabilities that this Agreement expressly provides shall survive such termination.

15.2 MATERIAL DEFAULT OF DEVELOPER RESULTS IN FAILURE OF RETAIL PROPERTY CLOSE OF ESCROW.

IF THE RETAIL PROPERTY CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M., PACIFIC TIME, ON THE CLOSING DATE ESTABLISHED BY THIS AGREEMENT FOR SUCH CLOSE OF ESCROW SOLELY AS A RESULT OF A DEFAULT BY DEVELOPER (INCLUDING FAILURE TO DELIVER THE DELIVERABLES REQUIRED PURSUANT TO SECTION 7.2.2(b) OR 7.3.2(b), AS APPLICABLE OR TO DELIVER SUFFICIENT FUNDS TO CAUSE THE CLOSING TO OCCUR IN A TIMELY MANNER, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7), THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT:

(i) THE PURCHASE PRICE DEPOSIT PROVIDED FOR IN SECTION 4.3.1 OF THIS AGREEMENT AND THE OTHER SUMS DESCRIBED IN THIS PARAGRAPH BEAR A REASONABLE RELATIONSHIP TO THE DAMAGES WHICH THE PARTIES ESTIMATE MAY BE SUFFERED BY THE CITY AS THE RESULT OF THE DEVELOPER'S DEFAULT UNDER THIS AGREEMENT THAT RESULTS IN THE FAILURE OF THE RETAIL PROPERTY CLOSE OF ESCROW, WHICH DAMAGES WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO QUANTIFY, THAT SUCH DEPOSIT CONSTITUTES A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT, AND THAT THE REMEDY PROVIDED FOR IN THIS AGREEMENT IS NOT A PENALTY OR FORFEITURE AND IS A REASONABLE LIMITATION ON DEVELOPER'S POTENTIAL LIABILITY AS A RESULT OF SUCH DEFAULT; PROVIDED THAT NOTHING I THIS AGREEMENT SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM

DEVELOPER FOR THE CITY TRANSACTION EXPENSES, RETAINING THE NONREFUNDABLE ENA DEPOSIT AND THE APPLICABLE ENA DEPOSIT AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE DATE OF TERMINATION OF THIS AGREEMENT AND THEREAFTER TO THE EXTENT INCURRED TO ADDRESS MATTERS CAUSED BY SUCH TERMINATION, AND

(ii) DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES.

(iii) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTIONS 4.6.4(f) AND 5.5.

(iv) IF DEVELOPER FAILS TO CURE ITS MATERIAL DEFAULT WITH RESPECT TO THE RETAIL PROPERTY CLOSE OF ESCROW WITHIN TEN (10) BUSINESS DAYS AFTER THE CITY PROVIDES WRITTEN NOTICE OF SUCH DEFAULT, THEN THE CITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND THE ESCROW IN ITS ENTIRETY, IN EITHER CASE BY DELIVERING WRITTEN NOTICE TO THE DEVELOPER AND TO ESCROW HOLDER, WHEREUPON THE CITY SHALL BE RELEASED FROM ITS OBLIGATIONS HEREUNDER, AND ESCROW HOLDER SHALL DISBURSE THE PURCHASE PRICE DEPOSIT AND ALL ACCRUED INTEREST THEREON TO THE CITY, AS LIQUIDATED DAMAGES, WHICH DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR SUCH DEFAULT, EXCEPT FOR THE RIGHTS AND REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 5.5 AND 18.24 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3.

Initials of City _____ Initials of Developer _____

15.3 FAILURE OF HEALTHCARE PROPERTY CLOSE OF ESCROW.

IF THE RETAIL PROPERTY CLOSE OF ESCROW HAS TAKEN PLACE, DEVELOPER HAS MADE THE FIRST OPTION PAYMENT AND THE HEALTHCARE PROPERTY CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M. PACIFIC TIME ON THE EXPIRATION OF THE HEALTHCARE PROPERTY OUTSIDE CLOSING DATE FOR ANY REASON OTHER THAN A MATERIAL DEFAULT OF THE CITY AS SET FORTH IN SECTION 15.4.1, THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT:

(i) THE HEALTHCARE PROPERTY OPTION PAYMENT PROVIDED FOR IN SECTION 4.3.3 OF THIS AGREEMENT SHALL BE FORFEITED TO THE CITY AS A NON-REFUNDABLE OPTION PAYMENT WHICH SHALL BE THE CITY'S SOLE COMPENSATION IN ALL EVENTS FOR A FAILURE OF THE HEALTHCARE PROPERTY CLOSE OF ESCROW TO OCCUR;

DEVELOPER FOR THE CITY TRANSACTION EXPENSES, RETAINING THE NONREFUNDABLE ENA DEPOSIT AND THE APPLICABLE ENA DEPOSIT AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE DATE OF TERMINATION OF THIS AGREEMENT AND THEREAFTER TO THE EXTENT INCURRED TO ADDRESS MATTERS CAUSED BY SUCH TERMINATION, AND

(ii) DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES.

(iii) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTIONS 4.6.4(f) AND 5.5.

(iv) IF DEVELOPER FAILS TO CURE ITS MATERIAL DEFAULT WITH RESPECT TO THE RETAIL PROPERTY CLOSE OF ESCROW WITHIN TEN (10) BUSINESS DAYS AFTER THE CITY PROVIDES WRITTEN NOTICE OF SUCH DEFAULT, THEN THE CITY SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT AND THE ESCROW IN ITS ENTIRETY, IN EITHER CASE BY DELIVERING WRITTEN NOTICE TO THE DEVELOPER AND TO ESCROW HOLDER, WHEREUPON THE CITY SHALL BE RELEASED FROM ITS OBLIGATIONS HEREUNDER, AND ESCROW HOLDER SHALL DISBURSE THE PURCHASE PRICE DEPOSIT AND ALL ACCRUED INTEREST THEREON TO THE CITY, AS LIQUIDATED DAMAGES, WHICH DAMAGES SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR SUCH DEFAULT, EXCEPT FOR THE RIGHTS AND REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 5.5 AND 18.24 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3.

JTM

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Initials of City Initials of Developer

15.3 FAILURE OF HEALTHCARE PROPERTY CLOSE OF ESCROW.

IF THE RETAIL PROPERTY CLOSE OF ESCROW HAS TAKEN PLACE, DEVELOPER HAS MADE THE FIRST OPTION PAYMENT AND THE HEALTHCARE PROPERTY CLOSE OF ESCROW DOES NOT TAKE PLACE ON OR BEFORE 5:00 P.M. PACIFIC TIME ON THE EXPIRATION OF THE HEALTHCARE PROPERTY OUTSIDE CLOSING DATE FOR ANY REASON OTHER THAN A MATERIAL DEFAULT OF THE CITY AS SET FORTH IN SECTION 15.4.1, THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS AGREEMENT IN THE SPACE PROVIDED BELOW THAT:

(i) THE HEALTHCARE PROPERTY OPTION PAYMENT PROVIDED FOR IN SECTION 4.3.3 OF THIS AGREEMENT SHALL BE FORFEITED TO THE CITY AS A NON-REFUNDABLE OPTION PAYMENT WHICH SHALL BE THE CITY'S SOLE COMPENSATION IN ALL EVENTS FOR A FAILURE OF THE HEALTHCARE PROPERTY CLOSE OF ESCROW TO OCCUR;

(ii) THE PARTIES ACKNOWLEDGE AND AGREE THAT THE HEALTHCARE PROPERTY OPTION PAYMENT PROVIDED FOR IN SECTION 4.3.3 SHALL BE THE EXCLUSIVE REMEDY TO SELLER FOR THE DAMAGES SUFFERED BY THE CITY AS THE RESULT OF THE FAILURE OF THE HEALTHCARE PROPERTY CLOSE OF ESCROW; PROVIDED THAT NOTHING HEREIN SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM DEVELOPER FOR THE CITY TRANSACTION EXPENSES, RETAINING THE NONREFUNDABLE ENA DEPOSIT AND THE APPLICABLE ENA DEPOSIT AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE HEALTHCARE PROPERTY OUTSIDE CLOSING DATE; AND

(iii) DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES.

(iv) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTIONS 4.6.4(f) AND 5.5.

(v) THE HEALTHCARE PROVISIONS SHALL TERMINATE WHEREUPON THE CITY SHALL BE RELEASED FROM ITS OBLIGATION HEREUNDER TO SELL THE HEALTHCARE PROPERTY TO THE DEVELOPER, AND THEREAFTER THE HEALTHCARE PROPERTY SHALL NOT BE ENCUMBERED BY THIS AGREEMENT, AND ESCROW HOLDER SHALL DISBURSE THE HEALTHCARE PROPERTY OPTION PAYMENT AND ALL ACCRUED INTEREST THEREON TO THE CITY, AS PAYMENT FOR THE OPTION GRANTED BY THE CITY TO DEVELOPER WHICH SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR THE FAILURE OF THE HEALTHCARE PROPERTY CLOSE OF ESCROW TO OCCUR EXCEPT FOR THE CITY RIGHTS TO REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 4.6.4(f), 5.5 AND 18.24 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3.

(vi) NOTHING CONTAINED IN THIS SECTION 15.3 SHALL RELIEVE DEVELOPER OF ITS OBLIGATION TO PERFORM THE MINIMUM HORIZONTAL IMPROVEMENTS, PROVIDED THAT THE MINIMUM HORIZONTAL IMPROVEMENTS ON THE HEALTHCARE PROPERTY SHALL BE LIMITED TO THE HEALTHCARE ROUGH GRADING AND THE HEALTHCARE PERIMETER LANDSCAPING.

Initials of City Initials of Developer

15.4 Failure to Close; Default of City.

15.4.1 If either Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on or before the applicable Closing Date as the same may be extended, solely

(ii) THE PARTIES ACKNOWLEDGE AND AGREE THAT THE HEALTHCARE PROPERTY OPTION PAYMENT PROVIDED FOR IN SECTION 4.3.3 SHALL BE THE EXCLUSIVE REMEDY TO SELLER FOR THE DAMAGES SUFFERED BY THE CITY AS THE RESULT OF THE FAILURE OF THE HEALTHCARE PROPERTY CLOSE OF ESCROW; PROVIDED THAT NOTHING HEREIN SHALL PRECLUDE THE CITY FROM RETAINING ALL REIMBURSEMENTS IT HAS PREVIOUSLY RECEIVED FROM DEVELOPER FOR THE CITY TRANSACTION EXPENSES, RETAINING THE NONREFUNDABLE ENA DEPOSIT AND THE APPLICABLE ENA DEPOSIT AND COLLECTING FROM DEVELOPER ANY ADDITIONAL AMOUNTS THEN DUE TO CITY ON ACCOUNT OF DDA TRANSACTION EXPENSES INCURRED BY THE CITY TO THE HEALTHCARE PROPERTY OUTSIDE CLOSING DATE; AND

(iii) DEVELOPER SHALL PAY THE FULL AMOUNT OF ESCROW HOLDER'S CHARGES.

(iv) DEVELOPER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 14.3 AND SHALL INDEMNIFY THE CITY AS PROVIDED IN SECTIONS 4.6.4(f) AND 5.5.

(v) THE HEALTHCARE PROVISIONS SHALL TERMINATE WHEREUPON THE CITY SHALL BE RELEASED FROM ITS OBLIGATION HEREUNDER TO SELL THE HEALTHCARE PROPERTY TO THE DEVELOPER, AND THEREAFTER THE HEALTHCARE PROPERTY SHALL NOT BE ENCUMBERED BY THIS AGREEMENT, AND ESCROW HOLDER SHALL DISBURSE THE HEALTHCARE PROPERTY OPTION PAYMENT AND ALL ACCRUED INTEREST THEREON TO THE CITY, AS PAYMENT FOR THE OPTION GRANTED BY THE CITY TO DEVELOPER WHICH SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY HEREUNDER FOR THE FAILURE OF THE HEALTHCARE PROPERTY CLOSE OF ESCROW TO OCCUR EXCEPT FOR THE CITY RIGHTS TO REMEDIES FOR A SEPARATE BREACH, IF ANY, OF THE CONFIDENTIALITY AND/OR INDEMNIFICATION PROVISIONS SET FORTH IN SECTIONS 4.6.4(f), 5.5 AND 18.24 OF THIS AGREEMENT AND/OR THE PROVISIONS OF SECTION 14.3.

(vi) NOTHING CONTAINED IN THIS SECTION 15.3 SHALL RELIEVE DEVELOPER OF ITS OBLIGATION TO PERFORM THE MINIMUM HORIZONTAL IMPROVEMENTS, PROVIDED THAT THE MINIMUM HORIZONTAL IMPROVEMENTS ON THE HEALTHCARE PROPERTY SHALL BE LIMITED TO THE HEALTHCARE ROUGH GRADING AND THE HEALTHCARE PERIMETER LANDSCAPING.

_____ JTM
Initials of City Initials of Developer

15.4 Failure to Close; Default of City.

15.4.1 If either Close of Escrow does not occur on or before 5:00 p.m., Pacific Time, on or before the applicable Closing Date as the same may be extended, solely

as a result of a Default by the City in the performance of its obligations under this Agreement with respect to such Close of Escrow, then, so long as Developer is not in Default, Developer shall have the right, by providing notice to the City, within twenty (20) Business Days after the Closing Date, of its election to do so, either: (a) to purchase the relevant Property pursuant to this Agreement notwithstanding such Default by the City, without waiving Developer's rights in connection with such Default; (b) with respect to the Retail Property Close of Escrow only, to terminate this Agreement and cancel the Escrow, in which case the provisions of Section 15.4.3 shall apply; (c) with respect to the Healthcare Property Close of Escrow only, to terminate its obligation to acquire the Property to be conveyed at the Healthcare Property Close of Escrow and the Healthcare Provisions; or (d) with respect to either Close of Escrow, to elect to extend the applicable Closing Date for a period of sixty (60) calendar days in order to provide the City with time to cure such Default (and in such event the City shall use its reasonable efforts to cure the same during such extension period). Notwithstanding the foregoing, in the event that all applicable City Closing Conditions have been waived by the City in writing or satisfied (except with respect to any applicable City Closing Condition which is not satisfied as a result of a Default by the City), and the City fails to deliver any of the materials described in Section 7.2.1(a) or 7.3.1(a) or otherwise fails to proceed with either Close of Escrow in breach of this Agreement within ten (10) Business Days after Developer has delivered into Escrow a written notice that Developer is prepared to consummate the transaction and proceed to Close of Escrow, Developer shall have the right to bring an action in equity against the City or subsequent owners, lessors or sublessors of the Property for specific performance of this Agreement, including Section 7, provided, however, that except as set forth in Section 18.5, Developer specifically waives any right to receive any monetary award as a result of the City's Default.

15.4.2 In the event the City receives timely notice of Developer's election pursuant to this Section 15.4 to purchase (a) the Retail Property or (b) pursuant to Close of Escrow to take place concurrently with or following the Retail Property Close of Escrow, the Healthcare Property, then as applicable, notwithstanding the Default by the City, Developer shall (a) with respect to the Retail Property Close of Escrow, deliver the Retail Property Closing Payment and all other deliverables required by this Agreement and (b) with respect to the Healthcare Property Close of Escrow, deliver the Healthcare Property Closing Payment and all other deliverables required by this Agreement into Escrow no later than ten (10) Business Days after the City's receipt of said notice and, provided that the City Retail Property Closing Conditions or the City Healthcare Property Closing Conditions, as applicable, have been satisfied, the Close of Escrow for such Property shall occur on that date which is eleven (11) Business Days after the City's receipt of such notice and Developer shall be deemed to have waived the City Default as of such Close of Escrow.

15.4.3 In the event the City is in Material Default of this Agreement and receives timely notice from Developer pursuant to this Section 15.4 of Developer's election to terminate this Agreement with respect to the Retail Property, then Developer's election to terminate this Agreement with respect to the Retail Property shall terminate the entirety of this Agreement, including the Retail Provisions and the Healthcare Provisions, the City shall pay the full amount of Escrow Holder's charges, and Developer shall be entitled to a

full refund of its Purchase Price Deposit. In the event the City is in Material Default of this Agreement with respect to the Healthcare Property Close of Escrow and receives timely notice of Developer's election not to proceed to Close of Escrow as to the Healthcare Property pursuant to this Section 15.4: (a) the provisions of this Agreement applicable to the Healthcare Property shall terminate and the provisions of this Agreement related to the Retail Property shall remain in full force and effect, (b) City shall pay the full amount of Escrow Holder's charges, and (c) Developer shall be entitled to a full refund of the Healthcare Property Option Payment previously paid to the City, if any, which refund shall be Developer's sole and exclusive remedy hereunder for the failure of the Healthcare Property Close of Escrow and, in all cases, Developer shall not be entitled to pursue an action against the City for damages or other remedies as a result of the Default by the City except as expressly set forth in Section 18.5.3.

15.4.4 In the event Developer has elected to purchase the Retail Property or the Healthcare Property pursuant to this Section 15, but fails to deliver the Retail Property Closing Payment or the Healthcare Property Closing Payment, as applicable, into Escrow and to satisfy the other Closing Conditions with respect to such Close of Escrow for the benefit of the City no later than ten (10) Business Days after the City's receipt of said notice, then the City shall have the right: (a) if the Retail Property Close of Escrow shall not then have occurred, to terminate this Agreement by providing written notice of its election to terminate to Developer, such termination to be in accordance with the provisions of Section 15.4.3. or (b) if the Retail Property Close of Escrow shall have occurred, to terminate the portions of this Agreement applicable to the Healthcare Property (i.e., the Healthcare Provisions), by providing written notice of its election to terminate to Developer, such termination to be in accordance with the provisions of Section 15.4.3.

15.4.5 The termination of this Agreement pursuant to this Section 15.4 shall not terminate or release any liability or obligations of Developer to indemnify the City as provided in Section 4.6.4(f), 5.5 or to comply with Section 14.3. In the event of a termination as provided in Section 15.4.3 or 15.4.4., under no circumstances shall Developer have any right or claim to, or against, the Property or any portion thereof. The termination of this Agreement pursuant to this Section 15.4 shall constitute a waiver of any and all rights and Claims either Party may have against the other, except as expressly provided above.

16. Remedies for Defaults After the Close of Escrow.

16.1 General Remedies.

In the event Developer or any Person to which it has Transferred an interest in the Property or any portion thereof or Improvement thereon is in Material Default with respect to any obligation of Developer under this Agreement following the Close of Escrow for the Property so conveyed, and prior to the issuance of the Certificate of Compliance with respect to such Property, the City, as its sole and exclusive remedies, may do any one or more of the following with respect to the Parcel in question; provided, however, subject to the terms of Sections 2.2.3(b)(iv) and (v) and Section 14.2.6, neither Developer and the Retail Property on the

one hand, nor Healthcare Developer and the Healthcare Property on the other hand, shall have any liability or obligation in connection with a Default relating to the other Party or Property (in other words, each such Person's obligations shall be independent, and the City's remedies shall relate only to the Person or the Property that is in Material Default). The City hereby waives all other rights and remedies in connection with such Material Default and acknowledges that the remedies set forth in this Section 16 are sufficient to protect the City's interests under this Agreement:

(a) The City may record a lien against the respective Retail Property or Healthcare Property as applicable in accordance with Section 16.2.

(b) The City may sue for damages it may have incurred.

(c) The City may seek to specifically enforce the obligations of Developer or the Healthcare Developer in connection with the Parcel owned by each respective party.

(d) Except as otherwise set forth in this Agreement, the City may exercise its Right of Repurchase pursuant to Section 16.3.

(e) Except as otherwise set forth in this Agreement, in the event of a Reversion Action Trigger only, the City may exercise its Right of Reversion pursuant to Section 16.4.

Upon and after termination of the City's Right of Repurchase and Right of Reversion pursuant to Section 16.3 and 16.4, the City agrees to provide Developer with such documentation, including recordable evidence of such termination, as Developer reasonably requires to reflect that the City no longer has such rights with respect to the Retail Project.

16.2 Lien Rights.

Developer, on behalf of itself, each Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner for the benefit of the City and its successors and assigns hereby agrees that the delinquent amount of any payments due hereunder, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the Property and shall be a continuing lien upon the Property in favor of the City effective upon Recording of the Memorandum of DDA (the "**City Lien**"), which lien and charge shall be paramount to the lien and charge of any Mortgage upon the Property subject to being subordinated to a Permitted Mortgage in accordance with the terms of Section 17.

16.3 Right of Repurchase.

For the period described in Section 16.3.4, the City shall have the right (the "**Right of Repurchase**"), from time to time, at any time after the date that Developer became in Material Default until such Material Default is cured to purchase the following ("**Reacquired Property**"): (a) all or any portion of the Retail Property and/or the Healthcare Property affected by the

Material Default, (b) any Improvements thereon, (c) all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and (d) all other appurtenant rights applicable to the respective Property, including the interest in any ground leases encumbering the respective Property. The Reacquired Property designated by the City shall be acquired by the City for the Repurchase Price less the amount of liens or Mortgages against the Reacquired Property and otherwise in accordance with this Section 16.3. The City may exercise its Right of Repurchase by delivering written notice to Developer stating that the City is exercising its Right of Repurchase and specifying the Reacquired Property; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Reacquired Property to the City pursuant to the Right of Repurchase and otherwise in accordance with this Section 16.3. The Right of Repurchase shall be a lien and encumbrance on the Property that shall be paramount to (a) the lien and charge of any Mortgage upon the Property, except that with respect to a first priority lien that is a Permitted Mortgage on the Other Healthcare Parcels with a Permitted Mortgagee, the implementation of the Right of Repurchase shall be subject to the terms of the Healthcare Subordination Agreement, and (b) the lien and charge of any mechanics' lien that may attach to the Property. The Reacquired Property shall be delivered to the City at close of escrow free and clear of all liens and Mortgages and subject only to the Permitted Exceptions at the time of Close of Escrow.

16.3.1 **Termination of this Agreement**. In the event the City exercises its Right of Repurchase as to any Reacquired Property as provided in this Section 16.3, this Agreement shall terminate with respect to the Reacquired Property as of the date of the quitclaim deed conveying to the City title to the Reacquired Property (and the Healthcare Property Option Payment if then held by Escrow shall be paid to the City); provided that the provisions of this Section 16.3 shall survive the termination of the Agreement.

16.3.2 **Exercise of Right of Repurchase**. The City may exercise its Right of Repurchase by delivering written notice to Developer stating that the City is exercising its Right of Repurchase and specifying the Reacquired Property; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Property to the City pursuant to the Right of Repurchase and otherwise in accordance with this Section 16.3. The Reacquired Property shall be delivered to the City at close of escrow free and clear of all liens and Mortgages and subject only to (x) the Permitted Exceptions at the time of the applicable original Close of Escrow for such portion of the Property and (y) all other matters created in connection with the Entitlements and the development of the Project pursuant to this Agreement.

16.3.3 **Process**. If the City is entitled to and elects to repurchase any designated Reacquired Property, the Parties shall: (a) within five (5) Business Days after the date of the City's notice of election to exercise the Right of Repurchase, open an escrow with an escrow agent designated by the City for the purchase and sale, and shall execute an escrow agreement that shall provide that Developer shall pay all costs of the escrow and shall include such usual and ordinary terms as are reasonably required by the escrow agent and by the transaction; (b) no later than five (5) Business Days after the opening of escrow, Developer shall place into the escrow appropriate quitclaim deeds and

bill of sale conveying fee title to the Reacquired Property; and (c) no later than eighty-five (85) calendar days after the opening of the escrow, the City shall deposit into the escrow and amount equal to (i) the Repurchase Price *minus* (ii) the Lien Release Amounts, if any. The escrow shall close, and title to the Reacquired Property shall be conveyed to the City, no later than five (5) Business Days after the City has deposited into escrow the Repurchase Price. Concurrently with the close of escrow, Developer shall comply with its obligations under Section 14.3. Nothing herein shall restrict the right of the City to terminate its exercise of the Repurchase Right at any time prior to the close of escrow. The Property acquired by the City shall be free and clear of all liens and Mortgages, including Permitted Mortgages, and subject only to the Permitted Exceptions at the time of conveyance to the City. If and to the extent that the Repurchase Price is less than Permitted Mortgage Unpaid Balance plus the aggregate amounts that may then be due under any other Permitted Mortgages (and any other Mortgages that may then exist), all Mortgagees shall nonetheless execute reconveyances of deeds of trusts, releases of mortgages, and any other documents requested by the City to remove the liens of all Mortgages from title to the Property. The Parties agree that the amount of reduction in the Repurchase Price as compared with the Fair Market Value of the Property is justified in that it bears a reasonable relationship to the damages which the Parties estimate may be suffered by the City as the result of the Developer's Material Default in the performance of its obligations under this Agreement, which damages would be impractical or extremely difficult to quantify, and that the remedy provided for herein is not a penalty or forfeiture, and is a reasonable limitation on the Developer's potential liability as a result of Developer's default.

16.3.4 **Termination of Right of Repurchase**. The Right of Repurchase shall remain in effect from the Close of Escrow with respect to a Parcel until (a) as to the Healthcare Parcel, the Recording by the City of a Certificate of Compliance with respect thereto and (b) as to the Retail Parcel, the satisfaction of the Conditions Precedent set forth in Section 9.3(a), (c), (d), (e), (f), (h) and (i) with respect to the Minimum Retail Improvements. In the event that Developer or any Person on behalf of Developer either (a) cures the Material Default which is the basis for the City's exercise of its Right of Repurchase, but excluding any Transfer in violation of this Agreement, or (b) Completes the Project prior to the closing of escrow on such Right of Repurchase, such Right of Repurchase shall cease and terminate with respect to such Material Default only.

16.3.5 **Release of Liability**. In the event the City exercises its Right of Repurchase, such purchase shall terminate or release the obligations of Developer with respect to the Reacquired Property except that Developer shall not be released from its obligations pursuant to Section 4.5.2(f), to return any written Due Diligence Information to the City as provided in Section 14.3 and to indemnify, defend and hold harmless the City Indemnified Parties as provided in Sections 4.6.4(f) and Section 10 for matters arising or related to the period of time prior to the conveyance of the Reacquired Property to the City and with respect to any Developer or Healthcare Developer during the Additional Liability Period; and to indemnify, defend and hold harmless the City Indemnified Parties as provided in Section 5.5 as to a Parcel for matters arising or related to the period prior to the Close of Escrow for such Parcel, and such obligations shall survive the close of escrow and shall not be merged into the quitclaim deed. Following such Close of Escrow, under no

circumstances shall Developer have any right or claim to, or against, the Reacquired Property. Notwithstanding the purchase of the Reacquired Property by the City as provided in this Section 16.3, this Agreement shall remain in full force and effect with respect to the portions of the Property and the Project not purchased by the City.

16.3.6 **Rights of Third Parties**. The Right of Repurchase shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of (a) any Mortgage upon the Parcels or Improvements, except that with respect to a first priority lien that is a Permitted Mortgage, the implementation of the Right of Repurchase shall be subject to the terms of the Healthcare Subordination Agreement and (b) any mechanics' lien that may attach to the Development Parcels or the Improvements thereon. The Right of Repurchase shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., who are not Developer, Healthcare Developer, Developer Affiliates or HCD Affiliates) granted pursuant to Transfers approved by the City or constituting Permitted Transfers and Recorded with respect to the Reacquired Property repurchased hereunder.

16.4 The Right of Reversion.

16.4.1 Following conveyance of any portion of the Property to Developer by the City and notwithstanding that the Reacquired Property may be encumbered by one or more Mortgages or Permitted Mortgages, in the event of the occurrence of any Reversion Action Trigger (defined in Section 16.4.1), and in addition to its other rights or remedies as a result of the occurrence of any such Reversion Action Trigger, the City shall have the right on the terms and subject to the conditions set forth in this Section 16.4 to re-enter and take possession of the applicable Reacquired Property or any portion thereof and to revest title thereto in the City (the "**Right of Reversion**") only in accordance with the terms of this Section 16.4. Any revesting of the Reacquired Property by the City whether based on voluntary action of Developer or otherwise after notice by the City of its intent to exercise the Right of Reversion is referred to herein as a "**Reversion Event**". The City shall be entitled to exercise the Right of Reversion at any time on or after the occurrence of any of any one or more of the Reversion Action Triggers only with respect to the respective Retail Property or Healthcare Property that is the subject of the Reversion Action Trigger; provided that the City has complied with the conditions to such reversion set forth in Section 16.4.2. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to (a) the lien and charge of any Mortgage upon the Property, except that with respect to a first priority lien that is a Permitted Mortgage on the Other Healthcare Parcels with a Permitted Mortgagee, the implementation of the Right of Reversion shall be subject to the terms of the Healthcare Subordination Agreement, and (b) the lien and charge of any mechanics' lien that may attach to the Property.

16.4.2 **Certain Defaults Triggering the Right of Reversion**. The Right of Reversion shall remain in effect from the Close of Escrow with respect to the Healthcare Parcel, until the Recording of a Certificate of Compliance for the Healthcare Parcel and with respect to the Retail Parcel, until Completion of the Minimum Retail Vertical Improvements with respect to the Retail Parcel and thereafter shall not apply,

provided that (a) the City shall not revest the Retail Property upon occurrence of a Reversion Action Trigger solely with respect to the Healthcare Property unless the City's right to revest is created by a Reversion Action Trigger with respect to the Minimum Healthcare Improvements, the Healthcare Transferor Obligations or the act or failure to act by the Healthcare Property Transferor with respect thereto and (b) the City shall not revest the any portion of the Healthcare Property upon occurrence of a Reversion Action Trigger solely with respect to the Retail Property. The City may exercise the Right of Reversion if it elects to do so with respect to only the Parcel affected by the Material Default and any Improvements thereon and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and all other appurtenant rights applicable thereto upon the occurrence of any of the following (each, a "**Reversion Action Trigger**," and the date on which the Reversion Action Trigger occurs shall be referred to herein, as the "**Reversion Action Trigger Date**").

(a) Developer fails to commence construction of the Minimum Horizontal Improvements within six (6) months after the Construction Period Commencement Date for the Retail Parcel, as such date may be extended for Force Majeure Delay;

(b) Healthcare Developer fails to commence construction of the Minimum Healthcare Vertical Improvements within twelve (12) months after the Construction Period Commencement Date for the Healthcare Parcel, as such date may be extended for Force Majeure Delay;

(c) Developer fails to commence construction of the Minimum Retail Vertical Improvements within eighteen (18) months after the Construction Period Commencement Date for the Retail Parcel, as such dates may be extended for Force Majeure Delay;

(d) Developer or Healthcare Developer, as to their respective Parcels, fails to Complete construction of the Minimum Vertical Improvements within thirty-six (36) months after the Construction Period Commencement Date applicable to such Parcel as such date may be extended for Force Majeure Delay; provided that such Completion date shall not under any circumstances be later than the date that is forty eight (48) months after the Close of Escrow for such Parcel (which date shall not be extended for Force Majeure Delay);

(e) Developer or Healthcare Developer with respect to their respective Parcels commits waste on the Property and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2, subject to extension for Force Majeure Delay;

(f) Developer or Healthcare Developer with respect to their respective Parcels abandons or substantially suspends (except for suspensions resulting from Force Majeure Delay) construction of the Project for a total period of one (1) year, and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2. Nothing in this Section 16.4.1(f) shall extend the terms of Section 16.4.1(a), (b) or (c) above;

(g) The occurrence of a Developer Insolvency Event; and

(h) A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.

16.4.3 **Conditions to Exercise of the Right of Reversion**. The City shall be entitled to exercise the Right of Reversion at any time on or after the applicable Reversion Action Trigger Date; provided that (a) the City has provided notice to Developer or Healthcare Developer as applicable that the City elects to exercise its Right of Reversion and such notice states the date for the Reversion Event and (b) the Reversion Event shall not take place until the earlier of (i) the date that is thirty (30) calendar days after Developer has had the opportunity to address the City Council at a public meeting regarding the Reversion Action Trigger or (b) if there is a Permitted Mortgage encumbering the Parcel, the date that is one (1) year after the date of such notice of exercise. In the event that, prior to the Reversion Event, Developer and Permitted Mortgagee with respect to the Other Healthcare Parcels or any Person on behalf of Developer either (x) cures the Reversion Action Trigger which is the basis for the City's exercise of its Right of Reversion or (y) Completes the Project prior to the date of the Reversion Event, such Right of Reversion shall cease and terminate with respect to such Reversion Action Trigger only.

16.4.4 **Exercise of Right of Reversion**. If the City exercises its Right of Reversion in accordance with the provisions of this Agreement, Developer shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the revesting of the Reacquired Property in the name of the City, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such revesting.

16.4.5 **Sale of Reacquired Property**. Upon the revesting in the City of title to the Reacquired Property, the City shall use reasonable efforts to resell the Reacquired Property as soon and in such manner as the City shall find feasible, in accordance with applicable state law, if any, and consistent with the objectives of this Agreement, to a qualified and responsible party or parties (as determined by the City in its sole discretion) who will assume the obligation of making or completing the Minimum Improvements and of using reasonable commercial efforts to commence and thereafter to Complete, the additional Retail Vertical Improvements. Upon such resale of the Reacquired Property, or any part thereof, the proceeds thereof shall be applied in the following order and amounts, provided that the City shall have no liability to Developer or to any Permitted Mortgagee or third party to the extent the balance is insufficient to pay the following amounts:

(a) Delinquencies. First, to repayment in full of all delinquent tax and delinquent assessment liens with respect to the portion of the Reacquired Property sold;

(b) Permitted Mortgage Balances. Second, if there is a Permitted Mortgage in favor of a Permitted Mortgage with respect to all or any portion of the Healthcare

Parcel only and the Reacquired Property is comprised of all or any portion of the Healthcare Parcel, to repayment in full of the outstanding balance of the Permitted Mortgages and all other sums then due and owing thereunder;

(c) Reimbursement to the City. Third, to reimburse the City on its own behalf for all costs and expenses incurred by the City, in connection with the recapture, management and resale of the Reacquired Property, or any part thereof, including: a pro-rata share of the salaries of personnel engaged in such action (based on the amount of time spent by such personnel on such matters relating to the Reacquired Property as compared to the aggregate amount of time worked by such personnel); all taxes, assessments and utility charges with respect to the Reacquired Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Reacquired Property; all costs of sale and marketing, including reasonable brokers' fees and costs incurred in the marketing and sale of the Reacquired Property; all legal fees and expenses; all escrow and title fees and costs; all survey and due diligence fees and costs; all the Lien Release Amounts, if any, paid by the City to third parties; and any amounts otherwise owing to the City or any third party by Developer and/or any Successor Owner, including any City Liens;

(d) Reimbursement to Developer. Fourth, to reimburse Developer up to the amount equal to the Repurchase Price attributable to the Reacquired Property less all amounts paid pursuant to Section 16.4.4(a), (b) and (c); and

(e) Balance Retained by the City. Any balance remaining after such reimbursements shall be retained by the City as its property.

16.4.6 **Release of Liability**. In the event the City exercises its Right of Reversion, such reversion shall terminate and release Developer, or Healthcare Developer, as applicable, from all liability and obligations of Developer or, as applicable, Healthcare Developer, under this Agreement with respect to the Reacquired Property, but shall not constitute a waiver or termination of the release provided for the benefit of the City pursuant to Section 4.5.2(f), the obligation to return any written Due Diligence Information to the City as provided in Section 14.3 and to indemnify the City as provided in Sections 4.6.4(f), 5.5 and 10 for matters relating to or arising prior to the conveyance of the Reacquired Property to the City, and such liability and obligations shall survive the close of escrow and shall not be merged into the quitclaim deed, it being acknowledged and agreed that all other obligations under this Agreement shall be released and terminated as of the date on which the Property or the applicable portion thereof is conveyed to the City. Following such Close of Escrow, under no circumstances shall Developer have any right or claim to, or against, the Reacquired Property. Notwithstanding the purchase of the Reacquired Property by the City as provided in this Section 16.4, this Agreement shall remain in full force and effect with respect to the portions of the Property not purchased by the City.

16.4.7 **Rights of Third Parties**. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of (a) any and all Mortgages, including Permitted Mortgages, upon the Parcels or Improvements, provided, however, that with respect to a first priority lien that is a Permitted Mortgage on the Other Healthcare Parcels or Improvements thereon, made by a Permitted Mortgagee, the implementation of the Right of Reversion shall be subject to the terms of the Healthcare Subordination Agreement and (b) any mechanics' lien that may attach to the Development Parcels or the Improvements thereon. The Right of Reversion shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., Persons other than Developer, Healthcare Developer, Developer Affiliates or HCD Affiliates) granted pursuant to Transfers approved by the City or constituting Permitted Transfers and Recorded on the portion of the Property for which the City exercises its rights under this Section 16.4.

16.4.8 **Continuation of Agreement**. This Agreement shall remain in full force and effect with respect to portions of the Property not revested in the City, but the termination of this Agreement shall be effective as of the date title to any portion of the Property and/or any Improvements thereon are revested in the City.

16.4.9 **Termination of Right of Reversion**. The Right of Reversion shall not apply to the Healthcare Parcel after Recording by the City of a Certificate of Compliance with respect thereto. The Right of Reversion shall not apply to the Retail Parcel after satisfaction of the Conditions Precedent set forth in Section 9.3(a), (c), (d), (e), (f), (h) and (i) with respect to the Minimum Retail Improvements.

16.5 Cooperation of Developer.

If the City exercises its Right of Repurchase or Right of Reversion in accordance with the provisions of this Agreement, Developer shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the repurchase or revesting of the Reacquired Property, as the case may be, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such transactions.

17. Mortgages and Mortgagee Protection.

17.1 Transfers to Permitted Mortgagee.

17.1.1 **Generally.**

(a) Any Mortgage or other encumbrance of the Parcel in violation of this Section 17.1 shall be a prohibited Transfer and a Material Default by Developer.

(b) Neither this Agreement, nor the Development Parcels (nor any portion thereof) nor the Improvements thereon, shall be cross-collateralized with any other contract or real or personal property, nor shall this Agreement or the Development Parcels (or

any portion thereof) or the Improvements thereon serve as additional security for any other loan by a Mortgagee, nor any other debt of Developer.

(c) No Permitted Mortgage otherwise permitted by this Agreement may be cross- collateralized or cross defaulted with any other Mortgage.

(d) Developer shall not transfer the Development Parcels or the Property or any portion thereof to a third party for purposes of a sale-leaseback transaction.

(e) Prior to the Transfer Approval End Date applicable thereto, Developer shall not encumber the Retail Parcel or the Medical Office Parcel or any portions thereof or any Improvements thereon with any Mortgage without the prior written consent of the City in its sole discretion. If City does permit a Mortgage, such Mortgage shall be a Permitted Mortgage made by a Permitted Mortgagee and in accordance with each and every requirement of this Agreement with respect to Mortgages, including this Section 17

(f) Prior to the Recording of a Certificate of Compliance with respect to the Healthcare Parcel, neither the Healthcare Developer nor the Developer shall encumber the Healthcare Parcel or an portion thereof or any Improvements thereon with any Mortgage, unless such Mortgage is a Permitted Mortgage made by a Permitted Mortgagee and in accordance with each and every requirement of this Section 17.

(g) Unless and until the City agrees (in its sole discretion) to permit a Permitted Mortgage on the Retail Parcels, the provisions of Sections 17.2 through 17.12 shall apply exclusively with respect to the Healthcare Developer and the Healthcare Parcel.

17.1.2 **Permitted Mortgages for Healthcare Vertical Improvements**. Prior to the Recording of a Certificate of Compliance with respect to the Minimum Healthcare Vertical Improvements on the Healthcare Parcel, the following shall apply to every Mortgage with respect to the Healthcare Parcel, the Improvements thereon or any portion thereof:

(a) A Mortgage shall be a Permitted Mortgage under this Agreement and a Mortgagee shall be a Permitted Mortgagee entitled to a Transfer under this Agreement if: (a) such Mortgagee is a Qualified Institutional Lender or is the lender identified in the Healthcare Financing Plan approved by the City in Section 4.6.4; (b) the terms of its Mortgage and all of the loan documents executed in connection with the loan are consistent with the Healthcare Financing Plan approved by the City in Section 4.6.4 and the requirements of Section 8.5 of this Agreement; (c) complete copies of all of the loan documents have been reviewed by the City and the City has determined that such loan documents comply with the requirement of this Section 17.1 and, if applicable, Section 17.3; (d) the loan proceeds will be used to finance the construction of the Healthcare Vertical Improvements on the Other Healthcare Parcels and for associated costs and expenses (including financing costs) and for no other purpose (and such purposes shall specifically exclude land acquisition costs); and (e) the Mortgage does not encumber the Retail Parcel, Medical Office Parcel or any portion thereof. The loan documents shall include a Healthcare Subordination Agreement in substantially the form and substance of the subordination agreement attached as Attachment 23 or otherwise acceptable to the City in its

sole discretion, which shall be Recorded at the Healthcare Property Close of Escrow, immediately after the Permitted Mortgage is Recorded.

(b) At least fifteen (15) Business Days prior to entering into any Mortgage, Developer shall deliver to the City drafts (and at least five (5) Business Days prior to entering into any Mortgage, Developer shall deliver to the City proposed Mortgagee's loan documents in substantially the form and substance of the final forms of such documents, red-lined to show changes from the drafts reviewed by the City; and shall deliver final forms or indicate no change in the previously submitted forms prior to the execution thereof), including all documents and guaranties securing the interest of the Mortgagee, and such other information as may be reasonably requested by the City to confirm the matters that require the City's determinations described in this Section 17.1.2. The City shall determine whether the loan documents for a proposed Permitted Mortgage comply with the requirements of this Agreement, including:

(i) Whether the proposed Mortgagee is a Qualified Institutional Lender or, if the proposed Mortgagee is not a Qualified Institutional Lender, whether the proposed Mortgagee was identified in the Financing Plan approved by the City.

(ii) Whether any unsecured mezzanine financing proposed by Developer complies with the terms of this Agreement, including the restrictions on Transfers and Transfers of Control.

17.2 Acknowledgment by City of Permitted Mortgagee.

Within ten (10) Business Days following the Developer's delivery of the loan documents and information required under Section 17.1.2: (a) the City shall acknowledge receipt of the same and receipt of the address of any Mortgagee (or proposed Mortgagee), (b) the City shall confirm in writing to Developer whether the proposed Mortgagee is a Permitted Mortgagee, or explain why the City considers the proposed Mortgagee not to be a Permitted Mortgagee, and (c) the City shall confirm in writing to Developer whether it has determined if the loan documents comply with the requirements of Sections 17.1 and 17.3 or explain why the City considers the loan documents not to comply.

17.3 Change in Loan Documents.

Following approval by the City of loan documents and the Healthcare Subordination Agreement pursuant to Section 17.1.2, but prior to closing of the Construction Loan evidenced by such loan documents, Developer shall not modify or agree to modify those loan documents without the prior written approval of the City in its sole discretion.

17.4 Initial Notice.

Developer or any Permitted Mortgagee shall provide the City notice, in accordance with the provisions of Section 18.6, of the name and address of such Mortgagee, accompanied by a copy of the executed loan documents for such Mortgage but the failure to provide such notice shall not affect the protections provided for under this Agreement to any Permitted Mortgagee.

17.5 Foreclosure Transfers.

If a Permitted Mortgagee acquires all or any portion of the Healthcare Property in a Foreclosure, the provisions of Section 17.6 and the Healthcare Subordination Agreement shall govern such acquisition and the rights and obligations of such Permitted Mortgagee. With respect to a Transfer to any Transferee which acquires title to the Healthcare Property or any portion thereof at a Foreclosure sale or from a Permitted Mortgagee following a Foreclosure and which Transferee is not a Permitted Mortgagee, the provisions of Section 2.2.3 shall apply; however, the City shall not withhold its consent to such Transfer so long as the Transferee shall meet each of the following criteria: (a) have a reputation as a quality builder of healthcare developments of the scope and constructed of the quality described by this Agreement; (b) be licensed to do business in the State of California; (c) have a reputation for fair and honest business dealings with persons or entities generally; (d) have a sufficient net worth to undertake the obligations to be performed by Developer; (e) shall propose a use that is consistent with this Agreement and not a Prohibited Use and (f) if an End User, shall have successfully constructed, or if not an End User, shall have successfully constructed, marketed and leased healthcare facilities of similar size and quality to those required to be constructed pursuant to the Approved Plans. All of the provisions contained in this Agreement shall be binding upon and benefit the Transferee which acquires title to all or any portion of the Property, and provided that such Person assumes the obligations of Developer under this Agreement in accordance with Section 2.2.3, the City shall recognize such Transferee as Developer under this Agreement.

17.6 Mortgagee Protections.

Each Permitted Mortgagee of a then-existing Permitted Mortgage that is a City approved Construction Loan affecting a portion of the Property which has provided notice to the City as required by Section 17.4 shall, until its Permitted Mortgage is satisfied of record or until written notice of satisfaction is given by the Permitted Mortgagee to the City or it ceases to be a Permitted Mortgagee, be entitled to the following:

17.6.1 Provision of concurrent notice of any default by any Party hereunder; provided, however, that a failure of a Party to deliver a concurrent copy of such notice of default to the Permitted Mortgagee shall not affect in any way the validity of the notice of default as it relates to the defaulting Party, but in any subsequent proceedings arising from or related to the notice of default with respect to which there was a failure to provide the requested concurrent notice to the Permitted Mortgagee, the interest of the Permitted Mortgagee and its lien upon the affected Property shall not be affected in any way until such time as it has received proper notice and all cure periods with respect thereto have expired, and provided, further, the giving of any notice of default or the failure to deliver a copy to any Permitted Mortgagee shall in no event create any liability on the part of the Person so declaring a default.

17.6.2 The right, but not the obligation, at any time prior to the earlier to occur of exercise of the Right of Repurchase and/or Right of Reversion, or the termination of this Agreement and without payment of any additional penalty or assumption of the obligations of Developer under this Agreement, to cure or remedy such Potential Default or Material Default, to effect any insurance, to pay any amounts due to the City, to make any

repairs or improvements, to do any other act or thing required of Developer under this Agreement and to do any act or thing which may be necessary and proper to be done in the performance and observance of this Agreement to prevent termination of this Agreement. To carry out the foregoing, Developer hereby agrees that from and after Healthcare Property Close of Escrow until acquisition of the Healthcare Parcel or any portion thereof by the City pursuant to the Right of Repurchase or Right of Reversion, such Permitted Mortgagee and its agents and contractors shall have full access to the Healthcare Parcel for purposes of accomplishing any of the foregoing. Any of the foregoing done by such Permitted Mortgagee shall be as effective to prevent a termination of this Agreement or the exercise by the City of the Right of Repurchase or the Right of Reversion as the same would have been if done by Healthcare Developer.

17.6.3 Notwithstanding any other provision of this Agreement to the contrary, if any Material Default shall occur which, pursuant to any provision of this Agreement, entitles the City to terminate this Agreement and/or to exercise its Right of Reversion, the City shall not be entitled to terminate this Agreement or to acquire the Reacquired Property unless (a) the City, following the expiration of any periods of time given Developer in this Agreement to cure such Material Default, shall have given written notice to such Permitted Mortgagee stating the City's intent to terminate this Agreement (a "**Notice to Mortgagee**"), and (b) within one year after delivery of such notice, such Permitted Mortgagee shall fail to do any of the following:

(a) cure the Material Default if the same consists of the nonperformance by Developer of any covenant or condition of this Agreement requiring the payment of money by Developer to the City, other than payments required under Sections 4.2 or Section 7 (provided, however, that nothing set forth in this Agreement shall restrict or limit the right of City to exercise its Governmental Capacity remedies with respect to the Entitlements or any bond issues in favor of the City); and

(b) if the Material Default is not of the type described in clause 17.6.3(a), either, in such Permitted Mortgagee's sole discretion, (i) cure such Material Default, if the same is capable of being cured within such one hundred eighty (180) calendar day period, (ii) deliver a Construction Bond to the City for all uncompleted Improvements; provided that the City shall have the right (upon delivery by the City of a written demand and without the consent of any other Person) to require the surety issuing the Construction Bond to commence the construction necessary to complete the Improvements no later than twelve (12) full calendar months after the date of the Construction Bond, or (iii) commence, or cause any trustee under the Permitted Mortgage to commence, and thereafter diligently pursue to completion, steps and proceedings to Foreclosure; provided that except as extended by Section 17.6.4, such Foreclosure shall be completed within a maximum of one (1) year following the commencement of such proceeding. Any Material Default which does not involve a covenant or condition of this Agreement requiring the payment of money by Developer to the City shall be deemed cured if any Permitted Mortgagee shall diligently pursue to completion Foreclosure and shall, upon acquiring fee title to all or any portion of the Property, thereafter undertake its obligations (if any) with respect such portion of the Property pursuant to Section 17.6.2.

17.6.4 If such Permitted Mortgagee is prohibited from commencing or prosecuting Foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer (other than any such process, injunction or court action occurring in response to any negligence or misfeasance of Permitted Mortgagee), the times specified in Section 17.6.3(b)(ii) for commencing or prosecuting a Foreclosure or other proceedings shall be extended for the period of the prohibition; provided that the Permitted Mortgagee shall have fully cured any Material Default required by Section 17.6.3(b)(i) above and shall continue to perform and/or cure all such obligations as and when the same fall due. Notwithstanding anything to the contrary in this Section 17.6, if the Foreclosure is not consummated on or before the date that is 365 days after the date of the Notice to Mortgagee, then at any time after such date (which shall not be extended by any Bankruptcy of Developer or any Force Majeure delay), the City may (in its sole discretion and without any further notice to any Mortgagee) consummate a Reversion Event.

17.6.5 No Permitted Mortgagee shall have the right to use the failure of the City to provide notice to any other Mortgagee as a claim, defense or estoppel to application of these provisions with respect to such Permitted Mortgagee's Permitted Mortgage.

17.7 Failure of Permitted Mortgagee to Cure.

If Healthcare Developer shall have failed to cure any Material Default following the Healthcare Property Close of Escrow within the time periods for such cure set forth in Section 14, and any notice required by Section 17.6.1 to a Permitted Mortgagee with respect to the Healthcare Developer and/or portion of the Healthcare Property affected by the Material Default was properly given, and such Permitted Mortgagee has not cured or commenced to cure as required by Section 17.6.3, the City may, at its option, upon thirty (30) calendar days' written notice to such Healthcare Developer and such Permitted Mortgagee either: (a) purchase the Reacquired Property pursuant to the Right of Repurchase set forth in Section 16.3; (b) subject to the conditions to exercise of such reversion set forth in Section 16.4.2, exercise its Right of Reversion with respect to Reacquired Property pursuant to Section 16.4 or (c) exercise any other rights or remedies provided to City by this Agreement.

17.8 Condemnation or Insurance Proceeds.

Except as otherwise expressly set forth in this Agreement, the rights of any Permitted Mortgagee pursuant to its Permitted Mortgage to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired.

17.9 Loss Payable Endorsement to Insurance Policy.

The City agrees that the name of the senior-most Permitted Mortgagee may be added as the primary loss payee to the "Loss Payable Endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement.

17.10 Subordination.

Notwithstanding anything to the contrary contained in this Agreement, the rights of the parties to declare defaults hereunder and exercise their respective rights and remedies described herein shall be subject in all cases to the conditions and limitations imposed thereon by the Healthcare Subordination Agreement(s) executed by the City. In the event of any conflict between the rights and remedies of the parties provided under this Agreement and the limitations on such rights and remedies under the Healthcare Subordination Agreement, the Healthcare Subordination Agreement shall control.

17.11 Constructive Notice and Acceptance.

Until such time as a Certificate of Compliance is Recorded with respect to the Property and subject to the provisions of Section 2 or this Section 17 and the terms of any Healthcare Subordination Agreement, all of the provisions contained in this Agreement shall be binding upon and benefit any Person who acquires fee title to a portion of the Property. Upon acquisition of fee title to an interest in the Property or any portion thereof by a Person, other than a Permitted Mortgagee which is not assuming the obligations of Developer under this Agreement, acquiring title through Foreclosure, the acquiring Person and the City shall meet and confer in good faith to revise the Schedule of Performance as reasonably necessary to provide adequate time for such Person to satisfy the obligations of Developer hereunder.

17.12 Bankruptcy Affecting the Developer.

Developer and City hereby agree that this Agreement (including the Right of Repurchase and Right of Reversion contained herein), the Quitclaim Deeds and the Other Agreements shall contain and consist of covenants running with the land and that neither this Agreement, the Quitclaim Deeds or the Other Agreements shall be subject to rejection in bankruptcy, and Developer hereby waives its rights to reject this Agreement, Quitclaim Deed(s) and the Other Agreements in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for Developer seeks to and does reject this Agreement, the Quitclaim Deeds or the Other Agreements in connection with any proceeding involving Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then without waiver of any right of the City to challenge such rejection, the Parties hereby agree for the benefit of the City and each and every Permitted Mortgagee that such rejection shall, subject to the written acceptance by the most senior Permitted Mortgagee, be deemed the Developer's assignment of this Agreement, the rights under the Quitclaim Deeds and the Other Agreements and the Property corresponding thereto to the most senior Permitted Mortgagee or its nominee or designee in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment the most senior Permitted Mortgagee shall, subject to compliance with Section 2.2, become the Healthcare Developer under this Agreement for the portion of the Other Healthcare Parcels secured by the Permitted Mortgage as if the Bankruptcy Proceeding had not occurred.

17.13 Notice and Cure Rights of City.

Following the occurrence of an event of default under any Mortgage, the holder of the Mortgage shall promptly notify the City of the occurrence of such event of default, which notification shall be provided to the City contemporaneously with the delivery to Developer or its Assignee of any notice of default under any of Mortgage documents. The City shall have the right, but not the obligation, during the cure periods which apply to Developer pursuant to the Mortgage documents to cure default by Developer relative to the Mortgage. If the City elects to cure Developer's default, the City shall be entitled to reimbursement by Developer of all direct and actual costs and expenses incurred by the City in curing the default and any amounts paid by the City in curing such Developer's default shall be secured by the City Lien against the Parcel under this Agreement.

18. General Provisions.

18.1 Applicable Law; Consent to Jurisdiction; Service of Process.

This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles. Developer and City agree that any disputes arising between them in connection with this Agreement or in connection with or under any instrument, agreement or document provided for or contemplated by this Agreement, including in connection with the execution of this Agreement, a Close of Escrow or any other matter arising under, related to or in connection with this Agreement (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended by Developer and the City to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between or among Developer and the City with respect to or arising out of or related to this Agreement in any jurisdiction other than that specified in this Section 18.1. Each Party hereby waives any right that it may have to assert forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 18.1, and stipulates that the State and federal courts located in the County of Orange, State of California, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 18.1 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement, or in the manner set forth in Section 18.6(a) or (c) of this Agreement pertaining to notice. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

18.2 Legal Fees and Costs.

If any Party to this Agreement institutes any action, suit, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an

"**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including (a) the Prevailing Party's reasonable attorneys' fees which shall be payable at the actual contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than $200 per hour and (b) costs actually incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "Decision") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) post judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. "Prevailing Party" within the meaning of this Section 18.2 includes a Party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such Party.

18.3 Modifications or Amendments.

No amendment, change, modification or supplement to this Agreement shall be valid and binding on any of the Parties unless it is represented in writing and signed by each of the Parties hereto.

18.4 Further Assurances.

Each of the Parties hereto shall execute and deliver, any and all additional papers, documents, or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of its obligations hereunder in order to carry out the intent and purposes of this Agreement.

18.5 Rights and Remedies Are Cumulative; Limitation on Damages.

18.5.1 **Cumulative Remedies**. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Material Default or any other Material Default by the other Party. Except as otherwise specifically set forth in this Agreement, and subject to Section 18.5.2 below, wherever a Party has a right to damages for the Material Default of another Party: (a) such damages shall be limited to direct (actual) damages for the Material Default of the other Party, and (b) 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.

18.5.2 **Limitation on Damages Payable by the City**. Developer acknowledges that the City would not have entered into this Agreement if the City could become liable for significant damages under or with respect to this Agreement and the Other Agreements. Consequently, and notwithstanding any other provision of this Agreement, except for (a) the monetary damages that may arise from the City's indemnity obligations referenced below in Section 18.5.3, and (b) the payment of attorneys' fees in accordance with Section 18.2 and court costs, the City shall not be liable in damages under this Agreement or any Other Agreement to Developer or to any Successor Owner and Developer hereby waives any and all rights to claim damages of any kind or nature from the City except as set forth in Section 18.5.3. Notwithstanding the foregoing, nothing herein shall be deemed to preclude Developer from seeking payment for amounts which the City is obligated to pay to Developer or Escrow Holder pursuant to Sections 1.8, 7.5.1, 7.5.4, 14.3.2, 15.1.3 or 15.4.3 of this Agreement, provided that Developer shall not be entitled to any damages in addition to the actual amounts owed by the City to Developer pursuant to this Agreement or the Other Agreements.

18.5.3 **Special Circumstances Where Damages may be Payable by the City**. Subject to Section 18.5.1, the limitations on damages set forth in Section 18.5.2 shall not limit the liability of the City, if any, for damages which arise out of (a) a breach of the City's representations and warranties contained in Sections 3.3 or 18.12 of this Agreement, provided that the amount of any damages payable pursuant to this clause (a) shall be the lesser of (i) actual damages, or (ii) One Hundred Thousand Dollars ($100,000) or (b) the exercise of any of the rights reserved to the City pursuant to Section 4.1(a)(i) or (ii) and as the same shall be included in each Quitclaim Deed.

18.5.4 **Right to Specific Performance**. In the event the City is in Material Default with respect to a portion of the Property conveyed to Developer or any obligation of City under this Agreement following Close of Escrow with respect to the Property so conveyed, Developer shall be entitled to seek specific performance or injunctive relief in order to enforce Developer's rights pursuant to this Agreement. For purposes of clarity, in the event that the City is obligated to pay any amounts to Developer pursuant to this Agreement, including pursuant to Sections 1.8 and 7.5.4, and the City fails to pay such amounts to Developer as and when required by this Agreement, Developer shall be entitled to seek specific performance of such obligation, notwithstanding the other provisions of this Section 18.5.

18.6 Notices, Demands and Communications between the Parties.

All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered to the other Party; (b) three (3) Business Days after such notice has been sent by U.S. Postal Service via certified mail, return receipt requested, postage prepaid, and addressed to the other Party as set forth below; (c) the next Business Day after such notice has been deposited with an overnight delivery service reasonably approved by

the Parties (Federal Express, Overnite Express, United Parcel Service and U.S. Postal Service are deemed approved by the Parties), postage prepaid, addressed to the Party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (d) when transmitted if sent by facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section 18.6 other than by facsimile or email (provided that the recipient Party need not receive such duplicate copy prior to any deadline set forth herein); or (ii) the receiving Party delivers a written confirmation of receipt for such notice either by facsimile, email or any other method permitted under this Section. Any notice given by facsimile or email shall be deemed received on the next Business Day if such notice is received after 5:00 p.m. (recipient's time) or on a non-Business Day. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

City:
Jeffrey C. Parker, City Manager
City of Tustin
300 Centennial Way
Tustin, CA 92780
Fax: 714-838-1602
Email: jparker@tustinca.org

With a copy to:
David Kendig
Woodruff Spradlin & Smart, APC
555 Anton Boulevard, #1200
Costa Mesa, CA 92626
Fax: (714) 415-1183
Email: dkendig@wss-law.com

Developer:
1C Tustin Legacy, LLC
915 Wilshire Blvd., Suite 2200
Los Angeles, CA 90017
Attn: John Mehigan
Fax: (213) 624-2279
Email: jmehigan@regencycenters.com

With a copy to:
Regency Centers
One Independent Drive, Suite 114
Jacksonville, FL 32202
Attn: Legal Department

With a copy to:
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, California 92614-7321
Attn: Drew Emmel, Esq.
Fax: (949) 553-8354
Email: demmel@allenmatkins.com

Any Party may by written notice to the other Party in the manner specified in this Agreement change the address to which notices to such Party shall be delivered.

18.7 Delay.

18.7.1 **Definition of Force Majeure Delay.** "**Force Majeure Delay**" shall mean the occurrence of any of the following events when such event is beyond the control of the First Party and such Party's contractors and consultants and is not due to an act or omission of such Party or any consultant, contractor or other Person for whom such Party may be contractually or legally responsible, which directly, materially and adversely affects (a) the ability of the First Party to meet its non-monetary obligations under this Agreement, including the deadlines imposed by the Schedule of Performance, or (b) the ability of Developer to Complete the Project, and which events (or the effect of which events) could not reasonably have been avoided by due diligence and use of reasonable efforts by the Party claiming Force Majeure Delay:

(a) Civil Unrest. An epidemic, blockade, quarantine, rebellion, war, insurrection, act of terrorism, strike or lock-out, riot, act of sabotage, civil commotion, act of a public enemy, freight embargo, or lack of transportation.

(b) Unforeseeable Conditions. Reasonably unforeseeable physical condition of the Property including the presence of Hazardous Materials.

(c) Casualty. Fire, earthquake or other casualty, in each case only if causing material physical destruction or damage on the Property.

(d) Litigation. Any lawsuit seeking to restrain, enjoin, challenge or delay any issuance of any Entitlement or seeking to restrain, enjoin, challenge, or delay construction of the Project, which is defended by the First Party.

(e) Change of Law. The passage of a referendum or initiative that results in the inability of the First Party to perform its material obligations hereunder; provided however that the foregoing shall not apply to a Party's performance regarding any Close of Escrow, which is governed by Sections 7 and 15.

(f) Weather. Unusually severe weather conditions not reasonably anticipatable for the City of Tustin, based upon U.S. Weather Bureau climatological reports for the months included plus a report indicating average precipitation, temperature, etc. for the last ten (10) years from the nearest reporting station.

(g) Other Party. Any delay caused by the Second Party's failure to respond in accordance with the terms of this Agreement from and after the time in which such failure becomes a Material Default under this Agreement.

18.7.2 **Limitation.** The term "**Force Majeure Delay**" shall be limited to the matters listed Section 18.7.1 above and specifically excludes from its definition the following matters which might otherwise be considered Force Majeure Delay:

(a) Entitlements. The suspension, termination, interruption, denial or failure to obtain or nonrenewal of any Entitlement, permit, license, consent, authorization or approval which is necessary for the development of the Project, except for any such matter resulting from a lawsuit or referendum as described in Section 18.7.1(d);

(b) Foreseeable Changes in Governmental Requirements. Any change in a Governmental Requirements which was proposed or was otherwise reasonably foreseeable at the Effective Date;

(c) Failure to Perform Obligations. Failure of Developer or any Successor Owner or other Person to perform any obligation to be performed by Developer or any Successor Owner or such other Person hereunder as the result of adverse changes in the financial condition of Developer or such Successor Owner or other Person, as applicable;

(d) Failure to Provide Financial Security. Failure of Developer or any Successor Owner to provide financial security required by this Agreement when due or to submit evidence of financing of the Project or failure to perform any obligation to be performed by Developer or any Successor Owner or other Person hereunder as the result of adverse changes in market conditions.

(e) Failure to Submit Required Documentation. Failure of the First Party to submit documentation as and when required by this Agreement.

(f) Failure to Submit Basic Concept Plan, Other Plans and Entitlements. Failure to submit a Basic Concept Plan and Concept Plan and Design Review submittals, and/or submittals for other Entitlements required for construction of the Improvements and/or development of the Project on the Property when required pursuant to the Schedule of Performance.

(g) Failure to Maintain Required Insurance. Failure to acquire, maintain and submit evidence of insurance policies as required by Section 11.

(h) Failure to Execute Documents. Failure of the First Party to execute documents.

(i) Other Matters. All other matters not caused by the Second Party and not listed in Section 18.7.1(a) through (f).

18.7.3 **Procedure**. If any Party (the "**First Party**") believes that it is entitled to an extension of time due to Force Majeure Delay, it shall notify the other Party (the "**Second Party**") in writing within thirty (30) calendar days from the date upon which the First Party becomes aware of such Force Majeure Delay, describing the Force Majeure Delay, when and how the First Party obtained knowledge thereof, the date the event commenced, the steps the First Party anticipates taking to respond to such Force Majeure Delay, and the estimated delay resulting from such Force Majeure Delay and response. The extension for Force Majeure Delay shall be granted or denied in the Second Party's reasonable discretion. If the First Party fails to notify the Second Party in writing of its

request for a given Force Majeure Delay within the thirty (30) calendar days specified above, there shall be no extension for such Force Majeure Delay.

18.7.4 **Extension of Time Periods**. Except as otherwise specifically set forth in this Agreement, all time periods under this Agreement, including the Schedule of Performance and the dates provided in Sections 16.3 and 16.4, relating to non-monetary obligations under this Agreement shall be extended for Force Majeure Delay in accordance with this Section 18.7.

18.7.5 **Reversion Action Dates**. Notwithstanding any other provision of this Agreement to the contrary, the Reversion Action Trigger Date shall be extended for Force Majeure Delays only to the extent specifically set forth in Section 16.4.

18.8 Conflict of Interest.

No appointed or elected official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any official or employee participate in any decision relating to the Agreement which affects his interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

18.9 Non-liability of City Officials and City or Developer Employees.

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

18.10 Inspection of Books and Records.

The City shall have the right at all reasonable times, upon ten (10) calendar days written notice, to inspect the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement.

18.11 Consents and Approvals.

18.11.1 **Consent**. In any instance in which a Party shall be requested to consent to or approve of any matter with respect to which such Party's consent or approval is required by any of the provisions of this Agreement, such consent or approval shall be given in writing. In addition, whenever not expressly otherwise stated: (a) the City, when acting in its Governmental Capacity shall be permitted to utilize its sole discretion with respect to matters requiring its approval except as otherwise specified in any applicable Governmental Requirements; (b) the City, when acting in its Proprietary Capacity shall not unreasonably withhold, condition or delay its approvals with respect to matters requiring its

approval hereunder; and (c) Developer shall not unreasonably withhold, delay or condition its consent with respect to matters requiring its approval hereunder.

18.11.2 **Deemed Submitted**. Any matter required by this Agreement to be submitted to the City shall be deemed submitted upon the submittal to the City Manager or designee.

18.11.3 **Action Taken**. Following its approval by the City, this Agreement shall be administered by any designee of the City Manager or the City Manager. Except where the terms of this Agreement expressly require the approval of a matter or the taking of any action by the City Council, any matter to be approved by the City shall be deemed approved, and any action to be taken by the City shall be deemed taken, upon the written approval by the City Manager (or designee). The City Manager or designee shall have the authority to issue interpretations with respect to this Agreement and to determine whether any action requires the approval of the City Council. All waivers, amendments or modifications of this Agreement shall require the approval of the City Council.

18.12 No Real Estate Commissions.

18.12.1 Developer Representation and Indemnity. The City shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. Developer represents that it has engaged no broker, agent or finder in connection with this Agreement or the transactions identified in this Agreement, other than disclosed to City in writing prior to the Effective Date. Developer hereby agrees to indemnify and hold the City and its elected and appointed officials, employees and 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 development of the Project or the transactions identified in this Agreement.

18.12.2 City Representation. The City represents that it has engaged no broker, agent, or finder in connection with this Agreement or the transactions identified in this Agreement.

18.13 Date and Delivery of Agreement.

Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, executed and delivered for all purposes under this Agreement and for the calculation of any statutory time periods based on the date an agreement between the Parties is effective, executed and/or delivered, as of the Effective Date.

18.14 Constructive Notice and Acceptance.

Every Successor Owner and each and every Person claiming by, through or under Developer or any Successor Owner is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such Person acquired an interest in the Project or Property.

18.15 Survival of Covenants, Representation and Warranties.

The covenants, representations, warranties, and indemnities specified in this Agreement shall survive any investigation made by any Party hereto and the closing of the transactions contemplated hereby until the termination of this Agreement.

18.16 Construction and Interpretation of Agreement.

18.16.1 **Construction**. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it; instead other rules of interpretation and construction shall be utilized. The provisions of California Civil Code Section 1654 are specifically waived by each Party hereto.

18.16.2 **Effect of Invalidity or Unenforceability**. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any Party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

18.16.3 **Captions**. The captions of the sections and clauses in this Agreement are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

18.16.4 **References to Sections, Sections, Paragraphs, Clauses, Exhibits, Attachments and Schedules**. Unless otherwise indicated, references in this Agreement to Sections, paragraphs, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Agreement and all attachments and schedules referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

18.16.5 **Gender, Singular and Plural**. As used in this Agreement and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and vice versa.

18.16.6 **Includes and Including**. As used in this Agreement the words "include" and "including" mean, respectively, "include, without limitation" and "including, without limitation".

18.17 Time of Essence.

Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided that the foregoing shall not be construed to limit or deprive a Party of the benefits of any cure period or Force Majeure Delay expressly provided for in this Agreement.

18.18 Fees and Other Expenses.

Except as otherwise provided in this Agreement, each of the Parties hereto shall pay its own fees and expenses, including attorneys' fees, experts' fees and consultants' fees and costs, in connection with negotiation and preparation of this Agreement and compliance with its terms.

18.19 No Partnership.

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other relationship between the Parties hereto other than purchaser and seller according to the provisions contained in this Agreement, or cause the City to be responsible in any way for the debts or obligations of Developer.

18.20 Binding Effect.

This Agreement and terms, provisions, promises, covenants, conditions and restrictions contained herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

18.21 No Third Party Beneficiaries.

This Agreement has been made and entered into solely for the benefit of the Parties to this Agreement and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies on any other Person. Without limiting the generality of the foregoing, nothing in this Agreement confers any rights or remedies on any Approved Healthcare Developer or approved Transferee unless and until such Approved Healthcare Developer becomes the Developer or Healthcare Developer, as applicable, hereunder, and then only for the period from and after the Transfer to such Developer or Healthcare Developer. Nothing in this Agreement relieves or discharges the obligation or liability of any third Persons to any Parties to this Agreement.

18.22 Counterparts.

This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Agreement shall not be effective until the execution and delivery by the Parties of at least one set of counterparts. The Parties agree to

recognize execution of this Agreement by facsimile or other electronically transmitted signatures; provided that such execution by facsimile or electronic transmission shall not be effective unless a manually executed copy of the signature page is promptly sent by U.S. Postal Service, postage prepaid or overnight delivery service or is hand delivered to the Parties or Escrow Holder pursuant to Section 4.4. The Parties hereby authorize each other (and Escrow Holder) to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

18.23 Duplicate Originals, Entire Agreement and Waivers.

18.23.1 **Duplicate Originals**. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

18.23.2 **Entire Agreement**. This Agreement, including the Attachments hereto, together with the Other Agreements, constitute the entire agreement between the Parties with respect to the subject matter hereof. This Agreement and the Other Agreements supersede and replace any and all prior agreements, proposed agreements, negotiations and communications, oral or written, relating to the subject matter hereof and contain the entire agreement between the Parties as to the subject matter hereof and any and all prior agreements, understandings or representations between the Parties and/or any Developer Affiliate are hereby terminated and canceled in their entirety. Each Party hereby acknowledges that no other Party hereto, nor its agents or attorneys, have made any promises, representations or warranties whatsoever, expressed or implied, not contained in this Agreement or the Other Agreements, to induce such Party to execute this Agreement, and each Party acknowledges that it has not executed this Agreement in reliance on any such promise, representation or warranty not contained in this Agreement or any Other Agreements. For the avoidance of doubt, this Agreement shall terminate and supersede the RFP, the responses of Developer or any Developer Affiliate in connection therewith and the ENA, except that this Agreement does not supersede Sections 3.5, 4.5.3, 4.3.6, 6.9.2, 10.2 or 10.13 of the ENA which shall remain in effect with respect to claims arising during or related to the term of the ENA.

18.23.3 **No Waiver**. No waiver of any provision or consent to any action under this Agreement shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically set forth in writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities for the City and Developer and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

18.24 Confidentiality.

18.24.1 **Non-Disclosure and Exceptions**. Subject to the provisions of the California Public Records Act (Government Code Section 6250 et seq.) (the "**Public Records Act**"), which governs the City's use and disclosure of its agreements and records,

the City and Developer hereby agree that each shall keep confidential information provided by the other and denominated as confidential and will not disclose any such information to any Person without obtaining the prior written consent of the other Party, except that (a) the City shall have the right to disclose any information contained in any third party reports produced or obtained by Developer and required to be disclosed by it pursuant to law, (b) Developer shall have the right to disclose any Developer Excluded Information, (c) the City shall have the right to disclose any City Excluded Information, (d) Developer shall have the right to disclose to its consultants, members, and their respective consultants and members, any information to the extent necessary or desirable in connection with Developer's due diligence on the Property and performance of its obligations under this Agreement and the Other Agreements, (e) City shall have the right to disclose to its officials, employees and City retained consultants and representatives all information received by it from Developer as required to perform its obligations under this Agreement and the Other Agreements, and (f) either Party shall have the right to disclose any information to the extent that it is legally required or compelled to do so provided that (to the extent permitted) it provides the other Property with prior notice of such disclosure obligation and cooperates with such other Party (at no cost or liability to the cooperating Party) in any attempts to obtain confidential treatment of such disclosed information. Developer's obligations pursuant to this Section 18.24 shall terminate upon the earlier of (A) termination of this Agreement, (B) the Healthcare Property Close of Escrow or (C) if the Healthcare Property Close of Escrow has not then occurred, the Healthcare Property Outside Closing Date. Except with respect to material described in Section 18.24.2, the City's obligations pursuant to this Section 18.24 shall terminate upon the earlier of (1) the Healthcare Property Close of Escrow or (2) if the Healthcare Property Close of Escrow has not then occurred, the Healthcare Property Outside Closing Date.

18.24.2 **Financial Information**. Developer shall identify with specificity any submitted financial 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. The City shall not disseminate such information and shall take all reasonable steps to maintain such confidentiality unless otherwise required by law. The City's staff, agents, negotiators and consultants may review the statements as necessary as long as such parties agree to maintain the confidentiality of such statements.

18.24.3 **Cooperation**. In the event that the City obtains a request pursuant to the provisions of the Public Records Act to disclose any of Developer's information which the City is required to keep confidential pursuant to the terms of this Agreement, the City shall provide Developer with prompt written notice thereof and the City and Developer shall cooperate at Developer's sole cost and expense to seek to avoid disclosure of such matters to the extent legally permissible pursuant to the provisions of the Public Records Act.

18.25 Proprietary and Governmental Roles; Actions by Parties.

Except where clearly and expressly provided otherwise in this Agreement, the capacity of the City in this Agreement shall be as owner, lessor, assembler, redeveloper and/or seller of

property only ("**Proprietary Capacity**"), and any obligations or restrictions imposed by this Agreement on the City, shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the exercise by the City of its governmental authority with respect to any matter related to this Agreement which shall include the regulation and entitlement of the Property pursuant to Governmental Requirements, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("**Governmental Capacity**"). In addition, nothing in this Agreement shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable Governmental Requirements.

18.26 Performance of Acts on Business Days.

In the event that the final date for payment of any amount or performance of any act under this Agreement falls on a day other than a Business Day, such payment may be made or act performed on the next succeeding Business Day.

[signature page follows]

IN WITNESS WHEREOF, the City and Developer have signed this Agreement as of the date first set forth above.

"CITY"

CITY OF TUSTIN

Dated: 10/20/15

By: _____
Jeffrey C. Parker
City Manager

ATTEST:

By: _____
Erica N. Rabe, City Clerk

APPROVED AS TO FORM

By: _____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

Dated: 10/20/15

[SIGNATURES CONTINUED ON NEXT PAGE]

"DEVELOPER"

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
Delaware limited partnership
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation
Its General Partner

Dated: 9/30/15

By: _____
John Mehigan
Vice President

JOINDER OF ESCROW HOLDER

The undersigned is joining this Agreement to evidence its agreement to receive, hold and disburse the Purchase Price Deposit in accordance with the terms of this Agreement and otherwise to comply with the escrow instructions set forth in this Agreement.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

LIST OF ATTACHMENTS

ATTACHMENT 1	GLOSSARY OF DEFINED TERMS
ATTACHMENT 2A	LEGAL DESCRIPTION OF DEVELOPMENT PARCELS
ATTACHMENT 2B	DEPICTION OF RETAIL PARCEL AND HEALTHCARE PARCEL
ATTACHMENT 3	SITE PLAN, SUBDIVISION AND PAD PLAN & COMMON AREA
ATTACHMENT 4	PRELIMINARY TITLE REPORT
ATTACHMENT 5	DESCRIPTION OF CITY BENEFITED PROPERTIES
ATTACHMENT 6	FORM OF CITY ESTOPPEL
ATTACHMENT 7	SCHEDULE OF PERFORMANCE
ATTACHMENT 8	SCOPE OF DEVELOPMENT
ATTACHMENT 9	DEPICTION OF HORIZONTAL IMPROVEMENTS
ATTACHMENT 10	LIST OF ENVIRONMENTAL REPORTS AND STATEMENTS
ATTACHMENT 11	FORM OF QUITCLAIM DEED
ATTACHMENT 12	FORM OF MEMORANDUM OF DDA
ATTACHMENT 13A	UPDATED REG CERTIFICATE
ATTACHMENT 13B	HEALTHCARE GUARANTOR CERTIFICATE
ATTACHMENT 13C	CONTROLLING PERSON CERTIFICATE
ATTACHMENT 14A	FORM OF REG GUARANTY
ATTACHMENT 14B	FORM OF HCD GUARANTY
ATTACHMENT 15	FORM OF CERTIFICATE OF COMPLIANCE
ATTACHMENT 16A	FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
ATTACHMENT 16B	FORM OF HCD ASSIGNMENT AND ASSUMPTION AGREEMENT
ATTACHMENT 17	FORM OF CITY DATE DOWN CERTIFICATE
ATTACHMENT 18A	FORM OF DEVELOPER DATE DOWN CERTIFICATE
ATTACHMENT 18B	FORM OF HEALTHCARE DEVELOPER CERTIFICATE
ATTACHMENT 19	LIST OF PROHIBITED USES
ATTACHMENT 20	FORM OF SPECIAL RESTRICTIONS
ATTACHMENT 21	RETAIL PARCEL PRE-APPROVED TENANTS
ATTACHMENT 22A	FORM OF CITY NON-DISTURBANCE AND ATTORNMENT AGREEMENT—PAD TRANSFEREE
ATTACHMENT 22B	FORM OF CITY NON-DISTURBANCE AND ATTORNMENT AGREEMENT—SPACE LEASES
ATTACHMENT 23	FORM OF HEALTHCARE PERMITTED MORTGAGEE SUBORDINATION AGREEMENT
ATTACHMENT 24	LAND REPURCHASE AMOUNT
ATTACHMENT 25	SLOPE PARCEL EASEMENT AND LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT
ATTACHMENT 26	TRIP ALLOCATION
ATTACHMENT 27	LICENSE AGREEMENT
ATTACHMENT 28	APPLICABLE APPROVALS
ATTACHMENT 29	ON-LOT IMPROVEMENTS

ATTACHMENT 1

GLOSSARY OF DEFINED TERMS

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"**Action**" shall have the meaning set forth in Section 18.2.

"**Additional Liability Period**" shall mean (a) with respect to any Developer or Healthcare Developer, for the period of ownership of its Successor Owners unless such Developer or Healthcare Developer has been released with respect to such obligations pursuant to Section 2.2.3(b)(v); (b) with respect to any Developer or Healthcare Developer, for the period of ownership of its Successor Owners acquiring pursuant to Permitted Transfer under Sections 2.2.2(a) or (b); (c) with respect to Transfer by Developer to a Healthcare Developer, for the additional period following Transfer to a Healthcare Developer until the HCD Guaranty has been delivered and the Healthcare Transferor Obligations have been completed; provided that in no event shall termination of the Additional Liability Period remove, reduce or modify the liability of Developer, Healthcare Developer or their respective Successor Owners for Ongoing Matters.

"**Additional Purchase Price**" shall have the meaning set forth in Section 4.2.3.

"**Agreement**" shall mean this Tustin Legacy Disposition and Development Agreement including all Attachments attached hereto.

"**ALTA Policy**" shall mean an ALTA extended coverage owner's and/or leasehold policy of insurance as such term is used in Section 6.2.

"**Applicable Approvals**" shall have the meaning set forth in Section 8.3.2.

"**Applicable ENA Deposit**" shall have the meaning set forth in Section 1.9.2.

"**Approval Notice**" shall mean Diligence Termination Notice.

"**Approved Healthcare Developer**" shall mean (a) a Healthcare Developer that is approved by the City in its sole discretion in accordance with the requirements of Sections 2.2.3(b) and 4.6, or (b) a Person that is Controlled by the Person that was the Controlling Person of a Healthcare Developer at the time of City approval of the Healthcare Developer. As of the Effective Date, there is no Approved Healthcare Developer.

"**Approved Plans**" shall mean, collectively: (a) the Applicable Approvals required by the City which govern development of improvements on the Property, including approval of plans by the City in its Governmental Capacity pursuant to the Concept Plan and Design Review process; (b) the Basic Concept Plans approved by the City in its Proprietary Capacity pursuant to Section 8.4.7 of the Agreement, and (c) approval by the City of construction levels drawings as required to obtain the Entitlements.

"**Assignment**" shall mean an Assignment and Assumption Agreement in the form and substance of the agreement attached as Attachment 16A which shall be required to be executed by transferor, Transferee and consented to by the City, with respect to an assignment and assumption of Developer's interest in the Project as a whole or in the Retail Project pursuant to Section 2.2.3(a).

"**Bankruptcy Proceeding**" shall have the meaning set forth in Section 17.12.

"**Base Closure Law**" shall have the meaning set forth in Section 1.1.1.

"**Base Purchase Price**" shall have the meaning set forth in Section 4.2.

"**Basic Concept Plan**" shall mean the submittals by Developer to the City for purposes of satisfaction of the Concept Plan and Design Review approval and shall include the Phasing and proposed product mix, provided that Basic Concept Plan submittals shall be reviewed by the City in its Proprietary Capacity (as opposed to the Concept Plan and Design Review submittals which are reviewed by the City Development Department under the Governmental Capacity of the City.)

"**Building**" shall mean each building and structure on any Development Parcels.

"**Building Pad**" shall mean any legally subdivided lot comprising a portion of the Development Parcels.

"**Business Day(s)**" shall mean any day on which City Hall is open for business and shall specifically exclude Fridays when City Hall is officially closed, Saturday, Sunday or a legal holiday.

"**CC&Rs**" shall have the meaning set forth in Section 13.

"**CEQA**" shall mean the California Environmental Quality Act and implementing regulations and guidelines, contained in Cal. Public Resources Code Section 21000 et seq., and Cal. Code of Regulations, title 14, Section 15000 et seq., respectively.

"**Certificate of Compliance**" shall mean a certificate to be issued with respect to a Parcel upon Completion by Developer of all of the Improvements and satisfaction of all additional Conditions Precedent applicable to such Parcel set forth in Section 9. A Certificate of Compliance may be issued for either of the Retail Project or the Healthcare Project.

"**City**" shall mean the City of Tustin and each assignee or successor to the City's rights, powers and responsibilities as described in Section 1.4.1.

"**City Attorney**" shall mean the individual appointed by the City Council as "City Attorney."

"**City Benefited Property**" shall mean the properties owned by the City and described on Attachment 5 attached hereto.

"**City Code**" shall mean the Tustin City Code for the City of Tustin, California, as the same may be amended from time to time.

"**City Costs Deposit**" shall have the meaning set forth in Section 1.8.2.

"**City Council**" shall mean the City Council of the City of Tustin which serves as the City's legislative body.

"**City Estoppel**" shall mean an estoppel certificate substantially in the form and substance of that attached hereto as Attachment 6, to be executed and delivered by the City to a Transferee or to a Successor Owner.

"**City Excluded Information**" shall mean information that is (a) known by the City prior to the disclosure thereof by Developer or its officers, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns, (b) developed by or on behalf of the City without the use of any confidential information provided by Developer or its officers, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns, (c) disclosed to the City by a third party other than Developer or any of its officers, employees, agents, attorneys, affiliates, representatives or contractors, or (d) known to the public through no act or fault of the City in violation of this Agreement.

"**City Hall**" shall mean the seat of government for the City of Tustin, presently located at 300 Centennial Way, Tustin, California.

"**City Indemnified Parties**" shall have the meaning set forth in Section 10.1.

"**City Lien**" shall have the meaning set forth in Section 16.2.

"**City Manager**" shall mean Mr. Jeffrey Parker, or his successor in such capacity, or other designee as identified in writing by the City Manager.

"**City Non-Disturbance and Attornment Agreement**" shall mean a recognition non-disturbance and attornment agreement and estoppel certificate to be executed and delivered by the City to a Transferee substantially in the form and substance attached hereto as Attachment 22A (with respect to Pad Transferees) or Attachment 22B (with respect to Space Leases) or as otherwise agreed by the parties thereto, each in its sole discretion.

"**City Representatives**" shall have the meaning set forth in Section 3.3.

"**City Healthcare Property Closing Conditions**" shall have the meaning set forth in Section 7.2.2.

"**City Retail Property Closing Conditions**" shall have the meaning set forth in Section 7.3.2.

"**City Transaction Expenses**" shall have the meaning set forth in Section 1.8.3.

"**Claim**" or "**Claims**" shall mean any and all claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including attorneys' fees, fees of expert witnesses, and consultants' and court and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes, or any type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

"**Class A Project**" shall mean, with respect to (a) the Retail Parcel, a first class retail shopping center equivalent in terms of construction, design and maintenance with the top ten percent (10%) of neighborhood commercial shopping centers in the market area (i.e., within twenty (20) miles of) the Property and containing no Prohibited Uses and (b) the Healthcare Parcel, a first class medical facility equivalent in terms of construction, design and maintenance with the top ten percent (10%) of medical office centers in the market area (i.e., within twenty (20) miles of) the Property and containing no Prohibited Uses.

"**Class A Standards**" shall mean in terms of the quality of maintenance, standards consistent with a Class A Project.

"**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 pursuant to one or more Quitclaim Deeds, and execution and Recording (to the extent that such Other Agreements are to be Recorded pursuant to the terms of Section 7.5.5(b)) of Quitclaim Deed and the Other Agreements and additional documents associated therewith, as more fully set forth in Section 7, which shall take place on the applicable Closing Date, and which shall take place in one or two closings.

"**Closing Conditions**" shall mean, with respect to the Healthcare Property Close of Escrow, the Developer Healthcare Property Closing Conditions and the City Healthcare Property Closing Conditions and with respect to the Retail Property Close of Escrow, the Developer Retail Property Closing Conditions and the City Retail Property Closing Conditions.

"**Closing Retail Equity Funding Letter**" shall mean the Retail Equity Funding Letter required to be delivered by Developer to the City prior, and as a condition for the benefit of the City, to the Retail Property Close of Escrow.

"**Commenced Construction**" shall mean, with respect to the Medical Office Building, that the Healthcare Developer owning the Medical Office Building has applied for and obtained the first building permit (which shall include the first foundation permit) for construction of the Vertical Improvements comprising the Medical Office Building.

"**Common Area**" shall mean the shared drive aisle as depicted on Attachment 3

"**Common Area Improvements**" shall mean the driveways, parking lots, internal street lighting, and landscaping within the Common Area as reflected in the Approved Plans, as will be further described in the CC&Rs.

"**Complete**" and "**Completion**" shall mean, with respect to the Project or, if the Project is constructed in Phases, with respect to a given Phase, the point in time when all of the following shall have occurred with respect to the Project or such Phase: (a) the Improvements with respect

thereto have been substantially completed in accordance with this Agreement; (b) the issuance of a permanent certificate of occupancy by the City or, to the extent a certificate of occupancy is not required by the City for a particular Improvement, the equivalent inspection, signoff or other permit activity with respect to such Improvement, (c) the Recording of a Notice of Completion (California Civil Code Section 3043) by Developer, its Successor Owner or such Party's contractor; (d) a certification by the Project Architect that such Improvements (with the exception of minor "punch list" items) have been completed in a good and workmanlike manner and substantially in accordance with the Approved Plans and specifications; and (e) all contractors, subcontractors, laborers, suppliers, Architects, and engineers who performed work on the relevant Improvements shall have been paid in full and shall have executed final unconditional lien waivers and any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against.

"**Concept Plan and Design Review**" shall mean collectively the concept plan review required by the Specific Plan and the site plan and design review approvals required by the City Code, which shall be part of the Entitlements.

"**Conditions Precedent**" shall have the mean, with respect to a Certificate of Compliance for the Healthcare Parcel and the Healthcare Project, the conditions precedent to issuance of such certificate set forth in Section 9.2, and with respect to a Certificate of Compliance for the Retail Parcel and the Retail Project, the conditions precedent to issuance of such certificate set forth in Section 9.3.

"**Construction Bond**" shall mean both a labor and material bond and a payment and performance bond, each in a sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Improvements required to be bonded, and guaranteeing due and punctual performance and completion (within the respective times provided in the Schedule of Performance) in accordance with the applicable Approved Plans that specifically describe the work to be performed in sufficient detail for the issuance of such bond(s), and including all obligations of and to subcontractors, sub-subcontractors and other Persons with respect to the work covered by such bond, and naming the City as a co-obligee. Said bonds, if issued, shall be issued by an insurance company which is licensed to do business in California and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department and for amounts which are not in excess of the acceptable amount set forth on such list for the respective surety. The insurance company shall have a rating equivalent to a Best rating of A or FSC rating of 9.

"**Construction Loan**" shall mean a Permitted Mortgage made by a Permitted Mortgagee that will be secured by a first lien deed of trust on all or any portion of the Development Parcels, the loan documents for which have been approved by the City as part of the Healthcare Financing Plan and otherwise in accordance with this Agreement, and the proceeds of which may be used by the mortgagee only to construct the Vertical Improvements and pay other Development Costs, provided that it is the intent of the Parties that **no** Construction Loan shall be permitted with respect to the Retail Project or any portion thereof or the Medical Office Project or any portion thereof, and accordingly, no such Construction Loan shall be permitted for any reason without the prior written consent of the City in its sole discretion.

"**Construction Period Commencement Date**" shall mean: (a) with respect to the Retail Parcel, the earlier of (i) the date on which the City issues to Developer the Grading Permits for the Grading Work on the Retail Parcel or (ii) six (6) months following Retail Property Close of Escrow but in no event later than June 30, 2017 and (b) with respect to the Healthcare Parcel, the earlier of (i) the date on which the City issues to Healthcare Developer the first permit for Horizontal Improvements on the Healthcare Parcel or (ii) six (6) months following Healthcare Property Close of Escrow but in no event later than December 1, 2017.

"**Control**" "**Controlled**" or "**Controlling**", as used with respect to any Person, shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of such Person, including through the ownership or control of voting securities, partnership interests, membership interests, or other equity interests, acting as the manager of a limited liability company, or otherwise.

"**Controlling Person**" shall mean (a) any Person who Controls Developer and (b) any Person who Controls a Controlling Person.

"**Costs**" shall have the meaning set forth in Section 18.2.

"**DA**" shall mean a Development Agreement, if any, entered into by the Parties with respect to the Development Parcels, pursuant to Government Code Section 65864 et seq.

"**DDA Transaction Expenses**" shall mean the City's predevelopment and implementation costs incurred in connection with this Agreement, the Other Agreements and/or the Project, and each and every component thereof, and shall include (a) City staff costs; (b) the costs of third party consultants, legal counsel, appraisers, financial, engineering and other consultants and any other expenditures required in connection with the implementation, amendment, modification and/or termination of this Agreement and/or the Other Agreements (including any requested modification to the attachments thereto); (c) approvals by the City under this Agreement and/or the Other Agreements, including the City's review and approval of requested Transfers, Transferees, Permitted Mortgages and Permitted Mortgages and documentation submitted by Developer or any proposed Transferee or Mortgagee in connection therewith; (d) and provision of estoppel certificates, certificates of compliance and the like, occurring at any time from the Effective Date until, as to each of the Retail Parcel and the Healthcare Parcel, the Recording of a Certificate of Compliance for such Parcel.

"**Decision**" shall have the meaning set forth in Section 18.2.

"**Default**" shall mean a Potential Default and/or Material Default, as the context requires.

"**Default Notice**" shall have the meaning set forth in Section 14.1.

"**Default Rate**" shall mean an interest rate of eight percent (8%) per annum, compounded annually, but in no event in excess of the maximum legal rate.

"**Defaulting Party**" shall have the meaning set forth in Section 14.1.

"**Developer**" shall mean Regency Centers Acquisition LLC, as of the Effective Date of the Agreement, and each and every Successor Owner following any Transfer or Transfer of Control pursuant to a Permitted Transfer or any other Transfer or Transfer of Control approved by the City, as described in Section 2.2, including Healthcare Developer with respect to the Healthcare Parcel.

"**Developer Affiliate**" shall mean REG, or any Person that Controls, is Controlled by or is under common Control with REG or Regency Centers Acquisition LLC.

"**Developer Excluded Information**" shall mean information that is (a) known by Developer prior to the disclosure thereof by the City or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns, (b) developed by or on behalf of Developer without the use of any confidential information provided by the City or its officers, employees, agents, attorneys, affiliates, representatives, contractors, successors or assigns, (c) disclosed to Developer by a third party other than the City or any of its elected and appointed officials, employees, agents, attorneys, affiliates, representatives or contractors, or (d) known to the public through no act or fault of Developer in violation of this Agreement.

"**Developer Healthcare Property Closing Conditions**" shall have the meaning set forth in Section 7.2.1.

"**Developer Insolvency Event**" shall have the meaning set forth in Section 2.2.5.

"**Developer Knowledge Parties**" shall have the meaning set forth in Section 3.1.

"**Developer Representatives**" shall mean the Developer and its officers, directors, employees, agents, representatives, tenants, prospective tenants, prospective purchasers, contractors, and other Persons accessing the Development Parcels and/or the Slope Parcel or other property owned by the City by, through or with the permission or under the direction or auspices of Developer, and when used in the context of the Healthcare Developer shall mean the s officers, directors, employees, agents, representatives, tenants, prospective tenants, prospective purchasers, contractors, and other Persons accessing the Healthcare Parcel and/or the Slope Parcel or other property owned by the City by, through or with the permission or under the direction or auspices of Healthcare Developer.

"**Developer Retail Property Closing Conditions**" shall have the meaning set forth in Section 7.3.1.

"**Developer Title Endorsements**" shall have the meaning set forth in Section 6.4.

"**Development Costs**" shall have the meaning set forth in Section 8.1.3.

"**Development Parcel**" shall mean either of the Retail Parcel or the Healthcare Parcel individually.

"**Development Parcels**" shall have the meaning set forth in Section 1.2.

"**Development Permits**" means all ministerial permits required by the City or any Governmental Authority in connection with construction of the Project and shall include any grading permit, foundation permit, construction permit, building permit or other permit type as may be necessary pursuant to Chapter 4 of the Specific Plan and/or the City Code.

"**Diligence Termination Notice**" shall have the meaning set forth in Section 5.1.

"**Disapproved Exception**" shall have the meaning set forth in Section 6.3.

"**Disposition Strategy**" shall have the meaning set forth in Section 1.1.5.

"**DTSC**" shall mean the California Department of Toxic and Substance Control.

"**Due Diligence Information**" shall mean any and all information or documentation relating to the Property furnished to Developer by the City, or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors or consultants, in connection with Developer's due diligence pursuant to Section 5.1 of this Agreement.

"**Due Diligence Period**" shall have the meaning set forth in Section 5.1.

"**EBS**" shall have the meaning set forth in Section 4.5.1(b)(iii).

"**Effective Date**" shall have the meaning set forth in the first paragraph of this Agreement and if no date is set forth in that location shall be the date of City Council approval of this Agreement (even if executed subsequent to such date).

"**ENA**" shall mean that certain Exclusive Agreement to Negotiate (Disposition Package 1C) entered into by the City and Developer, dated August 7, 2012, as the same may have been amended from time to time.

"**ENA Deposit**" shall have the meaning set forth in Section 1.8.1.

"**ENA Transaction Expenses**" shall have the meaning set forth in Section 1.8.1.

"**End User**" shall mean a Person operating a retail business, or a Healthcare User, in any Improvement including any Building or Leasable Space, whether such Person holds a fee interest in a Building Pad, a ground leasehold interest in a Building Pad, or a leasehold interest in a Leasable Space or is leasing office space in a Building.

"**Entitlements**" shall mean the City General Plan, the Specific Plan and the discretionary land use approvals and entitlements legally required by the City or any other Governmental Authority as a condition of the Parcel Map and development of the Property and construction of Improvements and shall include the Applicable Approvals, but shall specifically exclude Development Permits.

"**Entitlement Approval Date**" shall mean the date on which all of the Applicable Approvals for the Property to be developed by Developer with the Project have been granted by the City, and no lawsuit has been filed to challenge such entitlements within the statute of

limitations or, if a lawsuit has been filed, the date on which the lawsuit is finally adjudicated and is not appealable or has been settled and dismissed with prejudice.

"**Environmental Agency**" shall mean the United States Environmental Protection Agency; the California Environmental Protection Agency and all of its sub-entities, including any Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Toxic Substances Control, the South Coast Air Quality Management District, and the California Air Resources Board; the City; any Fire Department or Health Department with jurisdiction over the Property; and/or any other federal, State, regional or local governmental agency or entity that has or asserts jurisdiction over Hazardous Substance Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Materials in, on, under, about, or affecting the Project, the Development Parcels or any Improvements thereon.

"**Environmental Laws**" shall mean any federal, state, regional or local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, or permit conditions, in existence as of the Effective Date or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Materials, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Materials. Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("**CERCLA**"); the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.) ("**RCRA**"); the federal Water Pollution Control Act, as amended, (33 U.S.C. Section 1251 et seq.); the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 et seq.); the Hazardous Substances Account Act (Chapter 6.8 of the California Health and Safety Code Section 25300 et seq.); Chapter 6.5 commencing with Section 25100 (Hazardous Waste Control) and Chapter 6.7 commencing with Section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Water Code, Sections 13000 et seq.

"**Escrow**" shall have the meaning set forth in Section 4.4.

"**Escrow Holder**" shall mean First American Title Insurance Company.

"**Federal Deed**" shall mean that certain Quitclaim Deed H and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002, that was Recorded on May 14, 2002 as Instrument Number 20020404598.

"**Federal Government**" shall mean the United States of America (including the Navy), by and through the Secretary of the Navy, or designee.

"**Final EIS/EIR**" shall have the meaning set forth in Section 1.1.2.

"**Financing Plan**" shall have the meaning set forth in Section 4.6.1.

"**FIRPTA Affidavit**" shall mean an affidavit in form reasonably satisfactory to Developer certifying that the City is not a "foreign person" under the federal Foreign Investment in Real Property Act.

"**First Option Payment**" shall have the meaning set forth in Section 7.1.1(b).

"**First Option Term**" shall have the meaning set forth in Section 7.1.1(b).

"**First Party**" shall have the meaning set forth in Section 18.7.3.

"**Force Majeure Delay**" shall have the meaning set forth in Section 18.7.1 as limited by Section 18.7.2.

"**Foreclosure**" shall mean the foreclosure of any Permitted Mortgage (or any sale thereunder), whether by judicial proceedings, by virtue of any power of sale under the Permitted Mortgage, by acceptance of a deed-in-lieu of foreclosure, or by any other conveyance of all or any portion of the Property and/or Improvements by other appropriate proceedings in the nature of a foreclosure, resulting in the Transfer of all or any portion of the Property and/or Improvements to (a) any Permitted Mortgagee, (b) any entity that Controls Permitted Mortgagee, is Controlled by Permitted Mortgagee, or is Controlled by an entity that also Controls Permitted Mortgagee, (c) any participating lender in the Construction Loan (excluding Developer or any Developer Affiliate), and/or (d) any agent or nominee for one or more of the lenders in clauses (a) through (c) under the Permitted Mortgage that secures the Construction Loan.

"**FOST**" shall mean the Department of Navy findings and determinations that the Development Parcels were suitable for transfer to the City, pursuant to the document entitled "Final Finding of Suitability to Transfer For Southern Parcels 4-8, 10-12, 14, and 42, and Parcels 25, 26, 30-33, 37, and Portions of 40 and 41 Marine Corps Air Station Tustin, California" dated September 28, 2001.

"**GBA**" shall mean the gross square footage of a Building calculated in accordance with City Code requirements, and shall exclude items not included in such calculations, such as unoccupied mezzanines.

"**General Plan**" shall mean the most current general plan for the City of Tustin.

"**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.

"**Governmental Capacity**" shall have the meaning set forth in Section 18.25.

"**Governmental Requirements**" shall mean all laws, statutes, codes, ordinances, rules, regulations, standards, guidelines and other requirements issued by any Governmental Authority having jurisdiction over, governing, applying to or other affecting the Parties, the Project, the

Improvements, the Property or any component thereof and including the City Code, the Specific Plan, the Entitlements, the Development Permits and the Approved Plans.

"**Grading Work**" shall mean all of the rough grading work for foundations and utilities and precise grading work required to be completed by Developer on the Healthcare Parcel and the Retail Parcel under the terms of this Agreement and any Parcel Map and/or subdivision improvement agreement entered into in connection with the Parcel Map.

"**Ground Lease**" shall mean a lease of real property comprising all or a portion of a Parcel to an End User for construction and/or occupancy of one or more Buildings thereon.

"**Guaranty**" means a guaranty, in substantially the form and substance of the guaranty attached as Attachment 14A or 14 B or as otherwise approved by the City in its sole discretion in which the City is a named beneficiary, made by the specified guarantors and guarantying payment for all Development Costs, the faithful performance and completion (within the respective times provided in this Agreement) of the respective portions of the Project and the Improvements, or components thereof, and the other matters described herein in accordance with this Agreement.

"**Hazardous Materials**" shall mean and include the following:

(a) "**Hazardous Substance**", "**Hazardous Material**", "**Hazardous Waste**", or "**Toxic Substance**" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. subsection 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. subsection 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. subsection 6901, et seq.;

(b) An "**Extremely Hazardous Waste**", a "**Hazardous Waste**", or a "**Restricted Hazardous Waste**", under subsections 25115, 25117, or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to subsection 25140 or 44321 of the California Health and Safety Code;

(c) "**Hazardous Material**", "**Hazardous Substance**", "**Hazardous Waste**", "**Toxic Air Contaminant**", or "**Medical Waste**" under subsections 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

(d) "**Oil**" or a "**Hazardous Substance**" listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydro carbonic substance or by-product;

(e) Listed or defined as a "**Hazardous Waste**", "**Extremely Hazardous Waste**", or an "**Acutely Hazardous Waste**" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.9(a) of the California Health and Safety Code;

(g) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(h) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(i) Pesticides regulated under the Feral Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. subsections 136 et seq.;

(j) Asbestos, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. subsections 2601 et seq.;

(k) Any radioactive material including any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. subsection 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. subsection 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code Section 114960 et seq.;

(l) Regulated under the Occupational Safety and Health Act, 29 U.S.C. subsection 651 et seq., or the California Occupational Safety and Health Act, California Labor Code subsection 6300 et seq.; and/or

(m) Regulated under the Clean Air Act, 42 U.S.C. subsection 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"**HCD Affiliate**" shall mean any Person that Controls, is Controlled by or is under common Control with Healthcare Developer.

"**HCD Agreements**" shall mean a purchase and sale agreement between Developer and an Approved Healthcare Developer for the Healthcare Property and which may also allocate rights and obligations between Developer and Healthcare Developer under this Agreement with respect to acquisition and development of the Healthcare Parcel, the Healthcare Project and the Improvements located thereon, in form and substance approved by the City in its sole discretion.

"**HCD Assignment**" shall have the meaning set forth in Section 1.4.4.

"**HCD Equity Funding Letter**" shall have the meaning set forth in Section 4.6.4(b).

"**HCD Guaranty**" means a Guaranty in substantially the form and substance of the guaranty attached as Attachment 14B or as otherwise approved by HCD Developer, Developer and the City, each in its sole discretion.

"**Healthcare Developer**" shall have the meaning set forth in Section 2.2.3(b).

"**Healthcare Developer Affiliate**" shall mean any Person that Controls, is Controlled by or is under common Control with Healthcare Developer.

"**Healthcare Financing Plan**" shall have the meaning set forth in Section 4.6.4(a).

"**Healthcare Guarantor Certificate**" shall have the meaning set forth in Section 4.6.5(a)(ii).

"**Healthcare Guarantor(s)**" shall have the meaning set forth in Section 4.6.5.

"**Healthcare Horizontal Improvements**" shall mean the Horizontal Improvements required in connection with development, construction and operation of the Healthcare Project and the On-Lot Improvements for the Healthcare Parcel.

"**Healthcare Improvements**" shall mean the Healthcare Horizontal Improvements, the Healthcare Vertical Improvements, and the components of the Minimum Horizontal Improvements located upon or affecting the Healthcare Parcel.

"**Healthcare Parcel**" shall mean that portion of the Development Parcels depicted on Attachment 3 to this Agreement as Lots 10 through 13, inclusive, of Tentative Parcel Map 2015-127, upon which the Medical Uses and Healthcare Parcel Retail Uses are proposed to be constructed and operated.

"**Healthcare Parcel Retail Uses**" shall mean any retail uses permitted pursuant to the Specific Plan but specifically excluding grocery uses and stand-alone drug store use.

"**Healthcare Perimeter Landscape**" shall mean the Landscape Improvements to be constructed by Developer within the Healthcare Parcel Landscape Area, as each such term as defined the Slope Parcel Easement and Landscape Installation and Maintenance Agreement attached as Attachment 25.

"**Healthcare Project**" shall mean construction and installation of the Healthcare Improvements on the Healthcare Parcel.

"**Healthcare Property**" shall mean Healthcare Parcel together with all existing improvements, if any, presently located thereon, all appurtenances pertaining thereto and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection therewith.

Healthcare Property Close of Escrow" shall mean the Close of Escrow with respect to the Healthcare Property.

"**Healthcare Property Closing Date**" shall have the meaning set forth in Section 7.1.1(a).

"**Healthcare Property Closing Payment**" shall have the meaning set forth in Section 4.3.4(b).

"**Healthcare Rough Grading**" shall mean only the rough grading of the Healthcare Property required by and consistent with the Approved Plans and specifically excludes precise or finished grading of any Building Pads on the Healthcare Property.

"**Healthcare Property Option Payment**" shall have the meaning set forth in Section 7.1.1(b).

"**Healthcare Property Outside Closing Date**" shall have the meaning set forth in Section 7.1.1(a).

"**Healthcare Property Purchase Price**" shall have the meaning set forth in Section 4.2.1.

"**Healthcare Property Transferor**" shall mean (a) prior to the Transfer of the Healthcare Property to Healthcare Developer, the Initial Developer, or a Transferee with respect to the entirety of Initial Developer's interests in this Agreement and the Property, which Transfers Developer's interests in and to the Healthcare Project and the Healthcare Property and the components of this Agreement applicable thereto to an Approved Healthcare Developer pursuant to Section 2.2.3(b), and (b) from and after the Transfer of the Healthcare Property to Healthcare Developer, the Initial Developer and each Successor Owner of such Initial Developer owning all or any portion of the Retail Parcel.

"**Healthcare Provisions**" shall have the meaning set forth in Section 15.1.1.

"**Healthcare Subordination Agreement**" shall mean a subordination agreement between the City and a Permitted Mortgagee, if any, with respect to the Other Healthcare Parcels, in the form and substance of the agreement set forth as Attachment 23, or as otherwise agreed by the City and Permitted Mortgagee, each in its sole discretion.

"**Healthcare Transferor Obligations**" shall mean those obligations of Developer with respect to the Healthcare Property and the Healthcare Project for which the Healthcare Property Transferor remains liable and shall not be released following the Transfer of the Healthcare Property to the Healthcare Developer, notwithstanding the assignment to and assumption of such obligations by Healthcare Developer, and shall include (a) construction and Completion of the Minimum Horizontal Improvements upon the Healthcare Parcel; (b) construction and Completion of the work described in the Slope Parcel Easement and Landscape Installation and Maintenance Agreement; (c) the obligations of Healthcare Property Transferor set forth in Section 14.2.6(a); (d) all obligations of Developer and Healthcare Developer prior to the Healthcare Property Close of Escrow and the delivery by an Approved Healthcare Developer of the HCD Guaranty and the HCD Assignment, including all Ongoing Matters related thereto, and (e) the indemnity obligations of Developer set forth in Section 4.6.4(f).

"**Healthcare User**" shall mean any entity that operates a non-residential hospital, medical office, office, skilled nursing or other healthcare related facility.

"**Healthcare Vertical Improvements**" shall have the meaning set forth in Section 1.3.2(b).

"**Horizontal Improvements**" shall mean all Grading Work and the infrastructure improvements and utilities required to be constructed or installed on or in connection with the development of the Property as further described in the Scope of Development attached as Attachment 8 to this Agreement and depicted on Attachment 9 to this Agreement comprised of: (a) on-site and off-site infrastructure improvements including roadways, drives, alleyways, sidewalks, parking lots, all utilities required for the Project to the boundary of each Building or other improvement requiring such utility access, including the On-Lot Improvements and Common Area Improvements and (b) off-site infrastructure improvements including sidewalks, curb cuts and landscaping Horizontal Improvements and shall include those Improvements required by the Parcel Map, each and every Entitlement condition and Development Permit and any other Governmental Requirements.

"**Improvements**" shall mean the Horizontal Improvements, the Vertical Improvements and the On-Lot Improvements.

"**Independent Contract Consideration**" shall have the meaning set forth in Section 1.8.2.

"**Initial Developer**" shall have the meaning set forth in Section 1.4.2.

"**Initial Retail Equity Funding Letter**" shall mean the Retail Equity Funding Letter required to be delivered by Developer to the City prior the Effective Date.

"**Injured Party**" shall have the meaning set forth in Section 14.1.

"**Insured Party**" shall have the meaning set forth in Section 11.2.1.

"**Investigation(s)**" shall mean any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of or concerning the Property, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Materials.

"**Key Employees**" shall mean the following employees of Developer: John Mehigan, Vice President, Investments, West Region for Regency Centers.

"**Landscape Improvements**" shall mean the perimeter edge landscaping for the Development Parcels as described in Attachment 8 and in the locations depicted on Attachment 9 and the landscaping upon the Slope Parcel as described in Attachment 8 and in the locations depicted as an exhibit to Attachment 25, in each case as required by the Approved Plans.

"**Leasable Space**" shall mean any Building or demised portion of a Building that is Leased or is intended to be Leased for Retail Uses (with respect to the Retail Parcel) or for Medical Uses or Healthcare Parcel Retail Uses (with respect to the Healthcare Parcel), but shall exclude Building Pads.

"**Lease**" shall mean, as a noun, an agreement between Developer and a Tenant to lease, sublease or license a Parcel or any portion thereof or any Building or portion thereof thereon,

including any Ground Lease or Space Lease, and, as a verb, shall mean the leasing by Developer of any Parcel or Vertical Improvement or portion thereof, including any space within a Building, to a Tenant.

"**Lien Release Amounts**" shall mean the amounts, if any, (a) of any City Lien and (b) required to be paid to third parties by the City to clear all monetary liens (including all mechanics' liens and stop notices) and Mortgages that encumber the Reacquired Property on the date of a Reversion Event or the date of the close of escrow pursuant to the Right of Repurchase and which, with respect to taxes and assessments, are then due and payable.

"**Material Default**" shall have the meaning set forth in Sections 14.2.1 and 14.2.2.

"**MCAS Tustin**" shall have the meaning set forth in Section 1.1.1.

"**Medical Office Building**" shall have the meaning set forth in Section 1.1.7.

"**Medical Office Parcel**" shall have the meaning set forth in Section 1.1.7.

"**Medical Uses**" shall mean medical-related services, including (a) acute care/rehabilitation and skilled nursing facilities and associated services as approved by the City from time to time pursuant to conditional use permit, (b) urgent care facilities and/or (c) medical office uses staffed by doctors, nurses and/or related practitioners, and related amenities but shall specifically exclude stand-alone retail, warehousing and manufacturing uses.

"**Memorandum of Agreement**" shall have the meaning set forth in Section 1.1.3.

"**Memorandum of DDA**" shall mean a memorandum of record of this Agreement to be Recorded against the Property substantially in the form and substance of the memorandum attached to the Agreement as Attachment 12.

"**Minimum Healthcare Improvements**" shall have the meaning set forth in Section 9.2(a).

"**Minimum Healthcare Vertical Improvements**" shall have the meaning set forth in Section 1.3.2(b).

"**Minimum Horizontal Improvements**" shall mean that portion of the Horizontal Improvements comprised of (a) the Grading Work, (b) the construction of the shared main drive aisle coming off of Kensington Park Drive, (c) all local (and not backbone as described in the Tustin Legacy Backbone Infrastructure Program) on-site and off-site infrastructure improvements and utilities and utility systems required to be constructed or installed on or in connection with the development of the Development Parcels including (i) all roadways, drives, alleyways, sidewalks and parking lots within the Property, including finish paving as required to meet Code requirements for the Healthcare Vertical Improvements and Retail Vertical Improvements, the sidewalks along Kensington Park Drive, Edinger Avenue and Valencia Avenue adjacent to the perimeter of the Property and all traffic and circulation mitigation to support the Project; (ii) all utilities and utility systems required for the Project to the boundary of each Building Pad, including domestic and reclaimed water; sewer; telemetry; utilities

(electricity, gas, telephone, cable, telecommunications, etc.), (d) the Common Area Improvements, (e) "hydro seed" of the portions of the Development Parcels remaining undeveloped, and (f) the Landscape Improvements, including the landscape improvements upon the Slope Parcel, but Minimum Horizontal Improvements shall exclude the On-Lot Improvements.

"**Minimum Retail Improvements**" shall have the meaning set forth in Section 9.3(a).

"**Minimum Improvements**" shall mean the Minimum Retail Vertical Improvements, the Minimum Healthcare Vertical Improvements and all of the Horizontal Improvements and On-Lot Improvements.

"**Minimum Retail Vertical Improvements**" shall have the meaning set forth in Section 1.3.2(b).

"**Mortgage**" shall mean any indenture of mortgage or deed of trust, bond, grant of taxable or tax exempt funds from a governmental agency or other security interest affecting the Development Parcels or any portion thereof and the documents governing a sale-leaseback transaction, together with all loan documents related thereto, but excluding any community facilities districts, assessment districts, landscape and lighting districts or other assessments created or imposed by any Governmental Authority.

"**Mortgagee**" shall mean any mortgagee, beneficiary (or any agent for one or more lenders acting in such capacity) under any indenture of mortgage, deed of trust, trustee of bonds, governmental agency which is a grantor of funds, and, with respect to the Property or any portion thereof which is the subject of a sale-leaseback transaction, the Person acquiring fee title.

"**Navy**" shall mean the United States Department of Navy.

"**Non-Refundable ENA Deposit**" shall have the meaning set forth in Section 1.9.1.

"**Notice of Completion**" shall mean the notice of completion filed by Developer after the Completion of each Improvement, pursuant to California Civil Code Section 3093.

"**Notice to Mortgagee**" shall have the meaning set forth in Section 17.6.3.

"**Ongoing Matters**" shall mean the following matters for which the transferor Developer and/or Healthcare Developer, as applicable, shall remain responsible following any Transfer:

(a) matters or circumstances (including any payment obligations) which relate to or arose during the period that such transferor is or was Developer or Healthcare Developer, as applicable, hereunder and for the Additional Liability Period applicable thereto;

(b) matters or circumstances for which Developer, as Healthcare Property Transferor, remains liable hereunder and for the Additional Liability Period applicable thereto;

(c) the releases set forth in Section 4.5.2(f) or in the Other Agreements only for matters arising during or related to the period that such transferor was Developer hereunder and for the Additional Liability Period applicable thereto;

(d) the indemnities set forth in Sections 4.6.4(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.12.1 only for matters or circumstances (i) arising during or related to the period that such transferor was Developer and/or Healthcare Developer hereunder and for the Additional Liability Period applicable thereto and (ii) arising or related to periods subsequent to the Transfer Date if due to the acts or omissions of Developer or Healthcare Developer, as applicable, and/or any Developer Affiliate, HCD Affiliate or Developer Representative or for which Developer or Healthcare Developer may have liability pursuant to Section 2.2.2(a) and (b); and

(e) the obligations of Developer (including as Healthcare Property Transferor or otherwise) or Healthcare Developer, as applicable, under this Agreement or the Other Agreements which relate to any other portion of the Project that is not subject to such Transfer and as to which Developer, Healthcare Property Transferor or Healthcare Developer, as applicable, has not been theretofore released in accordance with this Agreement, if any and for the Additional Liability Period applicable thereto.

"**On-Lot Improvements**" shall mean dry and wet utility extensions, sidewalks and drives, walls, fences and landscaping from the back of curb to and including each Building Pad, as generally depicted on Attachment 29.

"**Opening of Escrow**" shall have the meaning set forth in Section 4.4.

"**Original REG Certificate**" shall have the meaning set forth in Section 4.6.2(b).

"**Other Agreements**" shall mean the Quitclaim Deed(s), the Special Restrictions, the Memorandum of DDA, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, the License Agreement, the CC&Rs and the DA.

"**Other Healthcare Parcels**" shall have the meaning set forth in Section 1.1.7.

"**Pad Transfer**" shall mean any Transfer including sale or Ground Lease of the fee interest in a Building Pad.

"**Pad Transferee**" shall mean a Person to whom Developer has Transferred a Building Pad.

"**Parcel**" shall mean either the Retail Parcel or the Healthcare Parcel, individually.

"**Parcel Map**" shall have the meaning set forth in Section 1.2.

"**Parcels**" shall mean the Retail Parcel and the Healthcare Parcel, collectively.

"**Parties**" shall mean the City and Developer, collectively.

"**Party**" shall mean either of the City or Developer, individually, as parties to this Agreement.

"**Permitted Exceptions**" shall have the meaning set forth in Section 6.2 as may be modified by Section 6.3.

"**Permitted Mortgage**" shall mean any indenture of mortgage or deed of trust, bonds, grant of taxable or tax-exempt funds from a governmental agency or other conveyance of a security interest in one or more of the Parcel(s), the Property or any portion thereof to a Permitted Mortgagee or the conveyance of the Property or any portion thereof to the Permitted Mortgagee or its Successor Owner or purchaser in connection with a Foreclosure which satisfies all of the criteria set forth in Section 2 and Section 17.

"**Permitted Mortgage Unpaid Balance**" shall mean the amount of principal and accrued and unpaid interest due to the Permitted Mortgagee under the Construction Loan as of to the date of the close of escrow following the City's notice to Developer whereby the City exercises its Right of Repurchase under Section 16.3 or Right of Reversion under Section 16.4.

"**Permitted Mortgagee**" shall mean a Mortgagee meeting the criteria set forth in Section 17.1.2 and accordingly entitled to the Permitted Mortgagee protections provided by this Agreement. For purposes of any acts under a Permitted Mortgage with respect to and/or following a Foreclosure thereunder, "Permitted Mortgagee" means such Permitted Mortgagee or any wholly-owned subsidiary thereof designated by the Permitted Mortgagee to take title to the foreclosed property. The participation, securitization or assignment of a loan (or any portion thereof) by a Permitted Mortgagee (acting in an individual capacity or as agent for other lenders) shall not give rise to any requirement that each lender participating in such participation, securitization or assignment itself be a Permitted Mortgagee (acting in an individual capacity or as agent for other lenders), so long as (a) at the inception of the loan, the originating and agent lender is a Permitted Mortgagee, and (b) at the time of any subsequent assignment of the loan, the successor owner and agent lender is a Permitted Mortgagee.

"**Permitted Transfer**" shall have the meaning set forth in Section 2.2.2.

"**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.

"**Phases**" and "**Phasing**" or similar terms, shall mean, as a noun, a subset of the Project that relates to all or any portion of the Development Parcels and which is to be developed, at one time as a distinct component of the Project, and that may be acquired or constructed prior to or following other components of the Project in accordance with the Schedule of Performance and, as a verb, the division of the Project into such Phases.

"**Potential Default**" shall have the meaning set forth in Section 14.1.

"**Preliminary Title Reports**" shall have the meaning set forth in Section 6.2.

"**Prevailing Party**" shall have the meaning set forth in Section 18.2.

"**Pre-Approved Tenant**" shall mean, for the Retail Parcel, any of the tenants identified on Attachment 21.

"**Products**" shall have the meaning set forth in Section 14.3.2.

"**Prohibited Use**" shall mean any use, whether by Developer, a Tenant, or any other entity, which is set forth on Attachment 19.

"**Project**" shall have the meaning set forth in Section 1.3.2.

"**Project Architect**" shall mean (a) with respect to the Retail Project, Architects Orange and (b) with respect to the Healthcare Project, if SN is the Approved Healthcare Developer, Boulder Associates, Inc. and if not SN, such other architect proposed by an Approved Healthcare Developer, who shall have experience in designing healthcare facilities similar to those proposed for the Healthcare Property, and approved by the City.

"**Project Budget Statement**" shall mean a document delivered by Developer to the City which shows, as of the end of the immediately preceding quarter, (a) the fees paid through the end of such prior quarter and estimated fees to be paid prior to Completion of the Project in connection with the development and construction of the Project, (b) out-of-pocket costs spent through the end of such prior quarter and estimated out-of-pocket costs to be paid prior to Completion of the Project, in each case for each of the major categories of hard and soft costs for the development and construction of the Project, and (c) with respect to any Permitted Mortgage, the remaining available balance under the Construction Loan associated with such Permitted Mortgage.

"**Project Fair Share Contribution**" shall have the meaning set forth in Section 8.7.2.

"**Property**" shall have the meaning set forth in Section 4.1(a).

"**Proprietary Capacity**" shall have the meaning set forth in Section 18.25.

"**Purchase Price Deposit**" shall be an earnest money deposit delivered by Developer to the City upon execution of the Agreement as described in Section 4.3.1.

"**Qualified Institutional Lender**" shall mean (a) a nationally chartered bank, national association, federal association bank, savings and loan association, investment bank, state chartered bank, lending institution, pension fund, insurance company or other institutional lender which is duly established and in the business of financing the size and type of development contemplated hereunder, and such term shall include but not be limited to Fannie Mae, Freddie Mac, FHA, Citibank, Wells Fargo, Union Bank, US Bank, and Bank of America or any other institutional lender that has a credit rating of at least an "A-" or that has a minimum of Five Billion Dollars ($5,000,000,000.00) of assets on its most recent balance statement or (b) any governmental agency or joint powers authority or indentured trustee acting for or on behalf of such Person.

"**Quitclaim Deed**" shall mean the quitclaim deed to be executed and delivered by the City at each Close of Escrow to quitclaim all of the City's interests in the Property then to be conveyed (subject to Section 4.1 and Section 7 and the terms of this Agreement) to Developer. Each Quitclaim Deed shall be in substantially the form and substance of the deed attached hereto as Attachment 11, acknowledged and in Recordable form.

"**Reacquired Property**" shall have the meaning set forth in Section 16.3 and shall be applicable in the case of an election by the City to repurchase pursuant to the Right of Repurchase or to revest pursuant to the Right of Reversion.

"**Record**", "**Recording**" and "**Recorded**" shall mean to record the specified instrument, or the current or past recording of the specified instrument, in the official records of Orange County California.

"**Recordable**" shall mean with respect to any document, that such document has been acknowledged and is otherwise in a form that would permit the Recording thereof.

"**REG**" shall have the meaning set forth in Section 1.4.2.

"**REG Guaranty**" shall have the meaning set forth in Section 4.6.3(a).

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

"**Released Party**" and "**Released Parties**" shall have the meanings set forth in Section 4.5.2(f).

"**Releasing Party**" shall have the meaning set forth in Section 4.5.2(f).

"**Remediate**" or "**Remediation**" shall mean any response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Materials as defined under comparable state and local laws, and any other cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Materials or Releases required by any Environmental Agency or within the purview of any Environmental Laws.

"**Repurchase Price**" shall mean (a) a "Land Repurchase Amount", which as to the Reacquired Property comprising the Retail Parcel, shall be equal the "Land Repurchase Amount" for the Retail Parcel set forth on Attachment 24 and as to Reacquired Property comprising the Healthcare Parcel, the "Land Repurchase Amount" for the Healthcare Parcel set forth on Attachment 24; plus (b) the costs incurred by Developer in construction of the Vertical Improvements upon the Reacquired Property, less (ii) the Lien Release Amounts with respect to the Reacquired Property, provided that if the portion of the land comprising the Reacquired Property is less than all of the Parcel of which it is a component, the Land Repurchase Amount for the Reacquired Property shall be determined on a per square foot basis based on the ratio that the land comprising the Reacquired Property bears to the Parcel of which it is a component as a

whole and reflecting whether or not the Reacquired Property contains any Vertical Improvements.

"**Retail Approval End Date**" shall mean the date of the issuance of the Certificate of Compliance for the Retail Parcel.

"**Retail Equity Funding Letter**" shall have the meaning set forth in Section 4.6.2(a).

"**Retail Horizontal Improvements**" shall mean required in connection with development, construction and operation of the Retail Project and the On-Lot Improvements for the Retail Parcel.

"**Retail Parcel**" shall mean that portion of the Development Parcels depicted on Attachment 3 to this Agreement as Parcels 1 through 9, inclusive, of Tentative Parcel Map 2015-127 upon which the Retail Uses are proposed to be constructed and operated.

"**Retail Project**" shall mean construction and installation of the Retail Improvements on the Retail Parcel.

"**Retail Property**" shall mean the Retail Parcel together with all existing improvements, if any, presently located thereon, all appurtenances pertaining thereto and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection therewith.

"**Retail Property Base Purchase Price**" shall have the meaning set forth in Section 4.2.1.

"**Retail Property Close of Escrow**" shall mean the Close of Escrow with respect to the Retail Property.

"**Retail Property Closing Date**" shall have the meaning set forth in Section 7.1.2.

"**Retail Property Closing Payment**" shall have the meaning set forth in Section 4.3.4(a).

"**Retail Property Outside Closing Date**" shall have the meaning set forth in Section 7.1.2.

"**Retail Provisions**" shall have the meaning set forth in Section 15(d).

"**Retail Uses**" shall mean retail uses including sales of goods or services, restaurants, a gas station with car wash or similar commercial purposes typically included in neighborhood commercial shopping centers and containing no Prohibited Uses. Retail Uses may include no more than four (4) drive-through establishments.

"**Retail Vertical Improvements**" shall have the meaning set forth in Section 1.3.2(b).

"**Reuse Plan**" shall have the meaning set forth in Section 1.1.1.

"**RFP**" shall have the meaning set forth in Section 1.1.5.

"**Reversion Action Trigger**" shall have the meaning set forth in Section 16.4.1.

"**Reversion Action Trigger Date**" shall have the meaning set forth in Section 16.4.1.

"**Reversion Event**" shall have the meaning set forth in Section 16.4.

"**Right of Repurchase**" shall have the meaning set forth in Section 16.3.

"**Right of Reversion**" shall have the meaning set forth in Section 16.4.

"**Schedule of Performance**" shall mean the document attached as Attachment 7 to the Agreement, setting forth the dates and time periods for submissions, approvals and actions, including the construction and Completion of the Improvements and shall include both the Retail Schedule of Performance and the Healthcare Schedule of Performance.

"**Scope of Development**" shall mean the description of the Project and Improvements attached as Attachment 8 to the Agreement.

"**Second Option Payment**" shall have the meaning set forth in Section 7.1.1(b).

"**Second Option Term**" shall have the meaning set forth in Section 7.1.1(b).

"**Second Party**" shall have the meaning set forth in Section 18.7.3.

"**Site Plan**" shall mean the site plan attached hereto as Attachment 3.

"**Slope Parcel**" shall mean that area designated on and exhibit to Attachment 25 to be owned and maintained by the City.

"**Slope Parcel Agreement Confirmation**" shall have the meaning set forth in Section 7.2.1(a)(iv).

"**Slope Parcel Easement and Landscape Installation and Maintenance Agreement**" shall have the meaning set forth in Section 12.4.

"**SN PSA**" means that certain Agreement of Purchase and Sale and Join Escrow Instructions dated February 6, 2015 by and between Developer and SN Properties, LLC, a California limited liability company, as amended by that certain First Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated April 7, 2015, as further amended by that certain Second Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated May 27, 2015, as further amended by that certain Third Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated June 12, 2015, as further amended by that certain Fourth Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated June 19, 2015, as further amended by that certain Fifth Amendment to Agreement of Purchase and Sale and Joint Escrow Instructions dated June 25, 2015.

"**Space Lease**" shall mean each Lease for Retail Use of a portion of an improved Building located on the Retail Parcel and each Lease for Medical Use or Healthcare Parcel Retail

Use of a portion of an improved Building located on the Healthcare Parcel, but in each case excluding leases of real property or ground leases.

"**Special Restrictions**" shall mean the Declaration of Special Restrictions for Parcel 1C substantially in the form and substance of the document attached hereto as Attachment 20, to be executed by the City and acknowledged in Recordable form and Recorded against the Development Parcels at the Retail Property Close of Escrow immediately prior to the Recording of the Quitclaim Deed.

"**Specific Plan**" shall mean the MCAS Tustin Specific Plan/Reuse Plan as the same has been or shall be amended from time to time.

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

"**Successor Owner**" shall mean (a) with respect to a Transfer of the Development Parcels or any portion thereof, each and every Person owning or acquiring fee title to or having a Ground Lease interest in all or any portion of such Property, (including with respect to the Transfer of the Healthcare Parcel by Developer to Healthcare Developer, the Healthcare Developer) and (b) with respect to the City Benefitted Property, each and every Person owning or acquiring fee title to all or any portion of the City Benefitted Property.

"**Supplemental Title Report**" shall have the meaning set forth in Section 6.3.

"**Survey**" shall have the meaning set forth in Section 6.1.

"**Surveyor**" shall have the meaning set forth in Section 6.1.

"**Tax A**" shall have the meaning set forth in Section 8.7.

"**Tax B**" shall have the meaning set forth in Section 8.7.3.

"**Tenant**" shall mean any Person who Leases any land and/or space on the Development Parcels and thereunder operates (or is constructing improvements with the intent to operate) Retail Uses, Healthcare Parcel Retail Uses or Medical Uses in such space.

"**Title Company**" shall mean First American Title Insurance Company.

"**Transfer**" shall mean (a) the transfer, sale, assignment, lease, license, entry into a property management agreement, gift, hypothecation, mortgage, pledge or encumbrance, or other similar conveyance by Developer or Healthcare Developer, as the case may be, of this Agreement, the Project, the Property and/or the Improvements thereon, or any portion thereof or interest therein, including a Pad Transfer or Lease, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; and (b) the granting by Developer or Healthcare Developer of any Mortgage, easement, license, lien or other encumbrance and/or the execution of any installment land sale contract or similar instrument affecting this Agreement or all or a portion of the Project, the Property, the Improvements thereon, or any portion thereof or interest therein and shall also include Transfer of Control of Developer or Healthcare Developer, as the case may be, or any conversion of Developer of Healthcare Developer to an entity form other

than that of Developer or Healthcare Developer, as applicable, at the time of execution of this Agreement.

"**Transfer Approval End Date**" shall mean (a) with respect to the Retail Parcel, the Retail Approval End Date, and (b) with respect to the Healthcare Parcel, the date of Recording of a Certificate of Compliance with respect to the Healthcare Parcel.

"**Transferable Products**" shall have the meaning set forth in Section 14.3.2.

"**Transfer of Control**" shall mean, with respect to Developer or Developer's Controlling Person, the occurrence, directly or indirectly, in a single transaction or a series of transactions, of any of the following:

(a) the conveyance, sale, assignment, transfer or disposition of all or substantially all of that Person's (or its Controlling Person's) assets, stock, membership or partnership interests or other equity interests;

(b) the dissolution, merger, reorganization, share exchange, recapitalization, restructuring or consolidation of that Person (or its Controlling Person), other than a transaction that would result in all of the voting securities of that Person (or its Controlling Person) outstanding immediately prior thereto to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50.01% of the combined voting power of all of the voting securities of that Person (or its Controlling Person) or such surviving entity outstanding immediately after such transaction; and

(c) the acquisition by any "Person" or "Group" (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) of an aggregate of 50.01% or more of the beneficial ownership (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934) of the issued and outstanding voting securities or other equity interests of that Person (or its Controlling Person), where such acquiring "Person" or "Group" did not directly or indirectly (or through an affiliate) already Control or own at least 50.01% of the voting securities or other equity interests of such Person (or its Controlling Person).

"**Transferee**" shall mean any Person to which a Transfer is made, including any Successor Owner or Mortgagee and any Pad Transferee or Tenant under a Ground Lease.

"**Tustin Legacy**" shall have the meaning set forth in Section 1.1.3.

"**Tustin Legacy Backbone Infrastructure Program**" shall have the meaning set forth in Section 8.7.1.

"**Updated REG Certificate**" shall have the meaning set forth in Section 4.6.3(a)(iii).

"**Vertical Improvements**" shall mean all of the Buildings, landscaping and other improvements, other than the Horizontal Improvements, to be constructed or installed on the Property, as further described in Section 1.3.2(b), consistent with the Specific Plan, the Reuse Plan, the Approved Plans, the Entitlements, the Development Permits and all Governmental Requirements.

ATTACHMENT 2A
LEGAL DESCRIPTION OF DEVELOPMENT PARCELS

LOT 1 AND THAT PORTION OF LOT Y OF TRACT NO. 17404, IN THE CITY OF TUSTIN, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 907, PAGES 6 TO 42, INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND AS AMENDED BY CERTIFICATES OF CORRECTION RECORDED JULY 17, 2013 AS INSTRUMENT NO. 2013-000428385, AND RECORDED ON FEBRUARY 26, 2015 AS INSTRUMENT NO. 2015-000102478, BOTH OF OFFICIAL RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 1 BEING IN THE SOUTHEASTERLY LINE OF KENSINGTON PARK DRIVE AS SHOWN ON SAID MAP, THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 1 AND SAID SOUTHEASTERLY LINE THE FOLLOWING 8 COURSES:

1) NORTH 40°39'15" EAST 199.34 FEET TO THE BEGINNING OF A TANGENT 1,452.04 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;
2) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 141.74 FEET THROUGH A CENTRAL ANGLE OF 05°35'35" TO THE BEGINNING OF A COMPOUND 1,046.68 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;
3) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 133.80 FEET THROUGH A CENTRAL ANGLE OF 07°19'27";
4) THENCE NORTH 27°44'13" EAST 150.84 FEET TO THE BEGINNING OF A TANGENT 960.03 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;
5) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 20.67 FEET THROUGH A CENTRAL ANGLE OF 01°14'00";
6) THENCE NORTH 28°58'13" EAST 302.90 FEET TO THE BEGINNING OF A TANGENT 1,354.04 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;
7) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 276.12 FEET THROUGH A CENTRAL ANGLE OF 11°41'02";
8) THENCE NORTH 40°39'15" EAST 114.24 FEET TO THE NORTHERLY LINE OF SAID LOT 1;

THENCE ALONG SAID NORTHERLY LINE AND THE NORTHERLY LINE OF SAID LOT Y, NORTH 85°39'14" EAST 36.77 FEET TO THE NORTHEASTERLY LINE OF SAID LOT Y;

THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 49°20'45" EAST 21.00 FEET TO THE BEGINNING OF A TANGENT 41.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 6.77 FEET THROUGH A CENTRAL ANGLE OF 09°27'43";

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 39°53'02" EAST 52.56 FEET TO THE BEGINNING OF A TANGENT 59.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 9.74 FEET THROUGH A CENTRAL ANGLE OF 09°27'43";

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE AND ITS SOUTHEASTERLY PROLONGATION THEREOF, SOUTH 49°20'45" EAST 253.94 FEET;

THENCE NORTH 40°39'14" EAST 5.82 FEET TO AN ANGLE POINT IN SAID NORTHEASTERLY LINE;

THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 50°39'44" EAST 307.15 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 31°38'44" WEST 31.02 FEET TO THE BEGINNING OF A NON-TANGENT 50.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL TO WHICH BEARS NORTH 15°57'31" EAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 66.17 FEET THROUGH A CENTRAL ANGLE OF 75°49'20";

THENCE SOUTH 30°08'10" WEST 142.55 FEET TO THE BEGINNING OF A NON-TANGENT 12,601.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL TO WHICH BEARS NORTH 59°02'54" WEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 387.19 FEET THROUGH A CENTRAL ANGLE OF 01°45'38";

THENCE SOUTH 40°55'55" WEST 102.25 FEET;

THENCE SOUTH 28°34'34" WEST 217.12 FEET;

THENCE SOUTH 30°09'46" WEST 58.74 FEET TO THE BEGINNING OF A 76.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE, 16.01 FEET THROUGH A CENTRAL ANGLE OF 11°59'24";

THENCE SOUTH 81°42'07" WEST 9.61 FEET;

THENCE SOUTH 44°04'22" WEST 29.79 FEET TO THE BEGINNING OF A TANGENT 183.50 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 34.27 FEET THROUGH A CENTRAL ANGLE OF 10°42'07" TO THE BEGINNING OF A REVERSE 1,754.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL TO WHICH BEARS SOUTH 56°37'45" EAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 117.75 FEET THROUGH A CENTRAL ANGLE OF 03°50'43";

THENCE SOUTH 50°36'47" WEST 24.81 FEET;

THENCE SOUTH 46°51'57" EAST 8.90 FEET;

THENCE SOUTH 43°08'03" WEST 28.50 FEET;

THENCE NORTH 46°51'57" WEST 9.00 FEET;

THENCE SOUTH 43°08'03" WEST 63.24 FEET;

THENCE SOUTH 43°47'30" WEST 30.69 FEET;

THENCE SOUTH 49°20'15" EAST 25.00 FEET;

THENCE SOUTH 40°39'15" WEST 32.91 FEET;

THENCE NORTH 82°10'21" WEST 7.02 FEET;

THENCE SOUTH 40°39'15" WEST 14.97 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT Y;

THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT Y, NORTH 49°20'45" WEST 48.15 FEET TO THE BEGINNING OF A TANGENT 65.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;

THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 19.87 FEET THROUGH A CENTRAL ANGLE OF 17°30'51" TO THE BEGINNING OF A REVERSE 86.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, A RADIAL TO WHICH BEARS NORTH 58°10'06" EAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 26.29 FEET THROUGH A CENTRAL ANGLE OF 17°30'51" TO A LINE PARALLEL WITH AND 7.00 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT Y;

THENCE ALONG SAID PARALLEL LINE, NORTH 49°20'45" WEST 136.30 FEET;

THENCE LEAVING SAID PARALLEL LINE, NORTH 48°07'44" WEST 47.08 FEET TO A LINE PARALLEL WITH AND 8.00 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT Y;

THENCE ALONG SAID PARALLEL LINE, NORTH 49°20'45" WEST 188.60 FEET;

THENCE LEAVING SAID PARALLEL LINE, SOUTH 80°35'42" WEST 10.43 FEET TO SAID SOUTHWESTERLY LINE;

THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 49°20'45" WEST 164.81 FEET TO THE NORTHWEST CORNER OF SAID LOT Y;

THENCE ALONG THE WESTERLY LINE OF SAID LOT Y, NORTH 04°20'45" WEST 38.18 FEET TO THE **POINT OF BEGINNING.**

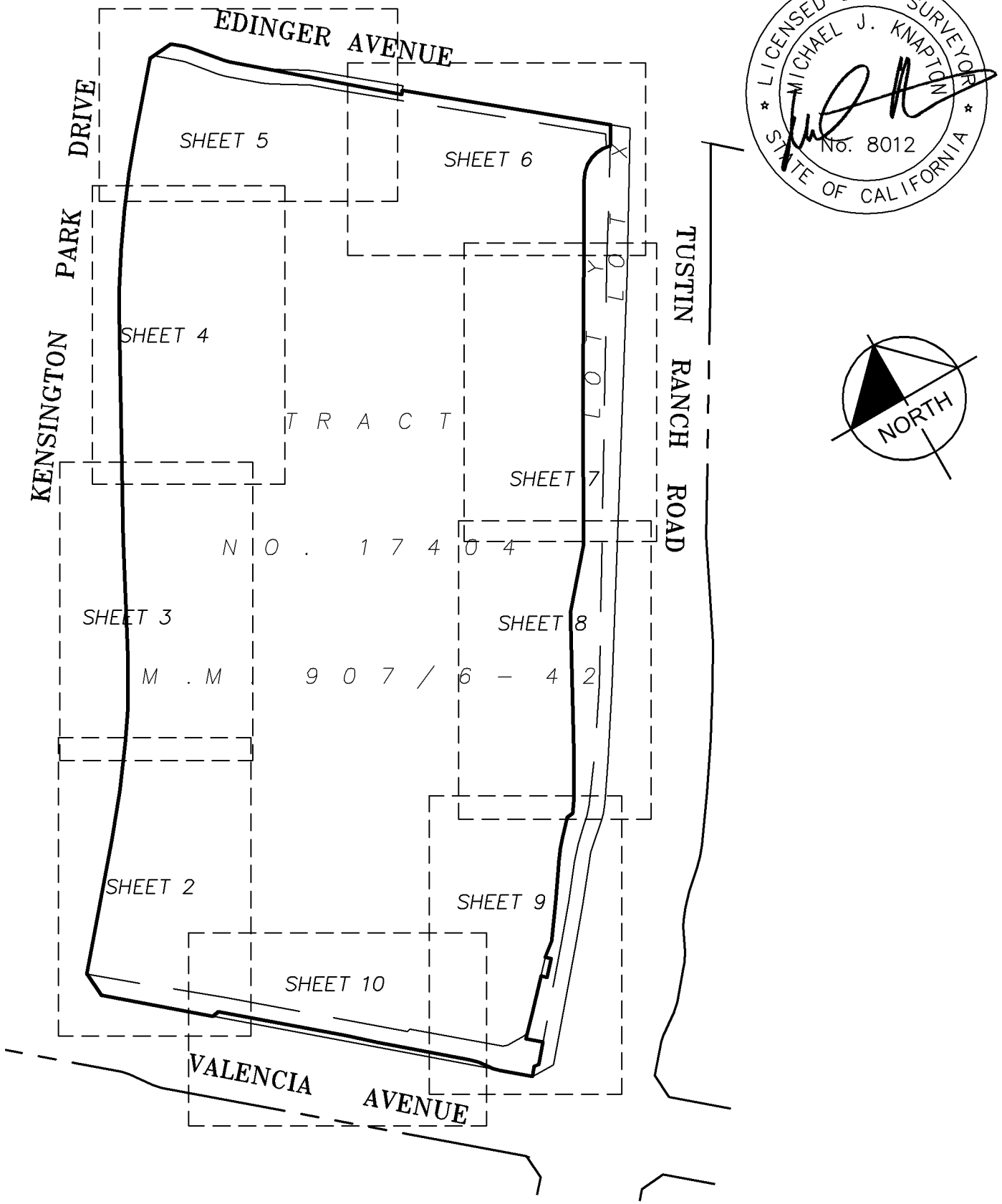
CONTAINING 911,297 SQUARE FEET, MORE OR LESS.

MICHAEL JAMES KNAPTON

P.L.S.8012 Revised: 9/2/2015



ATTACHMENT 2A
LEGAL DESCRIPTION OF DEVELOPMENT PARCELS (PLOT)

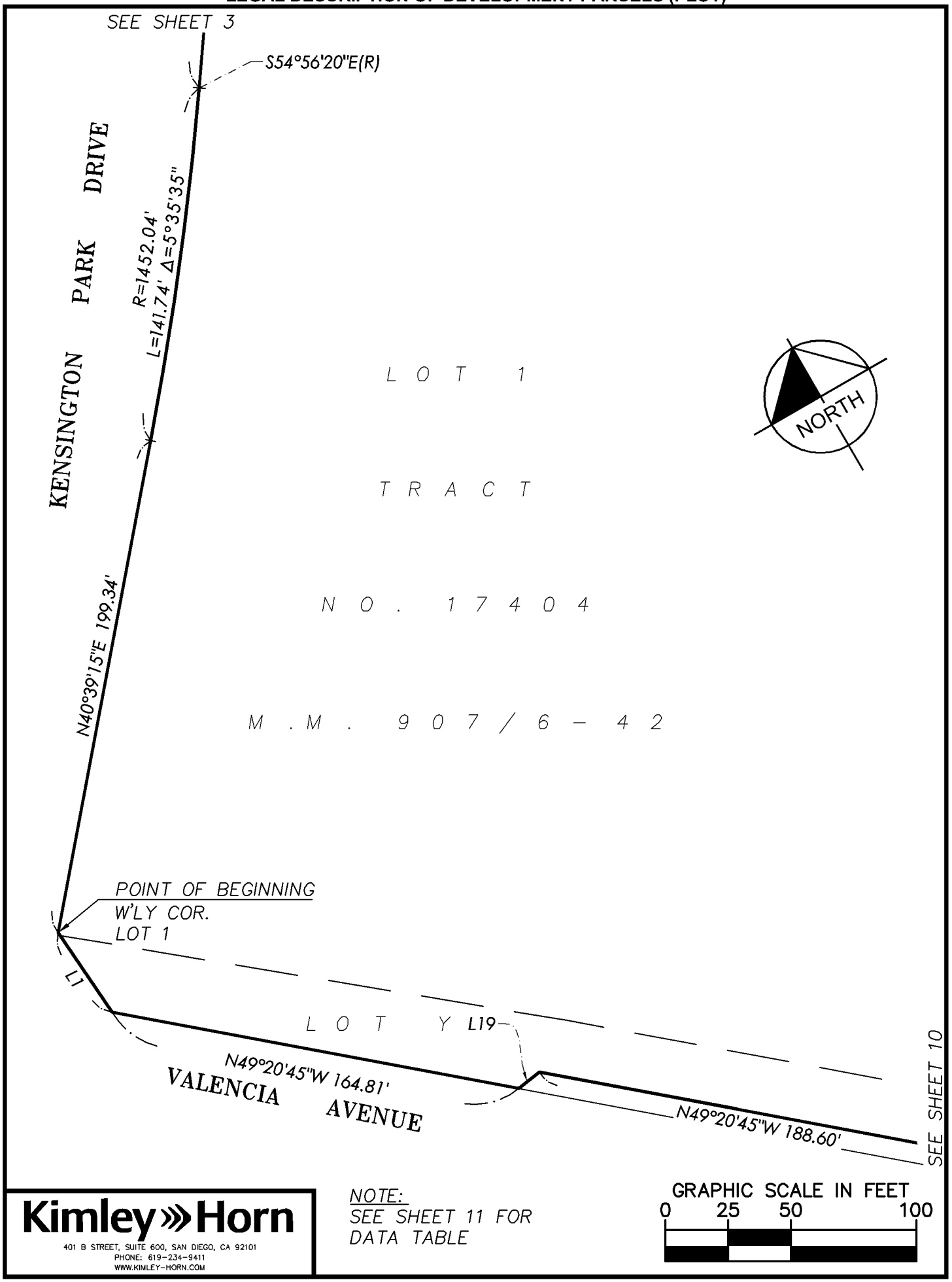


LICENSED LAND SURVEYOR
MICHAEL J. KNAPTON
No. 8012
STATE OF CALIFORNIA

GRAPHIC SCALE IN FEET
0 100 200 400

Kimley»Horn
401 B STREET, SUITE 600, SAN DIEGO, CA 92101
PHONE: 619-234-9411
WWW.KIMLEY-HORN.COM

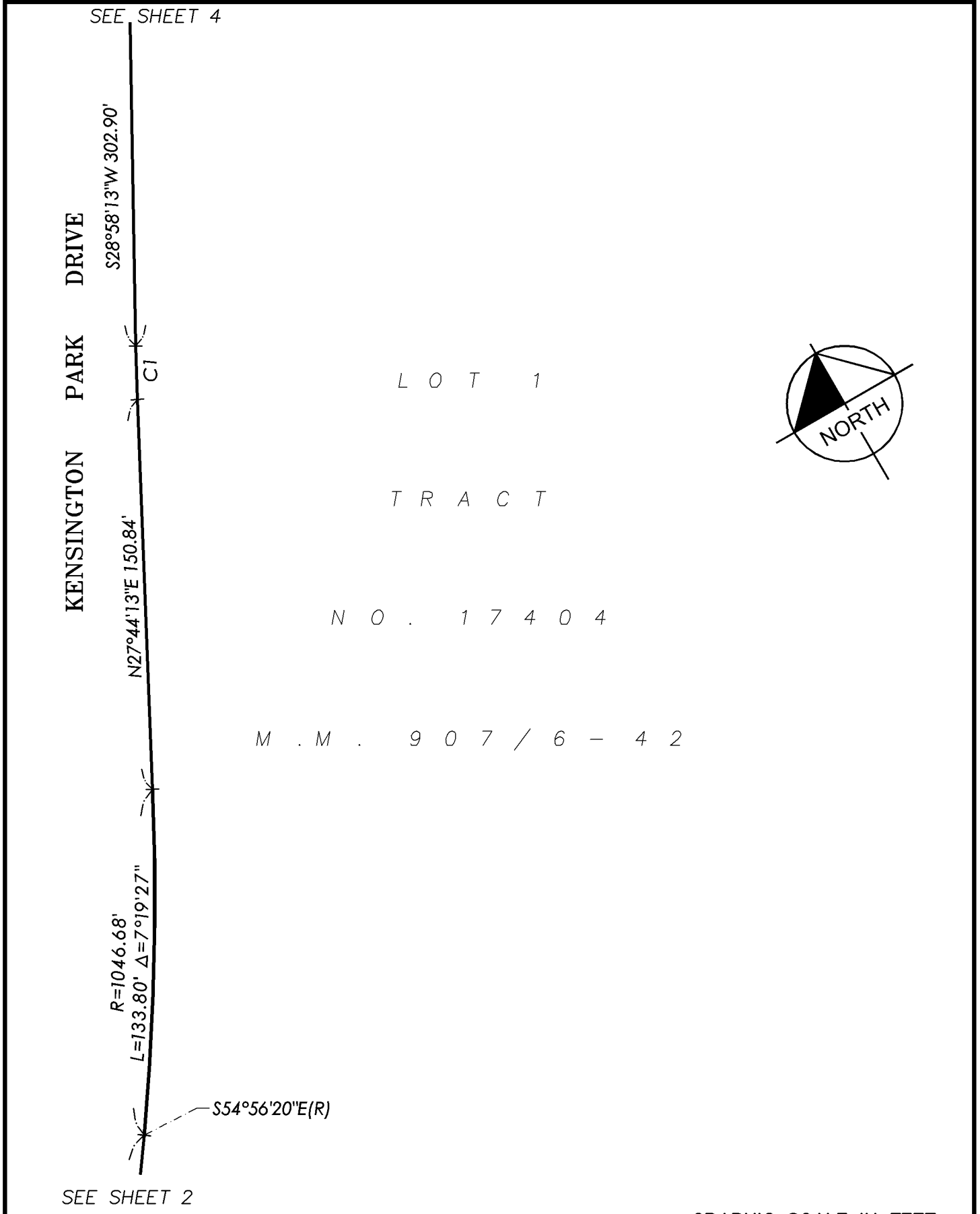
9/2/2015



Kimley»Horn
401 B STREET, SUITE 600, SAN DIEGO, CA 92101
PHONE: 619-234-9411
WWW.KIMLEY-HORN.COM

NOTE:
SEE SHEET 11 FOR DATA TABLE

GRAPHIC SCALE IN FEET
0 25 50 100



Kimley»Horn
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PHONE: 619-234-9411
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NOTE:
SEE SHEET 11 FOR DATA TABLE

GRAPHIC SCALE IN FEET
0 25 50 100

SEE SHEET 5

KENSINGTON PARK DRIVE

R=1354.04' L=276.12' Δ=11°41'02"

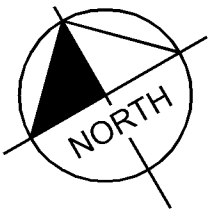
S28°58'13"W 302.90'

LOT 1

TRACT

NO. 17404

M.M. 907/6-42

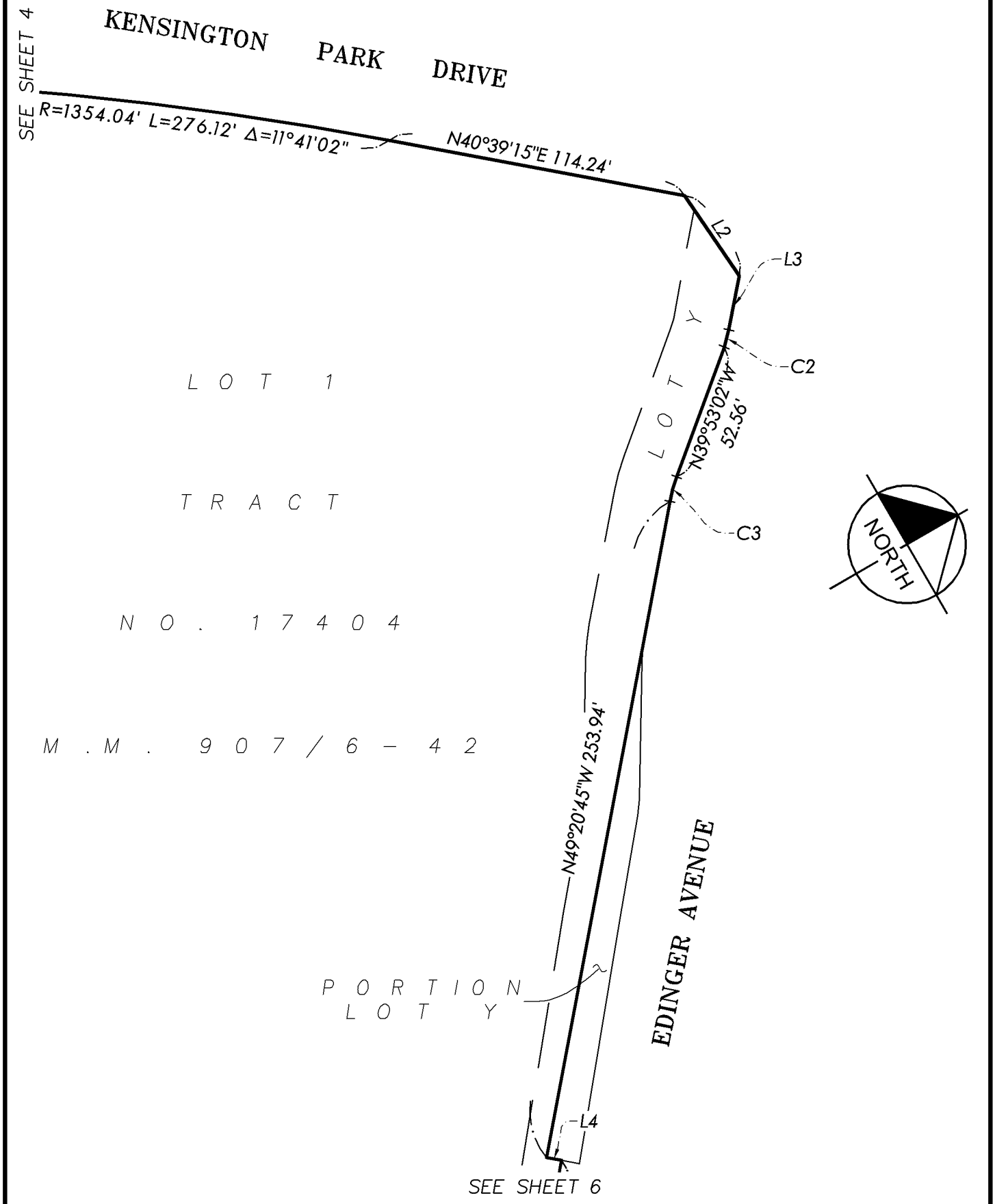


SEE SHEET 3

Kimley»Horn
401 B STREET, SUITE 600, SAN DIEGO, CA 92101
PHONE: 619-234-9411
WWW.KIMLEY-HORN.COM

NOTE:
SEE SHEET 11 FOR DATA TABLE

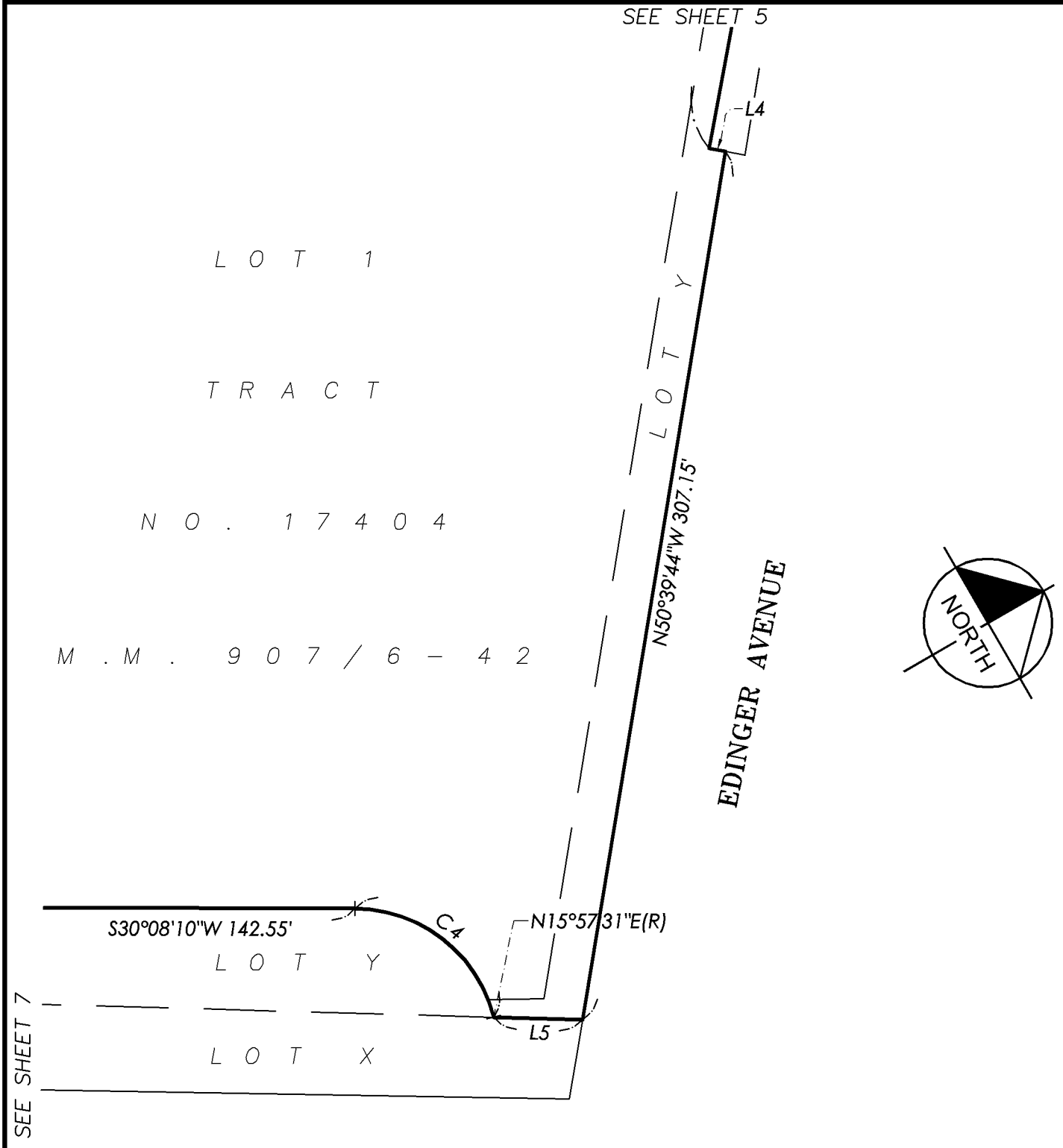
GRAPHIC SCALE IN FEET
0 25 50 100



Kimley»Horn
401 B STREET, SUITE 600, SAN DIEGO, CA 92101
PHONE: 619-234-9411
WWW.KIMLEY-HORN.COM

NOTE:
SEE SHEET 11 FOR DATA TABLE

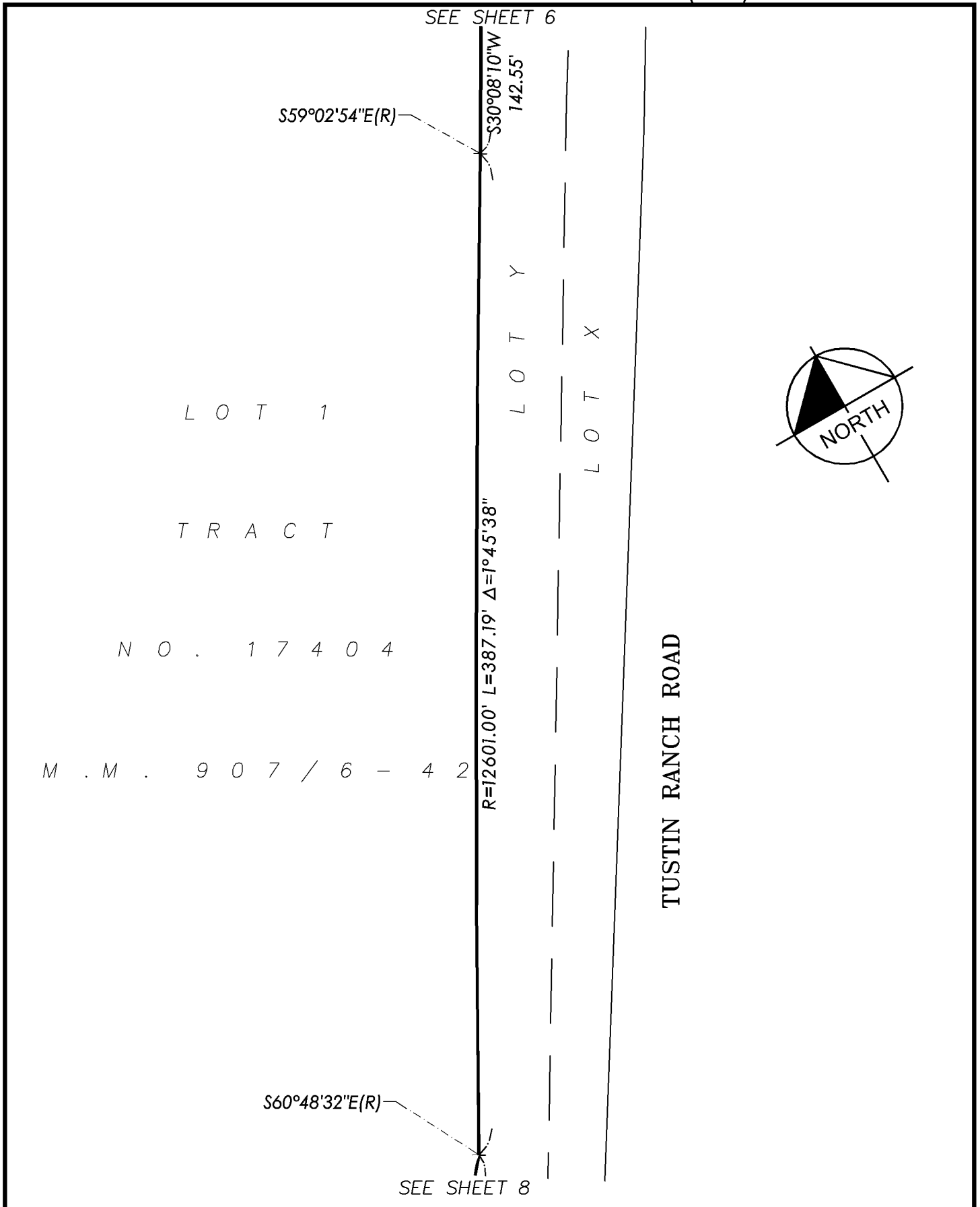
GRAPHIC SCALE IN FEET
0 25 50 100



Kimley»Horn
401 B STREET, SUITE 600, SAN DIEGO, CA 92101
PHONE: 619-234-9411
WWW.KIMLEY-HORN.COM

NOTE:
SEE SHEET 11 FOR DATA TABLE

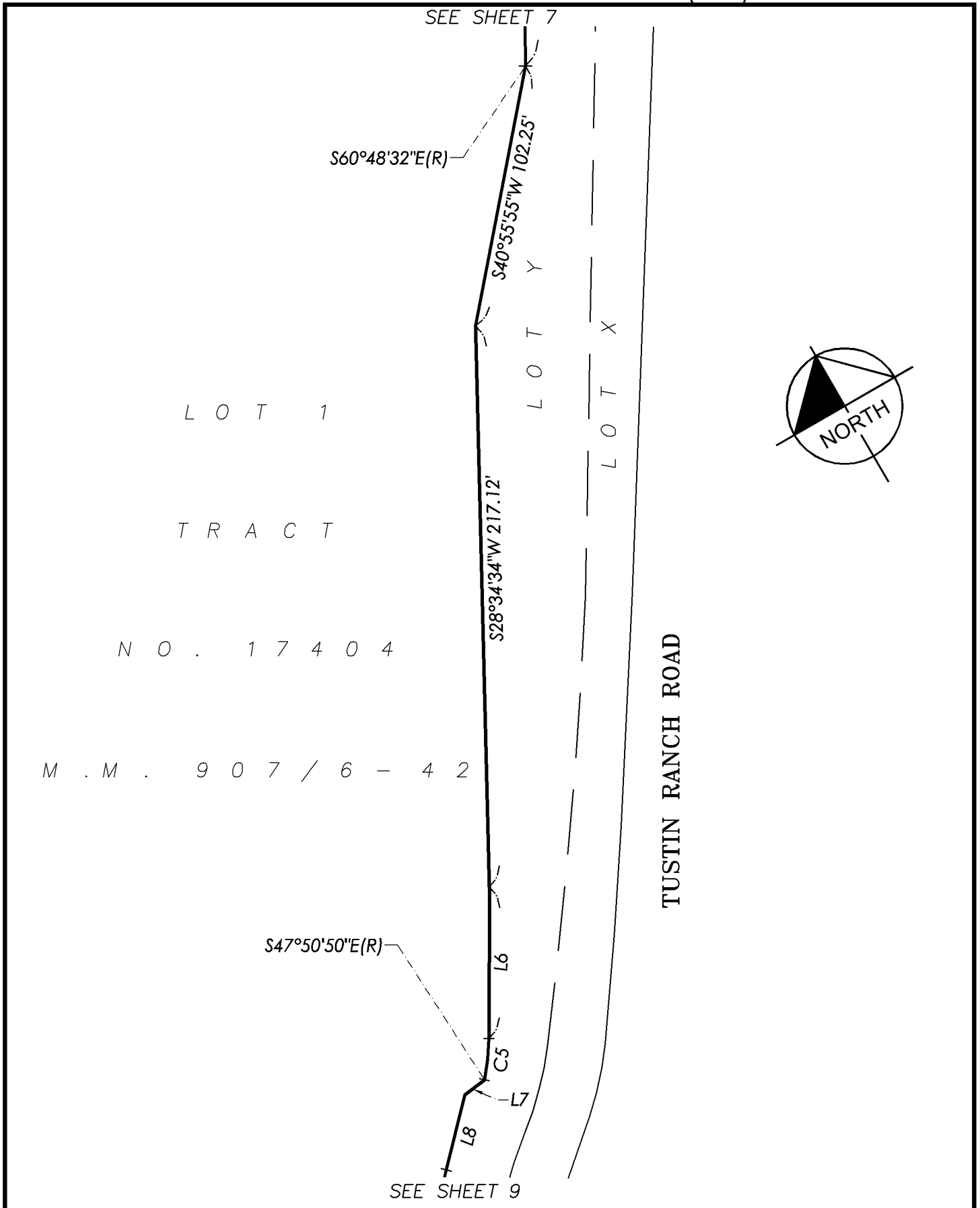
GRAPHIC SCALE IN FEET
0 25 50 100



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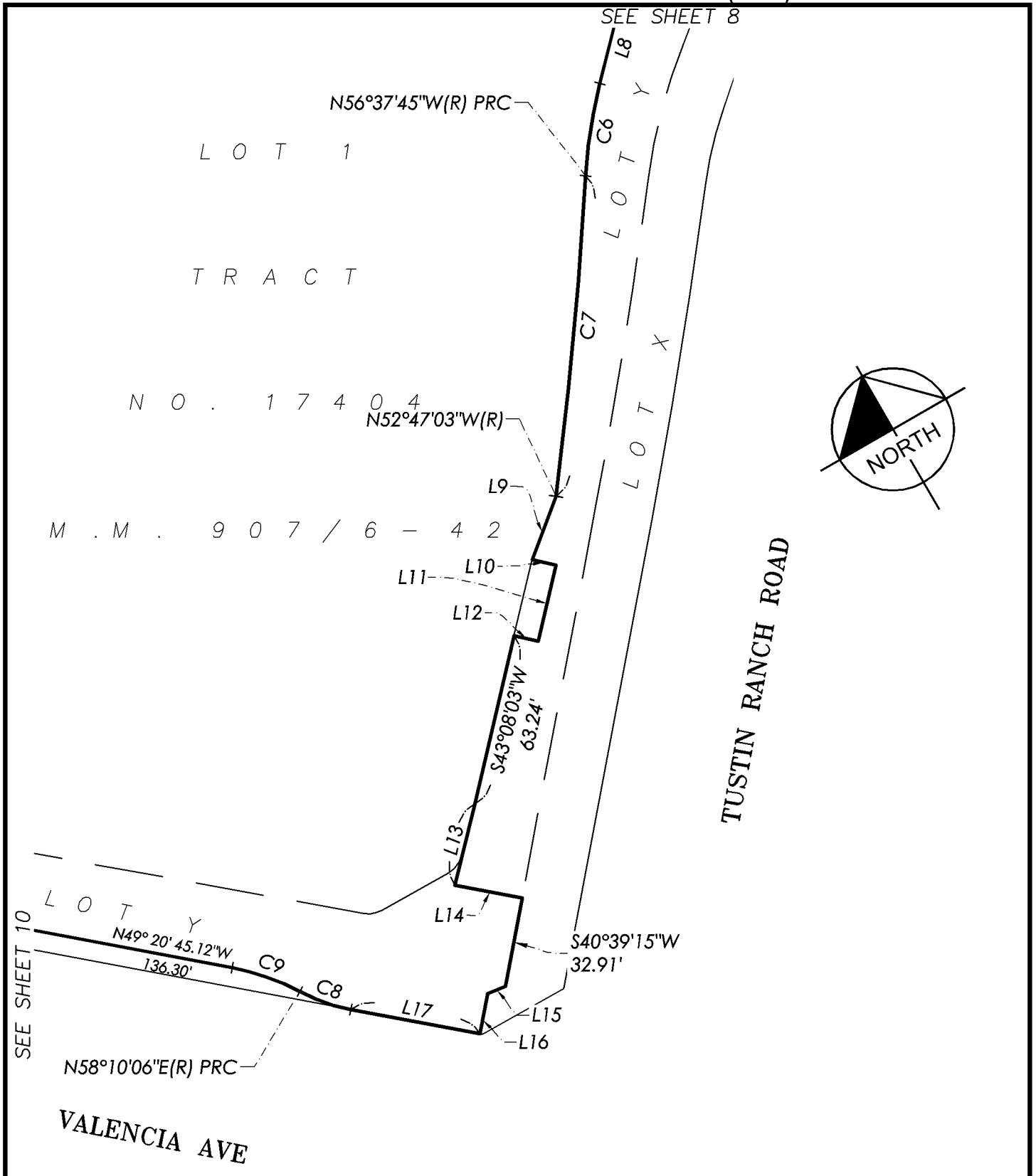
GRAPHIC SCALE IN FEET
0 25 50 100



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NOTE:
SEE SHEET 11 FOR DATA TABLE

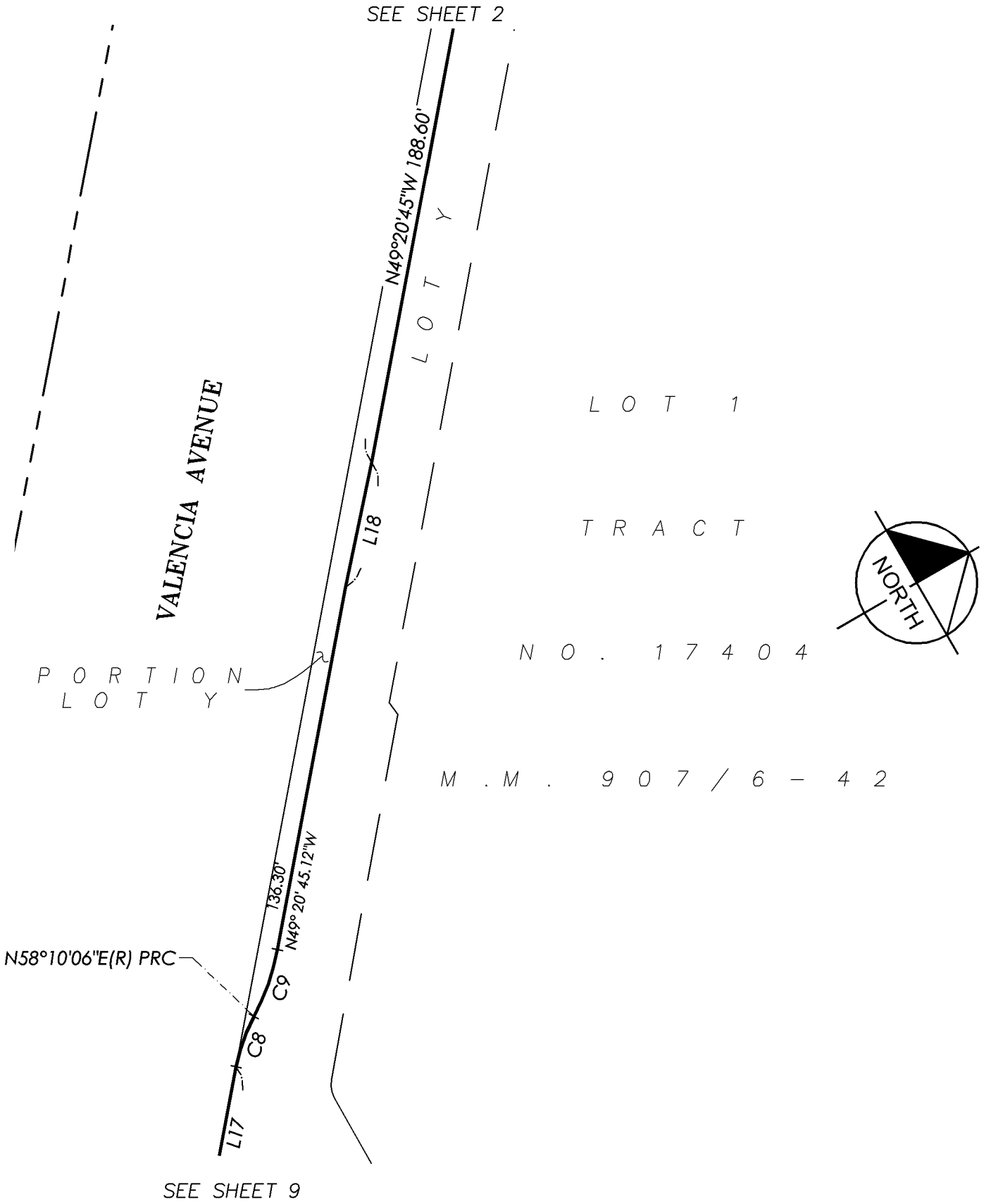
GRAPHIC SCALE IN FEET
0 25 50 100



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NOTE:
SEE SHEET 11 FOR DATA TABLE

GRAPHIC SCALE IN FEET
0 25 50 100



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NOTE:
SEE SHEET 11 FOR DATA TABLE

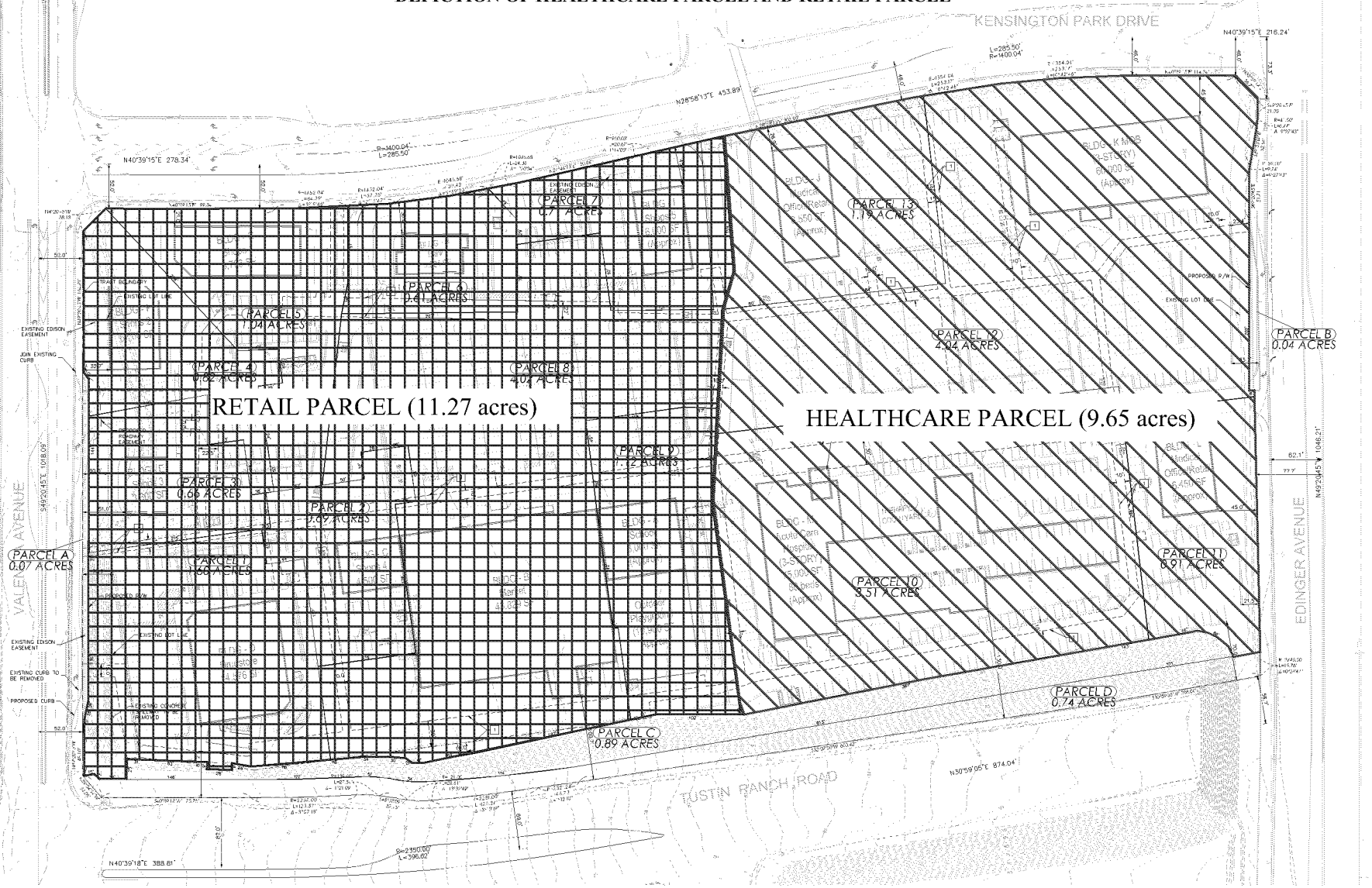
GRAPHIC SCALE IN FEET
0 25 50 100

LINE DATA TABLE		
-	LENGTH	BEARING
L1	38.18'	S4° 20' 45"E
L2	36.77'	S85° 39' 14"W
L3	21.00'	N49° 20' 45"W
L4	5.82'	N40° 39' 14"E
L5	31.02'	N31° 38' 44"E
L6	58.74'	S30° 09' 46"W
L7	9.61'	S81° 42' 07"W
L8	29.79'	S44° 04' 22"W
L9	24.81'	S50° 36' 47"W
L10	8.90'	N46° 51' 57"W
L11	28.50'	N43° 08' 03"E
L12	9.00'	S46° 51' 57"E
L13	30.69'	N43° 47' 30"E
L14	25.00'	N49° 20' 15"W
L15	7.02'	S82° 10' 21"E
L16	14.97'	N40° 39' 15"E
L17	48.15'	S49° 20' 45"E
L17	7.02'	S82° 10' 21"E
L18	47.08'	S48° 07' 44"E
L19	10.43'	N80° 35' 42"E

CURVE DATA TABLE			
-	RADIUS	LENGTH	DELTA
C1	960.03'	20.67'	Δ=1°14'00"
C2	41.00'	6.77'	Δ=9°27'43"
C3	59.00'	9.74'	Δ=9°27'43"
C4	50.00'	66.17'	Δ=75°49'20"
C5	76.50'	16.01'	Δ=11°59'24"
C6	183.50'	34.27'	Δ=10°42'07"
C7	1754.50'	117.75'	Δ=3°50'43"
C8	65.00'	19.87'	Δ=17°30'51"
C9	86.00'	26.29'	Δ=17°30'51"

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PHONE: 619-234-9411
WWW.KIMLEY-HORN.COM

ATTACHMENT 2B
DEPICTION OF HEALTHCARE PARCEL AND RETAIL PARCEL



LEGEND

- ROAD CENTERLINE
- TRACT BOUNDARY
- MAP BOUNDARY
- PROPOSED LOT LINES
- EXISTING LOT LINES
- PROPOSED IRWD WATER AND SEWER EASEMENT LINES
- PROPOSED ROADWAY EASEMENT

PROPOSED EASEMENTS/ DEDICATIONS

[1] PUBLIC IRWD WATER AND SEWER EASEMENT, PER SEPARATE INSTRUMENT

SUBDIVISION SUMMARY

SUBDIVISION SUMMARY		
PARCEL NAME	AREA (AC)	DISPOSITION
1	1.60	
2	0.69	
3	0.66	
4	0.82	
5	1.04	
6	0.61	
7	0.71	
8	4.02	
9	1.12	
10	3.51	
11	0.91	
12	4.04	
13	1.19	
A	0.07	ROADWAY (CITY OWNERSHIP)
B	0.04	ROADWAY (CITY OWNERSHIP)
C	0.89	SLOPE/LANDSCAPE (CITY OWNERSHIP)
D	0.74	SLOPE/LANDSCAPE (CITY OWNERSHIP)
TOTAL	22.66	

RETAIL PARCEL

HEALTHCARE PARCEL

GRAPHIC SCALE IN FEET
0 20 40 80

TUSTIN LEGACY
PREPARED FOR
REGENCY CENTERS
915 WILSHIRE BOULEVARD, SUITE 2200
LOS ANGELES, CA 90017
T 213.955.2200
LUISGOMEZ@REGENCYCENTERS.COM

TENTATIVE PARCEL MAP
2015-127
TENTATIVE PARCEL MAP

KPM PROJECT 095532001
DATE 7/17/2015
SCALE AS SHOWN
DESIGNED BY WS
DRAWN BY WS
CHECKED BY JB

LICENSED PROFESSIONAL
JASON MUREDA
No. 63164
7/17/2015

Kimley»Horn
© 2010 KIMLEY-HORN AND ASSOCIATES, INC.
765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: (714) 939-1030 FAX: (714) 938-9488
WWW.KIMLEY-HORN.COM

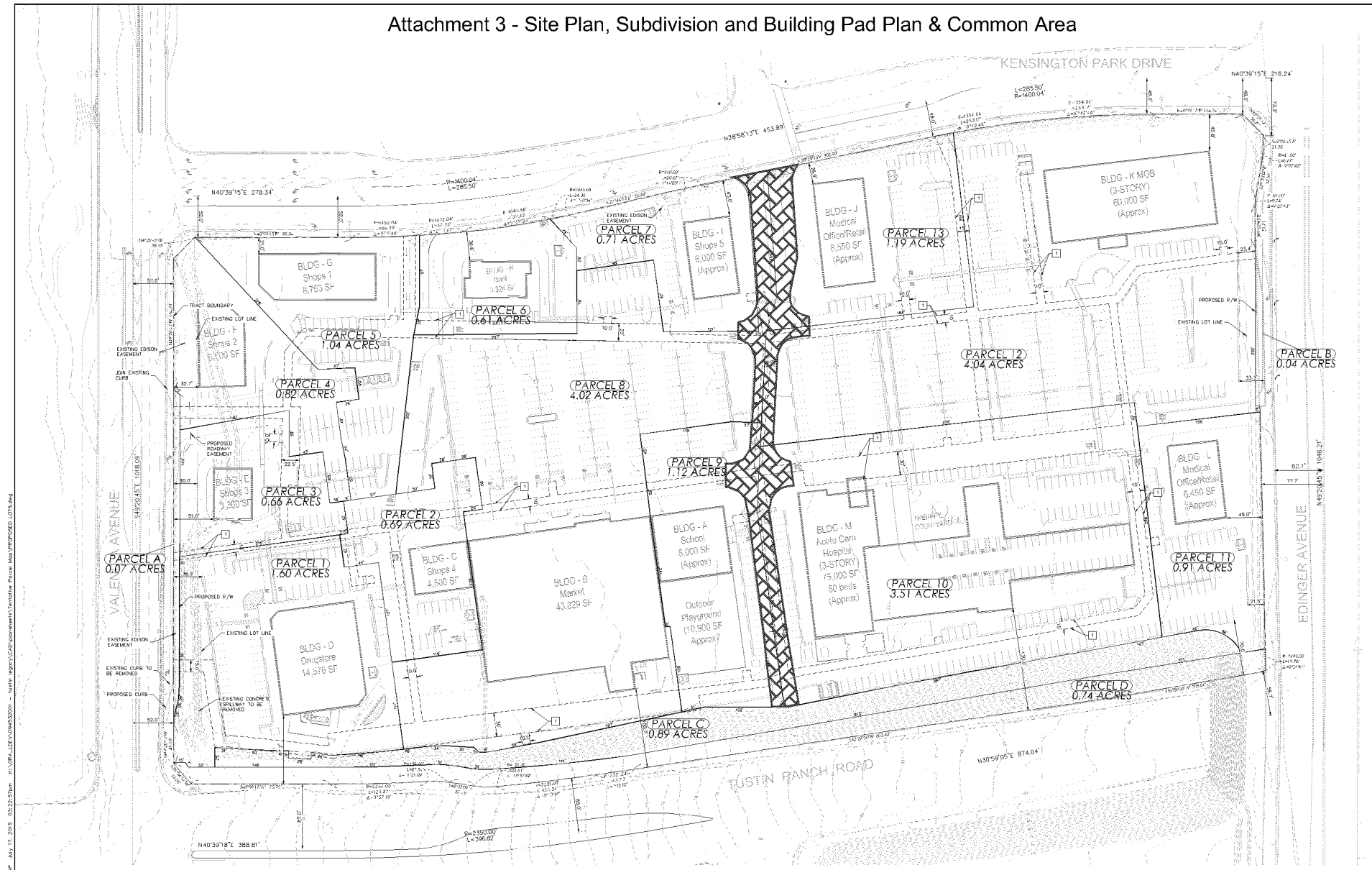
No.	REVISIONS	DATE	BY

SHEET NUMBER
C-101

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This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Attachment 3 - Site Plan, Subdivision and Building Pad Plan & Common Area



LEGEND

- ROAD CENTERLINE
- TRACT BOUNDARY
- MAP BOUNDARY
- PROPOSED LOT LINES
- EXISTING LOT LINES
- PROPOSED IRWD WATER AND SEWER EASEMENT LINES
- PROPOSED ROADWAY EASEMENT

PROPOSED EASEMENTS/ DEDICATIONS

[1] PUBLIC IRWD WATER AND SEWER EASEMENT, PER SEPARATE INSTRUMENT

SUBDIVISION SUMMARY

SUBDIVISION SUMMARY		
PARCEL NAME	AREA (AC)	DISPOSITION
1	1.60	
2	0.69	
3	0.66	
4	0.82	
5	1.04	
6	0.61	
7	0.71	
8	4.02	
9	1.12	
10	3.51	
11	0.91	
12	4.04	
13	1.19	
A	0.07	ROADWAY (CITY OWNERSHIP)
B	0.04	ROADWAY (CITY OWNERSHIP)
C	0.89	SLOPE/LANDSCAPE (CITY OWNERSHIP)
D	0.74	SLOPE/LANDSCAPE (CITY OWNERSHIP)
TOTAL	22.66	

Common Area

GRAPHIC SCALE IN FEET 0 20 40 80

TUSTIN LEGACY
PREPARED FOR
REGENCY CENTERS
915 WILSHIRE BOULEVARD, SUITE 2200
LOS ANGELES, CA 90017
T 213.553.3200
LUISGOMEZ@REGENCYCENTERS.COM

TENTATIVE PARCEL MAP
2015-127
TENTATIVE PARCEL MAP

Kimley»Horn
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765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: (714) 939-1030 FAX: (714) 938-9488
WWW.KIMLEY-HORN.COM

REGISTERED PROFESSIONAL ENGINEER JASON MUREDNIK CIVIL No. 63164 7/17/2015

KHA PROJECT 095432001
DATE 7/17/2015
SCALE AS SHOWN
DESIGNED BY WS
DRAWN BY WS
CHECKED BY JM

SHEET NUMBER C-101

Plotted By:Kershner, Chelsea Drawn Set:TUSTIN LEGACY Layout:TENTATIVE PARCEL MAP July 17, 2015 03:22:57pm K:\ORA_LOC\095432001 — Tustin Legacy\CAD plans\work\Tentative Parcel Map\PROPOSED LOTS.dwg

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Chicago Title Company

4210 Riverwalk Parkway, Suite 100, Riverside, CA 92505 • Phone: (951) 710-5900 • Fax:

Issuing Policies of Chicago Title Insurance Company

ORDER NO.: **00019139-002-KP**

Escrow/Customer Phone: **(949) 724-3100**

Chicago Title Company
4041 MacArthur Blvd.400
Newport Beach, CA 92660
ATTN: Karen L. Price
Email: karen.price@ctt.com

Title Officer: **John Balassi**
Title Officer Phone: **(951) 710-5903**
Title Officer Fax: **(951) 710-5955**
Title Officer Email: **BalassiJ@ctt.com**

PROPERTY: **VACANT LAND, TUSTIN, CA**

10th PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, ***Chicago Title Company*** *hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Nebraska Corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Countersigned:

By: _____
Authorized Signature

By:
Randy Quirk, President

Attest:
Michael Gravelle, Secretary

10th PRELIMINARY REPORT

SCHEDULE A

EFFECTIVE DATE: **August 13, 2015 at 7:30 a.m., Amended September 4, 2015, Amended No. 10**

The form of policy or policies of title insurance contemplated by this report is:

Std. Owner's Policy

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

   A FEE

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

   THE CITY OF TUSTIN, CALIFORNIA, California, a Municipal Corporation

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

   See Exhibit A attached hereto and made a part hereof.

EXHIBIT A

LEGAL DESCRIPTION

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

LOT 1 AND THAT PORTION OF LOT Y OF TRACT NO. 17404, IN THE CITY OF TUSTIN, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 907, PAGES 6 TO 42, INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND AS AMENDED BY CERTIFICATES OF CORRECTION RECORDED JULY 17, 2013 AS INSTRUMENT NO. 2013-000428385, AND RECORDED ON FEBRUARY 26, 2015 AS INSTRUMENT NO. 2015-000102478, BOTH OF OFFICIAL RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID LOT 1 BEING IN THE SOUTHEASTERLY LINE OF KENSINGTON PARK DRIVE AS SHOWN ON SAID MAP,

THENCE ALONG THE NORTHWESTERLY LINE OF SAID LOT 1 AND SAID SOUTHEASTERLY LINE THE FOLLOWING 8 COURSES:

1) NORTH 40°39'15" EAST 199.34 FEET TO THE BEGINNING OF A TANGENT 1,452.04 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;

2) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 141.74 FEET THROUGH A CENTRAL ANGLE OF 05°35'35" TO THE BEGINNING OF A COMPOUND 1,046.68 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;

3) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 133.80 FEET THROUGH A CENTRAL ANGLE OF 07°19'27";

4) THENCE NORTH 27°44'13" EAST 150.84 FEET TO THE BEGINNING OF A TANGENT 960.03 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;

5) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 20.67 FEET THROUGH A CENTRAL ANGLE OF 01°14'00";

6) THENCE NORTH 28°58'13" EAST 302.90 FEET TO THE BEGINNING OF A TANGENT 1,354.04 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;

7) THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 276.12 FEET THROUGH A CENTRAL ANGLE OF 11°41'02";

8) THENCE NORTH 40°39'15" EAST 114.24 FEET TO THE NORTHERLY LINE OF SAID LOT 1; THENCE ALONG SAID NORTHERLY LINE AND THE NORTHERLY LINE OF SAID LOT Y, NORTH 85°39'14" EAST 36.77 FEET TO THE NORTHEASTERLY LINE OF SAID LOT Y;

THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 49°20'45" EAST 21.00 FEET TO THE BEGINNING OF A TANGENT 41.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 6.77 FEET THROUGH A CENTRAL ANGLE OF 09°27'43";

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 39°53'02" EAST 52.56 FEET TO THE BEGINNING OF A TANGENT 59.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;

EXHIBIT A
(Continued)

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 9.74 FEET THROUGH A CENTRAL ANGLE OF 09°27'43";

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE AND ITS SOUTHEASTERLY PROLONGATION THEREOF, SOUTH 49°20'45" EAST 253.94 FEET;

THENCE NORTH 40°39'14" EAST 5.82 FEET TO AN ANGLE POINT IN SAID NORTHEASTERLY LINE; THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 50°39'44" EAST 307.15 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 31°38'44" WEST 31.02 FEET TO THE BEGINNING OF A NON-TANGENT 50.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL TO WHICH BEARS NORTH 15°57'31" EAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 66.17 FEET THROUGH A CENTRAL ANGLE OF 75°49'20";

THENCE SOUTH 30°08'10" WEST 142.55 FEET TO THE BEGINNING OF A NON-TANGENT 12,601.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, A RADIAL TO WHICH BEARS NORTH 59°02'54" WEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 387.19 FEET THROUGH A CENTRAL ANGLE OF 01°45'38";

THENCE SOUTH 40°55'55" WEST 102.25 FEET;

THENCE SOUTH 28°34'34" WEST 217.12 FEET;

THENCE SOUTH 30°09'46" WEST 58.74 FEET TO THE BEGINNING OF A 76.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE, 16.01 FEET THROUGH A CENTRAL ANGLE OF 11°59'24"; THENCE SOUTH 81°42'07" WEST 9.61 FEET;

THENCE SOUTH 44°04'22" WEST 29.79 FEET TO THE BEGINNING OF A TANGENT 183.50 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 34.27 FEET THROUGH A CENTRAL ANGLE OF 10°42'07" TO THE BEGINNING OF A REVERSE 1,754.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL TO WHICH BEARS SOUTH 56°37'45" EAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 117.75 FEET THROUGH A CENTRAL ANGLE OF 03°50'43";

THENCE SOUTH 50°36'47" WEST 24.81 FEET;

THENCE SOUTH 46°51'57" EAST 8.90 FEET;

THENCE SOUTH 43°08'03" WEST 28.50 FEET;

THENCE NORTH 46°51'57" WEST 9.00 FEET;

THENCE SOUTH 43°08'03" WEST 63.24 FEET;

THENCE SOUTH 43°47'30" WEST 30.69 FEET;

EXHIBIT A
(Continued)

THENCE SOUTH 49°20'15" EAST 25.00 FEET;

THENCE SOUTH 40°39'15" WEST 32.91 FEET;

THENCE NORTH 82°10'21" WEST 7.02 FEET;

THENCE SOUTH 40°39'15" WEST 14.97 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT Y; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT Y, NORTH 49°20'45" WEST 48.15 FEET TO THE BEGINNING OF A TANGENT 65.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY;

THENCE LEAVING SAID SOUTHWESTERLY LINE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 19.87 FEET THROUGH A CENTRAL ANGLE OF 17°30'51" TO THE BEGINNING OF A REVERSE 86.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, A RADIAL TO WHICH BEARS NORTH 58°10'06" EAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 26.29 FEET THROUGH A CENTRAL ANGLE OF 17°30'51" TO A LINE PARALLEL WITH AND 7.00 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT Y;

THENCE ALONG SAID PARALLEL LINE, NORTH 49°20'45" WEST 136.30 FEET;

THENCE LEAVING SAID PARALLEL LINE, NORTH 48°07'44" WEST 47.08 FEET TO A LINE PARALLEL WITH AND 8.00 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT Y;

THENCE ALONG SAID PARALLEL LINE, NORTH 49°20'45" WEST 188.60 FEET;

THENCE LEAVING SAID PARALLEL LINE, SOUTH 80°35'42" WEST 10.43 FEET TO SAID SOUTHWESTERLY LINE;

THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 49°20'45" WEST 164.81 FEET TO THE NORTHWEST CORNER OF SAID LOT Y;

THENCE ALONG THE WESTERLY LINE OF SAID LOT Y, NORTH 04°20'45" WEST 38.18 FEET TO THE POINT OF BEGINNING.

NOTE: SAID LAND IS DESCRIBED ABOVE BASED UPON A LEGAL DESCRIPTION PROVIDED TO THIS COMPANY AND IS NOT A LEGAL DESCRIPTION OF RECORD BUT IS ONLY USED HEREIN TO FACILITATE THE ISSUANCE OF THIS PRELIMINARY REPORT.

SCHEDULE B

EXCEPTIONS

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

A. This exception has been intentionally deleted

B. Said land is shown as exempt on the Orange County Tax Roll for the fiscal year 2014-2015.

Tax Identification Nos.: 430-391-18 and 430-391-39

C. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Part 0.5, Chapter 3.5 or Part 2, Chapter 3, Articles 3 and 4 respectively (commencing with Section 75) of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A; or as a result of changes in ownership or new construction occurring prior to date of policy.

D. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No:	13-01
Disclosed by:	Notice of Special Tax Lien
Recorded:	May 16, 2013 as Instrument No. 2013000296640 of Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the County of Orange. The tax may not be prepaid.

1. Water rights, claims or title to water, whether or not disclosed by the public records.

2. Easements, Covenants and Conditions contained in the deed from The United States of America, as Grantor, to The City of Tustin, California, as Grantee, recorded May 14, 2002 as Instrument No. 20020404598 of Official Records. Reference being made to the document for full particulars, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, to the extent such covenants, conditions or restrictions violate 42 U.S.C. §3604(c) or applicable state law. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

3. A notice that said Land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document

Recorded:	June 18, 2003 as Instrument No. 2003000710836 and March 28, 2007 as Instrument No. 2007000197041, both of Official Records
Redevelopment Agency:	City of Tustin

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Southern California Edison Company
Purpose:	Underground electrical supply systems and communication systems
Recorded:	January 10, 2007 as Instrument No. 2007000016377 of Official Records
Affects:	a portion of said land

SCHEDULE B – EXCEPTIONS
(Continued)

5. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey,

Job No.:	W. O. 3999-X
Dated:	July 7, 2015
Prepared by:	Hunsaker & Associates
Matters shown:	As follows:

1) The fact that a chain link fence traverses and meanders around the boundaries of the property herein described.
2) The fact that a concrete pad and grate inlet exist on the southwesterly corner of said land.

6. Any rights of parties in possession of said land, based on any unrecorded lease, or leases.

This Company will require a full copy of any unrecorded lease, together with all supplements, assignments, and amendments for review.

7. This exception has been intentionally deleted

8. This exception has been intentionally deleted

9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

In favor of: Southern California Edison Company, a corporation

Purpose:	Underground electrical supply systems, communications systems
Recording Date:	October 2, 2013
Recording No:	as Instrument No. 2013000565282, of Official Records
Affects:	A portion of Lot Y,

END OF ITEMS

NOTES

Note 1: Section 12413.1, California Insurance Code became effective January 1, 1990. This legislation regulates the disbursement of funds deposited with any title entity acting in an escrow or sub-escrow capacity. The law requires that all funds be deposited and collected by the title entity's escrow and/or sub-escrow account prior to disbursement of any funds. Some methods of funding may be subject to a holding period, which must expire before any funds may be disbursed. In order to avoid any such delays, all funding should be done via wire transfer. Funds deposited with the Company via wire transfer may be disbursed upon receipt. Funds deposited by cashiers checks, certified checks, and teller's checks is one business day after the day deposited. Other checks may require hold periods from two to five business days after the day deposited, and may delay your closing. The Company may receive benefits from such banks based upon the balances in such accounts. Such benefits will be retained by the Company as part of its compensation for handling such funds.

Note 2: The charge where an order is cancelled after the issuance of the report of title, will be that amount which in the opinion of the Company is proper compensation for the services rendered or the purpose for which the report is used, but in no event shall said charge be less that the minimum amount required under Section 12404.1 of the Insurance Code of the State of California. If the report cannot be cancelled "no fee" pursuant to the provisions of said Insurance Code, then the minimum cancellation fee shall be that permitted by law.

Note 3: California Revenue and Taxation Code Section 18668, effective January 1, 1991, requires that the buyer in all sales of California Real Estate, withhold 3-1/3% of the total sales price as California State Income Tax, subject to the various provisions of the law as therein contained, and as amended.

Note 4: Your application for title insurance was placed by reference to a street address or assessor's parcel number. Based upon our records, we believe that the description in this report covers the parcel that you requested.

To prevent errors, we require written confirmation that the legal description contained herein covers the parcel that you requested.

Note 5: The plat, (map), which is attached to this report, is to assist you in locating land with reference to streets and other parcels. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon.

Note 6: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

Note 7: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

NOTES
(Continued)

Note 8: Acceptance of the offer to insure provided for in this preliminary report constitutes the proposed insured's agreement that the sole and only liability of the company (and the title insurer) related to their actions in recording the documents provided to it for the closing of the contemplated transaction and the disbursing of funds acting in the function of a subescrow shall be that contained in the policy of title insurance that is to be issued by the company. The proposed insured understands and agrees that neither the underwritten company nor the title insurance company can guarantee or represent the condition or status of title or any physical condition existant with respect to real property. It is understood that no writing or instruction inconsistent with this understanding will have any force or effect or impose any liability against the underwritten company or the title insure in the contemplated transaction.

END OF NOTES

John Balassi (IE/Comm)/jh2

Fidelity National Financial, Inc.
Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected
We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

Disclosure of Personal Information
We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Disclosure to Affiliated Companies – We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties – We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information
We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

Access to Personal Information/Requests for Correction, Amendment, or Deletion of Personal Information
As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Changes to this Privacy Statement
This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the field rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for each discount. These discounts only apply to transaction involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

FNF Underwritten Title Company
CTC - Chicago Title Company

FNF Underwriter
CTIC - Chicago Title Insurance Company

Available Discounts

CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (CTIC)
Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge within the following time period from the date of the report.

FEE REEDUCTION SETTLEMENT PROGRAM (CTC and CTIC)
Eligible customers shall receive $20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in The People of the State of California.

DISASTER LOANS (CTIC)
The charge for a lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC)
On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 40% to 50% of the appropriate title insurance rate, depending on the type of coverage selected.

EMPLOYEE RATE (CTC and CTIC)
No charge shall be made to employees (including employees on approved retirement) of the Company or its underwritten, subsidiary title companies for policies or escrow services in connection with financing, refinancing, sale or purchase of the employees' bona fide home property. Waiver of such charges is authorized only in connection with those costs which the employee would be obligated to pay, by established custom, as a party to the transaction.

Notice

You may be entitled to receive a $20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19,1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is the subject of your current transaction, you must inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provided the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount.

Effective through November 1, 2014

Request for $20.00 Discount – CA Settlement

Use one form for each qualifying property.

To:	Chicago Title Company, 4210 Riverwalk Parkway, Suite 100, Riverside, CA 92505
Date:	
From: (name)	
Current Address:	
	I believe that I am qualified for the $20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs. I have not previously received a cash payment or a discount from another Company on the property described below: Signed: Date:
Address of qualifying property:	
Approximate date of transaction	

THIS SECTION IS FOR COMPANY USE ONLY.

☐ The above referenced party is entitled to receive a $20.00 discount on escrow services or title insurance pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs.

OR

☐ The above referenced party does NOT qualify for the $20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs for the following reason:

- ☐ The party has previously received credit for the transaction described above.
- ☐ The transaction described above did not occur in the time period allowed by the stipulated judgments—May 19, 1995 to November 1, 2002.

Fax this response to:

Escrow No.:	00019139-002-KP
Escrow Officer:	
Fax Number:	

ATTACHMENT ONE (Revised 06-03-11)

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY – 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.
   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

c. that result in no loss to You; or
d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.

5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.
   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$5000.00

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

* land use
* improvements on the land
* land division
* environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

* a notice of exercising the right appears in the public records
* on the Policy Date
* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:

* that are created, allowed, or agreed to by you
* that are known to you, but not to us, on the Policy Date – unless they appeared in the public records
* that result in no loss to you
* that first affect your title after the Policy Date – this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.
5. Lack of a right:

* to any land outside the area specifically described and referred to in Item 3 of Schedule A
  OR
* in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

2006 ALTA LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions, or location of any improvement erected on the Land;
(iii) the subdivision of land; or
(iv) environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
(a) created, suffered, assumed, or agreed to by the Insured Claimant;
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
(a) a fraudulent conveyance or fraudulent transfer, or
(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

2006 ALTA OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions, or location of any improvement erected on the Land;
(iii) the subdivision of land; or
(iv) environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
(a) created, suffered, assumed, or agreed to by the Insured Claimant;
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or
(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

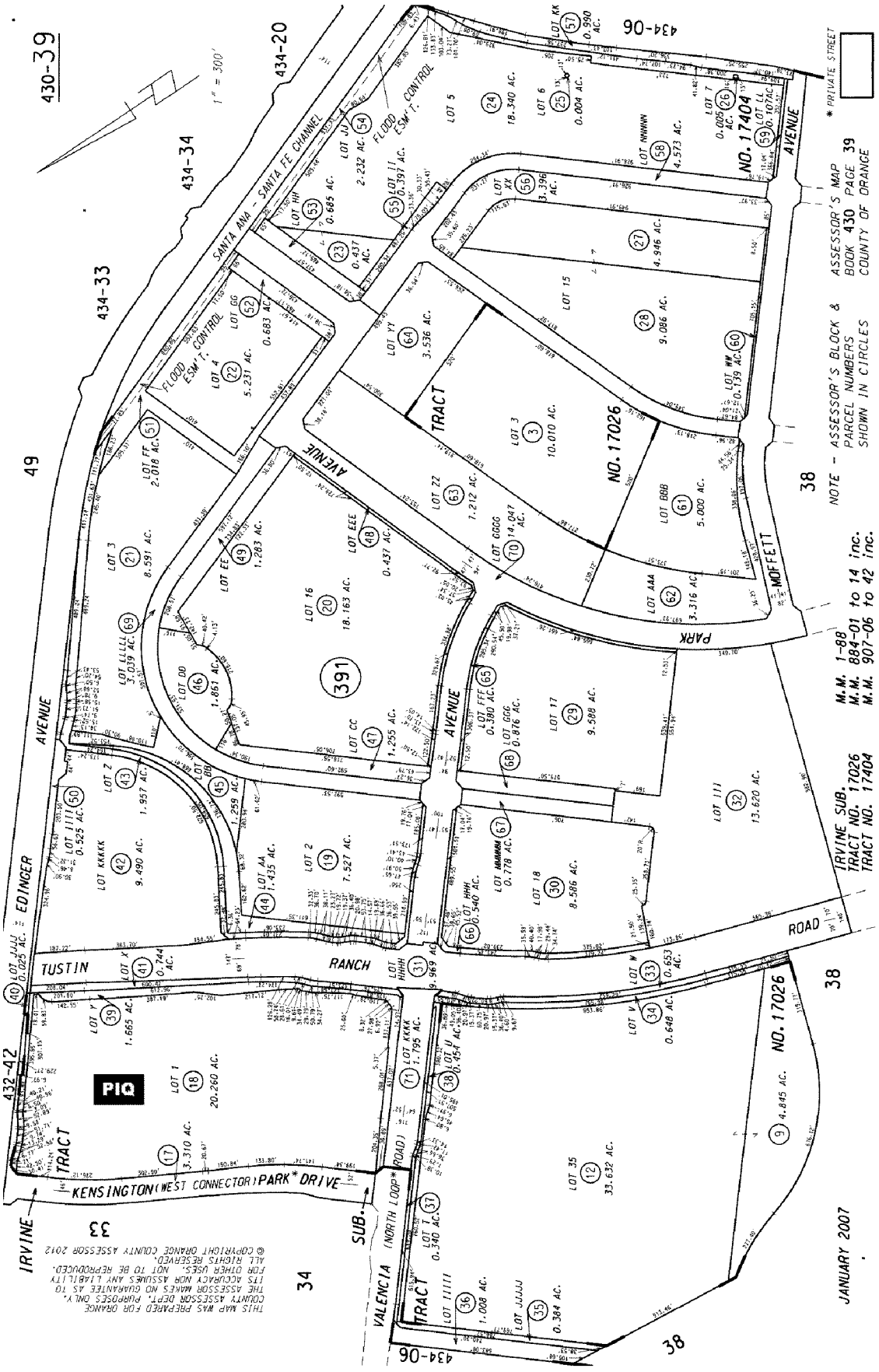
1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c),13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.


430-39
434-20
434-34
434-33
432-42
434-06
49
38
33
34
1" = 300'
SANTA ANA - SANTA FE CHANNEL
FLOOD CONTROL ESM'T.
AVENUE
EDINGER
TUSTIN
RANCH
ROAD
PARK
MOFFETT
KENSINGTON (WEST CONNECTOR) PARK* DRIVE
VALENCIA (NORTH LOOP* ROAD)
IRVINE
TRACT
SUB.
NO. 17404
NO. 17026
391
PIQ
* PRIVATE STREET
ASSESSOR'S MAP BOOK 430 PAGE 39 COUNTY OF ORANGE
NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES
M.M. 1-88 to 14 inc.
M.M. 884-01 to 14 inc.
M.M. 907-06 to 42 inc.
IRVINE SUB. TRACT NO. 17026 TRACT NO. 17404
JANUARY 2007
THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED.
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LEGAL DESCRIPTION

LOT C OF TRACT MAP NO. 17404, PER MAP FILED IN BOOK 907, PAGES 6 THROUGH 42, MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY

ATTACHMENT 5
TUSTIN LEGACY
CITY BENEFITED PROPERTY

ATTACHMENT 6
CITY ESTOPPEL

_____, 20__

[Transferee/Permitted Mortgagee]
_____
_____
Attn: _____

Re: Tustin Legacy Parcel 1C

Ladies and Gentlemen:

The undersigned is writing this letter to you ("**Transferee**") regarding that certain mixed use [retail/ medical office] project ("**Project**") that [has been] [may be] constructed on the land legally described on Exhibit "A" attached hereto ("**Parcel**").

The City of Tustin, a municipal corporation of the State of California (the "City"), and _____ ("**Developer**"), entered into that certain Tustin Legacy Disposition And Development Agreement For Parcel 1C, dated as of _____, 2015 ("**DDA**"), relating to the conveyance of the Parcel by the City to Developer and the subsequent development of the Parcel by Developer, all as more particularly set forth therein. All initially capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the DDA.

The City has executed that certain Declaration of Special Restrictions for Parcel 1C ("**Special Restrictions**"), dated _____, 20__, recorded in the Office of the County Recorder, Orange County, California ("**Official Records**"), against title to the Parcel on _____, 20__ as Instrument No. _____, which includes, among other matters, certain requirements regarding the use and maintenance of the Parcel and sets forth those provisions of the DDA which survive the issuance of a Certificate of Compliance with respect to the Project.

The City has executed that certain Quitclaim Deed [**Specify Healthcare or Retail Property Quitclaim Deed]** ("Quitclaim Deed"), dated _____, 20__, which was recorded in the Official Records against title to the Parcel on _____, 20__ as Instrument No. _____, which Quitclaim Deed conveyed to Developer fee title to the Parcel, subject to certain restrictions and limitations set forth in the Quitclaim Deed.

In addition, Developer and the City executed that certain Memorandum of Tustin Legacy Disposition and Development Agreement (Parcel 1C) ("**Memorandum of DDA**"), dated _____, 20__, which was recorded in the Official Records against title to the Parcel on _____, 20__ as Instrument No. _____, and provided record notice of the DDA and that certain Development Agreement ("**DA**"), dated _____, 20__, which was

recorded in the Official Records against title to the Parcel on _____, 20__ as Instrument No. _____.

The DDA, the Memorandum of DDA, the DA, the Special Restrictions, and the Quitclaim Deed are collectively referred to herein as the "**Property Documents**." The Property Documents do not comprise all of the agreements between the parties.

You have informed the undersigned City that Developer intends to Transfer its interest in the Development Parcels *[or specify portion thereof]* or a direct or indirect interest therein to Transferee on or around the date of this letter (the "**Transaction**").

By its execution of this letter, the City hereby confirms to Transferee that:

1. Except as set forth on Attachment 1 to this letter, the Property Documents are in full force and effect and have not been modified, supplemented or amended, whether orally or in writing, and have not been assigned or otherwise transferred by the City to any other person or entity.

2. To the best of the City's knowledge, except as set forth on Attachment 2 to this letter: (i) there are no defaults of Developer (including, without limitation, no Potential Defaults and no Material Defaults) under any of the Property Documents nor any facts which now, or after the giving of notice or the passage of time, or both, would constitute a default (including, without limitation, a Potential Default or Material Default) under any of the Property Documents or which would entitle the City to then exercise any of its rights or remedies under any of the Property Documents, including, without limitation, its Right of Reversion or Right of Repurchase pursuant to the DDA; and (ii) the City has no claim of breach, counterclaim, lien or offset presently existing against Developer, the Project or the Property under any of the Property Documents.

As used in this letter, the phrase "to the best of the City's knowledge" and words of like import, mean that the facts in question are actually known (as opposed to imputed, inquiry or constructive knowledge) to the representative of the City signing below, based upon such individual's own knowledge after a reasonable review of the relevant records and files in the possession of the City.

The undersigned acknowledges that Transferee *[INCLUDE ONLY IF APPLICABLE: and Transferee's prospective lender, and their participating lenders]*, may rely upon this letter in entering into the proposed Transaction. This letter is written in connection only with the proposed Transaction and may be relied upon only by Transferee *[INCLUDE ONLY IF APPLICABLE: and Transferee's prospective lender, and their participating lenders]* as to the matters addressed herein. This letter may not be relied upon by any other party or for any other purpose without the express written consent of the City. This certificate shall be binding upon the City and its successors and assigns.

[*Signature page follows*]

CITY OF TUSTIN

Dated: _____, 20__

By: _____
Name: _____
City Manager

ATTEST:

By:_____
Name: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

By:_____
Name: _____

Exhibit "A"

Legal Description of the Parcel 1C Property

Attachment 1

Modifications, Supplements or Amendments to Property Documents

1. [*enter "None" if there are no qualifications*]

Attachment 2

Qualifications to Matters Confirmed in Estoppel

1. [*enter "None" if there are no qualifications*]

ATTACHMENT 7

SCHEDULE OF PERFORMANCE*

1. EXECUTION OF AGREEMENT				
	DDA Section	**Item**	**Action**	**Responsible Party**
A	1.6	Developer executes Development Agreement relating to the Development Parcel.	On or before Effective Date.	Developer
B	1.8.2	Developer funds City Cost Deposit including payment of ENA Transaction Expenses	On or before Effective Date.	Developer
C	4.6.2; 4.6.8	Developer delivers REG Certificate, REG Supplemental Certificate and Developer Certificate and associated documentation in form approved by City	Prior to Effective Date.	Developer
D	4.4	Opening of Escrow – Developer and the City each delivers three executed copies of the DDA to Escrow Holder.	Within five (5) Business Days following City Council approval of the DDA.	City/Developer
E	5.6	City to deliver copies of all City-produced plans, reports, studies, investigations and other materials in its possession pertinent to the Property or the Project	Within ten (10) Business Days following the Effective Date.	City
F	11.1.1; 11.1.2, 11.2.3	Developer to obtain commercial general liability insurance and worker's compensation require by this Section and to provide Accord certificate evidencing same.	Insurance to be obtained prior to or upon the Effective Date. Accord certificate to be provided to City within seven (7) Business Days following the Effective Date and annually (upon request from the City) until Recording of a Certificate of Compliance for the Project.	Developer

*Except as set forth in Item 5 below, in the event of any express conflict between the provisions of this Schedule and the provisions of the Agreement ("DDA"), the provisions of the Agreement shall govern. Initially capitalized terms used in this Schedule of Performance shall have the meanings set forth in the DDA.

2 ENTITLEMENTS, MAPPING, GRADING, INFRASTRUCTURE, UTILITIES, BUILDING PERMITS				
	DDA Section	**Item**	**Action**	**Responsible Party**
A	8.4.5	Developer delivers the Basic Concept Plans to the City for Proprietary Review Approval.	Prior to Effective Date.	Developer
B	8.4.5	City Proprietary Review - The City comments or approves Developer and Healthcare Developer Basic Concept Plans.	City shall use good faith efforts to respond within fifteen (15) Business Days from Developer or Healthcare Developer submittal, as applicable.	City
C	4.6.6; 8.3	Developer submits for approval by the City in its Governmental Capacity, a Subdivision Map and Entitlement Application Package.	Prior to Effective Date.	Developer
D	4.6.6; 8.3	The City Council considers Parcel Map and Project Entitlements (in its Governmental Capacity).	Developer shall have applied for all Project Entitlements prior to the Effective Date. Approval of Entitlements listed on Attachment 28 and Recording of the Parcel Map are conditions precedent to Close of Escrow for the Property.	City
E	8.4.3	Developer shall submit for approval by the City in its Governmental Capacity, final design drawings and related documents conforming to the requirements of the City Code and including the required contents listed in Chapter 5 of the Specific Plan.	Prior to Close of Escrow for applicable Parcel.	Developer

3. CONVEYANCE OF PROPERTY FROM THE CITY TO DEVELOPER (RETAIL PROPERTY)				
	DDA Section	**Item**	**Action**	**Responsible Party**
A	4.6.1	Developer provides the City Developer Financing Plan and associated financial documentation.	On or before the Effective Date.	Developer
B	4.6.2	Developer issue Additional Assurance/Equity Funding Letter.	On or before the Effective Date.	Developer
C	4.6.3	Guaranty of Developer Obligations: REG Guaranty	Prior to the Retail Property Close of Escrow.	Developer
D	4.3.1	Developer delivers Purchase Price Deposit.	Within five (5) Business Days after execution of the Agreement by the City and Developer and as a condition to the effectiveness of the Agreement.	Developer
E	4.5, 5.1	Developer conducts site investigation during the Due Diligence Period.	Commencing on the Effective Date and ending on the date which is sixty (60) calendar days following the Effective Date at 4:00 P.M. Pacific Time.	Developer
F	6.1	Developer delivers to the City Property survey prepared by a licensed surveyor.	Prior to the end of the Due Diligence Period (i.e., no later than 60 days after Effective Date).	Developer
G	6.2	Title Company issues Preliminary Title Reports (PTR) to Developer and the City. During Due Diligence Period, Developer reviews PTR and may object to matters set forth in the PTR.	Developer PTR review period shall extend through the Due Diligence Period (60 days after Effective Date).	Developer
H	6.3	Developer shall provide the City a copy of Supplemental Title Reports and shall specify in writing Developer's disapproval of any item or exception shown on such Supplemental Title Reports.	Within ten (10) calendar days after Developer's receipt of any such Supplement Title Report.	Developer

3. CONVEYANCE OF PROPERTY FROM THE CITY TO DEVELOPER (RETAIL PROPERTY)				
	DDA Section	**Item**	**Action**	**Responsible Party**
I	6.4	Title Company issues the ALTA (Extended Coverage) Policy with policy amount equal to the Base Purchase Price.	As a condition to closing, Title Company shall be irrevocably and unconditionally prepared to issue such requested ALTA Policy to Developer at Close of Escrow.	Title Company
J	13	Developer submits CC&Rs to the City for review and approval and records CC&Rs against the Development Parcels.	Submittal for City review and approval prior to Retail Property Close of Escrow; CC&Rs to be recorded concurrently with Retail Property Close of Escrow	Developer
K	7.1.2; 7.3.1	Developer Retail Property Closing Conditions satisfied, including, Document Deliveries, Title Policy, Pre-Existing Obligations, Applicable Approvals; Grading and Building Permits, Leases; No Casualty or Condemnation, No Litigation, Representations and Warranties, Default.	Except as expressly provided otherwise in DDA, no later than twenty (20) business days prior to the Retail Property Close of Escrow.	Developer
L	7.1.2; 7.3.2	City Retail Property Closing Conditions satisfied, including, Developer Closing Payment, Document Deliveries, Parcel Map and Construction Bond, Applicable Approvals, Grading and Building Permits, Leases, Financial Capability, Representations and Warranties, and Default.	Except as expressly provided otherwise in DDA, no later than twenty (20) business days prior to the Close of Escrow.	City
M	7.4. (b)	Each Party submits to Escrow Holder a certificate stating that all Closing Conditions for its benefit have been satisfied or waived.	No later than two (2) business days prior to Close of Escrow.	Developer/City

3. CONVEYANCE OF PROPERTY FROM THE CITY TO DEVELOPER (RETAIL PROPERTY)				
	DDA Section	**Item**	**Action**	**Responsible Party**
N	4.3.4	Developer issues payment of the Balance of the Purchase Price and Other Amounts Due at Close of Escrow.	No later than one (1) business day prior to Close of Escrow.	Developer
O	7.1.2	Retail Property Close of Escrow	Date that is twenty (20) Business Days following the last to occur of the satisfaction of the Developer Retail Property Closing Conditions set forth in Sections7.3.1(c) through (i) of the DDA and the City Retail Property Closing Conditions set forth in Section 7.3.2(c) through (h) of the DDA (or the waiver thereof by the applicable Party).	
P	7.1.2	Retail Property Outside Closing Date	No later than December 16, 2016 (unless extended pursuant to DDA §7.1.3).	Developer
Q	7.1.3	Retail Property Outside Closing Date Extension	No later than ninety (90) days after the Retail Property Outside Closing Date if Developer is seeking a specific plan amendment, or an otherwise mutually approved extension subject to Section 7.1.3.	Developer
R	4.3	Developer issues payment of Additional Purchase Price to the City.	Within thirty (30) days after the date upon which the first of the following occurs: (a) a single grocery store of not less than 40,000 GBA and a drug store on the Retail Parcel are fully stocked and open for a minimum of one (1) day as a retail establishment or (b) Tenants occupying at least 53,000 GBA on the Retail Parcel are fully stocked and open for a minimum of one (1) day as a retail establishment. The Additional Purchase Price shall be secured by the REG Guaranty.	Developer

4. CONVEYANCE OF PROPERTY FROM THE CITY TO DEVELOPER (HEALTHCARE PROPERTY)				
	DDA Section	**Item**	**Action**	**Responsible Party**
A	2.2.3(b)	Developer requests the City approval of Healthcare Developer and approval to transfer Healthcare Parcel to Healthcare Developer.	Developer to submit written consent to the City at least twenty (20) Business Days prior to the date of any proposed Transfer.	Developer/City
B	4.6.4	Healthcare Developer delivers to the City financial information required by Section 2.2.3(b) and 4.6.4.	The earlier of at least ninety (90) calendar days prior to the Healthcare Property Close of Escrow or twenty (20) Business Days prior to a proposed Transfer pursuant to Section 2.2.3(b).	Healthcare Developer
C	4.6.4	Healthcare Developer (Other Healthcare Parcels only) delivers copy of commitment from Permitted Mortgagee and draft transaction documents	At least ninety (90) calendar days prior to Healthcare Property Close of Escrow	Healthcare Developer
D	4.6.5	Healthcare Developer to provide HCD Guaranty (in the form of Attachment 14B) to Developer and City.	At least two (2) business days prior to the Healthcare Property Close of Escrow.	Healthcare Developer
E	17.1.2(b)	Healthcare Developer delivers to the City proposed Mortgagee's loan documents for Healthcare Vertical Improvements.	At least fifteen (15) Business Days prior to entering into any Mortgage.	Healthcare Developer
F	7.1.1(b)	Developer delivers First Option Payment	No later than date of Retail Property Close of Escrow; provided no Option Payment is required if Retail Property Close of Escrow and Healthcare Property Close of Escrow occur concurrently..	Developer

4. CONVEYANCE OF PROPERTY FROM THE CITY TO DEVELOPER (HEALTHCARE PROPERTY)				
	DDA Section	**Item**	**Action**	**Responsible Party**
G	7.1.1(b)	Developer delivers Second Option Payment	No later than first (1st) anniversary of Retail Property Close of Escrow.	Developer
H	7.1.1; 7.2.1	Developer Healthcare Property Closing Conditions satisfied, including, Document Deliveries, Title Policy, Pre-Existing Obligations, Applicable Approvals; Parcel Map, Grading and Building Permits, No Casualty or Condemnation, No Litigation, Representations and Warranties, Default.	Except as expressly provided otherwise in DDA, no later than twenty (20) business days prior to the Healthcare Property Close of Escrow.	Developer/Healthcare Developer/Permitted Mortgagee if applicable
I	7.1.1(b)	Developer exercises Option	Provided Developer funds the First Option Payment, on or before the expiration of the First Option Term (i.e., at any time prior the first (1st) anniversary of the Retail Property Close of Escrow). Provided Developer funds the Second Option Payment, on or before the expiration of the Second Option Term (i.e., at any time prior the second (2nd) anniversary of the Retail Property Close of Escrow).	Developer
J	7.1.1; 7.2.2	The City Healthcare Property Closing Conditions satisfied, including, Developer Closing Payment, Document Deliveries, Parcel Map and Construction Bond, Applicable Approvals, Grading and Building Permits, Leases, Financial Capability, Representations and Warranties, and Default.	Except as expressly provided otherwise in DDA, no later than twenty (20) business days prior to the Healthcare Property Close of Escrow.	City

4. CONVEYANCE OF PROPERTY FROM THE CITY TO DEVELOPER (HEALTHCARE PROPERTY)				
	DDA Section	**Item**	**Action**	**Responsible Party**
K	7.4. (b)	Each Party submits to Escrow Holder a certificate stating that all Closing Conditions for its benefit have been satisfied or waived.	At least two (2) business days prior to Healthcare Property Close of Escrow.	Healthcare Developer/ Developer/City
L	4.3.4	Developer issues payment of the Balance of the Purchase Price and Other Amounts Due at Close of Escrow.	No later than one (1) business day prior to Healthcare Property Close of Escrow.	Developer
M	7.1.1.(a)	Healthcare Property Close of Escrow	The date which is twenty (20) Business Days following the last to occur of the satisfaction of the Developer Healthcare Property Closing Conditions set forth in Sections 7.2.1(c) through (h) of the DDA and the City Healthcare Property Closing Conditions set forth in Section 7.2.2(c) through (l) of the DDA (or the waiver thereof by the applicable Party) but in no event prior to the Retail Property Close of Escrow nor later than sixty (60) days after the last day of the Option Term	
N	7.1.1	Healthcare Property Outside Closing Date	No later than sixty (60) days after the Retail Property Close of Escrow (unless extended pursuant to Section 7.1.3 of the DDA).	Developer
O	7.1.1(b); 7.1.3	Health Care Property Outside Closing Date Extension and Options.	Extension for concurrent closing of Retail Property and Healthcare Property: Up to ninety (90) days if Developer is seeking a specific plan amendment, or an otherwise mutually approved extension subject to Section 7.1.3. First Option: Extends acquisition period through the first anniversary of the Retail Property Close of Escrow. Second Option: Extends acquisition period through the second anniversary of the Retail Property Close of Escrow.	Developer

5. CONSTRUCTION OF IMPROVEMENTS				
	DDA Section	**Item**	**Action**	**Responsible Party**
A	11.1.3	Developer to obtain or cause its contractor to maintain builder's risk insurance in accordance with DDA requirements	Commencing upon commencement of construction (i.e., upon issuance of grading or building permit by City for any construction)	Developer
B	8.1.5(a)	Developer commences construction of Minimum Horizontal Improvements.	Upon the earlier of (i) the date on which the City issues to Developer the Grading Permits for the Grading Work on the Retail Parcel or (ii) six (6) months following Retail Property Close of Escrow but in no event later than June 30, 2017), subject to Force Majeure Delay. Notwithstanding anything to the contrary in Section 8.1.5(a) or elsewhere in the DDA, Developer may commence Vertical Improvements for each pad upon completion of each graded certified pad.	Developer
C	8.1.5(a)	Developer completes Minimum Horizontal Improvements.	Within fifteen (15) months following the Construction Period Commencement Date, subject to Force Majeure Delay.	Developer
D		Developer commences construction of Retail Horizontal Improvements	Following commencement of Minimum Horizontal Improvements and in accordance with Retail Project schedule	Developer
E	8.1.5(b)	Developer commences construction of Minimum Retail Vertical Improvements.	Within twelve (12) months following the Construction Period Commencement Date for the Retail Parcel. Notwithstanding anything to the contrary in Section 8.1.5(a) or elsewhere in the DDA, Developer may commence Vertical Improvements for each pad upon completion of each graded certified pad.	Developer

5. CONSTRUCTION OF IMPROVEMENTS				
	DDA Section	**Item**	**Action**	**Responsible Party**
F	8.1.5(b); 9.3(a);	Developer Completes Minimum Retail Improvements	Within twenty four (24) months following the Construction Period Commencement Date for the Retail Parcel, subject to Force Majeure Delay, provided that such Completion date shall not under any circumstances be later than the date that is forty eight (48) months after the Close of Escrow for such Parcel (which date shall not be extended for Force Majeure Delay);.	Developer
G	8.1.5(b);	Healthcare Developer commences construction of Minimum Healthcare Vertical Improvements on Medical Office Parcel.	Upon the Construction Period Commencement Date for the Healthcare Parcel (i.e., earlier of (i) the date on which the City issues to Healthcare Developer the first permit for Horizontal Improvements on the Healthcare Parcel or (ii) six (6) months following Healthcare Property Close of Escrow but in no event later than December 1, 2017), subject to Force Majeure Delay. Notwithstanding anything to the contrary in Section 8.1.5(a) or elsewhere in the DDA, Healthcare Developer may commence Vertical Improvements for each pad upon completion of each graded certified pad.	Healthcare Developer
H		Healthcare Developer commences construction of Minimum Healthcare Vertical Improvements on Medical Office Parcel.	If the Medical Office Parcel is conveyed separately from the Other Healthcare Parcels, upon the Construction Period Commencement Date for the Healthcare Parcel (i.e., earlier of (i) the date on which the City issues to Healthcare Developer the first permit for Horizontal Improvements on the Healthcare Parcel or (ii) six (6) months following Healthcare Property Close of Escrow but in no event later than December 1, 2017), subject to Force Majeure Delay, but in no event prior to the date upon which the Healthcare Developer owning the Medical Office Parcel shall have Commenced Construction of the Healthcare Vertical Improvements comprising the Medical Office Building.	Healthcare Developer

5. CONSTRUCTION OF IMPROVEMENTS				
	DDA Section	**Item**	**Action**	**Responsible Party**
I	8.1.5(b); 9.3(b); 16.4.2	Healthcare Developer Completes Minimum Healthcare Vertical Improvements.	Within twenty four (24) months following the Construction Period Commencement Date for the Healthcare Parcel, subject to Force Majeure Delay, provided that such Completion date shall not under any circumstances be later than the date that is forty eight (48) months after the Close of Escrow for such Parcel (which date shall not be extended for Force Majeure Delay);.	Healthcare Developer
J	9.1; 9.2	The City issues a Healthcare Parcel Certificate of Compliance for the Healthcare Project.	Within ten (10) days after written request from Healthcare Developer setting forth evidence of satisfaction of the Conditions Precedent; provided that, notwithstanding any provision of the DDA to the contrary, in the event the City Manager determines that the City Council should approve the issuance of the Certificate of Compliance, sixty (60) days after written request from Healthcare Developer.	City
K	9.1; 9.3	The City issues a Retail Parcel Certificate of Compliance for the Retail Project.	Within ten (10) days after written request from Developer setting forth evidence of satisfaction of Conditions Precedent; provided that, notwithstanding any provision of the DDA to the contrary, in the event the City Manager determines that the City Council should approve the issuance of the Certificate of Compliance, sixty (60) days after written request from Healthcare Developer. .	City

ATTACHMENT 8

SCOPE OF DEVELOPMENT

Developer shall develop The Village at Tustin Legacy, which, at full build out, will consist of 248,292 square feet of nonresidential uses comprised of two major components:[1]

1. Retail Center: A 98,292 square-foot retail center with grocery store, pharmacy, childcare, food service, and general retail uses along Valencia Avenue and Kensington Park Drive.

2. Medical Plaza: A 150,000 square-foot medical plaza with a medical center, an acute care hospital/rehabilitation facility and medical office/retail buildings fronting along Kensington Park Drive and Edinger Avenue.

The project is zoned MCAS Tustin Specific Plan District (SP1) and is located on 20.96-acre area within Planning Area 7, Neighborhood B, of the MCAS Tustin Specific Plan with a Land Use Plan designation of Village Services, and General Plan Land Use designation of MCAS Tustin Specific Plan. The site is bounded by Edinger Avenue, Kensington Park Drive, Valencia Avenue and Tustin Ranch Road.

The proposed commercial center is geared towards providing neighborhood commercial services to the surrounding community including Tustin Fields I, Tustin Fields II, Columbus Square, Columbus Grove, Greenwood, Tustin Meadows, Peppertree and nearby nonresidential uses.

Developer shall construct the commercial center in multiple phases. The first phase shall include the construction of Horizontal Improvements, including grading and construction of the common areas such as parking lots, common area drive, landscape areas and off-site improvements. The second phase shall include the construction Minimum Retail Vertical Improvements. The final phase shall include the construction of any remaining Vertical Improvements.

Horizontal Improvements:

A. Grading: Clear, grub, and rough grade Developer's Tract, including the necessary undercutting, import, export, compaction of soils and delivery of certified building pads.

B. Site Utilities: Complete the installation of site utilities, including water, sanitary sewer, storm water, electric, gas and communications lines stubbed to each building pad.

C. Pavement and Curbs: Paved parking lot and interior roads, including entrance and exit driveways, curbs and gutters, catch basins, code signage and striping.

D. Lighting: Install parking lot lighting system for the Development, including concrete bases, light standards, fixtures, conduits and meter pedestals.

[1] All references to square footage in this Attachment are to GBA as defined in the DDA.

E. Landscape and Irrigation: Landscape and irrigation for the common area of the Development, and certain off-site improvements, including all necessary piping, wiring, controllers, trees, shrubs, and ground cover.

F. Off-Site Improvements: Roadways, deceleration lanes, curb and gutters, sidewalks, traffic signals, median cuts, utilities and utility relocations, streetlights, landscaping and irrigation, striping, and traffic control and temporary barricades and signage shown and/or required by the project Conditions of Approval.

Vertical Improvements:
Upon full buildout the retail center is anticipated to consist of nine (9) buildings (Buildings A through I) of varying sizes totaling approximately 98,282 square feet. The retail center design theme shall be of "Contemporary Barn" or "Contemporary Rustic" architecture style that borrows inspiration from the industrial aesthetics of the nearby blimp hangars to the agricultural farmlands that surrounded the site in the early 1900s. Building materials will further exhibit this influence with the use of metal roofing and siding, rich colored board and batten vertical sidings, rusticated stone veneer, barn door features, louvers and lattices.

Upon full buildout the medical plaza is anticipated to consist of four (4) buildings (Buildings J through M) of varying sizes and heights totaling 150,000 square feet. These buildings shall incorporate similar color and material palette as the retail center to the south, however, incorporate a more contemporary architectural style, utilizing sleek building lines and contrasts of light and heavy elements. Architectural design elements may include features such as multiple roof elements, varying parapet wall heights, varying wall planes, expanses of glass windows and metal or stone siding creating variations and visual interest in the building façade.

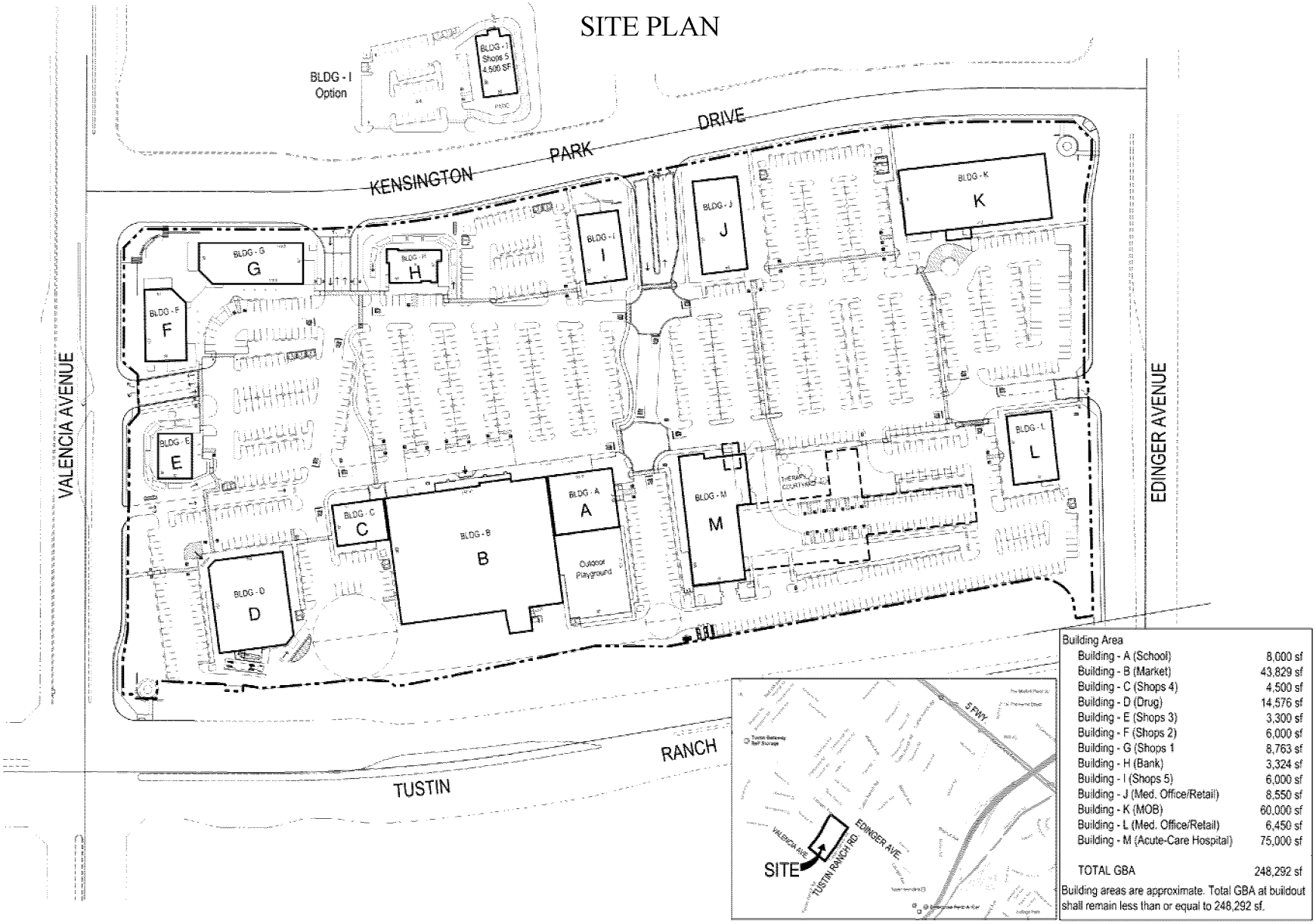
Parking:
The commercial center will include approximately 1,090 parking spaces subject to variations based on the final center design and layout. Parking areas for the retail center will be considered separate from the medical plaza parking. The retail center will be parked with approximately 470 stalls and the medical plaza will be parked with approximately 620 stalls. Ingress and egress points shall be located along Valencia Avenue, Kensington Park Drive and Edinger Avenue. Both the retail center and medical plaza will share the main drive located at Kensington Park Drive and Georgia Street.

Trip Allocation:
The maximum trip allocation for the project is as follows:

Project	**Daily 2-Way**
Retail Center (98,282 SF)	4,197
Retail/Office Medical Plaza (15,000 SF)	641
Medical Office Building (60,000 SF)	2,168
Skilled Nursing Facility/Acute Care (80 beds – 75,010 SF)	213
TOTAL MAXIMUM PROJECT TRIPS	**7,219**

The City is retaining the 1,755 trips identified in the final row on Attachment 26.

SITE PLAN



Building Area	
Building - A (School)	8,000 sf
Building - B (Market)	43,829 sf
Building - C (Shops 4)	4,500 sf
Building - D (Drug)	14,576 sf
Building - E (Shops 3)	3,300 sf
Building - F (Shops 2)	6,000 sf
Building - G (Shops 1	8,763 sf
Building - H (Bank)	3,324 sf
Building - I (Shops 5)	6,000 sf
Building - J (Med. Office/Retail)	8,550 sf
Building - K (MOB)	60,000 sf
Building - L (Med. Office/Retail)	6,450 sf
Building - M (Acute-Care Hospital)	75,000 sf
TOTAL GBA	248,292 sf

Building areas are approximate. Total GBA at buildout shall remain less than or equal to 248,292 sf.

ATTACHMENT 9 - DEPICTION OF HORIZONTAL IMPROVEMENTS

TUSTIN LEGACY
TENTATIVE PARCEL MAP NO. 2015-127

STORMWATER

THE PROPERTY IS A PREVIOUSLY GRADED SITE AND PART OF THE OVERALL DRAINAGE SYSTEM OF THE TUSTIN LEGACY PROJECT. A WQMP HAS BEEN PREPARED AND DESCRIBES THE CONSTRUCTION AND POST-CONSTRUCTION BMP.

UTILITY SERVICES

ELECTRIC:	SOUTHERN CALIFORNIA EDISON
WATER:	IRVINE RANCH WATER DISTRICT (IRWD)
WATER:	IRVINE RANCH WATER DISTRICT (IRWD)
STORM	CITY OF TUSTIN
TELEPHONE:	AT&T
TELECOMMUNICATIONS	VERIZON
GAS:	SOUTHERN CALIFORNIA GAS CO.

BENCHMARK

COUNTY OF ORANGE BENCHMARK NO: 38-97-85

DESCRIBED BY OCS 2002 – FOUND 3 3/4" OCS ALUMINUM BENCHMARK DISK STAMPED "38-97-85", SET IN THE SOUTHEASTERLY END OF A 1 FT. BY 24 FT. CONCRETE HEADWALL. MONUMENT IS LOCATED ALONG THE NORTHEASTERLY SIDE OF EDINGER AVENUE, 0.75 MILES NORTHWESTERLY OF THE CENTERLINE OF HARVARD AVENUE, 66FT NORTHEASTERLY OF THE CENTERLINE OF EDINGER AND 52 FT SOUTHEASTERLY OF THE SOUTHWEST RAIL ALONG THE ATCHINSON TOPEKA AND SANTA FE RAILWAY. MONUMENT IS SET 7.0 FT. BELOW THE RAILROAD TRACKS

ELEVATION:56.713 FEET (NAVD 88)

TITLE REPORT INFORMATION:

ITEM NUMBERS SHOWN HEREON CORRESPOND TO CHICAGO TITLE COMPANY ORDER NO. 12205793-996-SD1, DATED JUNE 25, 2015.

NO RESPONSIBILITY FOR COMPLETENESS, ACCURACY OR CONTENT OF SAID REPORT IS ASSUMED BY THIS MAP.

ITEM NUMBERS INDICATED WITH A HEXAGON (⬡) REFLECT ITEMS WHICH ARE PLOTTED HEREON:

A-C REFERS TO TAXES.

1 REFERS TO WATER RIGHTS, CLAIMS OR TITLE TO WATER.

2 REFERS TO EASEMENTS, COVENANTS AND CONDITIONS CONTAINED IN THE DEED FROM THE UNITED STATES OF AMERICA, AS GRANTOR, TO THE CITY OF TUSTIN, CALIFORNIA, AS GRANTEE, RECORDED MAY 14, 2002 AS INSTRUMENT NO. 20020404598 OF O.R.

3 REFERS TO A NOTICE THAT SAID LAND IS INCLUDED WITHIN A PROJECT AREA OF THE REDEVELOPMENT AGENCY RECORDED JUNE 18, 2003 AND MARCH 08, 2007 AS INSTRUMENT NO. 20030007108356 AND 20070000197041, BOTH OF O.R.

⬡4 REFERS TO AN EASEMENT FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS AND COMMUNICATION SYSTEMS GRANTED TO SOUTHERN CALIFORNIA EDISON RECORDED JANUARY 10, 2007 AS INSTRUMENT NO. 20070000016377, O.R.

5 REFERS TO MATTER WHICH MAY BE DISCLOSED BY AN INSPECTION.

6 REFERS TO ANY RIGHTS OF THE PARTIES IN POSSESSION.

7 REFERS TO RECITALS.

⬡8 REFERS TO AN EASEMENT FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS AND COMMUNICATION SYSTEMS GRANTED TO SOUTHERN CALIFORNIA EDISON RECORDED OCTOBER 2, 2013 AS INSTRUMENT NO. 20130005652052, O.R.

BASIS OF BEARINGS

THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING NORTH 89°20'45" WEST ALONG EDINGER AVENUE BETWEEN THE FOUND MONUMENTS AT KENSINGTON PARK DRIVE AND TUSTIN RANCH ROAD PER TRACT MAP NO. 17404 RECORDED IN BOOK 907 PAGES 6 TO 42 IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY.

PROPOSED EASEMENTS/ DEDICATIONS

1 PUBLIC IRWD WATER AND SEWER EASEMENT, PER SEPARATE INSTRUMENT.

NOTES:

1. THE PROPERTY DESCRIBED HEREON IS THE SAME AS THE PROPERTY DESCRIBED IN OLD REPUBLIC NATIONAL COMMERCIAL TITLE SERVICES FILE NO. 0A244793 WITH AN EFFECTIVE DATE OF NOVEMBER 01, 2013 AND THAT ALL EASEMENTS, COVENANTS AND RESTRICTIONS REFERENCED IN SAID TITLE SERVICES OR APPARENT FROM A PHYSICAL INSPECTION OF THE SITE OR OTHERWISE KNOWN TO HAVE BEEN PLOTTED HEREON OR OTHERWISE NOTED AS TO THEIR EFFECT ON THE SUBJECT PROPERTY.

2. SAID DESCRIBED PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ON FLOOD INSURANCE RATE MAP NO.'S 06059C0261J AND 06059C0263J WITH A DATE OF IDENTIFICATION OF DECEMBER 3, 2009, FOR COMMUNITY PANEL NO. 0263, IN ORANGE COUNTY, STATE OF CALIFORNIA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PREMISES IS SITUATED.

DATUM STATEMENT:

COORDINATES SHOWN ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, 1983 NAD, (1991.35 EPOCH OCS CPS ADJUSTMENT)

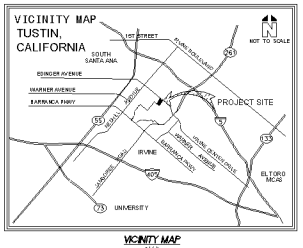
ALL DISTANCES SHOWN ARE GROUND UNLESS OTHERWISE NOTED. TO OBTAIN GRID DISTANCE MULTIPLY GROUND DISTANCE BY 0.99997770 (SCALE FACTOR IS PROJECT SPECIFIC).

RECORD OWNER:

TITLE TO THE FEE SIMPLE ESTATE OR INTEREST IN THE LAND IS VESTED IN THE CITY OF TUSTIN, CALIFORNIA, A MUNICIPAL CORPORATION AT THE EFFECTIVE DATE OCTOBER 4, 2006 AS INSTRUMENT NO 2006000661919

ACCESS NOTES:

A RECIPROCAL ACCESS EASEMENT WILL BE RECORDED ACROSS A NUMBER OF PARCELS IN THE PROJECT CC & R'S



VICINITY MAP
NTS

LEGAL DESCRIPTION

LOTS 1, X, AND Y OF TRACT 17404, IN THE CITY OF TUSTIN, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 907, PAGES 6 TO 42, INCLUSIVE, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND AMENDED BY CERTIFICATE OF CORRECTION RECORDED JULY 17, 2013 AS INSTRUMENT NUMBER 20130004285185, AND RECORDED ON FEBRUARY 26, 2015 AS INSTRUMENT NO 20150001102478, BOTH OF OFFICIAL RECORDS OF SAID COUNTY.

EARTHWORK

ROUGH GRADE EARTHWORK VOLUMES

Item	Cut (CY)	Fill (CY)
Total Quantities*	7,600	19,400
Adjusted Quantities**	10,700	19,700
1.1 Shrinkage/Subsidence	(3,100)	(1,700)
Overexcavation (10% of fill)		1,700
Net Import (+)		19,700

* Raw quantities exclusive of 1.1 CY/CY shrinkage/subsidence and overexcavation
** Net fill quantity amount required to balance site. Actual amounts may vary

ASSESSOR'S PARCEL NUMBERS

430-391-18
430-391-39
430-391-41

SHEET INDEX

SHEET #	SHEET TITLE
C-001	TITLE SHEET
C-101	TENTATIVE PARCEL MAP
C-201	CONCEPTUAL GRADING SHEET
C-202	CONCEPTUAL UTILITY PLAN
C-203	OFFSITE IMPROVEMENTS

LEGEND

- SUBDIVISION BOUNDARY
- PROPOSED LOT LINE
- EXISTING LOT LINE
- PROPOSED EASEMENTS
- EXISTING EASEMENTS
- CENTERLINE

ABBREVIATIONS

R/W	RIGHT OF WAY
BLDG.	BUILDING
SUB.	SUBDIVISION
PROP.	PROPOSED
EX	EXISTING
℄	CENTERLINE
P	PROPERTY
AC	LINE ACRE
CONC	EXISTING
FD	FOUND
CONC	CONCRETE

PROJECT TEAM

DEVELOPER
TUSTIN REGENCY, LLC (REGENCY CENTERS)
825 WILSHIRE BLVD SUITE 2200
LOS ANGELES, CA 90017-4

ENGINEER:
KIMLEY-HORN AND ASSOCIATES
765 THE CITY DRIVE, SUITE 200
ORANGE, CA 92868
PHONE: (714) 939-1030

ARCHITECT:
ARCHITECTS ORANGE
144 NORTH ORANGE ST.
ORANGE CA 92866

OWNER

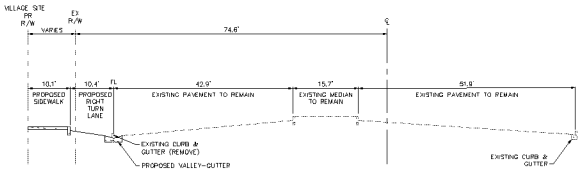
CITY OF TUSTIN
300 CENTENNIAL WAY
TUSTIN, CA 92780

SIGNATURE DATE

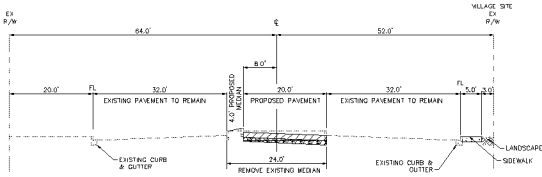
SUBDIVISION SUMMARY

SUBDIVISION SUMMARY

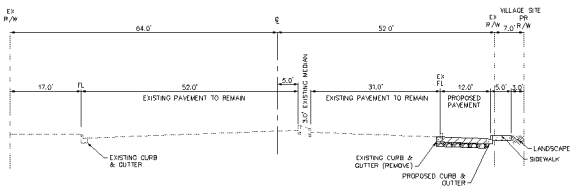
PARCEL NAME	AREA (AC)	DISPOSITION
1	1.60	
2	0.69	
3	0.68	
4	0.82	
5	1.04	
6	0.61	
7	0.71	
8	4.02	
9	1.12	
10	3.51	
11	0.91	
12	4.04	
13	1.19	
A	0.07	ROADWAY (CITY OWNERSHIP)
B	0.04	ROADWAY (CITY OWNERSHIP)
C	0.89	SLOPE/LANDSCAPE (CITY OWNERSHIP)
D	0.74	SLOPE/LANDSCAPE (CITY OWNERSHIP)
TOTAL	22.66	



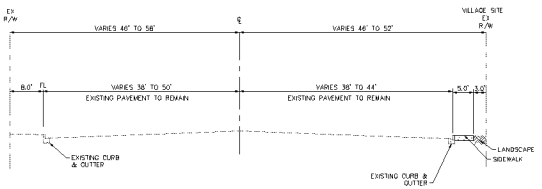
RIGHT TURN IMPROVEMENTS ON EDINGER AVENUE TYPICAL SECTION
SECTION D-D



LEFT TURN IMPROVEMENTS ON VALENCIA AVENUE TYPICAL SECTION
SECTION A-A



RIGHT TURN IMPROVEMENTS ON VALENCIA AVENUE TYPICAL SECTION
SECTION B-B



KENSINGTON PARK DRIVE TYPICAL SECTION
SECTION C-C

Kimley»Horn
© 2010 KIMLEY-HORN AND ASSOCIATES, INC.
765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: (714) 939-1030 FAX: (714) 938-9488
WWW.KIMLEY-HORN.COM

No.	REVISIONS	DATE	BY

LICENSED PROFESSIONAL
JASON MUREDDU
CA LICENSE NUMBER 63164
7/17/2015
DATE

KHA PROJECT 094532001
DATE 7/17/2015
SCALE AS SHOWN
DESIGNED BY WS
DRAWN BY WS
CHECKED BY JM

TENTATIVE PARCEL MAP
2015-127
TITLE SHEET

TUSTIN LEGACY
PREPARED FOR
REGENCY CENTERS
825 WILSHIRE BOULEVARD, SUITE 2200
LOS ANGELES, CA 90017
T 213.553.2000
LUISGOMEZ@REGENCYCENTERS.COM

SHEET NUMBER
C-001

Plotted By:Kershaw, Chanson Saved By:K:\TUSTIN LEGACY - Layout\TITLE SHEET - July 17, 2015 - 03:22:16pm K:\ORA-LGCY\094532001 - tustin legacy\CAD\Entitlements\Tentative Parcel Map\Title Sheet.dwg

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

ATTACHMENT 9 - DEPICTION OF HORIZONTAL IMPROVEMENTS



LEGEND

- ROAD CENTERLINE
- TRACT BOUNDARY
- MAP BOUNDARY
- PROPOSED LOT LINES
- EXISTING LOT LINES
- PROPOSED IRWD WATER AND SEWER EASEMENT LINES
- PROPOSED ROADWAY EASEMENT

PROPOSED EASEMENTS/ DEDICATIONS

[1] PUBLIC IRWD WATER AND SEWER EASEMENT, PER SEPARATE INSTRUMENT

SUBDIVISION SUMMARY

SUBDIVISION SUMMARY		
PARCEL NAME	AREA (AC)	DISPOSITION
1	1.60	
2	0.69	
3	0.66	
4	0.82	
5	1.04	
6	0.61	
7	0.71	
8	4.02	
9	1.12	
10	3.51	
11	0.91	
12	4.04	
13	1.19	
A	0.07	ROADWAY (CITY OWNERSHIP)
B	0.04	ROADWAY (CITY OWNERSHIP)
C	0.89	SLOPE/LANDSCAPE (CITY OWNERSHIP)
D	0.74	SLOPE/LANDSCAPE (CITY OWNERSHIP)
TOTAL	22.66	

GRAPHIC SCALE IN FEET
0 20 40 80

TUSTIN LEGACY
PREPARED FOR
REGENCY CENTERS
915 WILSHIRE BOULEVARD, SUITE 2200
LOS ANGELES, CA 90017
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TENTATIVE PARCEL MAP
2015-127
TENTATIVE PARCEL MAP

SHEET NUMBER
C-101

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REVISIONS

NO.	DATE	BY

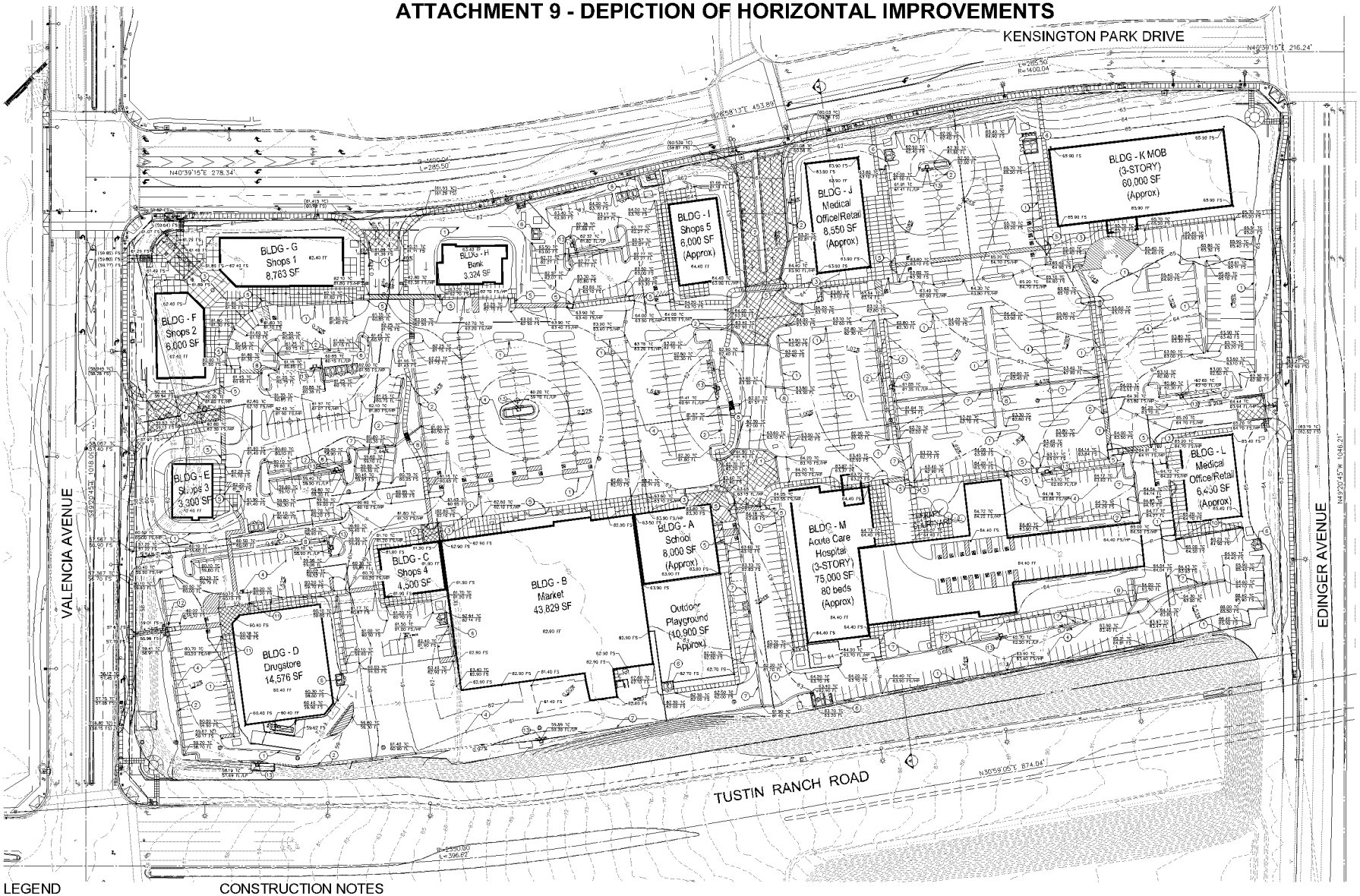
LICENSED PROFESSIONAL
JASON MUSEKAMP
CA LICENSE NUMBER
63164
7/17/2015

KHA PROJECT
094532001
DATE
7/17/2015
SCALE AS SHOWN
DESIGNED BY WS
DRAWN BY WS
CHECKED BY JM
UNIT ---

Plotted By:Kershaw, Chelsea Drawn By:TUSTIN LEGACY Layout:TENTATIVE PARCEL MAP July 17, 2015 03:22:57pm K:\ORA_LGE\094532001 — Tustin Legacy\CAD plans\exhibits\Tentative Parcel Map\PROPOSED LOTS.dwg

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ATTACHMENT 9 - DEPICTION OF HORIZONTAL IMPROVEMENTS



LEGEND

- CENTER LINE
- PROPERTY LINE
- EASEMENT LINE
- CIVIL LIMIT OF WORK LINE
- GRADE BREAK LINE
- RIDGE LINE
- FLOW LINE
- 2:1 SLOPE (MAX)
- PROPOSED SPOT GRADE
- EXISTING SPOT GRADE
- HIGH POINT SPOT GRADE
- LOW POINT SPOT GRADE
- PROPOSED FLOW (DIRECTION AND SLOPE)
- PROPOSED CATCH BASIN
- PROPOSED STORM DRAIN MANHOLE

CONSTRUCTION NOTES

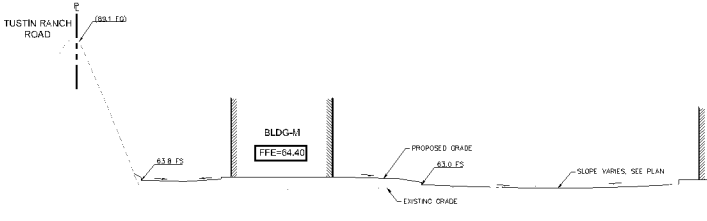
1. CONSTRUCT 6" CURB
2. CONSTRUCT 6" CURB AND GUTTER
3. HARDSCAPE TO BE DETERMINED
4. CONSTRUCT AC PAVEMENT
5. CONSTRUCT ADA CURB RAMP
6. TRASH ENCLOSURE PER ARCHITECT'S PLANS
7. CONSTRUCT 3' VALLEY GUTTER
8. CONSTRUCT 2' DOUBLE CURB CHANNEL
9. TRANSITION 6" CURB TO 8" CURB
10. TRANSITION 6" CURB TO 4" CURB
11. TRANSITION 6" CURB TO 0" CURB
12. PARKWAY DRAIN
13. INSTALL CATCH BASIN

BENCHMARK

COUNTY OF ORANGE BENCHMARK NO: 3B-97-85

DESCRIBED BY OCS 2002 - FOUND 3 3/4" OCS ALUMINUM BENCHMARK DISK STAMPED "3B-97-85", SET IN THE SOUTHEASTERLY END OF A 1 FT. BY 24 FT. CONCRETE HEADWALL. MONUMENT IS LOCATED ALONG THE NORTHEASTERLY SIDE OF EDINGER AVENUE, 0.75 MILES NORTHWESTERLY OF THE CENTERLINE OF HARVARD AVENUE, 80FT NORTHEASTERLY OF THE CENTERLINE OF EDINGER AND 52 FT SOUTHWESTERLY OF THE SOUTHWEST RAIL ALONG THE ATCHINSON TOPEKA AND SANTA FE RAILWAY. MONUMENT IS SET 7.0 FT. BELOW THE RAILROAD TRACKS

ELEVATION: 58.713 FEET (NAVD 88)



SECTION A-A

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REVISIONS

NO.	DATE	BY

LICENSED PROFESSIONAL
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CA LICENSE NUMBER
63164
7/17/2015

KHA PROJECT
094532001
DATE
7/17/2015
SCALE: AS SHOWN
DESIGNED BY: WS
DRAWN BY: WS
CHECKED BY: JM
DATE: ---

TENTATIVE PARCEL MAP
2015-127
CONCEPTUAL GRADING SHEET

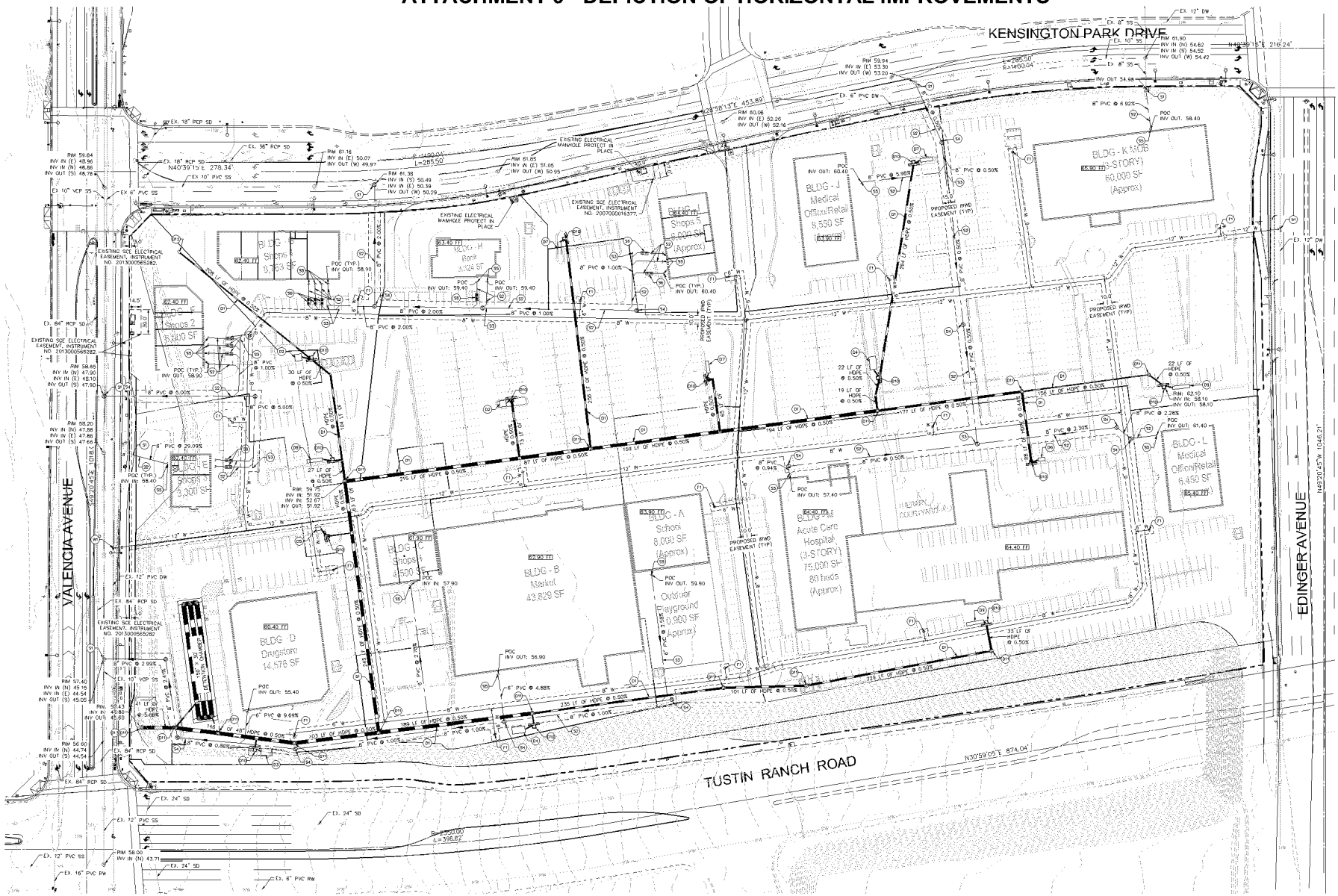
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SHEET NUMBER
C-201

Plotted By: Kimley-Horn and Associates, Inc. | Plot Date/Time: Jul 17, 2015 03:21:05pm | K:\ORA_LGE\094532001 - Tustin Legacy\Civil\Conceptual Grading Sheet\Tentative Parcel Map\CONCEPTUAL GRADING SHEET.dwg

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ATTACHMENT 9 - DEPICTION OF HORIZONTAL IMPROVEMENTS



LEGEND

- CENTER LINE
- PROPERTY LINE
- IRWD EASEMENT LINE
- SS — EXISTING SANITARY SEWER PIPE
- SD — EXISTING STORM DRAIN PIPE
- W — EXISTING DOMESTIC WATER PIPE
- RW — EXISTING RECLAIMED WATER PIPE
- S — PROPOSED SANITARY SEWER PIPE
- PROPOSED STORM DRAIN PIPE
- W — PROPOSED DOMESTIC WATER PIPE
- POINT OF CONNECTION (@ BLDG)
- POINT OF CONNECTION (TO EXISTING)
- PROPOSED SEWER CLEANOUT
- PROPOSED REDUCED PRESSURE DETECTOR BACKFLOW ASSEMBLY
- 2.00% PROPOSED FLOW (DIRECTION AND SLOPE)

DOMESTIC WATER

- (W1) HOT TAP EXISTING WATER MAIN. COORDINATE TAP WITH LOCAL WATER PURVEYOR.
- (W2) INSTALL DOMESTIC WATER METER. COORDINATE WITH LOCAL WATER PURVEYOR.
- (W3) BUILDING POINT OF CONNECTION (5-FT FROM BUILDING FACE). REFER TO PLUMBING PLANS FOR CONTINUATION.

FIRE WATER

- (F1) INSTALL FIRE HYDRANT ASSEMBLY (6"x4"x2½"x2½").
- (F2) INSTALL FIRE DEPARTMENT CONNECTION (6"x2½"x2½") POTTER ROEMER MODEL NO. 5765, OR APPROVED EQUAL.

SEWER CONSTRUCTION NOTES

- (S1) CONNECT TO EXISTING SEWER MAIN / BREAK INTO EXISTING SSMH PER SSPWC CONSTRUCTION STD PLANS
- (S2) INSTALL 6" SDR-35 PVC SEWER LATERAL AT 1.00% SLOPE.
- (S3) INSTALL SEWER CLEANOUT PER DETAIL X, SHEET X.
- (S4) CONSTRUCT SEWER MANHOLE PER SSPWC STD PLANS
- (S5) BUILDING POINT OF CONNECTION. REFER TO PLUMBING PLANS FOR CONTINUATION.
- (S6) INSTALL GREASE INTERCEPTOR.

STORM DRAIN

- (D1) PROPOSED STORM DRAIN PIPING AND APPURTENANCES. CONTRACTOR TO REFER TO DRAINAGE PLAN FOR INFORMATION.
- (D2) MODULAR WETLAND MODEL NO. MWS-L-8-8
- (D3) MODULAR WETLAND MODEL NO. MWS-L-8-12
- (D4) MODULAR WETLAND MODEL NO. MWS-L-8-16
- (D5) MODULAR WETLAND MODEL NO. MWS-L-4-6
- (D6) MODULAR WETLAND MODEL NO. MWS-L-4-8
- (D7) MODULAR WETLAND MODEL NO. MWS-L-4-15
- (D8) MODULAR WETLAND MODEL NO. MWS-L-4-19
- (D9) MODULAR WETLAND MODEL NO. MWS-L-4-21
- (D10) INSTALL CURB INLET
- (D11) INSTALL STORM DRAIN MANHOLE
- (D12) INSTALL GRATE INLET
- (D13) REMOVE EXISTING BRICK AND MORTAR PLUG AND CONNECT TO EXITING SDI.

GENERAL NOTES:

1. SEE SITE PHOTOMETRIC PLAN FOR LIGHT POLE LOCATION.
2. FRANCHISED UTILITY ROUTING (ELECTRICAL, PHONE, GAS, AND CABLE TV) TO BE DETERMINED AT A LATER DATE DURING THE CONSTRUCTION DOCUMENT PHASE.

TUSTIN LEGACY
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TENTATIVE PARCEL MAP 2015-127
CONCEPTUAL UTILITY PLAN

SHEET NUMBER C-202

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LICENSED PROFESSIONAL
JASON MURDOCK
CA LICENSE NUMBER 63164
7/15/2015

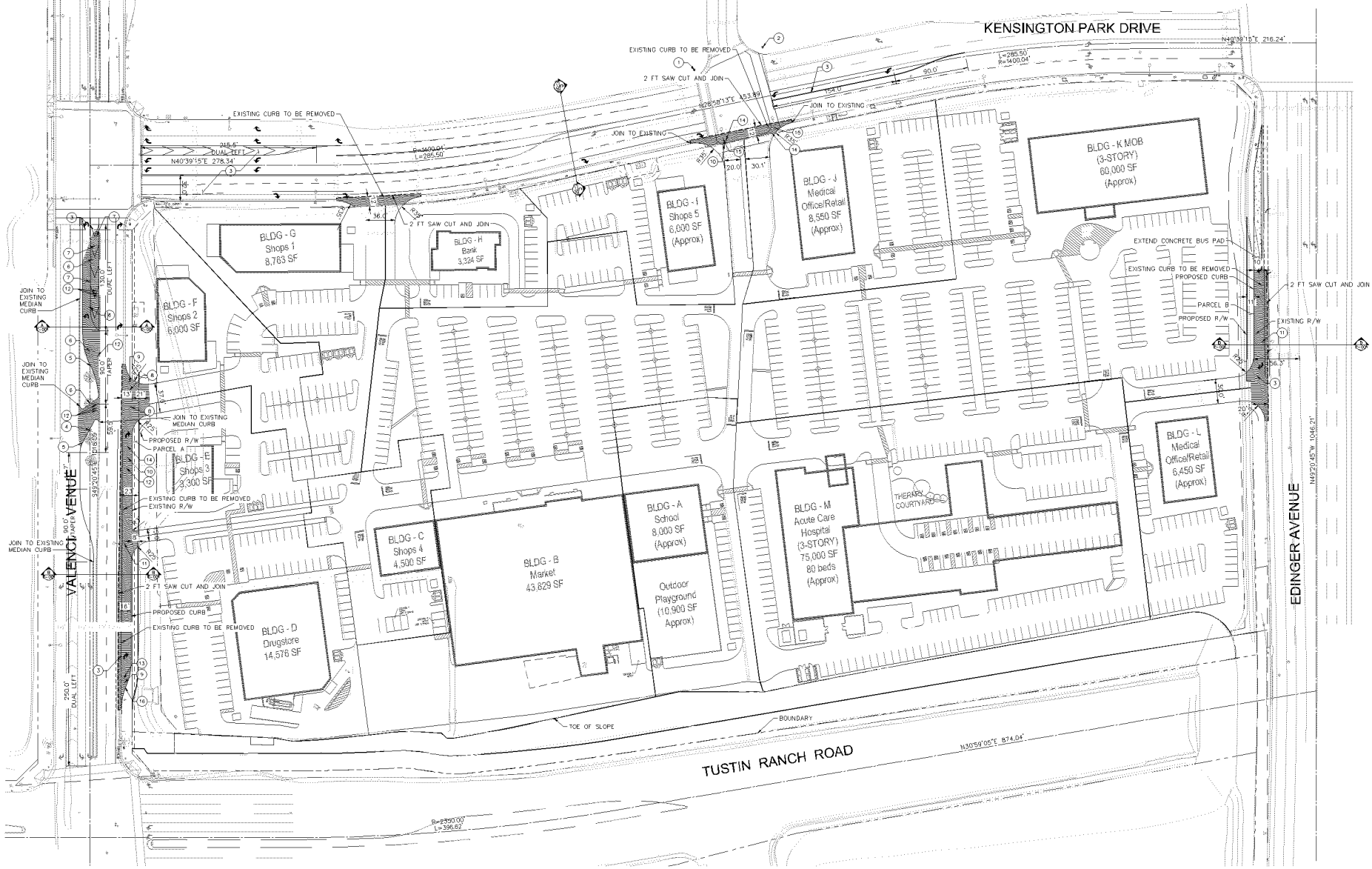
KHA PROJECT 094532001
DATE 7/15/2015
SCALE AS SHOWN
DESIGNED BY WS
DRAWN BY WS
CHECKED BY JM

No.	REVISIONS	DATE	BY

Plotted By:Kershner, Chelsea Sheet Set:TUSTIN LEGACY Layout:CONCEPTUAL UTILITY PLAN July 13, 2015 03:26:54pm K:\ORA_LDEV\094532001 — tustin legacy\CAD\pavement\Tentative Parcel Map\CONCEPTUAL UTILITY PLAN.dwg

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ATTACHMENT 9 - DEPICTION OF HORIZONTAL IMPROVEMENTS



LEGEND

- ROAD CENTERLINE
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY/LOT LINE
- 2 FT SAW CUT AND JOIN
- EXISTING ROAD MARKING
- PROPOSED ROAD MARKING
- CONSTRUCT 0.2" ARHM-66-C, PG 64-18,0.5" OVER 0.5" AC (TYPE III, B2-PG 64-10, 3/4") OVER 115" TYPE 2 AB
- PROPOSED CONCRETE AT BUS PAD

KEY NOTES

1. RECONSTRUCT SIGNAL POLE WITH LONGER MAST ARM.
2. INSTALL NEW SIGNAL POLE AND MAST ARM MAST ARM
3. PROPOSED STRIPING
4. RELOCATE WATER VALVE
5. PROPOSED MEDIAN CURB
6. REMOVE TREE
7. REMOVE SIGNS
8. RELOCATE COMMUNICATION PULL BOX
9. RELOCATE CATV PULL BOX
10. RELOCATE TELEPHONE MANHOLE
11. RELOCATE STREET LIGHT
12. RELOCATE WATER METER
13. RELOCATE FOR BLOW OFF/BOTTOM DRAIN ASSEMBLY
14. RELOCATE TRAFFIC PULL BOX
15. RELOCATE TRAFFIC SIGNAL
16. RELOCATED CABLE PULL BOX

GRAPHIC SCALE IN FEET
0 20 40 80

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NO.	REVISIONS	DATE	BY

LICENSED PROFESSIONAL
JASON MIRCHEVA
LICENSE NUMBER
63164
7/17/2015
DATE

KHA PROJECT
094553001
7/17/2015
SCALE: AS SHOWN
DESIGNED BY: MS
DRAWN BY: MS
CHECKED BY: JM

TENTATIVE PARCEL MAP
2015-127
OFFSITE IMPROVEMENTS

SHEET NUMBER
C-203

Plotted By: Fletcher, Chelsea Sheet Set: TUSTIN LEGACY Layout: C-203 OFFSITE IMPROVEMENTS July 17, 2015 03:25:45pm K:\ORA_LIEX\094553001 - Tustin Legacy\CAD\planmeets\Tentative Parcel Map\OFFSITE IMPROVEMENTS.dwg

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ATTACHMENT 10

LIST OF ENVIRONMENTAL REPORTS AND STATEMENTS

(as of 8/28/-215)

Provided as Part of City RFP Materials

1. Finding of Suitability to Transfer, dated 9/28/01
2. City Council Resolution 06-43, dated 4/3/06
3. Final EIS/EIR, Volume 1, dated 11/18/99
4. Final EIS/EIR, Volume 2, dated 12/9/99
5. Final EIS/EIR, Volume 3
6. Supplement EIR for TRR Responses, dated 8/26/04

Provided by City Letter or Email

7. Environmental Baseline Survey, dated 3/21/2001 (provided by email 3/25/2015)

ATTACHMENT 11
FORM OF QUITCLAIM DEED

CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §6103 AND §27383.

Recording requested by and when recorded mail to:

City Manager
The City of Tustin
300 Centennial Way
Tustin, CA 92780

Mail Tax Statements to:

Regency Centers Acquisition, LLC
915 Wilshire Blvd., Suite 2200
Los Angeles, CA 90017
Attn: John Mehigan

Space Above This Line Reserved for Recorder's Use

QUITCLAIM DEED
FOR PARCEL 1C
AND COVENANTS, CONDITIONS AND RESTRICTIONS, INCLUDING ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471

This Quitclaim Deed For Parcel 1C and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1471 (this "**Quitclaim Deed**") is made on this ____day of _____, 20__ (the "**Quitclaim Date**"), by the CITY OF TUSTIN, California, a municipal corporation of the State of California ("**GRANTOR**"), in favor of 1C TUSTIN LEGACY, LLC, a Delaware limited liability company ("**GRANTEE**").

WHEREAS:

A. The United States of America ("**Government**") and the GRANTOR entered into that certain Agreement between the United States of America (acting by and through the Secretary of the Navy or designee) and the City of Tustin, California, for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin ("**MCAS Tustin**"), dated May 13, 2002 ("**Conveyance Agreement**");

B. Pursuant to the Conveyance Agreement, the Government conveyed property at the Marine Corps Air Station Tustin (such property, "**Grantor Property**") to the GRANTOR pursuant to that certain Quitclaim Deed H and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002, that was recorded on May 14, 2002 in the Office of the County Recorder, Orange County, California ("**Official Records**") as Instrument Number 20020404598 ("**Government Deed**")

C. Pursuant to California Civil Code §1471, the Government determined that it is reasonably necessary to impose certain restrictions on the use of the Grantor Property to protect present and future human health or safety or the environment as a result of the presence of hazardous materials on portions of the Grantor Property described hereinafter with particularity;

D. The GRANTOR and the GRANTEE entered into the following: (i) that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____, 2015 ("**DDA**"), providing for the sale and development of a portion of the Grantor Property; and (ii) that certain Memorandum of Disposition and Development Agreement (Parcel 1C) ("**Memorandum of DDA**") to be recorded in the Official Records of even date with and immediately prior to the recording of this Quitclaim Deed;

E. The GRANTOR has executed that certain Declaration of Special Restrictions for Parcel 1C ("**Special Restrictions**"), consented to by the GRANTEE, which shall be recorded in the Official Records immediately prior to the recording of this Quitclaim Deed; and

F. The GRANTOR desires to convey and the GRANTEE desires to acquire a portion of the Grantor Property to facilitate economic redevelopment in accordance with that certain MCAS Tustin Reuse Plan adopted by the City Council of the City on October 17, 1996 and amended in September, 1998 ("**Reuse Plan**") and approved by the Government for MCAS Tustin.

1. NOW THEREFORE, the GRANTOR, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever quitclaim to the GRANTEE, all of the GRANTOR'S right, title and interest in and to that certain real property, comprising approximately 20.92 acres, more or less, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("**Land**"), together with all existing improvements, if any, presently located on the Land, all appurtenances pertaining to the Parcel (as hereinafter defined) or such improvements and all permits, licenses, approvals and authorizations issued by any governmental authority in connection with the Parcel. The Land, less and except all of the matters in Section 2 of this Quitclaim Deed, is referred to as the "**Parcel**."

2. EXCEPTING THEREOUT AND THEREFROM, however, and reserving to the GRANTOR, its successors and assigns, together with the right to grant and transfer all or a portion of the same, the following:

2.1 Any and all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights and other hydrocarbon by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Parcel together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Parcel or any other land, including the right to whipstock or directionally drill and mine from lands other than the Parcel, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Parcel and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to enter upon or use the surface of the Parcel in the exercise of such rights or otherwise adversely affect the use or operation of the Parcel as anticipated by this Agreement or the structural integrity of any improvements on the Parcel; and

2.2 Any and all water, water rights or interests therein appurtenant or relating to the Parcel or owned or used by the City in connection with or with respect to the Parcel no matter how acquired by the City, whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the perpetual right and power to explore, drill, re-drill and remove the same from or in the Parcel, to store the same beneath the surface of the Parcel and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by the City; but without, however, the right to enter upon or use the surface of the Parcel in the exercise of such rights or otherwise adversely affect the use or operation of the Parcel as anticipated by this Agreement or the structural integrity of any improvements on the Parcel;

Notwithstanding anything to the contrary set forth in this Quitclaim Deed, the reservation by the GRANTOR of the rights and interests in this Section 2 shall not be deemed to limit the GRANTEE'S right to construct foundations and other subsurface improvements and otherwise engage in subsurface construction activity in order to construct improvements on the Parcel.

3. SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, RESTRICTIONS, AND CONDITIONS, which shall be binding upon and enforceable against the Parcel and the GRANTEE, and its successors and assigns, in perpetuity:

3.1 The GRANTEE agrees to accept conveyance of the Parcel subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements and encumbrances of record, including, without limitation, the DDA, the Memorandum of DDA, and the Special Restrictions, which are covenants running with the land and are binding upon the GRANTEE and all successors and assigns of the GRANTEE owning all or any portion of Parcel for the benefit of the GRANTOR and its successors and assigns, unless or until such responsibilities and obligations are released pursuant to the provisions of the aforesaid documents, including the release of obligations under the DDA that GRANTEE may obtain pursuant to a Certificate of Compliance (as defined and further provided for in the DDA) executed by the City and recorded against the Parcel.

3.2 The Government Deed conveying the Parcel to the GRANTOR was recorded prior to recordation of this Quitclaim Deed. The GRANTOR has no knowledge regarding the accuracy of information provided by the Government regarding the environmental condition of

the Parcel and makes no warranties regarding the environmental conditions of the Parcel. The GRANTOR has no knowledge regarding the accuracy or adequacy of the Government's remediation of the Parcel as provided in the Government Deed.

3.3 The italicized information below is copied verbatim (except as discussed below) from Sections 2.2 through 2.6, and Sections 2.8, 2.9 and 3 of the Government Deed conveying the Grantor Property to the GRANTOR. To the extent applicable to the Parcel conveyed hereunder, by acceptance of this Quitclaim Deed, the GRANTEE, on behalf of itself and its successors and assigns acquiring fee title to all or any portion of the Property, hereby acknowledges and assumes all responsibilities placed upon the GRANTOR under the terms of the aforesaid Government Deed solely with respect to the Parcel conveyed hereunder. Within the italicized information contained in this Section 3.3 only, the term "Grantor" shall mean the Government, the term "Grantee" shall mean the City of Tustin and the term "Property" shall mean the Grantor Property, including, without limitation, the Parcel. To avoid confusion, within the italicized information, the word "Government" has been added in brackets after the word "Grantor", and the words "City of Tustin" have been added in brackets after the word "Grantee."

2.2 FOSTs have been completed and an Environmental Baseline Survey ("EBS") report is referenced in the FOSTs. The FOSTs and EBS reference environmental conditions on the Property and on other property not subject to this Deed. GRANTEE ["City of Tustin"] acknowledges that it has received copies of the EBS and the FOSTs and that all documents referenced therein have been made available to GRANTEE ["City of Tustin"] for inspection and copying.

2.3 Except as otherwise provided herein, or as otherwise provided by law, the GRANTEE ["City of Tustin"] acknowledges that it has inspected, is aware of and accepts the condition and state of repair of the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of the GRANTOR ["Government"] regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation which may be required to be undertaken by GRANTOR ["Government"] pursuant to paragraph 2.6 below, the GRANTEE ["City of Tustin"] further acknowledges that the GRANTOR ["Government"] shall not be liable for any latent or patent defects in the Property except to the extent required by applicable law.

2.4. ***Asbestos Containing Material***

2.4.1. GRANTEE ["City of Tustin"] is hereby informed an does hereby acknowledge that hazardous materials in the form of asbestos or asbestos-containing materials ("ACM") have been and found and are otherwise presumed to exist in Buildings/Structures 10P, 516, 567, 3002T, 6168, and 6480 on the Property. The EBS and FOSTs disclose the presence of known asbestos or ACM hazards in such buildings and structures on the Property.

2.4.2 GRANTEE ["City of Tustin"] covenants, on behalf of itself, its successor and assigns, as a covenant running with the land, that it will prohibit occupancy and use of buildings and structures, or portions thereof, containing known asbestos or ACM hazards prior to abatement of such hazards. In connection with its use and occupancy of the Property,

including, but not limited to, demolition of buildings and structures containing asbestos or ACM, it will comply with all applicable federal, state and local laws relating to asbestos and ACM.

2.4.3 An ACM survey has not been conducted for Structure 39. GRANTEE ["City of Tustin"] shall prohibit occupancy and use of Structure 39 and portions thereof until ACM surveys have been conducted by GRANTEE ["City of Tustin"] or its successors and assigns, and any necessary abatement required under applicable federal, state and local laws relating to asbestos and ACM has been completed by GRANTEE ["City of Tustin"] or its successor sand assigns.

2.4.4 The GRANTOR ["Government"] shall provide a notice of release, in recordable form, to the GRANTEE ["City of Tustin"] at such time as demolition of any buildings on the Property containing ACM has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ["City of Tustin"] that ACM has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This notice of release shall be deemed to remove all notices and restrictions relating to ACM from the Property. The GRANTOR ["Government"] shall have no obligation under this subparagraph for the demolition of buildings or the removal of ACM or soil remediation related to such demolition or removal action.

2.5. ***Lead Based Paint (LBP)***

2.5.1. The Property may include improvements that are presumed to contain LBP because they are thought to have been constructed prior to 1978. Buildings 23A, 23B, 23C, 23D, 23E, and 23F are restricted from residential use and children are not allowed to occupy the buildings. When these buildings are demolished, the GRANTEE ["City of Tustin"], or its successors and assigns, will be required to demolish the buildings in accordance with applicable laws and conduct post-demolition sampling and abatement of any soil-lead hazards related to the demolition prior to occupation of any newly constructed buildings. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section 745.113 the following notice is provided: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

2.5.2 The GRANTEE ["City of Tustin"] hereby acknowledges the required disclosure of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X). The GRANTEE ["City of Tustin"] acknowledges the

receipt of available records and reports pertaining to LBP and/or LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet "Protect Your Family from Lead in Your Home" (EPA 747-K-94-001). Furthermore, the GRANTEE ["City of Tustin"] acknowledges that it has read and understood the EPA pamphlet.

2.5.3 The GRANTEE ["City of Tustin"] covenants and agrees that, in any improvements on the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will be disclosed to potential occupants in accordance with Title X before use of such improvements as a residential dwelling (as defined in Title X). Further, the GRANTEE ["City of Tustin"] covenants and agrees that LBP hazards in target housing will be abated in accordance with Title X before use and occupancy as a residential dwelling. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six [6] years of age resides, or is expected to reside, in such housing) or any zero-bedroom dwelling.

2.5.4 The GRANTEE ["City of Tustin"] covenants and agrees that in its use and occupancy of the Property, it will comply with Title X and all applicable federal, state, and local laws relating to LBP. The GRANTEE ["City of Tustin"] acknowledges that the GRANTOR ["Government"] assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE ["City of Tustin"], or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with LBP on the Property, arising after the conveyance of the Property from the GRANTOR ["Government"] to the GRANTEE ["City of Tustin"], whether the GRANTEE ["City of Tustin"] has properly warned, or failed to properly warn, the persons injured.

2.5.5 The GRANTOR ["Government"] shall provide a notice of release, in recordable form, to the GRANTEE ["City of Tustin"] at such time as demolition of the buildings on the Property containing LBP has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ["City of Tustin"] that LBP has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to LBP from the Property. The GRANTOR ["Government"] shall have no obligation under this subparagraph for the demolition of buildings or the removal of LBP or soil remediation related to such demolition or removal action.

2.6 ***Notices And Covenants****:*

2.6.1. ***Notices: Hazardous Substance Notification****. Pursuant to 42 U.S.C. §9620(h)(3)(A), and the provisions of 40 C.F.R. part 373, the GRANTOR ["Government"] hereby gives notice that hazardous substances were stored for one year or more, released or disposed of on the Property. The information contained in this notice is required by regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund"), 42 U.S.C. Section 9620(h). The GRANTOR ["Government"] has made a complete search of its files and records concerning the Property. Based on that search, the type and quantity of such hazardous substances, the time at which such*

storage, release or disposal took place, to the extent such information is available, and a description of the remedial action taken, if any is contained in Exhibit "B".

2.6.2. ***Grant of Covenant [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(I)].*** *The GRANTOR ["Government"] covenants and warrants that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken before the date of transfer.*

2.6.3. ***Additional Remediation Obligation [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(II)].*** *The GRANTOR ["Government"] covenants and warrants that GRANTOR ["Government"] shall conduct any additional remedial action found to be necessary after the date of transfer for any hazardous substance existing on the Property prior to the date of this Deed. This covenant shall not apply to the extent that the GRANTEE ["City of Tustin"] caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant.*

2.6.4. ***Access [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii)].*** *In connection with GRANTOR'S ["Government"] covenant in 2.6.3 above and in connection with ongoing remediation on GRANTOR'S ["Government"] property adjacent to the Property, GRANTEE ["City of Tustin"] agrees on behalf of itself, its successors and assigns, as a covenant running with the land, that GRANTOR ["Government"], or its officers, agents, employees, contractors and subcontractors, shall have the right, upon reasonable notice to GRANTEE ["City of Tustin"], to enter upon the Property in any case in which a response or corrective action is found to be necessary at such property after the date of this deed or such access is necessary to carry out a response action or corrective action on adjoining property. Neither GRANTEE ["City of Tustin"], nor its successors and assigns, shall have any claim on account of such entries against the United States or any of its officers, agents, employees, contractors or subcontractors. The right to enter shall include the right to conduct tests, investigations and surveys, including, where necessary, drilling, test-pitting, boring and other similar activities. Such right shall also include the right to construct, operate, maintain or undertake any other response or corrective action as required or necessary, including, but not limited to monitoring wells, pumping wells and treatment facilities, and the installation of associated utilities. In exercising these rights of access, except in case of imminent and substantial endangerment to human health or the environment, the GRANTOR ["Government"] (1) shall give the GRANTEE ["City of Tustin"] reasonable notice of any action to be taken related to such remedial or corrective actions on the Property, and (2) make reasonable efforts to minimize interference with the on-going use of the Property. Furthermore, the GRANTOR ["Government"] and GRANTEE ["City of Tustin"] agree to cooperate in good faith to minimize any conflict between the necessary environmental investigation and remediation activities and the GRANTEE's ["City of Tustin"] use of the Property. Any inspection, survey, investigation or other response, corrective or remedial action undertaken by GRANTOR ["Government"] will, to the maximum extent practical, be coordinated with representatives designated by the GRANTEE ["City of Tustin"].*

In connection with GRANTOR's ["Government"] remedial actions described above, GRANTEE ["City of Tustin"] agrees on behalf of itself, its successors and assigns, as a covenant running with the land, to comply with the provisions of any health or safety plan in effect during the course of any such action.

2.8 ***Indemnification Regarding Transferees****. The GRANTOR ["Government"] hereby recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Pub. L. 102-484), as amended, regarding indemnification of transferees of closing Department of Defense property.*

2.9 ***Non-Discrimination****. GRANTEE ["City of Tustin"] covenants for itself, its successors and assigns, that it will comply with all applicable provisions of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1975 in the use, occupancy, sale or lease of the Property. The foregoing shall not be construed to prohibit the operation of federal or state approved programs focusing on the special needs of the homeless, veterans, victims of domestic violence and other classes of persons at risk; nor shall it be construed to prohibit employment practices not otherwise prohibited by law. The GRANTOR ["Government"] shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.*

3. ***NO HAZARD TO AIR NAVIGATION****: GRANTEE ["City of Tustin"] covenants for itself, its successors and assigns, that in connection with any construction or alteration on the Property, it will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.*

3.4 The responsibilities and obligations placed upon the GRANTOR by the Government shall run with the land and be binding on the GRANTEE and all subsequent owners of the Parcel or any portion thereof, unless and until such responsibilities and obligations are released pursuant to the provisions set forth in the Government Deed.

3.5 As further set forth in the DDA, and subject to the terms and conditions thereof, GRANTEE acknowledges that it has examined the Parcel and is buying the Parcel from the GRANTOR in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, which provisions shall survive the close of escrow related to this transaction and do not merge with this Quitclaim Deed.

4. **DDA Provisions**.

4.1 **Definitions**. Pursuant to the DDA, the City has imposed certain covenants, conditions and restrictions on the Parcel, including the releases contained in Section 4.5.2 of the DDA, which are set forth verbatim below in italics and each of which is hereby declared to be a covenant running with the land in perpetuity. Within the italicized language which follows, section references shall be to sections of the DDA, references to "this Agreement" shall mean the DDA, references to the "Effective Date" shall mean ***[insert Effective Date of DDA]*** and initially capitalized terms shall have the meanings set forth in Exhibit "C" attached hereto and incorporated herein by this reference.

4.2 **Releases**. Section 4.5.2(f) of the DDA provides as follows:

*(f) Release. Developer, on behalf of itself and each Successor Owner and every Person claiming by, through or under Developer or any Successor Owner (each a "**Releasing Party**"), hereby waives, as of the Effective Date, and agrees to waive, as of . . . Close of Escrow, the right of each Releasing Party to recover from, and fully and irrevocably releases, the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns (individually, a "**Released Party**" and collectively, the "**Released Parties**") from any and all Claims that Developer or any Releasing Party may now have or hereafter suffer or acquire arising from or related to: (i) any Due Diligence Information, (ii) any condition of the Property or any current or future improvement thereon, known or unknown by any Releasing Party or any Released Party, including as to the extent or effect of any grading of the Development Parcels; (iii) any construction defects, errors, omissions or other conditions, latent or otherwise, including environmental matters, as well as economic and legal conditions on or affecting the Property, or any portion thereof; (iv) the existence, Release, threatened Release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, or from, the Property or any current or future improvement thereon or any portion thereof; (v) Claims of or acts or omission to act of any Governmental Authority or any other third party arising from or related to any actual, threatened, or suspected Release of a Hazardous Material on, in, under, or from, about, or adjacent to the Property or any current or future improvement thereon, including any Investigation or Remediation at or about the Property or any current or future improvement thereon; and/or (vi) arising from or related to the Tustin Legacy Fair Share Backbone Infrastructure Program, any community facilities district or the cost or extent thereof, or the amount of the Project Fair Share Contribution or any community facilities district assessment against the Property, Development Parcels and/or Improvements described in this Agreement; provided that the foregoing release by the Releasing Parties shall not extend to (A) any breach by the City of any of the representations or warranties of the City set forth in Sections 3.3 or 18.12 of this Agreement, (B) any breach by the City of any of the covenants or obligations set forth in this Agreement or any Other Agreement, (C) any Claim that is the result of the gross negligence or willful misconduct of the City, or (D) any actions of the City or any of the Released Parties affecting a portion of the Property which occur following the Close of Escrow with respect to such portion of the Property. This release includes Claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer's release of the Released Parties. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:*

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

In this connection and to the extent permitted by law, Developer on behalf of itself,

and the other Releasing Parties hereby agrees, represents and warrants, which representation and warranty shall survive . . . Close of Escrow and the termination of this Agreement and shall not be merged with any Quitclaim Deed, that (x) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected, (y) the waivers and releases in this Section 4.5.2(f) have been negotiated and agreed upon in light of that realization and (z) Developer, on behalf of itself and the other Releasing Parties, nevertheless hereby intends to release, discharge and acquit the Released Parties from any such unknown Claims and controversies to the extent set forth above which might in any way be included as a material portion of the consideration given to the City by Developer in exchange for the City's performance hereunder.

BY INITIALING BELOW, DEVELOPER ACKNOWLEDGES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

_____ _____

CITY'S INITIALS *DEVELOPER'S INITIALS*

[remaining text of Section 4.5.2(f) of the DDA is intentionally omitted]

4.3 **Equitable Servitude**. The release set forth in Section 4.2 of this Quitclaim Deed is hereby declared to be an equitable servitude and a covenant running with the land comprising the Parcel for the benefit of the City Benefited Property and the City and each Successor Owner owning all or any portion of such City Benefited Property, burdening the Parcel and GRANTEE and the Successor Owners owning all or any portion of the Parcel and all Persons claiming by, through or under GRANTEE or any Successor Owner of the Parcel or any portion thereof (and for such additional period as may be applicable during the period in which the DDA remains effective) and to further evidence its effectiveness with respect to GRANTEE and the Successor Owners of the Parcel has been included in its entirety in this Quitclaim Deed.

5. This Quitclaim Deed is made and accepted upon (a) the covenants, conditions, restrictions and other matters set forth in the Special Restrictions, which are incorporated herein by reference with the same force and effect as though fully set forth herein, and (b) subject to reservations, covenants and restrictions as set forth in the Government Deed. Each future transfer or conveyance of the Parcel or any portion thereof shall include notice of the Special Restrictions and in addition shall include those disclosures and environmental covenants contained in the Government Deed.

5. The terms of this Quitclaim Deed are hereby agreed and declared by the GRANTEE and the GRANTOR to be covenants running with the land and enforceable as restrictions and equitable servitudes against the Parcel, and are hereby declared to be and shall be binding upon the Parcel and the GRANTEE and all successors and assigns of the GRANTEE owning all or

any portion of the Parcel for the benefit of the City Benefited Property (legally described on Exhibit "D" attached to this Quitclaim Deed and incorporated herein by this reference) and the GRANTOR, and the GRANTOR shall retain the right to enforce the restrictions and equitable servitudes against the Parcel and the same shall be enforceable solely by the GRANTOR notwithstanding any future transfer of the City Benefited Property or any interest therein or portion thereof.

{*remainder of page is blank*}

IN WITNESS WHEREOF, the GRANTOR, THE CITY OF TUSTIN, has caused this Quitclaim Deed to be executed on the day first above written.

CITY OF TUSTIN

CITY OF TUSTIN:

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By:

_____

_
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

{signatures continued on next page}

ACKNOWLEDGEMENT OF GRANTEE'S COVENANTS

BY EXECUTING THIS QUITCLAIM DEED BELOW, ON AND AS OF THE DATE WRITTEN BELOW, GRANTEE HEREBY ACKNOWLEDGES AND ACCEPTS on behalf of itself and all subsequent owners of the Parcel or any portion thereof: (A) this Quitclaim Deed and the covenants and agreements of the GRANTEE contained in this Quitclaim Deed and (B) the Special Restrictions and assumes and agrees to be bound by all of the obligations and liabilities, covenants, conditions, and restrictions in the Special Restrictions which are the responsibility of the "Developer" thereunder.

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
a Delaware limited partnership,
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation,
Its General Partner

Dated: _____

By: _____
John Mehigan
Vice President

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

Exhibit "A"
Legal Description of Parcel

Exhibit "B"
Description of the Remedial Action Taken by the Government

EXHIBIT "C"
DDA Definitions Applicable to Section 4.2 of the Quitclaim Deed

"**Agreement**" shall mean the DDA as defined in this Quitclaim Deed.

"**City**" shall mean the GRANTOR as defined in this Quitclaim Deed and each assignee or successor to the City's rights and powers under this Quitclaim Deed.

"**City Benefited Property**" shall mean the "City Benefited Property" legally described on Exhibit "D" to this Quitclaim Deed.

"**Claim**" or "**Claims**" shall mean any and all claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including attorneys' fees, fees of expert witnesses, and consultants' and court and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes, or any type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

"**Close of Escrow**" shall mean the Quitclaim Date.

"**Developer**" shall mean the GRANTEE pursuant to this Quitclaim Deed and all subsequent owners of the Parcel or any portion thereof.

"**Development Parcels**" shall mean the "Land" as defined in this Quitclaim Deed.

"**DA**" shall mean the Development Agreement by and between GRANTOR and GRANTEE with respect to the Parcel Recorded on _____, as Instrument No._____ .

"**Due Diligence Information**" shall mean any and all information or documentation relating to the Property furnished to GRANTEE by GRANTOR, or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors or consultants, in connection with Developer's due diligence pursuant to the DDA.

"**Environmental Agency**" shall mean the United States Environmental Protection Agency; the California Environmental Protection Agency and all of its sub-entities, including any Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Toxic Substances Control, the South Coast Air Quality Management District, and the California Air Resources Board; the City of Tustin; any Fire Department or Health Department with jurisdiction over the Property; and/or any other federal, State, regional or local governmental agency or entity that has or asserts jurisdiction over Hazardous Substance Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Materials in, on, under, about, or affecting the Project, the Development Parcels or any Improvements thereon.

"**Environmental Laws**" shall mean any federal, state, regional or local laws, ordinances,

rules, regulations, requirements, orders, directives, guidelines, or permit conditions, in existence as of March 11, 2014 or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Materials, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Materials. Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("**CERCLA**"); the Resource Conservation and Recovery Act, as amended, (42 U.S.C. Section 6901 et seq.) ("**RCRA**"); the federal Water Pollution Control Act, as amended, (33 U.S.C. Section 1251 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. Section 2601 et seq.); the Hazardous Substances Account Act (Chapter 6.8 of the California Health and Safety Code Section 25300 et seq.); Chapter 6.5 commencing with Section 25100 (Hazardous Waste Control) and Chapter 6.7 commencing with Section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Water Code, Sections 13000 et seq.

"**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 GRANTOR and GRANTEE, the Project, the Property or such portions of the foregoing as the context indicates.

"**Hazardous Materials**" shall mean and include the following:

(a) "**Hazardous Substance**", "**Hazardous Material**", "**Hazardous Waste**", or "**Toxic Substance**" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. subsection 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. subsection 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. subsection 6901, et seq.;

(b) An "**Extremely Hazardous Waste**", a "**Hazardous Waste**", or a "**Restricted Hazardous Waste**", under subsections 25115, 25117, or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to subsection 25140 or 44321 of the California Health and Safety Code;

(c) "**Hazardous Material**", "**Hazardous Substance**", "**Hazardous Waste**", "**Toxic Air Contaminant**", or "**Medical Waste**" under subsections 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

(d) "**Oil**" or a "**Hazardous Substance**" listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydro carbonic substance or by-product;

(e) Listed or defined as a "**Hazardous Waste**", "**Extremely Hazardous**

Waste", or an "**Acutely Hazardous Waste**" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Listed by the State as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code;

(g) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(h) Any material whose presence would require remediation pursuant to the guidelines set forth in the State Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(i) Pesticides regulated under the Feral Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. subsection 136 et seq.;

(j) Asbestos, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. subsection 2601 et seq.;

(k) Any radioactive material including any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. subsection 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. subsection 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code Section 114960 et seq.;

(l) Regulated under the Occupational Safety and Health Act, 29 U.S.C. subsection 651 et seq., or the California Occupational Safety and Health Act, California Labor Code subsection 6300 et seq.; and/or

(m) Regulated under the Clean Air Act, 42 U.S.C. subsection 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"**Improvements**" shall mean the various improvements, including without limitation, buildings, structures, and accompanying amenities and above and below ground infrastructure improvements, including, without limitation, utilities, utility extensions, utility systems, landscaping, hardscaping, storm drains and detention facilities, constructed or to be constructed on the Property by GRANTEE as contemplated by the DDA.

"**Investigation(s)**" shall mean any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of or concerning the Property, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Materials.

"**Other Agreements**" shall mean this Quitclaim Deed, the Special Restrictions, the Memorandum of DDA, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, the CC&Rs and the DA to which the Parcel is subject and which are Recorded substantially concurrently with the Recording of this Quitclaim Deed.

"**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.

"**Project**" shall mean the construction and installation on the Parcel of the Improvements (as defined in this Quitclaim Deed).

"**Project Fair Share Contribution**" shall mean the fair share of the Tustin Legacy Backbone Infrastructure Program funding paid by the GRANTEE.

"**Property**" shall mean the "Parcel" as defined in this Quitclaim Deed, together with all existing improvements, if any, located thereon as of the Effective Date of this Quitclaim Deed.

"**Quitclaim Deed**" shall mean this Quitclaim Deed.

"**Record**", "**Recordation**", "**Recording**" and "**Recorded**" shall mean to record the specified instrument, or the current or past recording of the specified instrument, in the official records of Orange County California.

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

"**Remediate**" or "**Remediation**" shall mean any response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Materials as defined under comparable state and local laws, and any other cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Materials or Releases required by any Environmental Agency or within the purview of any Environmental Laws.

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

"**Successor Owner**" shall mean shall mean (a) with respect to the Parcel, each and every Person owning or acquiring fee title to or having a ground lease interest in all or any portion of the Parcel and (b) with respect to the City Benefited Property, each and every Person owning or acquiring fee title to all or any portion of the City Benefited Property.

"**Tustin Legacy Backbone Infrastructure Program**" shall mean the Tustin Legacy Backbone Infrastructure Program in effect as of September, 2015.

Exhibit "D"
Legal Description of City Benefited Property

ATTACHMENT 12
MEMORANDUM OF DDA

CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §6103 AND §27383.

Recording requested by and when recorded mail to:
City Manager
The City of Tustin
300 Centennial Way
Tustin, CA 92780

MEMORANDUM OF
DISPOSITION AND DEVELOPMENT AGREEMENT
(PARCEL 1C)

This MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (PARCEL 1C) (this "**Memorandum of DDA**") is made as of _____, 20__ (the "**Memorandum Effective Date**") by and among the CITY OF TUSTIN, a municipal corporation of the State of California ("**City**") and 1C TUSTIN LEGACY, LLC, a Delaware limited liability company ("**Developer**"), to confirm that the City and the Developer have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____, 2015 (the "**DDA**"). The City and the Developer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**." Initially capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the DDA.

1. Real Property Affected by the DDA.

1.1. The Development Parcels. The property affected by the DDA consists of the real property legally described and depicted on Exhibit "A" attached hereto and incorporated herein by reference but excepting therefrom the matters set forth in Section 2 of the Quitclaim Deed (as defined below) (taking into account such exceptions, the "**Development Parcels**"), together with (a) all existing improvements, if any, presently located thereon, and (b) all appurtenances pertaining to the Development Parcels or such improvements, and (c) all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection with the Development Parcels (collectively, the "**Property**").

1.2. Quitclaim Deed. Immediately following the recordation of this Memorandum of DDA, a portion of the Property shall be conveyed by the City to Developer pursuant to, among other conveyance instruments, that certain "RETAIL PROPERTY QUITCLAIM DEED FOR A PORTION OF PARCEL 1C AND COVENANTS, CONDITIONS AND RESTRICTIONS, INCLUDING ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471" (the "**Retail Property Quitclaim Deed**"). Thereafter another portion of the Property may be conveyed pursuant to, among other conveyance instruments, one or more instruments denominated "HEALTHCARE PROPERTY QUITCLAIM DEED FOR A PORTION OF PARCEL 1C AND COVENANTS, CONDITIONS AND RESTRICTIONS, INCLUDING ENVIRONMENTAL RESTRICTIONS PURSUANT TO CIVIL CODE SECTION 1471 (the "**Healthcare Property Quitclaim Deed(s)**"; the Healthcare Property Quitclaim Deed(s) and the Retail Property Quitclaim Deed individually, each a "**Quitclaim Deed**" and collectively, the "**Quitclaim Deeds**").

1.3. Special Restrictions. This Memorandum of DDA has been executed as of the Memorandum Effective Date and shall be recorded in the Office of the County Recorder, Orange County, California (the "**Official Records**") prior to the recordation in the Official Records of (i) that certain Declaration of Special Restrictions for Parcel 1C executed by the City and acknowledged by Developer affecting the Development Parcels (the "**Special Restrictions**"), (ii) the Retail Property Quitclaim Deed, and (iii) the Healthcare Property Quitclaim Deed(s). The DDA, this Memorandum of DDA, and the Special Restrictions and all covenants, conditions, restrictions and obligations set forth in (a) the Retail Property Quitclaim Deed, with respect to the portion of the Property conveyed by the Retail Property Quitclaim Deed, and the Healthcare Property Quitclaim Deed(S), with respect to the portions of the Property conveyed by each Healthcare Property Quitclaim Deed, and (b) the Special Restrictions, shall be binding upon the Development Parcels, except that the Retail Property Quitclaim Deed shall be binding only on the portion of the Property conveyed by the Retail Property Quitclaim Deed, and the Healthcare Property Quitclaim Deed(s) shall only be binding on the portion of the Property conveyed by the Healthcare Property Quitclaim Deed(s), and, unless and until terminated in accordance with their respective terms, shall govern the use and development of the Property by Developer.

2. Effect of the DDA. The DDA imposes certain obligations, agreements, covenants, conditions and restrictions with respect to the Development Parcels and with respect to Developer's and its Successor Owner's acquisition, development, use, operation and ultimate disposition thereof, that run with the Development Parcels, unless and until terminated in accordance with their respective terms, as further set forth in the DDA. Among these obligations are the following:

(a) A requirement for payment of an Additional Purchase Price with respect to the Retail Parcel, which amounts shall be due and payable within thirty (30) days after the date upon which the first of the following occurs: (a) a single grocery store of not less than 40,000 GBA and a drug store on the Retail Parcel are fully stocked and open for a minimum of one (1) day as a retail establishment or (b) Tenants occupying at least 53,000 GBA on the Retail Parcel are fully stocked and open for a minimum of one (1) day as a retail establishment;

(b) Certain restrictions on Transfer (including without limitation, conveyance, lease and/or assignment) of Developer's interests under the DDA and/or in the Property (and the Improvements located thereon) or any portion thereof or interest therein, whether voluntary or involuntary, and certain restrictions on the Transfer of Control of Developer or Developer's Controlling Person contained in Section 2 of the DDA, that will terminate as to the Development Parcels subject thereto upon execution and recordation by the City of a Certificate of Compliance;

(c) Certain restrictions on Mortgages contained in Sections 2.2.3 and 2.2.4 and Section 17 of the DDA, including without limitation, a prohibition on encumbrance of the Retail Parcel and the Medical Office Parcel with any Mortgage and restrictions on encumbrance of the Other Healthcare Parcels with any Mortgage, which limitations will terminate as to the Development Parcels subject thereto upon execution and recordation by the City of a Certificate of Compliance;

(d) The releases contained in Section 4.5.2 of the DDA, which are restated in each of the Quitclaim Deed(s), and the indemnity and environmental provisions contained in Section 10.1 and Section 10.2 of the DDA, which are restated in the Special Restrictions, each of which remain in effect for the term set forth therein and are binding upon Developer and Successor Owners owning all or any portion of the Development Parcels and all Persons claiming by, through or under Developer or any Successor Owner of the Development Parcels, as and to the extent set forth in the respective Quitclaim Deeds and the Special Restrictions;

(e) To the extent provided under the DDA, the indemnities set forth in Sections 4.6.4(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.12.1 of the DDA shall (i) run with the land, (ii) survive the Close of Escrow and shall not merge into any of the Quitclaim Deed(s), and (iii) survive the sale of land to each Pad Transferee.

(f) The Right of Repurchase in favor of the City, contained in Section 16.3 of the DDA (copied verbatim below), that terminates as to the portion of the Development Parcels subject thereto upon execution and recordation by the City of a Certificate of Compliance; and

(g) The Right of Reversion in favor of the City contained in Section 16.4 of the DDA (copied verbatim below), that terminates as to the portion of the Development Parcels subject thereto upon execution and recordation by the City of a Certificate of Compliance.

3. Right of Repurchase and Right of Reversion. For ease of reference only, the following italicized Sections 16.3 and 16.4 are copied verbatim from the DDA and the term "**Repurchase Price**" as used herein shall have the meaning set forth in the DDA:

16.3 ***Right of Repurchase****.*

*For the period described in Section 16.3.4, the City shall have the right (the "**Right of Repurchase**"), from time to time, at any time after the date that Developer became in Material Default until such Material Default is cured to purchase the following ("**Reacquired Property**"): (a) all or any portion of the Retail Property and/or the Healthcare Property affected by the Material Default, (b) any Improvements thereon, (c) all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates*

and approvals from any governmental or quasi-governmental authority, and (d) all other appurtenant rights applicable to the respective Property, including the interest in any ground leases encumbering the respective Property .The Reacquired Property designated by the City shall be acquired by the City for the Repurchase Price less the amount of liens or Mortgages against the Reacquired Property and otherwise in accordance with this Section 16.3. The City may exercise its Right of Repurchase by delivering written notice to Developer stating that the City is exercising its Right of Repurchase and specifying the Reacquired Property; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Reacquired Property to the City pursuant to the Right of Repurchase and otherwise in accordance with this Section 16.3. The Right of Repurchase shall be a lien and encumbrance on the Property that shall be paramount to (a) the lien and charge of any Mortgage upon the Property, except that with respect to a first priority lien that is a Permitted Mortgage on the Other Healthcare Parcels with a Permitted Mortgagee, the implementation of the Right of Repurchase shall be subject to the terms of the Healthcare Subordination Agreement, and (b) the lien and charge of any mechanics' lien that may attach to the Property. The Reacquired Property shall be delivered to the City at close of escrow free and clear of all liens and Mortgages and subject only to the Permitted Exceptions at the time of Close of Escrow.

16.3.1 ***Termination of this Agreement****. In the event the City exercises its Right of Repurchase as to any Reacquired Property as provided in this Section 16.3, this Agreement shall terminate with respect to the Reacquired Property as of the date of the quitclaim deed conveying to the City title to the Reacquired Property (and the Healthcare Property Option Payment if then held by Escrow shall be paid to the City); provided that the provisions of this Section 16.3 shall survive the termination of the Agreement.*

16.3.2 ***Exercise of Right of Repurchase****. The City may exercise its Right of Repurchase by delivering written notice to Developer stating that the City is exercising its Right of Repurchase and specifying the Reacquired Property; provided that such notice is delivered at least ninety (90) calendar days prior to the date on which the City requires Developer to convey the Property to the City pursuant to the Right of Repurchase and otherwise in accordance with this Section 16.3. The Reacquired Property shall be delivered to the City at close of escrow free and clear of all liens and Mortgages and subject only to (x) the Permitted Exceptions at the time of the applicable original Close of Escrow for such portion of the Property and (y) all other matters created in connection with the Entitlements and the development of the Project pursuant to this Agreement.*

16.3.3 ***Process****. If the City is entitled to and elects to repurchase any designated Reacquired Property, the Parties shall: (a) within five (5) Business Days after the date of the City's notice of election to exercise the Right of Repurchase, open an escrow with an escrow agent designated by the City for the purchase and sale, and shall execute an escrow agreement that shall provide that Developer shall pay all costs of the escrow and shall include such usual and ordinary terms as are reasonably required by the escrow agent and by the transaction; (b) no later than five (5) Business Days after the opening of escrow, Developer shall place into the escrow appropriate quitclaim deeds and bill of sale conveying fee title to the Reacquired Property; and (c) no later than eighty-five (85) calendar days after the opening of the escrow, the City shall deposit into the escrow and amount equal to (i) the Repurchase Price minus (ii) the*

Lien Release Amounts, if any. The escrow shall close, and title to the Reacquired Property shall be conveyed to the City, no later than five (5) Business Days after the City has deposited into escrow the Repurchase Price. Concurrently with the close of escrow, Developer shall comply with its obligations under Section 14.3. Nothing herein shall restrict the right of the City to terminate its exercise of the Repurchase Right at any time prior to the close of escrow. The Property acquired by the City shall be free and clear of all liens and Mortgages, including Permitted Mortgages, and subject only to the Permitted Exceptions at the time of conveyance to the City. If and to the extent that the Repurchase Price is less than Permitted Mortgage Unpaid Balance plus the aggregate amounts that may then be due under any other Permitted Mortgages (and any other Mortgages that may then exist), all Mortgagees shall nonetheless execute reconveyances of deeds of trusts, releases of mortgages, and any other documents requested by the City to remove the liens of all Mortgages from title to the Property. The Parties agree that the amount of reduction in the Repurchase Price as compared with the Fair Market Value of the Property is justified in that it bears a reasonable relationship to the damages which the Parties estimate may be suffered by the City as the result of the Developer's Material Default in the performance of its obligations under this Agreement, which damages would be impractical or extremely difficult to quantify, and that the remedy provided for herein is not a penalty or forfeiture, and is a reasonable limitation on the Developer's potential liability as a result of Developer's default.

16.3.4 ***Termination of Right of Repurchase****. The Right of Repurchase shall remain in effect from the Close of Escrow with respect to a Parcel until (a) as to the Healthcare Parcel, the Recording by the City of a Certificate of Compliance with respect thereto and (b) as to the Retail Parcel, the satisfaction of the Conditions Precedent set forth in Section 9.3(a), (c), (d), (e), (f), (h) and (i) with respect to the Minimum Retail Improvements. In the event that Developer or any Person on behalf of Developer either (a) cures the Material Default which is the basis for the City's exercise of its Right of Repurchase, but excluding any Transfer in violation of this Agreement, or (b) Completes the Project prior to the closing of escrow on such Right of Repurchase, such Right of Repurchase shall cease and terminate with respect to such Material Default only.*

16.3.5 ***Release of Liability****. In the event the City exercises its Right of Repurchase, such purchase shall terminate or release the obligations of Developer with respect to the Reacquired Property except that Developer shall not be released from its obligations pursuant to Section 4.5.2(f), to return any written Due Diligence Information to the City as provided in Section 14.3 and to indemnify, defend and hold harmless the City Indemnified Parties as provided in Sections 4.6.4(f) and Section 10 for matters arising or related to the period of time prior to the conveyance of the Reacquired Property to the City and with respect to any Developer or Healthcare Developer during the Additional Liability Period; and to indemnify, defend and hold harmless the City Indemnified Parties as provided in Section 5.5 as to a Parcel for matters arising or related to the period prior to the Close of Escrow for such Parcel, and such obligations shall survive the close of escrow and shall not be merged into the quitclaim deed. Following such Close of Escrow, under no circumstances shall Developer have any right or claim to, or against, the Reacquired Property. Notwithstanding the purchase of the Reacquired Property by the City as provided in this Section 16.3, this Agreement shall remain in full force and effect with respect to the portions of the Property and the Project not purchased by the City.*

16.3.6 ***Rights of Third Parties****. The Right of Repurchase shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of (a) any Mortgage upon the Parcels or Improvements, except that with respect to a first priority lien that is a Permitted Mortgage, the implementation of the Right of Repurchase shall be subject to the terms of the Healthcare Subordination Agreement and (b) any mechanics' lien that may attach to the Development Parcels or the Improvements thereon. The Right of Repurchase shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., who are not Developer, Healthcare Developer, Developer Affiliates or HCD Affiliates) granted pursuant to Transfers approved by the City or constituting Permitted Transfers and Recorded with respect to the Reacquired Property repurchased hereunder.*

16.4 ***The Right of Reversion****.*

*Following conveyance of any portion of the Property to Developer by the City and notwithstanding that the Reacquired Property may be encumbered by one or more Mortgages or Permitted Mortgages, in the event of the occurrence of any Reversion Action Trigger (defined in Section 16.4.1), and in addition to its other rights or remedies as a result of the occurrence of any such Reversion Action Trigger, the City shall have the right on the terms and subject to the conditions set forth in this Section 16.4 to re-enter and take possession of the applicable Reacquired Property or any portion thereof and to revest title thereto in the City (the "**Right of Reversion**") only in accordance with the terms of this Section 16.4. Any revesting of the Reacquired Property by the City whether based on voluntary action of Developer or otherwise after notice by the City of its intent to exercise the Right of Reversion is referred to herein as a "**Reversion Event**". The City shall be entitled to exercise the Right of Reversion at any time on or after the occurrence of any of any one or more of the Reversion Action Triggers only with respect to the respective Retail Property or Healthcare Property that is the subject of the Reversion Action Trigger; provided that the City has complied with the conditions to such reversion set forth in Section 16.4.2. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to (a) the lien and charge of any Mortgage upon the Property, except that with respect to a first priority lien that is a Permitted Mortgage on the Other Healthcare Parcels with a Permitted Mortgagee, the implementation of the Right of Reversion shall be subject to the terms of the Healthcare Subordination Agreement, and (b) the lien and charge of any mechanics' lien that may attach to the Property.*

16.4.1 ***Certain Defaults Triggering the Right of Reversion****. The Right of Reversion shall remain in effect from the Close of Escrow with respect to the Healthcare Parcel, until the Recording of a Certificate of Compliance for the Healthcare Parcel and with respect to the Retail Parcel, until Completion of the Minimum Retail Vertical Improvements with respect to the Retail Parcel and thereafter shall not apply, provided that (a) the City shall not revest the Retail Property upon occurrence of a Reversion Action Trigger solely with respect to the Healthcare Property unless the City's right to revest is created by a Reversion Action Trigger with respect to the Minimum Healthcare Improvements, the Healthcare Transferor Obligations or the act or failure to act by the Healthcare Property Transferor with respect thereto and (b) the City shall not revest the any portion of the Healthcare Property upon occurrence of a Reversion Action Trigger solely with respect to the Retail Property. The City may exercise the Right of Reversion if it elects to do so with respect to only the Parcel affected by the Material Default and any*

*Improvements thereon and all applicable Entitlements and other development rights, consents, authorizations, variances, waivers, licenses, permits, certificates and approvals from any governmental or quasi-governmental authority, and all other appurtenant rights applicable thereto upon the occurrence of any of the following (each, a "**Reversion Action Trigger**," and the date on which the Reversion Action Trigger occurs shall be referred to herein, as the "**Reversion Action Trigger Date**").*

(a) *Developer fails to commence construction of the Minimum Horizontal Improvements within six (6) months after the Construction Period Commencement Date for the Retail Parcel, as such date may be extended for Force Majeure Delay;*

(b) *Healthcare Developer fails to commence construction of the Minimum Healthcare Vertical Improvements within twelve (12) months after the Construction Period Commencement Date for the Healthcare Parcel, as such date may be extended for Force Majeure Delay;*

(c) *Developer fails to commence construction of the Minimum Retail Vertical Improvements within eighteen (18) months after the Construction Period Commencement Date for the Retail Parcel, as such dates may be extended for Force Majeure Delay;*

(d) *Developer or Healthcare Developer, as to their respective Parcels, fails to Complete construction of the Minimum Vertical Improvements within thirty-six (36) months after the Construction Period Commencement Date applicable to such Parcel as such date may be extended for Force Majeure Delay; provided that such Completion date shall not under any circumstances be later than the date that is forty eight (48) months after the Close of Escrow for such Parcel (which date shall not be extended for Force Majeure Delay);*

(e) *Developer or Healthcare Developer with respect to their respective Parcels commits waste on the Property and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2, subject to extension for Force Majeure Delay;*

(f) *Developer or Healthcare Developer with respect to their respective Parcels abandons or substantially suspends (except for suspensions resulting from Force Majeure Delay) construction of the Project for a total period of one (1) year, and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2. Nothing in this Section 16.4.1(f) shall extend the terms of Section 16.4.1(a), (b) or (c) above;*

(g) *The occurrence of a Developer Insolvency Event; and*

(h) *A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control.*

16.4.2 ***Conditions to Exercise of the Right of Reversion****. The City shall be entitled to exercise the Right of Reversion at any time on or after the applicable Reversion Action Trigger Date; provided that (a) the City has provided notice to Developer or Healthcare Developer as applicable that the City elects to exercise its Right of Reversion and such notice states the date*

for the Reversion Event and (b) the Reversion Event shall not take place until the earlier of (i) the date that is thirty (30) calendar days after Developer has had the opportunity to address the City Council at a public meeting regarding the Reversion Action Trigger or (b) if there is a Permitted Mortgage encumbering the Parcel, the date that is one (1) year after the date of such notice of exercise. In the event that, prior to the Reversion Event, Developer and Permitted Mortgagee with respect to the Other Healthcare Parcels or any Person on behalf of Developer either (x) cures the Reversion Action Trigger which is the basis for the City's exercise of its Right of Reversion or (y) Completes the Project prior to the date of the Reversion Event, such Right of Reversion shall cease and terminate with respect to such Reversion Action Trigger only.

16.4.3 ***Exercise of Right of Reversion****. If the City exercises its Right of Reversion in accordance with the provisions of this Agreement, Developer shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable law to consummate the revesting of the Reacquired Property in the name of the City, including the execution and delivery of such other documents, certificates, agreements, deeds and other writings and the taking of such other actions as may be reasonably necessary to consummate such revesting.*

16.4.4 ***Sale of Reacquired Property****. Upon the revesting in the City of title to the Reacquired Property, the City shall use reasonable efforts to resell the Reacquired Property as soon and in such manner as the City shall find feasible, in accordance with applicable state law, if any, and consistent with the objectives of this Agreement, to a qualified and responsible party or parties (as determined by the City in its sole discretion) who will assume the obligation of making or completing the Minimum Improvements and of using reasonable commercial efforts to commence and thereafter to Complete, the additional Retail Vertical Improvements. Upon such resale of the Reacquired Property, or any part thereof, the proceeds thereof shall be applied in the following order and amounts, provided that the City shall have no liability to Developer or to any Permitted Mortgagee or third party to the extent the balance is insufficient to pay the following amounts:*

(a) *Delinquencies. First, to repayment in full of all delinquent tax and delinquent assessment liens with respect to the portion of the Reacquired Property sold;*

(b) *Permitted Mortgage Balances. Second, if there is a Permitted Mortgage in favor of a Permitted Mortgage with respect to all or any portion of the Healthcare Parcel only and the Reacquired Property is comprised of all or any portion of the Healthcare Parcel, to repayment in full of the outstanding balance of the Permitted Mortgages and all other sums then due and owing thereunder;*

(c) *Reimbursement to the City. Third, to reimburse the City on its own behalf for all costs and expenses incurred by the City, in connection with the recapture, management and resale of the Reacquired Property, or any part thereof, including: a pro-rata share of the salaries of personnel engaged in such action (based on the amount of time spent by such personnel on such matters relating to the Reacquired Property as compared to the aggregate amount of time worked by such personnel); all taxes, assessments and utility charges with respect to the Reacquired Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to*

obligations, Defaults or acts of Developer or any Successor Owner or each and every Person claiming by, through or under Developer or any Successor Owner; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Reacquired Property; all costs of sale and marketing, including reasonable brokers' fees and costs incurred in the marketing and sale of the Reacquired Property; all legal fees and expenses; all escrow and title fees and costs; all survey and due diligence fees and costs; all the Lien Release Amounts, if any, paid by the City to third parties; and any amounts otherwise owing to the City or any third party by Developer and/or any Successor Owner, including any City Liens;

(d) *Reimbursement to Developer. Fourth, to reimburse Developer up to the amount equal to the Repurchase Price attributable to the Reacquired Property less all amounts paid pursuant to Section 16.4.4(a), (b) and (c); and*

(e) *Balance Retained by the City. Any balance remaining after such reimbursements shall be retained by the City as its property.*

16.4.5 ***Release of Liability****. In the event the City exercises its Right of Reversion, such reversion shall terminate and release Developer, or Healthcare Developer, as applicable, from all liability and obligations of Developer or, as applicable, Healthcare Developer, under this Agreement with respect to the Reacquired Property, but shall not constitute a waiver or termination of the release provided for the benefit of the City pursuant to Section 4.5.2(f), the obligation to return any written Due Diligence Information to the City as provided in Section 14.3 and to indemnify the City as provided in Sections 4.6.4(f), 5.5 and 10 for matters relating to or arising prior to the conveyance of the Reacquired Property to the City, and such liability and obligations shall survive the close of escrow and shall not be merged into the quitclaim deed, it being acknowledged and agreed that all other obligations under this Agreement shall be released and terminated as of the date on which the Property or the applicable portion thereof is conveyed to the City. Following such Close of Escrow, under no circumstances shall Developer have any right or claim to, or against, the Reacquired Property. Notwithstanding the purchase of the Reacquired Property by the City as provided in this Section 16.4, this Agreement shall remain in full force and effect with respect to the portions of the Property not purchased by the City.*

16.4.6 ***Rights of Third Parties****. The Right of Reversion shall be a lien and encumbrance on the Property that shall be paramount to the lien and charge of (a) any and all Mortgages, including Permitted Mortgages, upon the Parcels or Improvements, provided, however, that with respect to a first priority lien that is a Permitted Mortgage on the Other Healthcare Parcels or Improvements thereon, made by a Permitted Mortgagee, the implementation of the Right of Reversion shall be subject to the terms of the Healthcare Subordination Agreement and (b) any mechanics' lien that may attach to the Development Parcels or the Improvements thereon. The Right of Reversion shall not defeat or render invalid or limit any rights or interests provided in easements, covenants, conditions or restrictions in favor of third parties (i.e., Persons other than Developer, Healthcare Developer, Developer Affiliates or HCD Affiliates) granted pursuant to Transfers approved by the City or constituting Permitted Transfers and Recorded on the portion of the Property for which the City exercises its rights under this Section 16.4.*

16.4.7 ***Continuation of Agreement****. This Agreement shall remain in full force and effect with respect to portions of the Property not revested in the City, but the termination of this Agreement shall be effective as of the date title to any portion of the Property and/or any Improvements thereon are revested in the City.*

16.4.8 ***Termination of Right of Reversion****. The Right of Reversion shall not apply to the Healthcare Parcel after Recording by the City of a Certificate of Compliance with respect thereto. The Right of Reversion shall not apply to the Retail Parcel after satisfaction of the Conditions Precedent set forth in Section 9.3(a), (c), (d), (e), (f), (h) and (i) with respect to the Minimum Retail Improvements.*

4. Certificates of Compliance. If the Developer satisfies the Conditions Precedent set forth in Section 9.2 of the DDA with respect to issuance of a Certificate of Compliance for the Retail Property or in Section 9.3 of the DDA with respect to issuance of a Certificate of Compliance for the Healthcare Property, then the City shall Record the appropriate Certificate of Compliance upon written request by Developer. The Certificate of Compliance so Recorded shall be binding upon the Parties to this Memorandum of DDA, their successors and assigns, and shall be deemed to be the City's conclusive determination of satisfactory Completion of the Improvements covered by such Certificate of Compliance and compliance with all other conditions required by the DDA, subject only to such continuing terms of the DDA referenced in Sections 9.7(a) through (d) of the DDA, and/or the covenants, conditions, restrictions and obligations set forth in this Memorandum, the Special Restrictions, the DA, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, the CC&Rs and the Quitclaim Deed(s), each of which shall survive in accordance with its respective terms. Developer, on behalf of itself and its successors and assigns hereby consents to the recordation of the Certificate of Compliance against the entirety of the Property, notwithstanding that portions of all of the Property may have been transferred prior thereto to third parties and confirms that no further acknowledgement or consent by the then-owners of the Property shall be required in connection with such recordation. For ease of reference only, the following italicized Section 9.7 is copied verbatim from the DDA:

"*9.7 Effect of Certificate of Compliance; Termination of Agreement.*

Except as set forth in this Section 9.7 and the Certificate of Compliance, after the Recording of a Certificate of Compliance, as the case may be, any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Parcel subject to the Certificate of Compliance or the Improvements thereon shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such Improvements, except that such Party shall continue be bound by the Special Restrictions, the CC&Rs, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement and the applicable Quitclaim Deed to the extent set forth therein. Issuance of the Certificate of Compliance shall not waive any rights or claim that the City may have against any party for latent or patent defects in design, construction or similar matters under any applicable law, nor shall it be evidence of satisfaction of any of Developer's obligations to others not a party to this Agreement. The Certificate of Compliance shall be in such form as to permit it to be Recorded. Upon Recording of the Certificate of Compliance, this Agreement shall terminate in its entirety with respect to the Project and Property to which such Certificate of Compliance applies, except that:

(a) the provisions of Section 4.5.2, including the release set forth therein, shall survive in perpetuity as further set forth in the Quitclaim Deed for such Property;

(b) the provisions of Section 11.1.4 shall survive until the expiration of the time period for provision of the environmental insurance policy described thereby.

(c) the indemnities set forth in Sections 4.6.4(f), 5.5, 8.8, 8.9, 8.11, 8.12, 10.1, 10.2 and 18.12.1 shall remain in effect and shall bind the indemnifying party and its successors and assigns to the extent set forth in the Special Restrictions or Other Agreements for such Property; and

(d) any and all obligations contained in the Federal Deed shall survive in perpetuity to the extent set forth therein, unless such obligations are released by the Federal Government."

5. DDA and Memorandum of DDA Run With the Land. The DDA and this Memorandum of DDA, including, without limitation, the provisions of the DDA recited and set forth above, and all other obligations, agreements, covenants, conditions and restrictions set forth in the DDA and this Memorandum of DDA are hereby agreed to by the Developer and by the City to be covenants running with the land and enforceable as equitable servitudes against the Development Parcels and are hereby declared to be and shall be binding upon the Development Parcels and Developer and its successors and assigns (who may own all or any portion of the Development Parcels) for the benefit of the City and its successors and assigns, subject to the effects of Recordation of a Certificate of Compliance as provided for in Section 4 above.

6. Priority of DDA and Special Restrictions. The DDA, including the City Lien, the Right of Repurchase and the Right of Reversion contained therein, this Memorandum of DDA and the Special Restrictions shall be superior in priority to all Mortgages.

7. Lien Rights. The delinquent amount of any payments due under the DDA, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the Property in favor of the City effective upon Recordation of the Memorandum of DDA, which lien and charge shall be paramount to the lien and charge of any Mortgage upon the Property.

8. Acknowledgment and Assumption by Developer. By acceptance of each Quitclaim Deed and the Special Restrictions, and upon recording of the Quitclaim Deed(s), Special Restrictions and this Memorandum of DDA, Developer hereby acknowledges and assumes all responsibilities placed upon Developer under the terms of the DDA.

9. Public Documents. The documents constituting the DDA are public documents and may be reviewed at the official offices of the City.

10. Interpretation; Notice. This Memorandum of DDA is prepared for recordation and notice purposes only and in no way modifies or expands the terms, conditions, provisions and covenants of the DDA. In the event of any inconsistency between terms, conditions, provisions and covenants of this Memorandum of DDA and the DDA, the terms, conditions, provisions and covenants of the DDA shall prevail.

11. Attachments. The Attachments attached to this Memorandum of DDA are hereby incorporated by this reference into this Memorandum of DDA as though fully set forth in this Section.

[signature page follows]

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of DDA as of the Memorandum Effective Date.

Date:_____

"CITY"

CITY OF TUSTIN

ATTEST:

By:_____
Jeffrey C. Parker
City Manager

By:_____
Erica N. Rabe, City Clerk

APPROVED AS TO FORM

By:_____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By:_____
Amy E. Freilich

{signatures continue on following page}

Date:_____

"DEVELOPER"

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
Delaware limited partnership
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation
Its General Partner

By: _____
John Mehigan
Vice President

ACKNOWLEDGMENT

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of Orange)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

Exhibit "A"

Development Parcels Legal Description

[*insert legal description*]

ATTACHMENT 13A

FORM OF REGENCY DATE DOWN CERTIFICATE REGARDING SECRETARY'S CERTIFICATE RE FUNDING

Reference is hereby made to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 1C dated as of _____, 2015 ("**DDA**"), by and between 1C Tustin Legacy, LLC, a Delaware limited liability company ("**Developer**"), and the City of Tustin, a municipal corporation of the State of California (the "**City**"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

This Date Down Certificate is being delivered by Regency Centers Corporation ("Company") concurrently with the Retail Property Close of Escrow.

The undersigned does hereby certify to the City, in his or her capacity as an officer of the Company and for and on behalf of REG as follows:

1. *[Except as set forth on Schedule 1 attached hereto, all/ All]* of the matters set forth in the Secretary's Certificate Regarding Funding dated [_____***2015]*** attached hereto as Exhibit A are true and correct as of the date hereof.

2. Attached to this Date Down Certificate as Exhibit B are true and correct copies of the certificate of good standing and tax good standing for the Company from the Florida and California Secretaries of State, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Date Down Certificate.

Without the written consent of the Company: (i) no Person other than the City may rely on this Date Down Certificate for any purpose; and (ii) copies of this Date Down Certificate may not be furnished to anyone for purposes of encouraging such reliance.

In no event shall the individual executing this Date Down Certificate on behalf of have any personal liability hereunder.

{remainder of page is blank – signature on next page}

REGENCY CENTERS CORPORATION,

Dated: _____

A Florida Corporation

By: _____

Name:_____

Title: _____

EXHIBIT "A"

{If none—enter None}

ATTACHMENT 13B

CERTIFICATE OF CHIEF FINANCIAL OFFICER OF HEALTHCARE DEVELOPER GUARANTOR

[TO BE PROVIDED BY HCD GUARANTOR]

This Certificate is being delivered pursuant to that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____, 2015 (the "**DDA**"), by and between 1C Tustin Legacy LLC, a Delaware limited liability company ("**Developer**"), and the City of Tustin, a municipal corporation of the State of California (the "**City**"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

Pursuant to the DDA, Developer has requested the City to approve _____, a_____ ("**HCD**") as the Healthcare Developer and approve the Transfer of the Healthcare Parcel to HCD under the DDA.

The undersigned does hereby certify to the City, in the name and on behalf of HCD that, as of the date hereof:

1. _____, a _____("**HCDG**") is the *[sole] [shareholder/member]* of HCD. **[MUST BE REVISED TO ADDRESS STRUCTURE]**

2. As shown on Exhibit A, the undersigned [Chief Financial Officer of HCDG] has the authority to execute and deliver this Certificate on behalf of HCDG.

3. Attached hereto as Exhibit B is a true and correct copy of the *{Certificate of Incorporation of the Company/Certificate of Formation}* of HCDG and any and all amendments thereto in effect on the date hereof.

4. Attached hereto as Exhibit C is a true and correct copy of the *{Bylaws/Operating Agreement}* of HCDG and any and all amendments thereto in effect on the date hereof.

5. Attached hereto as Exhibit D are true and correct copies of the Certificate of good standing for HCDG from *{the _____ Secretary of State and the}* California Secretary of State and a certificate of tax good standing for HCDG from the California Franchise Tax Board, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Certificate.

6. {Attached hereto as Exhibit E is a true and correct copy of the Certificate of Status of Foreign Corporation of HCDG and any and all amendments thereto in effect on the date hereof. }

7. *{Attached hereto as Exhibit F is a true and correct copy of the County of Orange Fictitious Business Name Statement of HCDG and any and all amendments thereto in effect on the date hereof.]*

8. Attached hereto as Exhibit G is evidence of authority of the individuals executing the HCD Guaranty to bind Healthcare Guarantor and to execute this Guaranty, including copies of all resolutions or other necessary actions taken by Healthcare Guarantor(s) to authorize the execution of this Guaranty.

9. In the event of a default by HCDG under the DDA or the Other Agreements, HCDG would be able to pay for all of the Guaranteed Obligations (as defined in the HCD Guaranty), without the use of any Project-level debt financing **[except as specifically authorized by the City in consenting to the Transfer to HCD and permitted by the DDA**]. In support of this statement, Healthcare Guarantor has (without the requirement of third party financing) a combination of (a) unencumbered cash, cash equivalents and marketable securities (that have not been pledged as collateral for any debt or other obligation) (the "**Liquid Assets**") and (b) cash flow from income producing assets (the "**Cash Flow**") that in the event of a default by HCD under the Funding Agreement, HCDG would be able to pay for all of the obligations of Healthcare Guarantor, without the use of any Project-level debt financing **[except as specifically authorized by the City in consenting to the Transfer to HCD and permitted by the DDA].**

*10. {If Healthcare Guarantor is delivering only the Equity Funding Agreement only:} [Reference is made to that that certain Equity Funding Agreement dated as of _____, 201_, a copy of which is attached hereto as Exhibit H (the "**Funding Agreement**"), pursuant to which the parent entity or entities of HCD has agreed to make certain "Advances" (as defined in the Funding Agreement) to HCD as equity capital to pay Obligations" (as defined in the Funding Agreement) incurred by HCD, all as more particularly set forth and in and subject to the terms of the Funding Agreement.]*

*11. {If Healthcare Guarantor is delivering only the Equity Funding Agreement only:} [HCDG has (without the requirement of third party financing) a combination of (a) unencumbered cash, cash equivalents and marketable securities (that have not been pledged as collateral for any debt or other obligation) (the "**Liquid Assets**") and (b) cash flow from income producing assets (the "**Cash Flow**") that, in the aggregate, are sufficient to allow HCDG to make the Advances as and when required under the Funding Agreement.]*

12. In addition to having sufficient Liquid Assets and Cash Flow *[{If Healthcare Guarantor is delivering the Equity Funding Agreement only:} [to make the Advances to HCD in accordance with and subject to the terms of the Funding Agreement, and]* to secure the HCD Guaranty in accordance with its terms, HCDG has an **[unsecured revolving credit facility/other funds]** with unused credit capacity well in excess of the amounts required to secure the obligations of HCDG under the HCD Guaranty*[{If Healthcare Guarantor is delivering the Equity Funding Agreement only:} [and in excess of the amounts that has agreed to provide for the benefit of HCD and the Healthcare Project in the Funding Agreement]*. The credit facility has the following characteristics:

(a) The lenders under such facility include [*list*] ("**Banks**")

(b) Each of the Banks have a capitalized value of more than / ___/ Billion Dollars); and

(c) HCDG has had an ongoing relationship with the Banks for at least **[period of time]**.

This Certificate is being furnished to the City solely to assist it in conducting its investigation of HCD's and HCDG's financial resources in connection with the approval of HCD as Healthcare Developer and/or approval of the Transfer to HCD. HCDG acknowledges and agrees that the City intends to rely on the information in this Certificate for these purposes in connection with approval of HCD as Healthcare Developer and/or approval of the Transfer to HCD. This Certificate may be relied upon by the City for these purposes.

Without the written consent of HCDG no Person other than the City may rely on this Certificate for any purpose.

In no event shall the individual executing this Certificate on behalf of HCDG have any personal liability hereunder.

[*Signature page to Certificate of Chief Financial Officer*]

Dated: _____, 2015

HCDG
a _____

By:_____
Name:
[Regional] Chief Financial Officer

ATTACHMENT 13C

CONTROLLING PERSON CERTIFICATE

[TO BE PROVIDED BY PARENT ENTITY/FUNDING SOURCE]

This Certificate is being delivered pursuant to that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____, 2015 (the "**DDA**"), by and between 1C Tustin Legacy LLC, a Delaware limited liability company ("**Developer**"), and the City of Tustin, a municipal corporation of the State of California (the "**City**"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

Pursuant to the DDA, Developer has requested the City to approve _____, a_____ ("**HCD**") as the Healthcare Developer and approve the Transfer of the Healthcare Parcel to HCD under the DDA.

The undersigned does hereby certify to the City, in the name and on behalf of HCD that, as of the date hereof:

1. _____, a _____("HCDP") is the [sole] [shareholder/member] of HCD. **[MUST BE REVISED TO ADDRESS STRUCTURE]**

2. The undersigned [Chief Financial Officer of HCDP] has the authority from HCDP to execute and deliver this Certificate on behalf of HCDP as evidenced by the information attached as Exhibit A.

3. Attached hereto as Exhibit B is a true and correct copy of the *{Certificate of Incorporation of the Company/Certificate of Formation}* of HCDP and any and all amendments thereto in effect on the date hereof.

4. Attached hereto as Exhibit C is a true and correct copy of the *{Bylaws/Operating Agreement}* of HCDP and any and all amendments thereto in effect on the date hereof.

5. Attached hereto as Exhibit D are true and correct copies of the Certificate of good standing for HCDP from *{the _____ Secretary of State and the}* California Secretary of State and a certificate of tax good standing for HCDP from the California Franchise Tax Board, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Certificate.

6. {Attached hereto as Exhibit E is a true and correct copy of the Certificate of Status of Foreign Corporation of HCDP and any and all amendments thereto in effect on the date hereof. }

7. *{Attached hereto as Exhibit F is a true and correct copy of the County of Orange Fictitious Business Name Statement of HCDP and any and all amendments thereto in effect on the date hereof.]*

8. HCDP and HCD have entered into that certain Equity Funding Agreement dated as of _____, 2015, a copy of which is attached hereto as Exhibit G (the "**Funding Agreement**"), pursuant to which HCDP has agreed to make certain "Advances" (as defined in the Funding Agreement) to HCD as equity capital to pay Obligations" (as defined in the Funding Agreement) incurred by HCD, all as more particularly set forth and in and subject to the terms of the Funding Agreement attached hereto as Exhibit Agreement.

9. The Funding Agreement was duly executed and delivered by _____, a _____ of HDCP, who had the authority to do so and the Funding Agreement is a valid and binding obligation of HDCP and fully enforceable in accordance with its terms.

10. HCDP has (without the requirement of third party financing) a combination of (a) unencumbered cash, cash equivalents and marketable securities (that have not been pledged as collateral for any debt or other obligation) (the "**Liquid Assets**") and (b) cash flow from income producing assets (the "**Cash Flow**") that, in the aggregate, are sufficient to allow HCDP to make the Advances as and when required under the Funding Agreement.

11. HCDP has the ability to satisfy all of its obligations to make timely Advances to HCD in accordance with and subject to the terms of the Funding Agreement, and based on current economic conditions HCDP believes that when such Advances are made by HCDP to HCD, HCD will be able to pay for all of the DDA Obligations, without the use of any Project-level debt financing **[except as specifically authorized by the City in consenting to the Transfer to HCD and permitted by the DDA].**

12. In addition to having sufficient Liquid Assets and Cash Flow to make the Advances to HCD in accordance with and subject to the terms of the Funding Agreement, HCDP has an **[unsecured revolving credit facility/other funds]** with unused credit capacity well in excess of the "Equity Funding Cap" (as defined in the Funding Agreement). The credit facility has the following characteristics:

(a) The lenders under such facility include [*list*] ("Banks")
(b) Each of the Banks have a capitalized value of more than [___] Billion Dollars); and
(c) HCDP has had an ongoing relationship with the Banks for at least **[period of time]**.

This Certificate is being furnished to the City solely to assist it in conducting its investigation of HCD's and HCDP's financial resources in connection with the approval of HCD as Healthcare Developer and/or approval of the Transfer to HCP and its investigation of HCDP's financial resources in connection with HCDP'S obligation to make Advances in accordance with the terms of the Funding Agreement. HCDP acknowledges and agrees that the City intends to rely on the information in this Certificate for these purposes in connection with approval of HCD as Healthcare Developer and/or approval of the Transfer to HCP. This Certificate may be relied upon by the City for these purposes.

Without the written consent of HCDP no Person other than the City may rely on this Certificate for any purpose.

In no event shall the individual executing this Certificate on behalf of HCDP have any personal liability hereunder.

[*Signature page follows*]

[*Signature page to Certificate of Chief Financial Officer*]

Dated: _____, 2015

HCDP
a _____

By:_____

[Regional] Chief Financial Officer

ATTACHMENT 14A
FORM OF REG GUARANTY

GUARANTY AGREEMENT
RETAIL PARCEL

This **GUARANTY AGREEMENT** (this "**Guaranty**") is made as of the _____ day of _____, 20__, by Regency Centers Corporation, a corporation formed under the laws of the State of Florida (the "**Guarantor**") in favor of the CITY OF TUSTIN, a public body, corporate and politic ("**City**").

Recitals

A. 1C Tustin Legacy, LLC, a Delaware LLC ("**Developer**") has entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____ (including all Attachments thereto, which as may be amended, updated or modified from time to time are referred to collectively as "**DDA**") under which Developer would acquire the Retail Property and Healthcare Developer would acquire the Healthcare Property (each as defined in the DDA.) Initially capitalized terms used and not defined herein shall have the meanings set forth in the DDA.

B. Concurrently with the delivery of this Guaranty, Developer is acquiring the Retail Property under the DDA. Under the terms of the DDA, Developer will be required to perform certain design work and construct the Minimum Horizontal Improvements (some of which are required to be constructed on the Retail Parcel and some of which are required to be constructed on the Healthcare Parcel). In addition, Developer is required to perform certain design work and construct the Minimum Retail Improvements, and shall have the right to construct certain additional Retail Vertical Improvements together with related amenities, the nature, scope and extent of which are defined in the DDA. Further, under the terms of the DDA, *[upon Developer's acquisition of the Healthcare Property, Developer shall be obligated to assign/Developer has assigned]* its rights and obligations with respect to the Healthcare Property under the DDA and the Other Agreements to a Healthcare Developer *[, which, concurrent with the delivery of this Guaranty is acquiring the Healthcare Property.]* Healthcare Developer will be required to perform certain design and construction work for the development of the Minimum Healthcare Improvements, including, if not carried out by Developer, the Minimum Horizontal Improvements.

C. The Guarantor is the general partner of Regency Centers, L.P., a Delaware limited partnership ("RCLP") RCLP is the sole member of Developer and thus has a direct and substantial interest in Developer and will derive benefit from the acquisition of the Property and the development and sale or lease of the Project. .

Agreements

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce City to convey the Retail Parcel to Developer and the Healthcare Parcel to Developer and/or Healthcare Developer, City has required that the

Guarantor execute and deliver this Guaranty to City. The Guarantor hereby makes the guaranties, obligations, covenants and agreements set forth below in this Agreement.

Section 1. Guaranty.

1.1 Payment and Completion Obligations.

1.1.1 The Guarantor absolutely and unconditionally guarantees that Guarantor shall pay any and all costs required and cause any and all work to be performed as may be required to carry out and Complete the following elements of the Project (the "**Completion Obligations**"):

(a) Payment of all Development Costs for the design, construction and Completion of the Minimum Retail Improvements, provided that Guarantor's obligation to pay for construction and Completion of Improvements pursuant to this clause (a) shall apply only as and to the extent Developer has pulled building permits for construction of such Minimum Retail Improvements; and

(b) Payment of all Development Costs for design, construction and Completion of the Minimum Horizontal Improvements (and provided further that the obligations of Guarantor to pay for the design, construction and completion of the Minimum Healthcare Improvements upon the Healthcare Parcel shall remain in effect notwithstanding the sale by Developer of the Healthcare Parcel or the issuance by any third party of a guaranty of Minimum Horizontal Improvements delivered in connection therewith); the foregoing work shall be an absolute obligation of Guarantor in the event that, Developer fails to commence or complete, in a lien-free condition, construction of the Minimum Horizontal Improvements within the time period set forth in the Schedule of Performance (subject to any extension permitted by the DDA for Force Majeure Delay), and such obligation shall be joint and several with any obligation of Healthcare Developer under the DDA to construct and complete the Minimum Horizontal Improvements on the Healthcare Parcel in the event that Developer Defaults in its obligation to so construct and complete the Minimum Horizontal Improvements.

1.1.2 The Guarantor absolutely and unconditionally guarantees that Guarantor shall pay any and all costs required and cause any and all work to be performed as may be required to carry out the following obligations if Developer shall fail to timely perform its obligations under the DDA (the "**Payment Obligations**" and collectively with the Completion Obligations, the "**Payment and Completion Obligations**"):

(a) Payment of the Additional Purchase Price;

(b) Payment of all costs and expenses of the City arising in connection with the exercise by the City of its remedies under the DDA with respect to Developer, the Minimum Horizontal Improvements, the Retail Improvements, the Retail Provisions and/or the Retail Parcel or any Improvements thereon including the costs and expenses of the City arising from its exercise of the Right of Repurchase or Right of Reversion with respect to the Retail Parcel as provided in Sections 16.3 and 16.4 of the DDA, respectively; but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the

Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Developer, or by REG pursuant to the REG Guaranty;

(c) Payment of the costs and expenses incurred by the City, if any, in enforcement by the City of its remedies under the DDA with respect to Developer, the Retail Parcel, the Healthcare Transferor Obligations and/or any Improvements on the Retail Parcel; and

(d) Payment of all of the Development Costs incurred to cause the Completion of the Improvements on the Retail Parcel, such that the Retail Parcel shall be in a lien-free condition as required by the DDA.

1.2 Payment of Enforcement Costs. In addition to its obligations in Section 1.1, the Guarantor agrees to pay all costs and expenses incurred by City, including reasonable attorneys' fees and costs, court costs and all other litigation expenses (including reasonable expert witness fees, costs of depositions and other discovery, travel expenses, exhibit preparation, and courier, postage, communication and document copying expenses), in enforcing this Guaranty (the "**Enforcement Payment Obligation**"). The provisions of this Section 1.2 shall survive the termination of this Guaranty.

1.3 Performance of Work. The work (a) shall be performed in accordance with the Scope of Development and within the time periods set forth in the Schedule of Performance all as and to the extent set forth in the DDA; provided however, that if the time periods set forth in the Schedule of Performance have expired, the City and Guarantor shall meet and confer in good faith to revise the Schedule of Performance as reasonably necessary to provide adequate time to Guarantor to satisfy its obligations hereunder; (b) shall be performed in accordance with the other requirements for construction of the Project set forth in the DDA, and (c) shall be diligently pursued by the Guarantor to Completion of the Project and issuance of a Certificate of Compliance for each of the Retail Parcel and the Healthcare Parcel.

1.4 Guaranteed Obligations. "**Guaranteed Obligations**" means the Payment and Completion Obligations and the Enforcement Payment Obligation.

1.5 Definition of Project. For purposes of this Guaranty, and notwithstanding the definition provided for under the DDA, the definition of "Project" shall mean (a) the Minimum Retail Vertical Improvements and (b) the Minimum Horizontal Improvements.

Section 2. Performance of Payment and Completion Obligations Upon Default by Developer

2.1 Default by Developer. If Developer is in Material Default under the DDA for any reason, including for failure to commence or prosecute the development of the Project in accordance with the Schedule of Performance or the Scope of Development, then City may, but shall not be obligated to, deliver written notice to the Guarantor (a "**Guaranty Notice**"), that is designed to provide notice to Guarantor of such default. While the exact wording of the notice is not mandatory, a notice in substantially the following form is adequate notice stating: "This notice is to inform you or confirm that Developer is in Material Default under the terms of the DDA in the following respect(s): ***[identify Material Default(s) by Developer]***. City hereby

requests that you, as Guarantor, undertake to do and pay the Guaranteed Obligations as defined in that certain Guaranty Agreement Retail Parcel, dated _____." The Guarantor, promptly after receipt of the Guaranty Notice shall perform its Payment and Completion Obligations. The notice need not take the exact form set forth herein and failure of the City to provide the Guaranty Notice shall not relieve Guarantor from any of its obligations under this Guaranty. The Guarantor will take whatever actions may be necessary to perform the Payment and Completion Obligations, including the following:

2.1.1 Diligently and expeditiously proceed to ensure the Completion of the Project at the Guarantor's sole cost and expense, at the times and subject to the terms and conditions set forth in the DDA;

2.1.2 Fully pay and discharge all Development Costs incurred or required to be incurred in connection with the Completion of the Project; and

2.1.3 Pay any amounts necessary to release and discharge any mechanics', material providers' or other liens that may exist or come into existence in connection with the Retail Parcel or the Completion of the Minimum Horizontal Improvements, or in the alternative contest the same subject to the terms and conditions set forth in the DDA.

2.2 Difficulty or Expense of Completion of the Project Does Not Excuse Guarantor or Guaranty. The Guarantor's obligations under this Guaranty will remain in full force and effect until the Guaranteed Obligations are fully and finally performed, regardless of whether the Guarantor or any other Person determines that Completion of the Project is difficult, more expensive than originally intended, or involves "Unanticipated Expense or Delay" (defined below). "**Unanticipated Expense or Delay**" includes any event or circumstance that would make the Completion of the Project more costly or would delay the Completion of the Project, such events and circumstances specifically including the following matters: (a) a casualty that affects the Parcel or any Improvements that may have been constructed; (b) the discovery of unanticipated soils conditions or Hazardous Materials in, on, or under the Parcel; (c) Governmental Requirements or court orders applicable to the Project; (d) any lack of debt or equity financing for Development Costs; (e) any change in market conditions and (f) other events or circumstances beyond the control of Developer or the Guarantor relating to the Project.

2.3 No Discharge Until Completion. It is the intent of the Guarantor and City that the obligations and liabilities of the Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally performed, the obligations and liabilities of the Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. The Guaranteed Obligations shall be deemed to be fully and finally performed for purposes of this Guaranty and this Guaranty shall terminate on the date on which the Certificate of Compliance is recorded by the City with respect to the Retail Parcel.

Section 3. Absolute, Irrevocable and Unconditional Guaranty.

3.1 Irrevocable Guaranty. This Guaranty is an absolute, irrevocable and unconditional guaranty of performance. This Guaranty shall be effective as a waiver of, and the Guarantor hereby expressly waives, any right to which the Guarantor may otherwise have been entitled, whether now existing under statute, at law or in equity, or arising under any statute enacted after the date hereof or arising under any doctrine of law or equity promulgated after the date hereof to require City to take prior recourse or proceedings against any collateral, security or Person. It shall not be necessary for City, in order to enforce such payment or performance by the Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Developer, Healthcare Developer, the Healthcare Guarantor(s) or any other Person liable on such indebtedness or for such performance, or to enforce any rights against any security given to secure such indebtedness or performance, or to join Developer or any other Person liable for the performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining performance of the Guaranteed Obligations.

3.2 Demand Against the Guarantor. City may bring suit or make a demand against Developer or against the Guarantor or any other parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of City against the Guarantor.

3.3 Independent Guaranty. The obligations of the Guarantor under this Guaranty are independent of and in addition to the obligations and liabilities of Developer or Healthcare Developer under the DDA and under the Other Agreements. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given by the Guarantor, or any other Person under or in connection with the Property, the Improvements, the DDA or the Other Agreements. The liability of the Guarantor under this Guaranty is in addition to any and all other liability the Guarantor may have in any other capacity with respect to Developer , including, if applicable, any direct or indirect ownership or control of any debt and/or equity securities of Developer or any Controlling Person of the Developer.

Section 4. Certain Agreements and Waivers by the Guarantor.

4.1 Waivers. The Guarantor agrees that, except in the event of full performance of the Guaranteed Obligations (a) neither City's rights or remedies nor the Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, (b) the Guarantor waives any rights, claims or defenses arising from any such events, actions, facts, or circumstances, and (c) the liability of the Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(i) any limitation on the liability of, or recourse against, any other Person, including City, in the DDA or any of the Other Agreements or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of the

Guarantor hereunder exceed or are more burdensome than those of Developer under the DDA;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of the Guarantor's recourse against any Person or collateral;

(v) whether express or by operation of law, any partial release of the liability of the Guarantor hereunder (except to the extent expressly so released by City with respect to this Guaranty) or any complete or partial release of Developer or any other Person liable, directly or indirectly, for the performance of any or all of the Guaranteed Obligations;

(vi) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Developer or any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Guarantor or its respective successors or assigns;

(viii) either with or without notice to or consent of the Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or the DDA or any of the Other Agreements or any other agreements that may have been executed by Developer, City or any third party affecting the obligations of Developer or City under the DDA, or performance (including changes with respect to the construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the DDA, the Other Agreements, any other agreements that may have been executed by Developer , City or any third party affecting the obligations of Developer or City under the DDA or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by City to Developer or to any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of City to take or prosecute (or in taking or prosecuting) any action for the

collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting), or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(x) any failure of City to notify the Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the DDA or any of the Other Agreements or any of the Guaranteed Obligations or any part thereof, or of any release of or change in any security, or of the occurrence or existence of any Material Default, or of any other action taken or refrained from being taken by City against Developer or any security or other recourse, or of any new agreement between City and Developer, it being understood that City shall not be required to give the Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice the Guarantor may have otherwise had being hereby waived by the Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding Developer and any collateral, including any changes in the business or financial condition of Developer or any collateral, and the Guarantor acknowledges and agrees that City shall have no duty to notify the Guarantor of any information which City may have concerning Developer or any collateral;

(xi) the existence of any claim, counterclaim, set-off or other right that the Guarantor may at any time have against Developer, City, or any other Person, whether or not arising in connection with this Guaranty, the DDA, or any Other Agreements;

(xii) the unenforceability of all or any part of the Guaranteed Obligations against Developer, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury or other law, or because the Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in the DDA or the Other Agreements, or because Developer has any valid defense, claim or offset with respect thereto, or because Developer 's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that the Guarantor shall remain liable hereon regardless of whether Developer or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Developer or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(xiii) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Developer or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by City, or any action taken or omitted by City in any such proceedings, including any election to have City's claim allowed as being secured, partially secured or unsecured, any extension of credit by City

in any such proceedings or the taking and holding by City of any security for any such extension of credit;

(xiv) any other condition, event, omission, action that would in the absence of the provisions of this Section 4 result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(xv) any notice to the Guarantor of the existence of or the extending to Developer of any grace or cure period for the performance of any of the Guaranteed Obligations;

(xvi) any defense of waiver, release, discharge in res judicata, statute of frauds, fraud, or ultra vires acts that may be available to Developer in respect of the DDA or any of the Other Documents;

(xvii) to the fullest extent permitted by law: (A) any defense arising as a result of City's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code; and (B) without limiting the generality of any other provision hereof, all rights and benefits that might otherwise be available to the Guarantor under California Civil Code Sections 2787 through 2855, inclusive, including without limitation any rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Guarantor by reason of such provisions of the California Civil Code.

(xviii) . Notwithstanding Guarantor's foregoing waivers, Guarantor shall be entitled to credit against the Guaranteed Obligations any of Developer's actual payment or performance of such obligations, but without exoneration of Guarantor in the event that the City accepts something other than prompt and full performance of any of the Guaranteed Obligations by Developer;

(xix) the benefit of any statute of limitations affecting the liability of the Guarantor under this Guaranty or the enforcement of this Guaranty, including any rights arising under Section 359.5 of the California Code of Civil Procedure;

(xx) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Developer in respect of the Guaranteed Obligations or Guarantor in respect of this Guaranty; or

(xxi) any early termination of any of the Guaranteed Obligations.

4.2 Additional Waivers.

4.2.1 Without limiting any of the waivers contained in Section 4.1, the Guarantor waives all rights and defenses that the Guarantor may have because Developer

obligations may be, or may be deemed to be, secured by real property. This ***means***, among other things:

(i) The City may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by Developer or Healthcare Developer.

(ii) If the City forecloses on any real property collateral pledged by Developer or Healthcare Developer: (i) the amount of the obligation owed to the City may be reduced only by the net price for which that collateral is sold at the foreclosure sale or proceedings, even if the collateral is worth more than the sale price and (ii) the City may collect from the Guarantor even if the City, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Developer.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Developer's obligations may be, or may be deemed to be, secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

4.2.2 Without limiting any of the waivers contained in Section 4.1, Guarantor hereby waives any rights or defenses the Guarantor may have in respect of his or her obligations as a guarantor by reason of any election of remedies by the creditor.:

4.2.3 Without limiting the generality of any other waiver or provision of this Guaranty, Guarantor waives any and all benefits or defenses under California Civil Code Sections 2899 and 3433, Chapter 2 of Title 14 of the California Civil Code and California Commercial Code section 3605.

4.3 Preferences. In the event any payment by Developer or any other Person to City is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason City is required to refund such payment or pay the amount thereof to any other party, such payment by Developer or any other party to City shall not constitute a release of the Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by City of this Guaranty or of the Guarantor or the prior expiration of this Guaranty), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by City or paid by City to another Person which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by City and any attorneys' fees, costs and expenses paid or incurred by City in connection with any such event.

4.4 Defenses. The Guarantor waives all rights and defenses arising out of an election of remedies by City, including exercise by the City of its Right of Reversion upon occurrence of a Reversion Event or a repurchase of the Property pursuant to City's Right of Repurchase, even though such election of remedies may have destroyed such Guarantor's rights of subrogation and reimbursement against Developer by operation of California Code of Civil Procedure Section 580d or otherwise.

4.5 Anti-Deficiency Waivers. The Guarantor waives (a) any defenses the Guarantor may have by reason of an election of remedies by City, and (b) any rights or defenses the Guarantor may have by reason of protection afforded to Developer with respect to the Guaranteed Obligations pursuant to the anti-deficiency or other laws of California limiting or discharging Developer 's obligations, including California Code of Civil Procedure Sections 580a, 580b, 580d or 726.

4.6 Waiver of Notice of Acceptance. The Guarantor waives notice of acceptance of this Guaranty.

4.7 No Limitation on Waivers. No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty. All of the waivers contained herein are irrevocable and unconditional and are intentionally and freely made by the Guarantor.

Section 5. Subordination.

If, for any reason whatsoever, Developer is now or hereafter becomes indebted, directly or indirectly to the Guarantor including, without limitation, by operation of Civil Code Sections 2847 and 2848, or any successor statutes or similar law (any such indebtedness being referred to as the "**Subordinated Debt**"):

(a) The Subordinated Debt and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Developer securing the Subordinated Debt shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations, until the Guaranteed Obligations have been paid or performed in full;

(b) The Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any of the Subordinated Debt until the Guaranteed Obligations have been fully and finally performed; provided, however, that so long as no Material Default under the DDA or the Other Agreements shall have occurred and be continuing, Guarantor shall not be prohibited from receiving such (i) reasonable management fees or reasonable salary from Developer, and (ii) distributions from Developer in an amount equal to any income taxes imposed on such Guarantor which are attributable to Developer's income from the Property;

(c) The Guarantor hereby assigns and grants to City a security interest in all the Subordinated Debt and security therefor, if any, of Developer to the Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Developer as debtor, City shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian, dividends and payments that are payable upon any obligation of Developer to the Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally performed. If, notwithstanding the

foregoing provisions, the Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, the Guarantor shall pay the same to City immediately, the Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for City and shall have absolutely no dominion over the same except to pay it immediately to City; and

(d) The Guarantor shall promptly upon request of City from time to time execute such documents and perform such acts as City may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including execution and delivery of proofs of claim, further assignments and security agreements, and delivery to City of any promissory notes or other instruments evidencing indebtedness of Developer to the Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by the Guarantor, of obligations of Developer to the Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Section 6. Other Liability of the Guarantor or Developer.

If the Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Developer to City other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of City hereunder shall be cumulative of any and all other rights that City may have against the Guarantor. If Developer is or becomes obligated to City for any liabilities or indebtedness other than or in excess of the Guaranteed Obligations, any payment received or recovery realized upon such other liabilities or indebtedness of Developer to City may be applied by City to such other liabilities or indebtedness.

Section 7. City Assigns; Disclosure of Information.

This Guaranty is for the benefit of City and City's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. The Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof.

Section 8. Binding Effect; Successor and Assigns.

This Guaranty is binding not only on the Guarantor, but also on the Guarantor's successors and assigns.

Section 9. Governing Law.

The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of California (without regard to its conflicts of law principles) and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. The Guarantor and City agree that any disputes arising between them in connection with this Guaranty or in connection with or under any instrument, agreement or document provided for or contemplated

by this Guaranty, including in connection with the execution of this Guaranty, the Guaranteed Obligations or any other matter arising under, related to or in connection with this Guaranty (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended by the Guarantor and City to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between or among the Guarantor and City with respect to or arising out of this Guaranty in any jurisdiction other than that specified in this Section 9. Each party hereby waives any right that it may have to assert forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 9, and stipulates that the State and federal courts located in the County of Orange, State of California, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of this Guaranty. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 9 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Guaranty, or in the manner set forth below for notices. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

Section 10. Invalidity of Certain Provisions.

If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 11. Costs and Expenses of Enforcement.

The Guarantor agrees to pay to City on demand all costs and expenses incurred by City in seeking to enforce City's rights and remedies under this Guaranty, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated hereon. All such costs and expenses incurred by City shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations and shall be payable by the Guarantor on demand by City. In the event of any suit or proceeding to adjudicate or resolve any dispute in connection with this Guaranty, the prevailing party shall be entitled to recover its reasonable attorneys' fees which shall be payable at the actual contractual hourly rate for City's litigation counsel at the time the fees were incurred, but in no event more than $200 per hour and costs, court costs and all other litigation expenses (including reasonable expert witness fees, costs of depositions and other discovery, travel expenses, exhibit preparation, and courier, postage, communication and document copying expenses).

Section 12. No Usury.

It is not the intention of City or the Guarantor to obligate the Guarantor to pay interest in excess of that lawfully permitted to be paid by the Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by the Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that the Guarantor, in its capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of the Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between the Guarantor and City.

Section 13. Representations, Warranties, and Covenants of the Guarantor.

Guarantor hereby represents, warrants, and covenants that: (a) the Guarantor has a financial interest in Developer and will derive a material and substantial benefit, directly or indirectly, from the developing the Project and from the making of this Guaranty by the Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against the Guarantor; (c) the Guarantor is not, and the execution, delivery and performance by the Guarantor of this Guaranty will not cause the Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Guarantor is bound or affected; (d) the Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this Guaranty; (e) except as may have been previously disclosed to City in writing, there is no litigation pending or, to the knowledge of the Guarantor, threatened by or before any tribunal against or affecting the Guarantor; (f) all financial statements and information heretofore furnished to City by the Guarantor do, and all financial statements and information hereafter furnished to City by the Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of the Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of the Guarantor heretofore furnished to City, no material adverse change has occurred in the financial condition of the Guarantor, nor, except as heretofore disclosed in writing to City, has the Guarantor incurred any material liability, direct or indirect, fixed or contingent; (g) after giving effect to this Guaranty, the Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of the Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (h) the Guarantor has read and fully understands the provisions contained in the DDA and the Other Agreements. The Guarantor's representations, warranties and covenants are a material inducement to City to convey the Property and enter into the Other Agreements and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Developer, any Person, or any security for all or any part of the Guaranteed Obligations.

Section 14. Notices.

All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under the DDA shall be in writing and, unless otherwise

specifically provided in the DDA, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty or in the DDA (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty, the DDA or the Other Agreements or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 15. Cumulative Rights.

All of the rights and remedies of City under this Guaranty, the DDA and the Other Agreements are cumulative of each other and of any and all other rights at law or in equity, and the exercise by City of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by City of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by City to exercise, or delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Material Default. No notice to or demand on the Guarantor in any case shall of itself entitle the Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right or remedy of City with respect hereto, or any default or breach, can be waived, nor can this Guaranty or the Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed and delivered by City to the Guarantor.

Section 16. Subrogation.

The Guarantor shall not have any right of subrogation under the DDA or the Other Agreements or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally discharged in accordance with Section 2.4 above, and the Guarantor hereby waives all of such rights. The Guarantor shall not exercise any rights that it may acquire by way of subrogation under this Guaranty, by virtue of any payment made hereunder or otherwise, until all the Guaranteed Obligations have been paid or performed in full. If any amount is paid to Guarantor on account of such subrogation rights before the Guaranteed Obligations have been paid or performed in full, the amount will be held in trust for the benefit of City and will immediately be paid to City to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as City, in its sole and absolute discretion, determines. Until the Guaranteed Obligations are paid or performed in full,

any indebtedness of Developer to the Guarantor is hereby subordinated to all obligations and liabilities of Developer to City arising out of or related to the DDA.

Section 17. Time of Essence.

Time shall be of the essence in this Guaranty with respect to all of the Guarantor's obligations hereunder.

Section 18. Bankruptcy of Developer

The obligations of the Guarantor under this Guaranty will continue to be effective, or be automatically reinstated: (a) if the performance or the payment, in whole or in part, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by City (as a preference, fraudulent conveyance or otherwise) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of City, the Guarantor or any other Person, or (b) upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to Developer, the Guarantor a or any other person, or any substantial part of its property, or otherwise, all as though such payments had not been made. If Material Default has occurred and continues or exists and declaration of default or acceleration under or with respect to the DDA or if any default occurs under this Guaranty or any of the Guaranteed Obligations at such time is prevented by reason of the pendency against the Guarantor or Developer or any other Person of a case or proceeding under a bankruptcy or insolvency law, the Guarantor , agrees that this Guaranty and the Guaranteed Obligations will be deemed to have been declared in default or accelerated with the same effect as if this Guaranty and the Guaranteed Obligations had been declared in default and accelerated in accordance with their respective terms. The Guarantor will immediately perform or pay the Guaranteed Obligations as required under this Guaranty without further notice or demand.

Section 19. Healthcare Developer Obligations

[{If Healthcare Property transaction with Healthcare Developer occurs immediately following acquisition of Healthcare Property by Developer, this Section shall be marked Intentionally Deleted and the text shall be deleted/If Healthcare Property transaction with Healthcare Developer does not occur immediately following acquisition of Healthcare Property by Developer, this Section 18 shall be included in the Guaranty:}

In the event Developer purchases the Healthcare Property and does not concurrently Transfer the entirety of the Healthcare Property to one or more Healthcare Developer(s) approved by the City and providing HCD Guaranties from Guarantors approved by the City in accordance with the requirements of the DDA, then as to the portion of the Healthcare Property not Transferred ("Remainder Property"), the Guaranteed Obligations shall include all obligations of Healthcare Developer with respect to the Remainder Property and the Healthcare Provisions under the DDA and the Other Agreements as and to the extent of the obligations of Guarantor with respect to the Retail Property and the Retail Provisions under this Guaranty, as though the term "Retail Parcel" included the Remainder Parcel and the term "Minimum Retail Improvements" including the Minimum Healthcare Improvements. In the event Developer later Transfers the Healthcare Property or any Remainder Property to an approved Healthcare Developer which

provides an HCD Guaranty acceptable to City in its sole discretion, from a Guarantor acceptable to City in its sole discretion, this Guaranty shall no longer include the obligations of the Healthcare Developer under the DDA as to the portion of the Healthcare Property so Transferred and the City shall execute an amendment to this Guaranty deleting this Section 18.]

Section 20. Entire Agreement; Counterparts; Construction.

This Guaranty embodies the entire agreement between City and the Guarantor with respect to the guaranty by the Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by the Guarantor of the Guaranteed Obligations. This Guaranty shall be effective upon execution by the Guarantor and delivery to City. This Guaranty may not be modified, amended or superseded except in a writing signed by City and the Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

[*Signatures appear on the following page*]

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty as of the date first written above.

Address of Guarantor

By:_____

ATTACHMENT 14B

FORM OF GUARANTY
FOR HEALTHCARE PARCEL

This **GUARANTY AGREEMENT FOR HEALTHCARE PARCEL** (this "**HCD Guaranty**") is made as of the _____ day of _____, 20__, by_____, a _____ ("**Healthcare Guarantor**") in favor of the CITY OF TUSTIN, a public body, corporate and politic ("**City**").

Recitals

A. 1C Tustin Legacy, LLC, a Delaware LLC ("**Developer**") has entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____ (including all Attachments thereto), which as may be amended, updated or modified from time to time are referred to collectively as "**DDA**") under which Developer would acquire the Retail Property and _____, a _____ ("Healthcare Developer**"**) would acquire the Healthcare Property (each as defined in the DDA.) Initially capitalized terms used and not defined herein shall have the meanings set forth in the DDA.

B. Concurrently with the delivery of this HCD Guaranty, Developer *has assigned* its rights and obligations with respect to the Healthcare Property under the DDA ("**HCD Rights** and **Obligations**") to Healthcare Developer and Healthcare Developer has acquired the Healthcare Property.

C. Under the terms of the DDA, Healthcare Developer is required to perform certain design work and construct the Minimum Healthcare Improvements, including, if not carried out by Developer, the Minimum Horizontal Improvements.

D. The Healthcare Guarantor is the sole owner/managing member of Healthcare Developer and thus has a direct and substantial interest in Healthcare Developer and will derive benefit from the acquisition of the Healthcare Property and the development and sale or lease of the Healthcare Project. The Healthcare Guarantor will also derive a direct and substantial benefit by guaranteeing Healthcare Developer's obligation to undertake the actions with respect to the Healthcare Parcel required of Healthcare Developer under the DDA, including providing this HCD Guaranty, inasmuch as the City would not have transferred the Healthcare Parcel to Healthcare Developer or consented to such transfer in the absence of Healthcare Developer undertaking such obligations.

Agreements

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and to induce City to authorize the transfer of the Healthcare Property to Healthcare Developer and to approve the assignment of the HCD Rights and Obligations to Healthcare Developer the Healthcare Guarantor hereby makes the guaranties, obligations, covenants and agreements set forth below in this Agreement.

Section 1. HCD Guaranty.

1.1 Payment and Completion Obligations. The Healthcare Guarantor absolutely and unconditionally guarantees that the Healthcare Guarantor shall pay any and all costs required and cause any all work to be performed as may be required to cause the Completion of the following elements of the Healthcare Project to occur ("**Payment and Completion Obligations**"):

1.1.1 Payment of all Development Costs for the design, construction and Completion of the Minimum Healthcare Improvements; provided that Healthcare Guarantor's obligation to pay for construction and Completion of the Healthcare Vertical Improvements pursuant to this Section 1.1.1 shall apply commencing when Developer has pulled the first permit for construction of such Healthcare Vertical Improvements.

1.1.2 Payment of all Development Costs for the design, construction and Completion of any additional Healthcare Vertical Improvements or other improvements, including Healthcare Horizontal Improvements upon the Healthcare Parcel for which construction has commenced prior to the Expiration Date of this HCD Guaranty ("**Additional Healthcare Improvements**"); provided that such construction shall be deemed to have commenced prior to the Expiration Date of this HCD Guaranty if a building permit for such Vertical Improvements or any portion thereof has been issued by the City at any time prior to the Expiration Date of this HCD Guaranty as defined in Section 16.

1.1.3 The indemnities and other obligations of Healthcare Developer pursuant to Section 10 of the DDA, and

1.1.4 Payment of all costs and expenses of the City arising in connection with the exercise by the City of its remedies under the DDA and/or this HCD Guaranty with respect to Healthcare Developer, the Healthcare Improvements, the Healthcare Provisions and/or the Healthcare Parcel, or any Improvements thereon, including, in each case, any costs incurred by the City with respect to the Healthcare Parcel, the Healthcare Project, Healthcare Developer or the HCD Guaranty and, if applicable, the costs and expenses of the City arising from its exercise of the Right of Repurchase or Right of Reversion as provided in Sections 16.3 and 16.4 of the DDA, respectively, including the payment of the Repurchase Price, but excluding the Repurchase Price applicable to any Reacquired Property actually acquired by the City pursuant to the Right of Repurchase; provided that the City shall be entitled to retain the Reacquired Property so acquired in its entirety, notwithstanding any contribution or payment made by Healthcare Developer, the Healthcare Guarantors(s) under this Guaranty, Developer or the Guarantor(s) under the REG Guaranty.

1.1.5 The Healthcare Guarantor shall pay (or shall have caused others to pay) all of the Development Costs incurred to cause the Completion of the Healthcare Project, such that the Healthcare Property shall be in a lien-free condition as required by the DDA.

1.2 Payment of Enforcement Costs. In addition to its obligations in Section 1.1, the Healthcare Guarantor agrees to pay all costs and expenses incurred by City,

including reasonable attorneys' fees and costs, court costs and all other litigation expenses (including reasonable expert witness fees, costs of depositions and other discovery, travel expenses, exhibit preparation, and courier, postage, communication and document copying expenses), in enforcing this HCD Guaranty ("**Enforcement Payment Obligation**"). The provisions of this Section 1.2 shall survive the termination of this HCD Guaranty.

1.3 Performance of Work. The commencement, construction and Completion of the Improvements: (a) shall be performed in accordance with the Scope of Development and within the time periods set forth in the Schedule of Performance all as and to the extent set forth in the DDA; (b) shall be performed in accordance with the other requirements for construction of the Healthcare Project set forth in the DDA, and (c) shall be diligently pursued by the Healthcare Guarantor to Completion of the Healthcare Project and issuance of a Certificate of Compliance for the Healthcare Parcel.

1.4 Guaranteed Obligations. "**Guaranteed Obligations**" means the Payment and Completion Obligations and the Enforcement Payment Obligation.

1.5 Definition of Project. For purposes of this Guaranty, the definition of Project shall mean the Project as described in the DDA and shall include the Additional Healthcare Improvements.

Section 2. Performance of Payment and Completion Obligations Upon Default by Healthcare Developer

2.1 Default by Healthcare Developer. If Healthcare Developer is in Material Default under the DDA for any reason, including for failure to commence or prosecute the development of the Healthcare Project in accordance with the Schedule of Performance or the Scope of Development, then City may deliver written notice to the Healthcare Guarantor (a "**HCD Guaranty Notice**"), stating the Material Default by Healthcare Developer and requesting that the Healthcare Guarantor undertake to do and pay the Guaranteed Obligations. The Healthcare Guarantor, promptly after receipt of the HCD Guaranty Notice shall perform its Payment and Completion Obligations. The Healthcare Guarantor will take whatever actions may be necessary to perform the Payment and Completion Obligations, including the following:

2.1.1 Diligently and expeditiously proceed to ensure the Completion of the Healthcare Project at the Healthcare Guarantor's sole cost and expense, at the times and subject to the terms and conditions set forth in the DDA;

2.1.2 Fully pay and discharge all Development Costs incurred or required to be incurred in connection with the Completion of the Healthcare Project ; and

2.1.3 Pay any amounts necessary to release and discharge any mechanics', material providers' or other liens that may exist or come into existence in connection with the Healthcare Parcel and Completion of the Healthcare Project or in the alternative contest the same subject to the terms and conditions set forth in the DDA.

2.2 Difficulty or Expense of Completion of the Healthcare Project Does Not Excuse Healthcare Guarantor or HCD Guaranty. The Healthcare Guarantor's obligations under

this HCD Guaranty will remain in full force and effect until the Guaranteed Obligations are fully and finally performed, regardless of whether the Healthcare Guarantor or any other Person determines that Completion of the Healthcare Project is difficult, more expensive than originally intended, or involves "Unanticipated Expense or Delay" (defined below). "**Unanticipated Expense or Delay**" includes any event or circumstance that would make the Completion of the Healthcare Project more costly or would delay the Completion of the Healthcare Project, such events and circumstances specifically including the following matters: (a) a casualty that affects the Healthcare Parcel or any Improvements that may have been constructed; (b) the discovery of unanticipated soils conditions or Hazardous Materials in, on, or under the Healthcare Parcel; (c) Governmental Requirements or court orders applicable to the Healthcare Project; (d) any lack of debt or equity financing for Development Costs; (e) any change in market conditions and (f) other events or circumstances beyond the control of Healthcare Developer or the Healthcare Guarantor relating to the Healthcare Project.

2.3 No Discharge Until Completion. It is the intent of the Healthcare Guarantor and City that the obligations and liabilities of the Healthcare Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally performed, the obligations and liabilities of the Healthcare Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this HCD Guaranty, be deemed a legal or equitable discharge or release of a guarantor. The Guaranteed Obligations shall be deemed to be fully and finally performed for purposes of this HCD Guaranty and this HCD Guaranty shall terminate on the later of (a) the Expiration Date (defined in Section 16) and (b) the date on which the Certificate of Compliance is recorded by the City with respect to the Healthcare Parcel.

Section 3. Absolute, Irrevocable and Unconditional HCD Guaranty.

3.1 Irrevocable HCD Guaranty. This HCD Guaranty is an absolute, irrevocable and unconditional guaranty of performance. This HCD Guaranty shall be effective as a waiver of, and the Healthcare Guarantor hereby expressly waives, any right to which the Healthcare Guarantor may otherwise have been entitled, whether now existing under statute, at law or in equity, or arising under any statute enacted after the date hereof or arising under any doctrine of law or equity promulgated after the date hereof to require City to take prior recourse or proceedings against any collateral, security or Person. It shall not be necessary for City, in order to enforce such payment or performance by the Healthcare Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Developer, Healthcare Developer, the Guarantor under the REG Guaranty or any other Person liable on such indebtedness or for such performance, or to enforce any rights against any security given to secure such indebtedness or performance, or to join Developer or Healthcare Developer or any other Person liable for the performance of the Guaranteed Obligations or any part thereof in any action to enforce this HCD Guaranty, or to resort to any other means of obtaining performance of the Guaranteed Obligations.

3.2 Demand Against the Healthcare Guarantor. City may bring suit or make a demand against Healthcare Developer or against the Healthcare Guarantor or any other parties who have signed this HCD Guaranty or any other guaranty covering all or any part of the

Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of City against the Healthcare Guarantor.

3.3 Independent Guaranty. The obligations of the Healthcare Guarantor under this HCD Guaranty are independent of and in addition to the obligations and liabilities of Developer and Healthcare Developer under the DDA and under the Other Agreements. This HCD Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given by the Healthcare Guarantor, or any other Person under or in connection with the Property, the Improvements, the DDA or the Other Agreements. The liability of the Healthcare Guarantor under this HCD Guaranty is in addition to any and all other liability the Healthcare Guarantor may have in any other capacity with respect to Healthcare Developer, including, if applicable, any direct or indirect ownership or control of any debt and/or equity securities of Healthcare Developer or any Controlling Person of the Healthcare Developer.

Section 4. Certain Agreements and Waivers by the Healthcare Guarantor.

4.1 Waivers. The Healthcare Guarantor agrees that (a) neither City's rights or remedies nor the Healthcare Guarantor's obligations under the terms of this HCD Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, (b) the Healthcare Guarantor waives any rights, claims or defenses arising from any such events, actions, facts, or circumstances, and (c) the liability of the Healthcare Guarantor under this HCD Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(i) any limitation on the liability of, or recourse against, any other Person, including City, in the DDA or any of the Other Agreements or arising under any law;

(ii) any claim or defense that this HCD Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of the Healthcare Guarantor hereunder exceed or are more burdensome than those of Healthcare Developer under the DDA;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) the operation of any statutes of limitation or other laws regarding the limitation of actions, all of which are hereby waived as a defense to any action or proceeding brought by City against the Healthcare Guarantor, to the fullest extent permitted by law;

(v) any homestead exemption or any other exemption under applicable law;

(vi) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of the Healthcare Guarantor's recourse against any Person or collateral;

(vii) whether express or by operation of law, any partial release of the liability of the Healthcare Guarantor hereunder (except to the extent expressly so released by City with respect to this HCD Guaranty) or any complete or partial release of Healthcare Developer or any other Person liable, directly or indirectly, for the performance of any or all of the Guaranteed Obligations;

(viii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Healthcare Developer or any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(ix) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Healthcare Guarantor or its respective successors or assigns;

(x) either with or without notice to or consent of the Healthcare Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or the DDA or any of the Other Agreements or any other agreements that may have been executed by Healthcare Developer, City or any third party affecting the obligations of Healthcare Developer or City under the DDA, or performance (including changes with respect to the construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the DDA, the Other Agreements, any other agreements that may have been executed by Healthcare Developer , City or any third party affecting the obligations of Healthcare Developer or City under the DDA or any other guaranty of any or all of the

Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by City to Healthcare Developer or to any other Person at any time liable for the performance of any or all of the Guaranteed Obligations;

(xi) any neglect, lack of diligence, delay, omission, failure, or refusal of City to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting), or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(xii) any failure of City to notify the Healthcare Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the DDA or any of the Other Agreements or any of the Guaranteed Obligations or any part thereof, or of any release of or change in any security, or of the occurrence or existence of any Material Default, or of any other action taken or refrained from being taken by City against Healthcare Developer or any security or other recourse, or of any new agreement between City and Healthcare Developer, it being understood that City shall not be required to give the Healthcare Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice the Healthcare Guarantor may have otherwise had being hereby waived by the Healthcare Guarantor, and the Healthcare Guarantor shall be responsible for obtaining for itself information regarding Healthcare Developer and any collateral, including any changes in the business or financial condition of Healthcare Developer or any collateral, and the Healthcare Guarantor acknowledges and agrees that City shall have no duty to notify the Healthcare Guarantor of any information which City may have concerning Healthcare Developer or any collateral;

(xiii) the existence of any claim, counterclaim, set-off or other right that the Healthcare Guarantor may at any time have against Healthcare Developer, City, or any other Person, whether or not arising in connection with this HCD Guaranty, the DDA or any Other Agreements;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations against Healthcare Developer, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury or other law, or because the Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in the DDA or the Other Agreements, or because Healthcare Developer has any valid defense, claim or offset with respect thereto, or because Healthcare Developer's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that the Healthcare Guarantor shall remain liable hereon regardless of whether Healthcare Developer or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Healthcare Developer or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(xv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Healthcare Developer or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by City, or any action taken or omitted by City in any such proceedings, including any election to have City's claim allowed as being secured, partially secured or unsecured, any extension of credit by City in any such proceedings or the taking and holding by City of any security for any such extension of credit;

(xvi) any other condition, event, omission, action that would in the absence of this paragraph result in the release or discharge of the Healthcare Guarantor from the performance or observance of any obligation, covenant or agreement contained in this HCD Guaranty or any other agreement;

(xvii) any notice to the Healthcare Guarantor of the existence of or the extending to Healthcare Developer of any grace or cure period for the performance of any of the Guaranteed Obligations;

(xviii) any defense of waiver, release, discharge in res judicata, statute of frauds, fraud, or ultra vires acts that may be available to Developer or Healthcare Developer in respect of the DDA or any of the Other Documents;

(xix) to the fullest extent permitted by law: (A) any defense arising as a result of City's election, in any

proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code; and (B) without limiting the generality of any other provision hereof, all rights and benefits that might otherwise be available to the Healthcare Guarantor under any guarantor, suretyship or other defenses under any law of the State of California or otherwise (including California Civil Code Sections 2787 to 2855, inclusive), including without limitation any rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Guarantor by reason of such provisions of the California Civil Code.

(xx) the benefit of any statute of limitations affecting the liability of the Healthcare Guarantor under this HCD Guaranty or the enforcement of this HCD Guaranty, including any rights arising under Section 359.5 of the California Code of Civil Procedure;

(xxi) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Healthcare Developer in respect of the Guaranteed Obligations or Healthcare Guarantor in respect of this HCD Guaranty; or

(xxii) any early termination of any of the Guaranteed Obligations.

4.2 Additional Waivers.

4.2.1 Without limiting any of the waivers contained in Section 4.1, the Healthcare Guarantor waives all rights and defenses that the Healthcare Guarantor may have because Healthcare Developer's obligations may be, or may be deemed to be, secured by real property. This ***means***, among other things:

(i) The City may collect from the Healthcare Guarantor without first foreclosing on any real or personal property collateral pledged by the Healthcare Developer or Developer.

(ii) If the City forecloses on any real property collateral pledged by the Healthcare Developer or Developer: (i) the amount of the obligation owed to the City may be reduced only by the net price for which that collateral is sold at the foreclosure sale or proceedings, even if the collateral is worth more than the sale price and (2) the City may collect from the Healthcare Guarantor even if the City, by foreclosing on the real property collateral, has destroyed any right the Healthcare Guarantor may have to collect from the Healthcare Developer.

This is an unconditional and irrevocable waiver of any rights and defenses the Healthcare Guarantor may have because the Healthcare Developer's obligations may be, or may be deemed to be, secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

4.2.2 Without limiting any of the waivers contained in Section 4.1, Healthcare Guarantor hereby waives any rights or defenses based upon any or all of the following:

(i) The Healthcare Guarantor rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Healthcare Guarantor by reason of Sections 2787 to 2855, inclusive of the California Civil Code.

(ii) Any rights or defenses the Healthcare Guarantor may have in respect of his or her obligations as a guarantor by reason of any election of remedies by the creditor.

4.2.3 Without limiting the generality of any other waiver or provision of this Guaranty, Healthcare Guarantor waives any and all benefits or defenses under California Civil Code Sections 2899 and 3433, Chapter 2 of Title 14 of the California Civil Code and California Commercial Code section 3605.

4.3 Preferences. In the event any payment by Healthcare Developer or any other Person to City is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason City is required to refund such payment or pay the amount thereof to any other party, such payment by Healthcare Developer or any other party to City shall not constitute a release of the Healthcare Guarantor from any liability hereunder, and this HCD Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by City of this HCD Guaranty or of the Healthcare Guarantor or the prior expiration of this Guaranty), as the case may be, with respect to, and this HCD Guaranty shall apply to, any and all amounts so refunded by City or paid by City to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by City and any attorneys' fees, costs and expenses paid or incurred by City in connection with any such event.

4.4 Defenses. The Healthcare Guarantor waives all rights and defenses arising out of an election of remedies by City, including exercise by the City of its Right of Reversion upon occurrence of a Reversion Event or a repurchase of the Property pursuant to City's Right of Repurchase, even though such election of remedies may have destroyed such Healthcare Guarantor's rights of subrogation and reimbursement against Healthcare Developer by operation of California Code of Civil Procedure Section 580d or otherwise.

4.5 Subrogation and Anti-Deficiency Waivers. The Healthcare Guarantor waives the Healthcare Guarantor's rights of subrogation and reimbursement, including: (a) any defenses the Healthcare Guarantor may have by reason of an election of remedies by City, and

(b) any rights or defenses the Healthcare Guarantor may have by reason of protection afforded to Healthcare Developer with respect to the Guaranteed Obligations pursuant to the anti-deficiency or other laws of California limiting or discharging Healthcare Developer's obligations, including California Code of Civil Procedure Sections 580a, 580b, 580d or 726.

4.6 Waiver of Notice of Acceptance. The Healthcare Guarantor waives notice of acceptance of this HCD Guaranty, any rights, defenses and benefits that may be derived from Sections 2787 to 2855, inclusive, of the California Civil Code or comparable provisions of the laws of any other jurisdiction, and all other suretyship defenses the Healthcare Guarantor would otherwise have under the laws of California or any other jurisdiction.

4.7 No Limitation on Waivers. No provision or waiver in this HCD Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this HCD Guaranty. All of the waivers contained herein are irrevocable and unconditional and are intentionally and freely made by the Healthcare Guarantor.

Section 5. Subordination.

If, for any reason whatsoever, Healthcare Developer is now or hereafter becomes indebted, directly or indirectly to the Healthcare Guarantor including, without limitation, by operation of Civil Code Sections 2847 and 2848, or any successor statutes or similar law (any such indebtedness being referred to as the "**Subordinated Debt**"):

(i) The Subordinated Debt and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Healthcare Developer securing the Subordinated Debt shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations, until the Guaranteed Obligations have been paid or performed in full;

(ii) The Healthcare Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any of the Subordinated Debt until the Guaranteed Obligations have been fully and finally performed; provided, however, that so long as no Material Default under the DDA or the Other Agreements shall have occurred and be continuing, Healthcare Guarantor shall not be prohibited from receiving such (i) reasonable management fees or reasonable salary from Healthcare Developer, and (ii) distributions from Healthcare Developer in an amount equal to any income taxes imposed on such Healthcare Guarantor which are attributable to Healthcare Developer's income from the Property;

(iii) The Healthcare Guarantor hereby assigns and grants to City a security interest in all the Subordinated Debt and security therefor, if any, of Healthcare Developer to the Healthcare Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Healthcare Developer as debtor, City shall have the right to prove its claim in any such proceeding so as to establish its rights

hereunder and shall have the right to receive directly from the receiver, trustee or other custodian, dividends and payments that are payable upon any obligation of Healthcare Developer to the Healthcare Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally performed. If, notwithstanding the foregoing provisions, the Healthcare Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, the Healthcare Guarantor shall pay the same to City immediately, the Healthcare Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for City and shall have absolutely no dominion over the same except to pay it immediately to City; and

(iv) The Healthcare Guarantor shall promptly upon request of City from time to time execute such documents and perform such acts as City may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including execution and delivery of proofs of claim, further assignments and security agreements, and delivery to City of any promissory notes or other instruments evidencing indebtedness of Healthcare Developer to the Healthcare Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by the Healthcare Guarantor, of obligations of Healthcare Developer to the Healthcare Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this HCD Guaranty.

Section 6. Other Liability of the Healthcare Guarantor or Healthcare Developer.

If the Healthcare Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Healthcare Developer to City other than under this HCD Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of City hereunder shall be cumulative of any and all other rights that City may have against the Healthcare Guarantor. If Healthcare Developer is or becomes obligated to City for any liabilities or indebtedness other than or in excess of the Guaranteed Obligations, any payment received or recovery realized upon such other liabilities or indebtedness of Healthcare Developer to City may be applied by City to such other liabilities or indebtedness.

Section 7. City Assigns; Disclosure of Information.

This HCD Guaranty is for the benefit of City and City's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. The Healthcare Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof.

Section 8. Binding Effect; Successor and Assigns.

This HCD Guaranty is binding not only on the Healthcare Guarantor, but also on the Healthcare Guarantor's successors and assigns.

Section 9. Governing Law.

The validity, enforcement, and interpretation of this HCD Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of California (without regard to its conflicts of law principles) and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. The Healthcare Guarantor and City agree that any disputes arising between them in connection with this HCD Guaranty or in connection with or under any instrument, agreement or document provided for or contemplated by this HCD Guaranty, including in connection with the execution of this HCD Guaranty, the Guaranteed Obligations or any other matter arising under, related to or in connection with this HCD Guaranty (including a determination of any and all issues in such dispute, whether of fact or of law) shall be tried and litigated exclusively in the Superior Court of the County of Orange, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California. This choice of venue is intended by the Healthcare Guarantor and City to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between or among the Healthcare Guarantor and City with respect to or arising out of this HCD Guaranty in any jurisdiction other than that specified in this Section 9. Each party hereby waives any right that it may have to assert forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 9, and stipulates that the State and federal courts located in the County of Orange, State of California, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy or proceeding arising out of this HCD Guaranty. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 9 by means of registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this HCD Guaranty, or in the manner set forth below for notices. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

Section 10. Invalidity of Certain Provisions.

If any provision of this HCD Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this HCD Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this HCD Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 11. Costs and Expenses of Enforcement.

The Healthcare Guarantor agrees to pay to City on demand all costs and expenses incurred by City in seeking to enforce City's rights and remedies under this HCD Guaranty, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated hereon. All such costs and expenses incurred by City shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations and shall be payable by the Healthcare Guarantor on demand by City.

Section 12. No Usury.

It is not the intention of City or the Healthcare Guarantor to obligate the Healthcare Guarantor to pay interest in excess of that lawfully permitted to be paid by the Healthcare Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by the Healthcare Guarantor under this HCD Guaranty constitutes interest in excess of the maximum amount of interest that the Healthcare Guarantor, in its capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of the Healthcare Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this HCD Guaranty and of any other agreement between the Healthcare Guarantor and City.

Section 13. Representations, Warranties, and Covenants of the Healthcare Guarantor.

Until the Guaranteed Obligations are performed in full and each and every term, covenant and condition of this HCD Guaranty is fully performed, the Healthcare Guarantor hereby represents, warrants, and covenants that: (a) the Healthcare Guarantor has a financial interest in Healthcare Developer and will derive a material and substantial benefit, directly or indirectly, from the developing the Healthcare Project and from the making of this HCD Guaranty by the Healthcare Guarantor; (b) this HCD Guaranty is duly authorized and valid, and is binding upon and enforceable against the Healthcare Guarantor; (c) the Healthcare Guarantor is not, and the execution, delivery and performance by the Healthcare Guarantor of this HCD Guaranty will not cause the Healthcare Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Healthcare Guarantor is bound or affected; (d) the Healthcare Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this HCD Guaranty; (e) except as may have been previously disclosed to City in writing, there is no litigation pending or, to the knowledge of the Healthcare Guarantor, threatened by or before any tribunal against or affecting the Healthcare Guarantor; (f) all financial statements and information heretofore furnished to City by the Healthcare Guarantor do, and all financial statements and information hereafter furnished to City by the Healthcare Guarantor will, fully and accurately present the condition (financial or otherwise) of Healthcare Guarantor as of their dates and the results of the Healthcare Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of the Healthcare Guarantor heretofore furnished to City, no material adverse change has occurred in the financial condition of the Healthcare Guarantor, nor, except as heretofore disclosed in writing to City, has the Healthcare Guarantor incurred any material liability, direct or indirect, fixed or contingent; (g) after giving effect to this HCD Guaranty, the Healthcare Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of the Healthcare Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (h) the Healthcare Guarantor has read and fully understands the provisions contained in the DDA and the Other Agreements. The Healthcare Guarantor's representations, warranties and covenants are a material inducement to City to approve the assignment of the DDA to the Healthcare Developer, convey the Healthcare Property and enter into the Other Agreements and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other

event affecting Healthcare Developer, Healthcare Guarantor, any other Person, or any security for all or any part of the Guaranteed Obligations.

Section 14. Notices.

All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under the DDA shall be in writing and, unless otherwise specifically provided in the DDA, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this HCD Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this HCD Guaranty, the DDA or the Other Agreements or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 15. Cumulative Rights.

All of the rights and remedies of City under this HCD Guaranty, the DDA and the Other Agreements are cumulative of each other and of any and all other rights at law or in equity, and the exercise by City of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by City of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by City to exercise, or delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Material Default. No notice to or demand on the Healthcare Guarantor in any case shall of itself entitle the Healthcare Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this HCD Guaranty or any right or remedy of City with respect hereto, or any default or breach, can be waived, nor can this HCD Guaranty or the Healthcare Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this HCD Guaranty) executed and delivered by City to the Healthcare Guarantor.

Section 16. Subrogation; Expiration.

The Healthcare Guarantor shall not have any right of subrogation under the DDA or the Other Agreements or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally discharged in accordance with Section 2.4 above, and the Healthcare Guarantor hereby waives all of such rights. The Healthcare Guarantor shall not exercise any rights that it may acquire by way of subrogation

under this HCD Guaranty, by virtue of any payment made hereunder or otherwise, until all the Guaranteed Obligations have been paid or performed in full. The Guaranteed Obligations will not be deemed to be "paid or performed in full" until the expiration of two years and one day (without the filing of any bankruptcy, dissolution, reorganization, or insolvency proceedings by or against either the Healthcare Guarantor or Healthcare Developer during such period) after such payment and/or performance ("**Expiration Date**"). If any amount is paid to Healthcare Guarantor on account of such subrogation rights before the Guaranteed Obligations have been paid or performed in full, the amount will be held in trust for the benefit of City and will immediately be paid to City to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in such order as City, in its sole and absolute discretion, determines. Until the Guaranteed Obligations are paid or performed in full, any indebtedness of Healthcare Developer to the Healthcare Guarantor is hereby subordinated to all obligations and liabilities of Healthcare Developer to City arising out of or related to the DDA.

Section 17. Time of Essence.

Time shall be of the essence in this HCD Guaranty with respect to all of the Healthcare Guarantor's obligations hereunder.

Section 18. Bankruptcy of Healthcare Developer

The obligations of the Healthcare Guarantor under this HCD Guaranty will continue to be effective, or be automatically reinstated: (a) if the performance or the payment, in whole or in part, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by City (as a preference, fraudulent conveyance or otherwise) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of City, the Healthcare Guarantor or any other Person, or (b) upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to Healthcare Developer, the Healthcare Guarantor a or any other Person, or any substantial part of its property, or otherwise, all as though such payments had not been made. If Material Default has occurred and continues or exists and declaration of default or acceleration under or with respect to the DDA or if any default occurs under this HCD Guaranty or any of the Guaranteed Obligations at such time is prevented by reason of the pendency against the Healthcare Guarantor or Healthcare Developer or any other Person of a case or proceeding under a bankruptcy or insolvency law, the Healthcare Guarantor agrees that this HCD Guaranty and the Guaranteed Obligations will be deemed to have been declared in default or accelerated with the same effect as if this HCD Guaranty and the Guaranteed Obligations had been declared in default and accelerated in accordance with their respective terms. The Healthcare Guarantor will immediately perform or pay the Guaranteed Obligations as required under this HCD Guaranty without further notice or demand.

Section 19. Entire Agreement; Counterparts; Construction.

This HCD Guaranty embodies the entire agreement between City and the Healthcare Guarantor with respect to the guaranty by the Healthcare Guarantor of the Guaranteed Obligations. This HCD Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by the Healthcare Guarantor of the Guaranteed Obligations. This

HCD Guaranty shall be effective upon execution by the Healthcare Guarantor and delivery to City. This HCD Guaranty may not be modified, amended or superseded except in a writing signed by City and the Healthcare Guarantor referencing this HCD Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This HCD Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

[*Signatures appear on the following page*]

IN WITNESS WHEREOF, the Healthcare Guarantor has duly executed this HCD Guaranty as of the date first written above.

Address of Healthcare Guarantor

By:_____

ATTACHMENT 15
CERTIFICATE OF COMPLIANCE

CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FORM RECORDING FEES PER GOVERNMENT CODE §6103 AND §27383. **Recording requested by and when recorded mail to:** City Manager The City of Tustin 300 Centennial Way Tustin, CA 92780	

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE FOR

[HEALTHCARE/RETAIL] PARCEL

This CERTIFICATE OF COMPLIANCE ("**Certificate of Compliance**") is made as of _____, 20__ by the CITY OF TUSTIN, a municipal corporation of the State of California ("**City**"), in favor of _____ ("**Developer**"), with reference to the following matters:

A. The City and 1C Tustin Legacy, LLC ("**Initial Developer**") entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____, 2015 (the "**DDA**").

B. The DDA is evidenced by that certain Memorandum of Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C (the "**Memorandum of DDA**"), dated as of _____ and recorded on that date in the Office of the County Recorder, Orange County, California (the "**Official Records**") as Instrument No._____ with respect to certain real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "**Development Parcels**"). All initially capitalized terms not otherwise defined herein shall have the meanings assigned to them in the DDA.

C. Pursuant to and as further described in the DDA, the Developer agreed to acquire, develop and construct certain Improvements comprising the Project on the Development Parcels.

D. Pursuant to Section 9 of the DDA, the City agreed to furnish to the Developer, upon request therefor by the Developer, a Certificate of Completion in recordable form upon satisfaction of the Conditions Precedent to issuance thereof set forth in *[Section 9.2/9.3]* of the DDA.

D. The City has determined that the Developer has satisfied the Conditions Precedent set forth in *[Section 9.2/9.3]* of the DDA for the City's issuance of a Certificate of Compliance with respect to the *[Healthcare Parcel/Retail Parcel]* as legally described on Exhibit "B" attached hereto and incorporated herein by this reference (the "**Certified Parcel**"). For avoidance of doubt, this Certificate applies only with respect to the Certified Parcel, and does not apply to the any other portion of the Development Parcels or any Improvements thereon.

NOW, THEREFORE, the City certifies as follows:

1. This Certificate of Compliance covers and applies to the Certified Parcel and that portion of the Improvements and the *{Retail/Healthcare}* Project constructed thereon [*as depicted and described on Exhibit "C" attached hereto and incorporated herein by this reference (the "**Certified Improvements**")]*.

2. This Certificate of Compliance shall be deemed conclusive evidence of the City's determination that the *{Developer/Healthcare Developer}* has satisfactorily Completed construction and development with respect to the Improvements comprising the *{Retail/Healthcare}* Project and has satisfied all Conditions Precedent set forth in *[Section 9.2/9.3]* of the DDA for issuance of this Certificate of Compliance.

3. A Certificate of Compliance shall have the effects set forth in Section 9 of the DDA and in other applicable provisions of the DDA with respect to the Certified Parcel *{and the Certified Improvements thereon only}*.

4. Upon recordation of this Certificate, the DDA shall terminate as to the Certified Parcel and shall be of no further force and effect with respect to the Certified Parcel and any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Certified Parcel shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA with respect to the Certified Parcel and/or the Certified Improvements, except that the following recorded documents shall survive the termination of the DDA, each in accordance with its terms, as to the Certified Improvements and the Certified Parcel and all Persons owning, leasing or occupying the Certified Parcel and/or the Certified Improvements shall continue to be bound by the following recorded documents, to the extent provided for in such documents, which shall survive the termination of the DDA (each in accordance with its terms), shall not merge with any deed on any transfer of any portion of the Certified Parcel and shall survive the issuance of this Certificate of Compliance as and to the extent indicated in the referenced documents:

(a) The Declaration of Special Restrictions dated _____, 201_ and recorded on _____ 201_ in the Official Records as Instrument No. _____;

(b) The Quitclaim Deed(s) dated _____, 201_ and recorded on _____, 201__ in the Official Records as Instrument No. _____;

(c) The provisions of Section 9.7 of the DDA which, as set forth in the Memorandum of DDA, expressly survive the termination of the DDA; and

(d) The Slope Parcel Easement and Landscape Installation and Maintenance Agreement dated _____, 201_ and recorded on _____, 201__ in the Official Records as Instrument No. _____; and

(e) The CC&Rs dated _____, 201_ and recorded on _____, 201__ in the Official Records as Instrument No. _____;

5. Notwithstanding any other provision of the DDA to the contrary or the issuance or recordation of this Certificate of Compliance and the termination of the DDA as to the Certified Parcel as a result thereof, issuance of this Certificate of Compliance shall not waive any rights or claim that the City may have against any Person or party for latent or patent defects in design, construction or similar matters under any applicable law with respect to construction of the Improvements, including without limitation, the Horizontal Improvements (whether located on or off of the Certified Parcel), or any other rights or remedies of the City available at law or in equity, nor shall it be evidence of satisfaction of any of the Developer's obligations to third parties who are not a party to the DDA.

6. This Certificate of Compliance is not a Notice of Completion as referred to in California Civil Code Section 3093.

7. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the documents executed by the City and ***{Healthcare}*** Developer..

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

IN WITNESS WHEREOF, the City has caused this Certificate of Compliance to be duly executed by its officer duly authorized as of the date first above written.

CITY OF TUSTIN:

Dated: _____

By: _____
Jeffrey C. Parker,
City Manager

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

ATTEST:

By: _____
Erica Rabe
City Clerk

ACCEPTED AND AGREED:

DEVELOPER/HEALTHCARE DEVELOPER:

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPMENT PARCELS

EXHIBIT B
LEGAL DESCRIPTION OF CERTIFIED PARCEL

EXHIBIT C
DESCRIPTION/DEPICTION OF COMPLETED IMPROVEMENTS

ATTACHMENT 16A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
(FOR SECTIONS 2.2.2 and 2.2.3(a) TRANSFERS)

CITY OF TUSTIN OFFICIAL BUSINESS
REQUEST DOCUMENT TO BE
RECORDED AND TO BE EXEMPT FROM
RECORDING FEES PER
GOVERNMENT CODE 6103 AND 27383.

Recording requested by and
when recorded mail to:

City Manager
The City of Tustin
300 Centennial Way
Tustin, CA 92780

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Parcel 1C Tustin Legacy)

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment**") is made as of _____, 20__ (the "**Assignment Effective Date**") by and between 1C Tustin Legacy, LLC, a Delaware limited liability company ("**Developer**"), and _____, a _____ ("**Transferee**"), **[{*to be inserted only in connection with a Transfer that is not a Permitted Transfer*:}** *with the consent of the CITY OF TUSTIN, a municipal corporation of the State of California (the "**City**")*], with reference to the following matters:

A. The City and Developer entered into that certain Tustin Legacy Disposition and Development Agreement for Parcel 1C dated as of _____, 2015 (the "**DDA**"), relating to the conveyance from the City to Developer of that certain real property legally described on Exhibit "A" attached hereto (the "**Development Parcels**") and the subsequent development of the Development Parcels by Developer, all as more particularly set forth in the DDA. All initially capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the DDA. Developer and the City executed that certain Memorandum of Tustin Legacy Disposition and Development Agreement (Parcel 1C) (the "**Memorandum of DDA**"), dated _____, which was recorded in the Office of the County Recorder, Orange County, California (the "**Official Records**") against title to the Development Parcels on _____ as Instrument No. _____, and provided record notice of the DDA.

B. The City has executed that certain Declaration of Special Restrictions for Parcel 1C (the "**Special Restrictions**"), dated _____, that was recorded in the Official Records against title to the Development Parcels on _____ as Instrument No. _____, which includes, among other matters, certain requirements regarding the use and maintenance of the Development Parcels and sets forth those provisions of the DDA that survive the issuance of a Certificate of Compliance with respect to the Project.

C. The City has executed that certain Quitclaim Deed for Disposition Parcel 1C and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1471 (the "**Quitclaim Deed**"), dated _____, which was recorded in the Official Records against title to the Development Parcels on _____ as Instrument No. _____, which Quitclaim Deed conveyed to Developer the fee title to the Development Parcels, subject to certain restrictions and limitations set forth in the Quitclaim Deed.

D. Developer and the City executed that certain Development Agreement (the "**DA**"), dated _____, which was recorded in the Official Records against title to the Development Parcels on _____as Instrument No. _____.

E. Developer and the City executed that certain Slope Parcel Easement and Landscape Installation and Maintenance Agreement (the "**Slope Agreement**"), dated _____, which was recorded in the Official Records against title to the Development Parcels on _____as Instrument No. _____.

F. The DDA, the Memorandum of DDA, the Special Restrictions, the DA, the Quitclaim Deed, the Slope Agreement and the CC&Rs, in each case including all Exhibits and attachments thereto and in each case including all amendments to any of the foregoing through the Assignment Effective Date, are collectively referred to herein as the "**Property Documents**".

G. Pursuant to the DDA, Developer agreed to develop and construct on the Development Parcels certain Improvements comprising the Project.

H. Concurrently with the execution and delivery of this Assignment, Developer is conveying to Transferee that portion of the Property comprised of that certain real property legally described on Exhibit "B" attached hereto, including all Improvements, if any, located thereon, all appurtenances pertaining thereto and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection therewith, for purposes of construction and operation by Transferee of the Project and other Transferee Improvements (defined below) on the Transfer Property, the ("**Transfer Property**"), and for sale of same, and Transferee will develop the Transfer Property in accordance with the requirements of the DDA, including, without limitation, the Scope of Development and the Schedule of Performance, and the other Property Documents.

I. The DDA imposes certain covenants, conditions, payment obligations and restrictions on the Development Parcels and, prior to the filing of a Certificate of Completion, the DDA restricts Developer's ability to transfer ownership and/or control of the Development Parcels, the Project, the Improvements and/or Developer's obligations with respect to the Project

(including, without limitation, Developer's obligations with respect to the off-site infrastructure improvements), all as set forth in the DDA.

J. Developer desires to convey the Transfer Property to Transferee and to assign to Transferee all of Developer's right, title and interest in and to the Property Documents with respect to the Transfer Property (the "**Transfer Event**") ***[{to be inserted only in connection with a Transfer that is not a Permitted Transfer:}*** *to have such assignment approved by the City, and to have Transferee approved by the City as a "Transferee" (as that term is defined in and used in Section 2 of the DDA)]*. Pursuant to Section 2 of the DDA (including without limitation, Section 2.2.3(a) of the DDA with respect to a transfer of a transferor's entire interest) a Transfer must include, among other things, the execution and delivery of an Assignment and Assumption Agreement. Developer and Transferee are entering into this Assignment in order to fulfill the obligations of Developer and Transferee as a Transferee under Section 2 of the DDA.

Simultaneously with this Transfer Event, Transferee will be acquiring the Transfer Property from Developer pursuant to and in accordance with the terms of the DDA.

NOW, THEREFORE, for good and valuable consideration, Developer and Transferee agree as follows:

1. **Assignment.**

1.1 As of the Assignment Effective Date, Developer hereby assigns, conveys, transfers, bargains, grants, sells and sets over to Transferee, as and to the extent owned or held by Developer, the following (collectively, the "**Assigned Interests**"):

(a) All right, title and interest of "Developer" under the Property Documents.

(b) Those rights and obligations of Developer as the "Developer" under the Property Documents including, without limitation, (i) the obligation to construct and Complete the Minimum Horizontal Improvements and other Improvements on the Transfer Property when and as required by the Property Documents, (ii) the obligation to maintain the Improvements located on the Transfer Property, and (iii) any and all additional corresponding rights, obligations, conditions, limitations and restrictions under the Property Documents imposed upon or with respect to the Transfer Property (and all Improvements thereon) arising from and after the Assignment Effective Date, including, without limitation, the rights, obligations, conditions, limitations, releases, indemnities and restrictions contained within the following provisions of the DDA:

(i) Sections 2.1 through 2.4, inclusive;

(ii) Sections 4.5.1 and 4.5.2, including without limitation the release set forth in Section 4.5.2(f);

(iii) Sections 5.1 through 5.7 and 6.1 through 6.4, inclusive;

(iv) Sections 8.1 through 8.12, inclusive;

(v) Sections 9.1 through 9.7, inclusive;

(vi) Sections 10.1 through 10.7, inclusive;

(vii) Sections 11.1 through 11.2, inclusive, and

(viii) Sections 12.1 through 12.8, inclusive.

(c) All Entitlements and Development Permits and other development rights relating to the Transfer Property.

(d) The obligations retained by the Developer with respect to the construction and Completion of the Minimum Horizontal Improvements on the Transfer Property and the construction of the work described in the Slope Agreement, which Transferee shall be obligated to carry out in a timely manner in accordance with the Schedule of Performance in the DDA;

(e) All plans, specifications, maps, drawings, and other renderings owned by Developer and relating to the Transfer Property, the Project and the Entitlements pertaining thereto; *{and}*

(f) All warranties, claims, and any similar rights of Developer relating to and benefiting the Transfer Property or the rights and interests transferred pursuant to this Assignment*; and*

(g) all development rights relating to the Transfer Parcel*[.] or [; and]*

(h) ***[{include only if Transfer Parcel comprises all of the Development Parcels}*** *all intangible rights, goodwill, and similar rights relating to the Project and/or the Transfer Parcel; and]*

(i) ***{Insert any additional specific rights or obligations being assigned or assumed by the Transferee. The assignment should generally be limited to those matters related to development construction, maintenance of the Project and the Transfer Property.}***

1.2 The Assigned Interests together with the Transfer Property are collectively referred to in this Assignment as the "**Assigned Property**."

2. **Assumption.**

2.1 Transferee, on behalf of itself and its successors and assigns, from and after the Assignment Effective Date, hereby assumes and receives the Assigned Property and Transferee agrees with Developer (and such agreement is expressly also made for the benefit of the City and may be directly enforced by the City) as follows, in each case, to the extent relating to the period from and after the Assignment Effective Date ***{NOTE: the following to be revised as***

***appropriate if Minimum Horizontal Improvements or other obligations of Developer or Healthcare Developer under the DDA have been completed}*:**

(a) Transferee accepts and expressly assumes all of the Assigned Property and all of the obligations, conditions, limitations and restrictions imposed upon the Transfer Property and/or the Developer with respect to the Transfer Property under the Property Documents, and Transferee expressly assumes and shall be subject to all the obligations, conditions, limitations and restrictions to which Developer and/or the Transfer Property is subject under or by reason of the Property Documents.

(b) Transferee expressly assumes and shall be subject to all the obligations, conditions, limitations and restrictions to which Developer and/or the Assigned Property are subject by reason of the Entitlements related to the Transfer Property;

(c) Upon and subject to the terms and provisions of the Property Documents, Transferee expressly assumes and shall be subject to all the obligations to perform, construct and/or install any and all of the Improvements, specifically including without limitation, the Minimum Horizontal Improvements located on or affecting the Transfer Property ***{and: Insert any additional assumed construction obligations}*** (collectively, the "**Transferee Improvements**") in accordance with the Scope of Development and within the time periods specified in the Schedule of Performance.

(d) Upon and subject to the terms and provisions of the Property Documents, Transferee shall pay and perform all obligations of Developer set forth in the Property Documents that relate to the Assigned Property, including, without limitation, the following obligations: (i) the obligation to construct all Improvements to be constructed on the Transfer Property in accordance with the Scope of Development and within the time periods specified in the Schedule of Performance; (ii) the obligation to pay all sums required to be paid by Developer under the Property Documents in connection with the ownership and/or development of the Assigned Property, to the extent such amounts have not been paid as of the Assignment Effective Date; (iii) the obligation to develop the Transfer Property in full compliance with all then-existing Entitlements and the Approved Plans; (iv) as a condition precedent to this Assignment, the obligation of the Controlling Person of the Transferee to deliver to the City a Guaranty (or if such Controlling Person is not approved by the City as the Guarantor, another Person approved by the City in its sole discretion as the Guarantor in accordance with Section 4.6 of the DDA).

(e) For the avoidance of doubt, upon the execution and delivery of this Assignment, Transferee shall be deemed to have assumed and shall be obligated to comply with and perform: (i) all obligations of Developer under this Agreement and the Property Documents, (ii) all obligations of Developer under the Property Documents with respect to the Transfer Property, and the Improvements thereon.

(f) ***{Insert any additional obligations to be assumed by Transferee.}***

2.2 For avoidance of doubt, and without limiting the generality of the foregoing, Transferee hereby agrees: (a) that Transferee has hereby assumed and shall be subject to and obligated to perform in accordance with or otherwise comply with the requirements of the DDA, including without limitation, the following: (i) the restrictions on Mortgages; (ii) the rights and remedies of Transferor of the Transfer Property set forth in Sections 14.2.6; (iii) the Transfer and Transfer of Control restrictions set forth in Sections 2.1 through 2.4, inclusive; (iv) Sections 4.5.1 and 4.5.2 (inclusive) including, without limitation, the release set forth in Section 4.5.2 (f); (v) the indemnities and other requirements of Sections 10.1 through 10.7, inclusive; and (vi) the covenants and use restrictions set forth in Sections 12.1 through 12.8, inclusive; and (b) that it shall be subject to all rights and remedies of the City under the Property Documents, including without limitation, the Right of Repurchase and the Right of Reversion set forth in the DDA.

2.3 Transferee shall remain fully responsible to perform and satisfy all of the obligations and liabilities assumed by Transferee pursuant to Section 2.1 and 2.2 above regardless of any of the following:

(a) the value of the Assigned Property or the income to be derived from the Assigned Property;

(b) the existence or non-existence of any liens, easements, covenants, conditions, restrictions, claims or encumbrances affecting the Assigned Property (including without limitation any of the foregoing arising from or related to the Entitlements or any of the Property Documents);

(c) the suitability of the Assigned Property for any and all future development, uses and activities which Transferee or Developer may conduct thereon, including, without limitation, the development of the Project as described in the Property Documents and this Assignment;

(d) the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan, the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authorities;

(e) the compliance by the City or any third party with respect to the Reuse Plan, the General Plan, the Specific Plan, the Special Restrictions, the CC&Rs, the Tustin Legacy Backbone Infrastructure Program or any other agreement or governmental restriction or plan affecting Tustin Legacy by the City or any third party;

(f) the habitability, merchantability or fitness for a particular purpose of the Assigned Property;

(g) the manner, quality, state of repair or lack of repair of the Assigned Property;

(h) the nature, quality or condition of the Assigned Property including without limitation, water, soil and geology;

(i) the compliance of or by the Assigned Property and/or its operation in accordance with any of the Entitlements or any Governmental Requirements, including without limitation, the National Environmental Policy Act, CEQA and the Americans with Disabilities Act of 1990;

(j) the manner or quality of the construction or materials, if any, incorporated into any part of the Transfer Property or the Improvements;

(k) the presence or absence of Hazardous Materials, including without limitation, asbestos or lead paint at, on, under, or adjacent to the Transfer Property or any other portion of the Development Parcels or Tustin Legacy;

(l) the content, completeness or accuracy of the information, documentation, studies, reports, surveys and other materials, delivered to Transferee by Developer or others in connection with Transferee's review of the Assigned Property and the transactions contemplated in the Property Documents or this Assignment;

(m) the conformity of the existing improvements on the Transfer Property, the Development Parcels and/or at Tustin Legacy, if any, to any plans or specifications therefor;

(n) compliance of the Assigned Property with past, current or future Governmental Requirements relating to zoning, subdivision, planning, building, fire, safety, health or environmental matters and/or covenants, conditions, restrictions or deed restrictions;

(o) the deficiency of any undershoring or of any drainage to, on or from the Transfer Property or any other portion of Tustin Legacy;

(p) the condition of any adjoining land owned by the City, including without limitation the Slope Parcel and any improvements thereon;

(q) the fact that all or a portion of the Transfer Property may be located on or near an earthquake fault line or falls within an earthquake fault zone established under the Alquist-Priolo Earthquake Zone Act, California Public Resources Code sections 2621-2630 or within a seismic hazard zone established under the Seismic Hazards Mapping Act, California Public Resources Code sections 2690-2699.6 and sections 3720-3725;

(r) the existence or lack of vested land use, zoning or building entitlements affecting the Assigned Property;

(s) the construction or lack of construction of Tustin Legacy or if constructed, the construction of Tustin Legacy in accordance with design guidelines, plans and specifications previously or to be prepared therefor;

(t) the conditions, covenants and restrictions imposed or to be imposed upon the Assigned Property or any portion thereof under the Property Documents or the Entitlements;

(u) the contents of the Memorandum of Agreement, the Federal Deed, the Base Closure Law and the FOST; and

(v) any other matters.

3. **Release and Continuing Liability under the DDA**.

[{Delete (not applicable) for Transfer to Permitted Transferee/: Delete (not applicable) if terms of Section 2.2.3(iv) for release of Developer are not met } *As of the Assignment Effective Date, Developer shall be released from all obligations under the Property Documents with respect to the Transfer Property, the construction and Completion of the Vertical Improvements, and the other obligations expressly assumed by the Transferee hereunder; provided, however, that notwithstanding the assignment in Section 1 of this Assignment, the assumption in Section 2 of this Assignment, and the City's consent attached to this Assignment, Developer shall not be released from the obligations identified in Section 2.2.3(a)(iv) of the DDA.]*

4. **Indemnity.**

Transferee shall indemnify, protect, defend, assume all responsibility for and hold harmless Developer and its members, officers, agents, affiliates, employees, contractors, consultants, and representatives (collectively referred to as the "**Developer Indemnified Parties**") with counsel reasonably acceptable to Developer, from and against any and all Claims arising from or relating to Transferees' failure to perform its obligations under, or otherwise comply with, the DDA, any of the Property Documents, or this Assignment.

5. **No Waiver or Modification.**

Nothing contained in this Assignment shall modify in any way any other provisions of the Property Documents and/or the Entitlements. Transferee acknowledges that it is taking title to and is assuming the Assigned Property subject to, among other things, the rights of the City and Developer as described in the Property Documents.

6. **Additional Documents.**

Developer and Transferee shall each execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions as are necessary or desirable to effectuate the intent and purposes of this Assignment.

7. **Representations and Warranties of Transferee.**

As an inducement to the City to consent to this Assignment and to perform its obligations under the DDA for the benefit of Transferee, Transferee represents and warrants to the City as follows:

7.1 Transferee has the necessary expertise, experience, financial experience and qualifications and legal status necessary to perform as Transferee pursuant to this Assignment and the Property Documents to construct and complete the Project, and, without limiting the foregoing, Transferee is experienced in the development, management, and leasing of commercial projects of the size and type described in this Assignment and the Property Documents and understands the process and requirements associated with projects such as the Project described herein.

7.2 Transferee's acquisition of the Property, development of the Project and its other undertakings pursuant to this Assignment and the Property Documents are for the purpose of timely development of the Development Parcels in accordance with the Schedule of Performance attached to the DDA and not for speculation or land holding.

7.3 Transferee is a *[_____] [company], duly organized, and validly existing and in good standing under the laws of the State of _____,]* is duly qualified to do business and in good standing in the State of California and each other jurisdiction where the operation of its business or its ownership of property or the performance of Transferee's obligations under this Assignment and the Property Documents make such qualification necessary.

7.4 Transferee has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Assignment or any of the Property Documents) all requisite power and authority required to enter into this Assignment and the instruments referenced in this Assignment and the Property Documents, to assume and perform the obligations of Developer under the Property Documents, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

7.5 Transferee has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Assignment or any Property Documents) all required consents in connection with entering into this Assignment and the instruments and documents referenced in this Assignment and the Property Documents, assuming and performing the obligations of Developer under the Property Documents to which Transferee is or shall be a party and the consummation of the transactions contemplated hereby and thereby.

7.6 The individuals executing this Assignment and the individuals that will execute the instruments referenced in this Assignment and the Property Documents on behalf of Transferee have, or will have upon execution thereof, the legal power, right and actual authority to bind Transferee to the terms and conditions hereof and thereof.

7.7 This Agreement has been duly authorized, executed and delivered by Transferee and all documents required in this Assignment or the Property Documents to be executed by

Transferee pursuant to this Assignment or the Property Documents shall be, at such time as they are required to be executed by Transferee, duly authorized, executed and delivered by Transferee and are or shall be, at such time as the same are required to be executed hereunder, valid, legally binding obligations of and enforceable against Transferee in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

7.8 Neither the execution or delivery of this Assignment, the documents referenced in this Assignment or the Property Documents, nor the incurring of the obligations set forth in this Assignment or the Property Documents and the certificates, declarations and other documents referenced in this Assignment and the Property Documents, nor the consummation of the transactions contemplated in this Assignment or the Property Documents, nor compliance with the terms of this Assignment and the documents referenced in this Assignment or the Property Documents, will violate any provision of law or any order of any court or Governmental Authority to which Transferee is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan partnership agreement, lease or other agreements or instruments to which Transferee or any of its members are a party and which affect the Property or the transactions contemplated by this Assignment or the Property Documents.

7.9 No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to the best of Transferee's knowledge, threatened against Transferee or its members.

7.10 Transferee is relying solely upon its own inspections and investigations in proceeding with this Assignment and the assumption of the Property Documents and the transactions contemplated hereby and thereby, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation or on the non-disclosure of any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Assignment or the Property Documents. In making such investigation and assessment, Transferee has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the generality of the foregoing provisions, Transferee acknowledges that the City has not made and will not make any representations or warranties concerning the condition of the Property, the compliance or non-compliance of the Property or any portion thereof with Environmental Laws or the existence or non-existence of Hazardous Materials in relation to the Property or any portion thereof or otherwise.

7.11 To Transferee's knowledge, except as described on Attachment 4, there are no adverse conditions or circumstances, no pending or threatened litigation, governmental action, or other condition which could prevent or materially impair Transferee's ability to develop the Transfer Property and the Project as contemplated by the terms of this Assignment and the Property Documents.

7.12 Except as set forth in this Assignment and the Property Documents, Transferee has not paid or given, and will not pay or give, any third Person any money or other consideration for obtaining this Assignment, other than the normal cost of conducting business and cost of professional services such as architects, engineers and attorneys.

7.13 All reports, documents, instruments, information and forms of evidence delivered by Transferee to the City concerning or related to this Assignment and the Property Documents and the transactions contemplated hereby and thereby are, to the best of Transferee's knowledge, accurate and correct and sufficiently complete at the time of submission to give the City true and accurate knowledge of the subject matter, and do not contain any misrepresentation or omission.

7.14 Prior to the Assignment Effective Date, Transferee has delivered evidence of equity capital and financial capacity to comply with the obligations of Transferee under this Assignment and the Property Documents required to be satisfied under the DDA *[in the form of the information specified in Section 2.2.3(a)(ii) of the DDA and including an Equity Funding Letter if required by the DDA]* ("**Financial Information**"). The Financial Information is in full force and effect, remains true and correct as of the Assignment Effective Date and has not been amended or modified. Based on the Financial Information, Transferee has, as of the Assignment Effective Date, the equity capital and financial capacity, to comp.ly with the obligations of Transferee under this Assignment and the Property Documents required to be satisfied under the DDA

7.15 Prior to the Assignment Effective Date, Developer and Transferee, as the proposed Developer, have executed and delivered that certain _____, *dated* _____, *20__* (the "**PSA**"), a copy of which has been delivered by Developer to the City. The PSA: (a) is in full force and effect and has not been amended or modified, and (b) will not be modified, amended or terminated by Developer or Transferee without the prior consent of City in its sole discretion. Upon satisfaction of the conditions precedent set forth in Section 7.2.1 of the DDA and without any other requirement or condition pursuant to the terms of the PSA or any other agreement entered into by Transferee and Developer, as of the Close of Escrow, Developer shall be obligated to sell to Transferee, and Transferee has agreed to acquire, all right, title and interest of Developer under the DDA and the other Property Documents with respect to the Transfer Property and the development thereof ***[{insert if Property previously conveyed by the City to Developer:}****,including the Property],* and to assume and comply with the obligations of Developer and other obligations of Developer under this Assignment and the Property Documents (including, without limitation, execution of the Guaranty required to comply with the terms of this Assignment and the Property Documents) required to be satisfied with respect to the Transferee and/or the Transfer Property, whether prior to or following the Close of Escrow. Transferee acknowledges that, notwithstanding the execution by Transferee and Developer of the PSA, the City has the right, in its sole discretion to approve and/or disapprove Transferee as Developer, the PSA and any future agreements with Transferee, as further set forth in Section 2.2.3(b) and/or Section 4.6 of the DDA, as applicable.

7.16 Transferee does not have any contingent obligations or any other contracts the performance or nonperformance of which could affect the ability of Transferee to carry out its obligations hereunder. Transferee has not and shall not undertake such additional projects as

could reasonably be expected to jeopardize the sufficiency of such equity, capital and firm and binding commitments for the purposes expressed in the preceding sentence.

7.17 *[Except as set forth in Exhibit ___, there/ There]* are no legal proceedings either pending or, to the best of Transferee's knowledge, threatened, to which Transferee is or may be made a party, or to which any of Transferee's property, or the Transfer Property, is or may become subject, which could materially affect the ability of Transferee to carry out its obligations hereunder.

Transferee's representations and warranties set forth in this Section 8 shall be deemed to be restated at each Close of Escrow, and shall survive each Close of Escrow until the termination of the DDA with respect to the Transfer Property and shall not be merged with any Quitclaim Deed. The phrase "**to Transferee's knowledge**" and similar phrases means those Persons Transferee represents as having knowledge of the transactions and Transferee and accepted by the City, comprised of ***[ADD NAMES]*** in each case without any duty of inquiry (collectively, the "**Transferee Knowledge Parties**"). Notwithstanding anything to the contrary contained herein, none of the Transferee Knowledge Parties shall be personally liable for any inaccuracy or breach by Transferee of the representations and warranties contained in this Section 8 or elsewhere in this Assignment or the Property Documents. Transferee shall promptly advise the City in writing if any of the Transferee Knowledge Parties becomes aware (without any duty of inquiry) that any representation or warranty made by Transferee in or pursuant to this Assignment the DDA is or becomes untrue in any material respect prior to each Close of Escrow.

8. **No Real Estate Commissions.**

Developer and Transferee each represents for the benefit of the City that it has engaged no broker, agent or finder in connection with this Assignment or the transactions identified in this Assignment or the Property Documents, other than disclosed to City in writing prior to the Effective Date. Developer and Transferee hereby agrees to indemnify and hold the City and its elected and appointed officials, employees and 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 and/or Transferee regarding this Assignment, the Property Documents or development of the Project or the transactions identified in this Assignment and the Property Document.

9. **Miscellaneous.**

9.1 Modification. No amendment, change, modification or supplement to this Assignment shall be valid and binding on Developer or Transferee unless it is represented in writing and signed by both Developer and Transferee. ***[{To be inserted only in connection with a Transfer that is not a Permitted Transfer:}*** *and with the written consent of the City thereto.]* No amendment, change, modification or supplement to this Assignment shall be deemed to be part of the consent or deemed to be consented to by the City, unless the City executes a separate written consent to such amendment, change, modification or supplement.

9.2 Applicable Law. This Assignment shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles.

9.3 Binding Effect. This Assignment and the terms, provisions, promises, covenants and conditions hereof shall be binding upon and inure to the benefit of Developer and Transferee and their respective heirs, legal representatives, successors and assigns.

9.4 Counterparts. This Assignment may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Assignment shall not be effective until the execution and delivery by Developer and Transferee of at least one set of counterparts ***[{to be inserted only in connection with a Transfer that is not a Permitted Transfer:}*** *(together with an executed counterpart of the City's consent attached to this Assignment)]*. A counterpart of this Assignment that is executed and delivered electronically (by facsimile machine or email) shall not be effective unless an ink-signed original executed copy of the signature page of this Assignment is also promptly delivered to the other party, and such ink-signed original executed page is actually received by the other party. Developer and Transferee hereby authorize each other to detach and combine original signature pages and notarial acknowledgements and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Assignment as a duly and validly executed agreement.

9.5 City as Third Party Beneficiary. Developer and Transferee hereby acknowledge and agree that until the Certificate of Compliance is recorded in the Official Records with respect to the Transfer Property, the City shall be an intended third party beneficiary under this Assignment and the City shall have the right to enforce the terms and provisions of this Assignment applicable to the City. Other than the City, there shall be no third party beneficiaries of this Assignment.

9.6 Notices. From and after the Amendment Effective Date, all notices that the City delivers to the "Developer" under the Property Documents and/or the Entitlements with respect to the Transfer Property shall also concurrently be delivered to Transferee pursuant to Section 17.6 of the DDA, shall be delivered to Transferee only at the following addresses:

Transferee:

[_____]
_____
_____
_____

with a copy to:

[legal counsel]
_____
_____
_____]

[*signature page follows*]

Developer and Transferee each has caused this Assignment to be duly executed by its duly authorized officer as of the Assignment Effective Date.

"DEVELOPER"

By: _____
Name: _____
Title: _____

Dated: _____

"TRANSFEREE"

[_____],
a _____

Dated: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

{City consent on next page}

[THE FOLLOWING ACKNOWLEDGEMENT IS TO BE INSERTED ONLY IN CONNECTION WITH A TRANSFER THAT IS NOT A PERMITTED TRANSFER]

ACKNOWLEDGMENT AND CONSENT BY CITY OF TUSTIN

By executing in the space set forth below, the City of Tustin hereby:

(a) Acknowledges receipt of the Assignment and Assumption Agreement (the "**Assignment**") to which this Consent is attached;

(b) Consents to the making of the Assignment between Developer and Transferee, subject to the terms and conditions set forth in the Assignment and this Acknowledgement and Consent by City of Tustin;

(c) Agrees that ***[insert name of Transferee], a _____]*** (the assignee in the Assignment) shall be deemed by the City to be the "Developer" under the DDA with respect to the Transfer Property, from and after the Assignment Effective Date;

(d) Acknowledges the additional addresses for Notices for Transferee set forth in the Assignment and agrees that from and after the Assignment Effective Date all notices from City to Developer under the Property Documents and the Entitlements with respect to the Transfer Property shall also be delivered to Transferee at such addresses.

(e) This Consent by the City constitutes the consent required pursuant to Section 2.(a) of the DDA with respect to Transfer to a Transferee and constitutes the City's acknowledgment that the requirements of Section 2.2.3(a) have been satisfied with respect to the Transfer described in this Assignment;

(f) ***[{Delete (not applicable) for Transfer to Permitted Transferee/: Delete (not applicable) if terms of Section 2.2.3(iv) for release of Developer are not met }*** Transferor is released from the obligations of Developer under the DDA and the Property Documents; provided that, notwithstanding the foregoing or the assumption of obligations by Transferee:

(1) Developer shall not be relieved of any of its other obligations under the DDA or the Property Documents and specifically, and without limitation shall not be relieved or released from the Ongoing Matters and/or, in its capacity as Healthcare Property Transferor, from the Healthcare Transferor Obligations;

(2) the Healthcare Transferor Obligations shall remain the obligations of Transferor and each Successor Owner of the Retail Parcels that is not an End User unless and until such Person is expressly released in writing by the City; and

(3) nothing in this paragraph (f) shall limit Developer's liability during any applicable Additional Liability Period.

(g) This Consent by the City to the Assignment shall not constitute evidence of compliance with or satisfaction of any obligation of Developer under any of the Property Documents, or any other agreement between Developer and the City, except for the obligation of Developer to obtain the City's consent to any Transfer.

CITY:

CITY OF TUSTIN

Dated: _____, 20____

By:_____
Jeffrey C. Parker
City Manager

ATTEST:

By:_____
Erica N. Rabe
City Clerk

APPROVED AS TO FORM:

By:_____
David Kendig, City Attorney

Special Counsel to the City
Armbruster Goldsmith & Delvac LLP

By:_____
Amy E. Freilich

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

Legal Description of the Development Parcels

[*Insert Legal Description*]

EXHIBIT "B"

Legal Description of the Transfer Property

[*Insert Legal Description of Transfer Property*]

ATTACHMENT 16B

FORM OF HCD ASSIGNMENT AND ASSUMPTION AGREEMENT

**CITY OF TUSTIN OFFICIAL BUSINESS
REQUEST DOCUMENT TO BE
RECORDED AND TO BE EXEMPT FROM
RECORDING FEES PER
GOVERNMENT CODE 6103 AND 27383.**

**Recording requested by and
when recorded mail to:**

City Manager
The City of Tustin
300 Centennial Way
Tustin, CA 92780

SPACE ABOVE THIS LINE FOR RECORDER'S USE

HCD ASSIGNMENT AND ASSUMPTION AGREEMENT

(Parcel 1C Tustin Legacy)

This HCD ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment**") is made as of _____, 20__ (the "**Assignment Effective Date**") by and between 1C Tustin Legacy, LLC, a Delaware limited liability company ("**Developer**"), and _____, a _____ ("**Transferee**"), with the consent of the CITY OF TUSTIN, a municipal corporation of the State of California (the "**City**"), with reference to the following matters:

A. The City and Developer entered into that certain Tustin Legacy Disposition and Development Agreement for Parcel 1C dated as of _____, 2015 (the "**DDA**"), relating to the conveyance from the City to Developer of that certain real property legally described on Exhibit "A" attached hereto (the "**Development Parcels**") and the subsequent development of the Development Parcels by Developer, all as more particularly set forth in the DDA. All initially capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the DDA. Developer and the City executed that certain Memorandum of Tustin Legacy Disposition and Development Agreement (Parcel 1C) (the "**Memorandum of DDA**"), dated _____, which was recorded in the Office of the County Recorder, Orange County, California (the "**Official Records**") against title to the Development Parcels on _____ as Instrument No. _____, and provided record notice of the DDA.

B. The City has executed that certain Declaration of Special Restrictions for Parcel 1C (the "**Special Restrictions**"), dated _____, that was recorded in the Official

Records against title to the Development Parcels on _____ as Instrument No. _____, which includes, among other matters, certain requirements regarding the use and maintenance of the Development Parcels and sets forth those provisions of the DDA that survive the issuance of a Certificate of Compliance with respect to the Project.

C. The City has executed that certain Quitclaim Deed for Disposition Parcel 1C and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1471 (the "**Quitclaim Deed**"), dated _____, which was recorded in the Official Records against title to the Development Parcels on _____ as Instrument No. _____, which Quitclaim Deed conveyed to Developer the fee title to the Development Parcels, subject to certain restrictions and limitations set forth in the Quitclaim Deed.

D. Developer and the City executed that certain Development Agreement (the "**DA**"), dated _____, which was recorded in the Official Records against title to the Development Parcels on _____as Instrument No. _____.

E. Developer and the City executed that certain Slope Parcel Easement and Landscape Installation and Maintenance Agreement (the "**Slope Agreement**"), dated _____, which was recorded in the Official Records against title to the Development Parcels on _____as Instrument No. _____.

F. The DDA, the Memorandum of DDA, the Special Restrictions, the DA, the Quitclaim Deed, the Slope Agreement and the CC&Rs, in each case including all Exhibits and attachments thereto and in each case including all amendments to any of the foregoing through the Assignment Effective Date, are collectively referred to herein as the "**Property Documents**".

G. Pursuant to the DDA, Developer agreed to develop and construct on the Development Parcels certain Improvements comprising the Project.

H. Concurrently with the execution and delivery of this Assignment, Developer is conveying to Transferee that portion of the Healthcare Property comprised of that certain real property legally described on Exhibit "B" attached hereto, including all Improvements, if any, located thereon, all appurtenances pertaining thereto and all permits, licenses, approvals and authorizations issued by any Governmental Authority in connection therewith, for purposes of construction and operation by Transferee of a portion of the Healthcare Project and other Transferee Improvements (defined below) on the Transfer Property, the ("**Transfer Property**"), and for sale of same, and Transferee will develop the Transfer Property in accordance with the requirements of the DDA, including, without limitation, the Scope of Development and the Schedule of Performance, and the other Property Documents.

I. The DDA imposes certain covenants, conditions, payment obligations and restrictions on the Development Parcels and, prior to the filing of a Certificate of Completion, the DDA restricts Developer's ability to transfer ownership and/or control of the Development Parcels, the Project, the Improvements and/or Developer's obligations with respect to the Project (including, without limitation, Developer's obligations with respect to the off-site infrastructure improvements), all as set forth in the DDA.

J. Developer desires to convey the Transfer Property to Transferee and to assign to Transferee all of Developer's right, title and interest in and to the Property Documents with respect to the Transfer Property (the "**Transfer Event**") to have such assignment approved by the City, and to have Transferee approved by the City as a "**Healthcare Developer**" (as that term is defined in and used in Section 2 of the DDA)]. Pursuant to Section 2 of the DDA (including without limitation, Section 2.2.3(b) of the DDA), a Transfer must include, among other things, the execution and delivery of an HCD Assignment and Assumption Agreement. Developer and Transferee are entering into this Assignment in order to fulfill the obligations of Developer and Transferee under Section 2 of the DDA.

Simultaneously with this Transfer Event, Transferee will be acquiring the Transfer Property from Developer pursuant to and in accordance with the terms of the DDA.

NOW, THEREFORE, for good and valuable consideration, Developer and Transferee agree as follows:

1. **Assignment.**

1.1 As of the Assignment Effective Date, Developer hereby assigns, conveys, transfers, bargains, grants, sells and sets over to Transferee, as and to the extent owned or held by Developer, the following (collectively, the "**Assigned Interests**"):

(a) All right, title and interest of "Healthcare Developer" under the Property Documents to the extent affecting the Transfer Property (provided that Developer hereby reserves and shall not convey to Transferee any right, title or interest to the extent such right, title or interest is required by Developer in connection with the Retail Property).

(b) Those rights and obligations of Developer as the "Developer" under the Property Documents to the extent such rights and obligations apply to the Transfer Property (or the Project or Improvements located or to be located thereon), including, without limitation, (i) the obligation to construct and Complete the Healthcare Horizontal Improvements and the Minimum Healthcare Vertical Improvements on the Transfer Property, (ii) the obligation to maintain the Improvements located on the Transfer Property, and (iii) any and all additional corresponding rights, obligations, conditions, limitations and restrictions under the Property Documents imposed upon or with respect to the Transfer Property (and all Improvements thereon) arising from and after the Assignment Effective Date, including, without limitation, the rights, obligations, conditions, limitations, releases, indemnities and restrictions contained within the following provisions of the DDA:

(i) Sections 2.1 through 2.4, inclusive;

(ii) Sections 4.5.1 and 4.5.2, including without limitation the release set forth in Section 4.5.2(f);

(iii) Sections 5.1 through 5.7 and 6.1 through 6.4, inclusive;

(iv) Sections 8.1 through 8.12, inclusive, provided that, with respect to Section 8.2.1, the time period applicable to Transferee for the Completion of the Healthcare Minimum Vertical Improvements shall be reduced by six (6) months from the time period otherwise set forth in the DDA for Completion of the Minimum Vertical Improvements pursuant to the provisions of Section 14.2.6 of the DDA;

(v) Sections 9.1 through 9.7, inclusive;

(vi) Sections 10.1 through 10.7, inclusive;

(vii) Sections 11.1 through 11.2, inclusive, and

(viii) Sections 12.1 through 12.8, inclusive.

(c) All Entitlements and Development Permits and other development rights relating to the Transfer Property.

(d) The obligations retained by the Developer with respect to the construction and Completion of the Minimum Horizontal Improvements on the Transfer Property and the construction of the work described in the Slope Agreement, which Transferee shall be obligated to carry out only to the extent Developer fails to perform such obligations in a timely manner in accordance with the Schedule of Performance in the DDA;

(e) All plans, specifications, maps, drawings, and other renderings owned by Developer and relating to the Transfer Property (which assignment shall be on a non-exclusive basis), the Healthcare Project and the Entitlements pertaining thereto; *{and}*

(f) All warranties, claims, and any similar rights of Developer relating to and benefiting the Transfer Property or the rights and interests transferred pursuant to this Assignment*[.] or [; and]*

(g) ***{Insert any additional specific rights or obligations being assigned or assumed by the Transferee. The assignment should generally be limited to those matters related to development construction, maintenance of the Healthcare Project and the Transfer Property.}*** *[.] or [; and]*

(h) {If the Medical Office Parcels are conveyed separately from the Other Healthcare Parcels, add in assignment to Healthcare Developer acquiring the Other Healthcare Parcels the following language:} **["Healthcare Developer shall not commence construction on the Transfer Parcel until and unless construction of the Medical Office Building on the Medical Office Parcels has "Commenced" (as defined in the DDA), all as set forth in more detail in Section 8.2.6 of the DDA and neither the Healthcare Developer of the Medical Office Parcels nor Transferee is in Default (as defined in the DDA) under any Property Document."]**

1.2 The Assigned Interests together with the Transfer Property are collectively referred to in this Assignment as the "**Assigned Property**."

2. **Assumption.**

2.1 Transferee, on behalf of itself and its successors and assigns, from and after the Assignment Effective Date, hereby assumes and receives the Assigned Property and Transferee agrees with Developer (and such agreement is expressly also made for the benefit of the City and may be directly enforced by the City) as follows, in each case, to the extent relating to the period from and after the Assignment Effective Date:

(a) Transferee accepts and expressly assumes all of the Assigned Property and all of the obligations, conditions, limitations and restrictions imposed upon the Transfer Property and/or the Developer with respect to the Transfer Property under the Property Documents, and Transferee expressly assumes and shall be subject to all the obligations, conditions, limitations and restrictions to which Developer and/or the Transfer Property is subject under or by reason of the Property Documents that relate to the Transfer Property.

(b) Transferee expressly assumes and shall be subject to all the obligations, conditions, limitations and restrictions to which Developer and/or the Assigned Property are subject by reason of the Entitlements related to the Transfer Property;

(c) Upon and subject to the terms and provisions of the Property Documents, Transferee expressly assumes and shall be subject to all the obligations to perform, construct and/or install any and all of the Healthcare Improvements, specifically including without limitation, but subject to clause (d) below, the Minimum Horizontal Improvements located on or affecting the Transfer Property ***{and: Insert any additional assumed construction obligations}*** (collectively, the "**Transferee Improvements**") in accordance with the Scope of Development and within the time periods specified in the Schedule of Performance; provided, however, that the time period applicable to Transferee for the completion of the Healthcare Minimum Vertical Improvements shall be reduced by six (6) months from the time period otherwise set forth in the DDA pursuant to the provisions of Section 14.2.6 of the DDA; and

(d) Upon and subject to the terms and provisions of the Property Documents, Transferee shall pay and perform all obligations of Developer set forth in the Property Documents that relate to the Assigned Property, including, without limitation, the following obligations: (i) the obligation to construct all Improvements to be constructed on the Transfer Property in accordance with the Scope of Development and within the time periods specified in the Schedule of Performance; (ii) the obligation to pay all sums required to be paid by Developer under the Property Documents in connection with the ownership and/or development of the Assigned Property, to the extent such amounts have not been paid as of the Assignment Effective Date; (iii) the obligation to develop the Transfer Property in full compliance with all then-existing Entitlements and the Approved Plans; (iv) as a condition precedent to this Assignment, the obligation of the Controlling Person of the Transferee to deliver to the City an HCD Guaranty (or if such Controlling Person is not approved by the City as the Healthcare Guarantor, another Person approved by the City in its sole discretion as the Healthcare Guarantor in accordance with Section 4.6 of the DDA).

(e) For the avoidance of doubt, upon the execution and delivery of this Assignment, Transferee shall be deemed to have assumed and shall be obligated to comply with and perform: (i) all obligations of Healthcare Developer under this Agreement and the Property Documents, (ii) all obligations of Developer under the Property Documents with respect to the Transfer Property, the Healthcare Project and the Improvements thereon, including all requirements of each of the provisions of the Property Documents that are expressly imposed only upon Developer, but apply with respect to the Transfer Property (and the Healthcare Project and/or the Improvements thereon), but in such event only with respect to the Transfer Property (and the Healthcare Project and the Improvements existing or to be constructed thereon).

(f) ***{Insert any additional obligations to be assumed by Transferee.}***

2.2 For avoidance of doubt, and without limiting the generality of the foregoing, Transferee hereby agrees: (a) that Transferee has hereby assumed and shall be subject to and obligated to perform in accordance with or otherwise comply with the requirements of the DDA, including without limitation, the following: (i) the restrictions on Mortgages; (ii) the rights and remedies of Transferor of the Transfer Property set forth in Sections 14.2.6; (iii) the Transfer and Transfer of Control restrictions set forth in Sections 2.1 through 2.4, inclusive; (iv) Sections 4.5.1 and 4.5.2 (inclusive) including, without limitation, the release set forth in Section 4.5.2 (f); (v) the indemnities and other requirements of Sections 10.1 through 10.7, inclusive; and (vi) the covenants and use restrictions set forth in Sections 12.1 through 12.8, inclusive; and (b) that it shall be subject to all rights and remedies of the City under the Property Documents, including without limitation, the Right of Repurchase and the Right of Reversion set forth in the DDA.

2.3 Transferee shall remain fully responsible to perform and satisfy all of the obligations and liabilities assumed by Transferee pursuant to Section 2.1 and 2.2 above regardless of any of the following:

(a) the value of the Assigned Property or the income to be derived from the Assigned Property;

(b) the existence or non-existence of any liens, easements, covenants, conditions, restrictions, claims or encumbrances affecting the Assigned Property (including without limitation any of the foregoing arising from or related to the Entitlements or any of the Property Documents);

(c) the suitability of the Assigned Property for any and all future development, uses and activities which Transferee or Developer may conduct thereon, including, without limitation, the development of the Project as described in the Property Documents and this Assignment;

(d) the ability of the City or any third party to complete, or likelihood of the completion of, any of the improvements and infrastructure described by the General Plan, the Reuse Plan, the Specific Plan, the Tustin Legacy Backbone Infrastructure Program or any other plan or policy of the City or any other Governmental Authorities;

(e) the compliance by the City or any third party with respect to the Reuse Plan, the General Plan, the Specific Plan, the Special Restrictions, the CC&Rs, the Tustin Legacy Backbone Infrastructure Program or any other agreement or governmental restriction or plan affecting Tustin Legacy by the City or any third party;

(f) the habitability, merchantability or fitness for a particular purpose of the Assigned Property;

(g) the manner, quality, state of repair or lack of repair of the Assigned Property;

(h) the nature, quality or condition of the Assigned Property including without limitation, water, soil and geology;

(i) the compliance of or by the Assigned Property and/or its operation in accordance with any of the Entitlements or any Governmental Requirements, including without limitation, the National Environmental Policy Act, CEQA and the Americans with Disabilities Act of 1990;

(j) the manner or quality of the construction or materials, if any, incorporated into any part of the Transfer Property or the Improvements;

(k) the presence or absence of Hazardous Materials, including without limitation, asbestos or lead paint at, on, under, or adjacent to the Transfer Property or any other portion of the Development Parcels or Tustin Legacy;

(l) the content, completeness or accuracy of the information, documentation, studies, reports, surveys and other materials, delivered to Transferee by Developer or others in connection with Transferee's review of the Assigned Property and the transactions contemplated in the Property Documents or this Assignment;

(m) the conformity of the existing improvements on the Transfer Property, the Development Parcels and/or at Tustin Legacy, if any, to any plans or specifications therefor;

(n) compliance of the Assigned Property with past, current or future Governmental Requirements relating to zoning, subdivision, planning, building, fire, safety, health or environmental matters and/or covenants, conditions, restrictions or deed restrictions;

(o) the deficiency of any undershoring or of any drainage to, on or from the Transfer Property or any other portion of Tustin Legacy;

(p) the condition of any adjoining land owned by the City, including without limitation the Slope Parcel and any improvements thereon;

(q) the fact that all or a portion of the Transfer Property may be located on or near an earthquake fault line or falls within an earthquake fault zone established under the

Alquist-Priolo Earthquake Zone Act, California Public Resources Code sections 2621-2630 or within a seismic hazard zone established under the Seismic Hazards Mapping Act, California Public Resources Code sections 2690-2699.6 and sections 3720-3725;

(r) the existence or lack of vested land use, zoning or building entitlements affecting the Assigned Property;

(s) the construction or lack of construction of Tustin Legacy or if constructed, the construction of Tustin Legacy in accordance with design guidelines, plans and specifications previously or to be prepared therefor;

(t) the conditions, covenants and restrictions imposed or to be imposed upon the Assigned Property or any portion thereof under the Property Documents or the Entitlements;

(u) the contents of the Memorandum of Agreement, the Federal Deed, the Base Closure Law and the FOST; and

(v) any other matters.

3. **Release and Continuing Liability under the DDA**.

As of the Assignment Effective Date, Developer shall be released from all obligations under the Property Documents with respect to the Transfer Property, the construction and Completion of the Healthcare Vertical Improvements, and the other obligations expressly assumed by the Transferee hereunder; provided, however, that notwithstanding the assignment in Section 1 of this Assignment, the assumption in Section 2 of this Assignment, and the City's consent attached to this Assignment, Developer shall not be released from the obligations identified in Section 2.2.3(b)(v) of the DDA.

4. **Indemnity.** Transferee shall indemnify, protect, defend, assume all responsibility for and hold harmless Developer and its members, officers, agents, affiliates, employees, contractors, consultants, and representatives (collectively referred to as the "**Developer Indemnified Parties**") with counsel reasonably acceptable to Developer, from and against any and all Claims arising from or relating to Transferees' failure to perform its obligations under, or otherwise comply with, the DDA, any of the Property Documents, or this Assignment.

5. **Definitions**.

For purposes of this Assignment and the obligations of the Transferee under the DDA, within the sections of the DDA listed in Sections 1 and 2 of this Assignment, the following terms shall have the meanings set forth below:

(a) "Developer" shall mean Healthcare Developer;

(b) "Property" and "Development Parcels" shall each mean the Assigned Property;

(c) "Project" shall mean the construction and installation of the Healthcare Improvements, and

(d) "Improvements" shall mean the Healthcare Horizontal Improvements and Healthcare Vertical Improvements and the components of the Minimum Horizontal Improvements located upon or affecting the Transfer Property.

6. **No Waiver or Modification.**

Nothing contained in this Assignment shall modify in any way any other provisions of the Property Documents and/or the Entitlements. Transferee acknowledges that it is taking title to and is assuming the Assigned Property subject to, among other things, the rights of the City and Developer as described in the Property Documents.

7. **Additional Documents.**

Developer and Transferee shall each execute and deliver to the other party, upon demand, such further documents, instruments and conveyances, and shall take such further actions as are necessary or desirable to effectuate the intent and purposes of this Assignment.

8. **Representations and Warranties of Healthcare Developer.**

As an inducement to the City to consent to this Assignment and to perform its obligations under the DDA for the benefit of Transferee, Transferee represents and warrants to the City as follows:

8.1 Transferee has the necessary expertise, experience, financial experience and qualifications and legal status necessary to perform as Transferee pursuant to this Assignment and the Property Documents to construct and complete the Project, and, without limiting the foregoing, Transferee is experienced in the development, management, and leasing of commercial projects of the size and type described in this Assignment and the Property Documents and understands the process and requirements associated with projects such as the Project described herein.

8.2 Transferee's acquisition of the Property, development of the Project and its other undertakings pursuant to this Assignment and the Property Documents are for the purpose of timely development of the Development Parcels in accordance with the Healthcare Schedule of Performance attached to the DDA and not for speculation or land holding.

8.3 Transferee is a *[_____ [company], duly organized, and validly existing and in good standing under the laws of the State of _____,]* is duly qualified to do business and in good standing in the State of California and each other jurisdiction where the operation of its business or its ownership of property or the performance of Transferee's obligations under this Assignment and the Property Documents make such qualification necessary.

8.4 Transferee has (or will have prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to

this Assignment or any of the Property Documents) all requisite power and authority required to enter into this Assignment and the instruments referenced in this Assignment and the Property Documents, to assume and perform the obligations of Healthcare Developer under the Property Documents, to consummate the transaction contemplated hereby and to take any steps contemplated thereby or hereby, and to perform its obligations hereunder and thereunder.

8.5 Transferee has obtained (or will have obtained prior to the date by which a particular step is required to be taken or performance of a particular obligation is required to be commenced pursuant to this Assignment or any Property Documents) all required consents in connection with entering into this Assignment and the instruments and documents referenced in this Assignment and the Property Documents, assuming and performing the obligations of Healthcare Developer under the Property Documents to which Transferee is or shall be a party and the consummation of the transactions contemplated hereby and thereby.

8.6 The individuals executing this Assignment and the individuals that will execute the instruments referenced in this Assignment and the Property Documents on behalf of Transferee have, or will have upon execution thereof, the legal power, right and actual authority to bind Transferee to the terms and conditions hereof and thereof.

8.7 This Agreement has been duly authorized, executed and delivered by Transferee and all documents required in this Assignment or the Property Documents to be executed by Transferee pursuant to this Assignment or the Property Documents shall be, at such time as they are required to be executed by Transferee, duly authorized, executed and delivered by Transferee and are or shall be, at such time as the same are required to be executed hereunder, valid, legally binding obligations of and enforceable against Transferee in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

8.8 Neither the execution or delivery of this Assignment, the documents referenced in this Assignment or the Property Documents, nor the incurring of the obligations set forth in this Assignment or the Property Documents and the certificates, declarations and other documents referenced in this Assignment and the Property Documents, nor the consummation of the transactions contemplated in this Assignment or the Property Documents, nor compliance with the terms of this Assignment and the documents referenced in this Assignment or the Property Documents, will violate any provision of law or any order of any court or Governmental Authority to which Transferee is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan partnership agreement, lease or other agreements or instruments to which Transferee or any of its members are a party and which affect the Property or the transactions contemplated by this Assignment or the Property Documents.

8.9 No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to the best of Transferee's knowledge, threatened against Transferee or its members.

8.10 Transferee is relying solely upon its own inspections and investigations in proceeding with this Assignment and the assumption of the Property Documents and the transactions contemplated hereby and thereby, and is not relying on the accuracy or reliability of any information provided to it by the City, on any oral or written representation or on the non-disclosure of any facts or conclusions of law made by the City, or any of its elected and appointed officials, officials, employees, agents, attorneys or representatives made in connection with this Assignment or the Property Documents. In making such investigation and assessment, Transferee has been provided access to any persons, records or other sources of information which it has deemed appropriate to review and it has thereafter completed such investigation and assessment. Without limiting the generality of the foregoing provisions, Transferee acknowledges that the City has not made and will not make any representations or warranties concerning the condition of the Property, the compliance or non-compliance of the Property or any portion thereof with Environmental Laws or the existence or non-existence of Hazardous Materials in relation to the Property or any portion thereof or otherwise.

8.11 To Transferee's knowledge, except as described on Attachment 4, there are no adverse conditions or circumstances, no pending or threatened litigation, governmental action, or other condition which could prevent or materially impair Transferee's ability to develop the Transfer Property and the Project as contemplated by the terms of this Assignment and the Property Documents.

8.12 Except as set forth in this Assignment and the Property Documents, Transferee has not paid or given, and will not pay or give, any third Person any money or other consideration for obtaining this Assignment, other than the normal cost of conducting business and cost of professional services such as architects, engineers and attorneys.

8.13 All reports, documents, instruments, information and forms of evidence delivered by Transferee to the City concerning or related to this Assignment and the Property Documents and the transactions contemplated hereby and thereby are, to the best of Transferee's knowledge, accurate and correct and sufficiently complete at the time of submission to give the City true and accurate knowledge of the subject matter, and do not contain any misrepresentation or omission.

8.14 Prior to the Assignment Effective Date, Transferee has delivered a HCD Equity Funding Letter dated _____ and executed by _____ to the City ("**HCD Equity Funding Letter**"). The HCD Equity Funding Letter is in full force and effect and has not been amended or modified. Based on the HCD Equity Funding Letter, Transferee has, as of the Assignment Effective Date, the equity capital and financial capacity, without requirement of third party financing other than as set forth in the Initial Retail Equity Funding Letter, sufficient to obtain the Applicable Approvals and Development Permits. Prior to the Healthcare Property Close of Escrow, Transferee shall deliver to the City an additional equity funding letter in accordance with Section 4.6.2(a) of the DDA and comply with the other obligations of Transferee under this Assignment and the Property Documents required to be satisfied prior to the Healthcare Property Close of Escrow.

8.15 Prior to the Assignment Effective Date, Developer and Transferee, as the proposed Healthcare Developer, have executed and delivered that certain _____, *dated* _____, *20__* (the "**PSA**"), a copy of which has been delivered by Developer to the

City. The PSA: (a) is in full force and effect and has not been amended or modified, and (b) will not be modified, amended or terminated by Developer or Transferee without the prior consent of City in its sole discretion. Upon satisfaction of the conditions precedent set forth in Section 7.2.1 of the DDA and without any other requirement or condition pursuant to the terms of the PSA or any other HCD Agreement entered into by Transferee and Developer, as of the Healthcare Property Close of Escrow, Developer shall be obligated to sell to Transferee, and Transferee has agreed to acquire, all right, title and interest of Developer under the DDA and the other Property Documents with respect to the Transfer Property and the development thereof, and to assume and comply with the obligations of Healthcare Developer and other obligations of Developer under this Assignment and the Property Documents (including, without limitation, execution of the HCD Guaranty and the HCD Agreements, if any, required to comply with the terms of this Assignment and the Property Documents) required to be satisfied with respect to the Healthcare Developer and/or the Transfer Property, whether prior to or following the Healthcare Property Close of Escrow. Transferee acknowledges that, notwithstanding the execution by Transferee and Developer of the PSA, the City has the right, in its sole discretion to approve and/or disapprove Transferee as Healthcare Developer, the PSA and any future HCD Agreements with Transferee, as further set forth in Section 2.2.3(b) and/or Section 4.6 of the DDA, as applicable.

8.16 Transferee does not have any contingent obligations or any other contracts the performance or nonperformance of which could affect the ability of Transferee to carry out its obligations hereunder. Transferee has not and shall not undertake such additional projects as could reasonably be expected to jeopardize the sufficiency of such equity, capital and firm and binding commitments for the purposes expressed in the preceding sentence.

8.17 *[Except as set forth in Exhibit ___, there/ There]* are no legal proceedings either pending or, to the best of Transferee's knowledge, threatened, to which Transferee is or may be made a party, or to which any of Transferee's property, or the Transfer Property, is or may become subject, which could materially affect the ability of Transferee to carry out its obligations hereunder.

Transferee's representations and warranties set forth in this Section 8 shall be deemed to be restated at each Close of Escrow, and shall survive each Close of Escrow until the termination of the DDA with respect to the Transfer Property and shall not be merged with any Quitclaim Deed. The phrase "**to Transferee's knowledge**" and similar phrases means those Persons Transferee represents as having knowledge of the transactions and Transferee and accepted by the City, comprised of ***[ADD NAMES]*** in each case without any duty of inquiry (collectively, the "**Transferee Knowledge Parties**"). Notwithstanding anything to the contrary contained herein, none of the Transferee Knowledge Parties shall be personally liable for any inaccuracy or breach by Transferee of the representations and warranties contained in this Section 8 or elsewhere in this Assignment or the Property Documents. Transferee shall promptly advise the City in writing if any of the Transferee Knowledge Parties becomes aware (without any duty of inquiry) that any representation or warranty made by Transferee in or pursuant to this Assignment the DDA is or becomes untrue in any material respect prior to each Close of Escrow.

9. **No Real Estate Commissions.**

Developer and Transferee each represents for the benefit of the City that it has engaged no broker, agent or finder in connection with this Assignment or the transactions identified in this Assignment or the Property Documents, other than disclosed to City in writing prior to the Effective Date. Developer and Transferee hereby agrees to indemnify and hold the City and its elected and appointed officials, employees and 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 and/or Transferee regarding this Assignment, the Property Documents or development of the Healthcare Project or the transactions identified in this Assignment and the Property Document.

10. **Miscellaneous.**

10.1 Modification. No amendment, change, modification or supplement to this Assignment shall be valid and binding on Developer or Transferee unless it is represented in writing and signed by both Developer and Transferee and with the written consent of the City thereto. No amendment, change, modification or supplement to this Assignment shall be deemed to be part of the consent or deemed to be consented to by the City, unless the City executes a separate written consent to such amendment, change, modification or supplement.

10.2 Applicable Law. This Assignment shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles.

10.3 Binding Effect. This Assignment and the terms, provisions, promises, covenants and conditions hereof shall be binding upon and inure to the benefit of Developer and Transferee and their respective heirs, legal representatives, successors and assigns.

10.4 Counterparts. This Assignment may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Assignment shall not be effective until the execution and delivery by Developer and Transferee of at least one set of counterparts (together with an executed counterpart of the City's consent attached to this Assignment). A counterpart of this Assignment that is executed and delivered electronically (by facsimile machine or email) shall not be effective unless an ink-signed original executed copy of the signature page of this Assignment is also promptly delivered to the other party, and such ink-signed original executed page is actually received by the other party. Developer and Transferee hereby authorize each other to detach and combine original signature pages and notarial acknowledgements and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Assignment as a duly and validly executed agreement.

10.5 City as Third Party Beneficiary. Developer and Transferee hereby acknowledge and agree that until the Certificate of Compliance is recorded in the Official Records with respect to the Transfer Property, the City shall be an intended third party beneficiary under this Assignment and the City shall have the right to enforce the terms and provisions of this

Assignment applicable to the City. Other than the City, there shall be no third party beneficiaries of this Assignment.

10.6 Notices. From and after the Amendment Effective Date, all notices that the City delivers to the "Healthcare Developer" under the Property Documents and/or the Entitlements with respect to the Transfer Property shall also concurrently be delivered to Transferee pursuant to Section 17.6 of the DDA, shall be delivered to Transferee only at the following addresses:

Transferee:

[_____]
_____
_____
_____

with a copy to:

[legal counsel]
_____
_____
_____]

[*signature page follows*]

Developer and Transferee each has caused this Assignment to be duly executed by its duly authorized officer as of the Assignment Effective Date.

"DEVELOPER"

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
Delaware limited partnership,
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation,
Its General Partner

Dated: _____

By: _____
John Mehigan
Vice President

"TRANSFEREE"

[_____],
a _____

Dated: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

{City consent on next page}

ACKNOWLEDGMENT AND CONSENT BY CITY OF TUSTIN

By executing in the space set forth below, the City of Tustin hereby:

(a) Acknowledges receipt of the Assignment and Assumption Agreement (the "**Assignment**") to which this Consent is attached;

(b) Consents to the making of the Assignment between Developer and Transferee, subject to the terms and conditions set forth in the Assignment and this Acknowledgement and Consent by City of Tustin;

(c) Agrees that ***[insert name of Transferee], a _____]*** (the assignee in the Assignment) shall be deemed by the City to be the "Healthcare Developer" under the DDA with respect to the Transfer Property, from and after the Assignment Effective Date;

(d) Acknowledges the additional addresses for Notices for Transferee set forth in the Assignment and agrees that from and after the Assignment Effective Date all notices from City to Developer under the Property Documents and the Entitlements with respect to the Transfer Property shall also be delivered to Transferee at such addresses.

(e) This Consent by the City constitutes the consent required pursuant to Section 2.2.3(b) of the DDA with respect to Transfer to a Healthcare Developer and constitutes the City's acknowledgment that the requirements of Section 2.2.3(b) have been satisfied with respect to the Transfer described in this Assignment;

(f) Transferor is released from the obligations of Developer under the DDA and the Property Documents with respect to construction and Completion of the Healthcare Vertical Improvements; provided that, notwithstanding the foregoing or the assumption of obligations by Transferee:

(1) Developer shall not be relieved of any of its other obligations under the DDA or the Property Documents and specifically, and without limitation shall not be relieved or released from the Ongoing Matters and/or, in its capacity as Healthcare Property Transferor, from the Healthcare Transferor Obligations;

(2) the Healthcare Transferor Obligations shall remain the obligations of Transferor and each Successor Owner of the Retail Parcels that is not an End User unless and until such Person is expressly released in writing by the City;

(3) nothing in this paragraph (f) shall limit Developer's liability during any applicable Additional Liability Period; and

(4) after Transferee has delivered the HCD Guaranty and the Minimum Horizontal Improvements have been completed, other than the Ongoing Matters and the remaining Healthcare Transferor Obligations, Developer shall not have any liability for any breach of the DDA by Transferee or otherwise relating to the Transfer Property.

(g) This Consent by the City to the Assignment shall not constitute evidence of compliance with or satisfaction of any obligation of Developer under any of the Property Documents, or any other agreement between Developer and the City, except for the obligation of Developer to obtain the City's consent to any Transfer.

CITY:

CITY OF TUSTIN

Dated: _____, 20____

By:_____
Jeffrey C. Parker
City Manager

ATTEST:

By:_____
Erica N. Rabe
City Clerk

APPROVED AS TO FORM:

By:_____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By:_____
Amy E. Freilich

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"

Legal Description of the Development Parcels

[*Insert Legal Description*]

EXHIBIT "B"

Legal Description of the Transfer Property

[*Insert Legal Description of Transfer Property*]

ATTACHMENT 17

FORM OF CITY DATE DOWN CERTIFICATE REGARDING REPRESENTATIONS AND WARRANTIES

Reference is hereby made to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 1C dated as of_____, 2015 ("**DDA**"), by and between 1C Tustin Legacy, LLC, a Delaware limited liability company ("**Developer**"), and the City of Tustin, a municipal corporation of the State of California (the "**City**"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

This Date Down Certificate is being delivered by the City pursuant to *{Section 7.2.1(a)(viii)/ 7.3.1(a)(viii)}* of the DDA concurrently with the *{Retail Property/Healthcare Property}* Close of Escrow.

The undersigned does hereby certify to *{Healthcare}* Developer, in the name and on behalf of the City, that all of the representations and warranties made by the City in Section 3.3 and in Section 18.12.2 of the DDA are true and correct as of the date hereof, except as set forth on Exhibit A attached hereto.

Without the written consent of the City: (i) no Person other than *{Healthcare}* Developer may rely on this Date Down Certificate for any purpose; and (ii) copies of this Date Down Certificate may not be furnished to anyone for purposes of encouraging such reliance.

In no event shall the individual executing this Date Down Certificate on behalf of the City have any personal liability hereunder.

{remainder of page is blank – signature on next page}

Dated: _____

CITY:

CITY OF TUSTIN

By:_____
Jeffrey Parker
City Manager

APPROVED AS TO FORM

By:_____
David Kendig, City Attorney

EXHIBIT "A"

{If none—enter None}

ATTACHMENT 18A

FORM OF DEVELOPER DATE DOWN CERTIFICATE REGARDING REPRESENTATIONS AND WARRANTIES

Reference is hereby made to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 1C dated as of_____, 2015 ("**DDA**"), by and between 1C Tustin Legacy, LLC, a Delaware limited liability company ("**Developer**"), and the City of Tustin, a municipal corporation of the State of California (the "**City**"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

This Date Down Certificate is being delivered by Developer pursuant to *{Section 7.2.2(b)(viii)/7.3.2(b)(vii)}* of the DDA concurrently with the *{Retail Property/Healthcare Property}* Close of Escrow.

The undersigned does hereby certify to the City, in his or her capacity as an officer of Developer and for and on behalf of Developer as follows:

1. All of the representations and warranties made by Developer in Sections 2.1, 3.1, 4.5.1, 5.2, and 18.12.1 of the DDA are true and correct as of the date hereof, except as set forth on Exhibit A attached hereto.

2. The documentation submitted by the Developer to the City pursuant to Section 4.6.2 of the DDA prior to the Effective Date is true and correct in all material respects as of the date of this certificate.

3. Attached to this Date Down Certificate as Exhibit B are true and correct copies of the certificate of good standing and tax good standing for Developer from the Delaware and California Secretary of State, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Date Down Certificate.

4. The Financing Plan, as the same may have been updated in accordance with the requirements of Section 4.6.1 or 4.6.4 of the DDA, remains true and correct and the Project budget for the Minimum Improvements remains a reasonable budget.

Without the written consent of Developer: (i) no Person other than the City may rely on this Date Down Certificate for any purpose; and (ii) copies of this Date Down Certificate may not be furnished to anyone for purposes of encouraging such reliance.

In no event shall the individual executing this Date Down Certificate on behalf of Developer have any personal liability hereunder.

{remainder of page is blank – signature on next page}

"DEVELOPER"

Dated: _____

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
Delaware limited partnership
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation
Its General Partner

By: _____
Name:_____Title:
_____

EXHIBIT "A"

{If none—enter None}

ATTACHMENT 18 B
HEALTHCARE DEVELOPER CERTIFICATE
REGARDING REPRESENTATIONS AND WARRANTIES AND AUTHORITY

Reference is hereby made to that certain Tustin Legacy Disposition and Development Agreement For Disposition Parcel 1C dated as of _____, 2015 ("**DDA**"), by and between 1C Tustin Legacy, LLC, a Delaware limited liability company ("**Developer**"), and the City of Tustin, a municipal corporation of the State of California (the "**City**"). Capitalized terms used herein that are not defined herein shall have the meanings specified in the DDA.

This Certificate is being delivered pursuant to Section 7.2.2(b)(xiii) of the DDA concurrently with the Healthcare Property Close of Escrow and the delivery by Developer and _____("**Healthcare Developer**") of that certain HCD Assignment and Assumption Agreement of even date herewith ("**Assignment Agreement**") pursuant to which Developer has assigned to Healthcare Developer and Healthcare Developer has assumed, among other things, Developer's rights and obligations with respect to the Healthcare Property and Healthcare Provisions as further set forth therein and in the DDA. As an inducement to the City to consent to the Transfer to Healthcare Developer and the matters described by the Assignment Agreement, the undersigned does hereby certify to the City, in his or her capacity as an officer of *{Healthcare Developer/Company}* and for and on behalf of such entity, as follows:

1. Authority of Undersigned. I, the undersigned, am the duly elected and qualified [state office held] of _____, a *{limited liability company/corporation/other}* duly organized and existing under the laws of the State of _____ (the "**Company**") and am authorized by the Company to make the certifications contained in this Certificate. *{The Company is the entity that is Healthcare Developer under the Assignment Agreement/or explain relationship of Company to Healthcare Developer}.*

2. Representations and Warranties. All of the representations and warranties made by Healthcare Developer in the Assignment Agreement are made for the benefit of the City and are true and correct as of the date hereof, except as set forth on Exhibit A attached hereto.

3. Financial and Other Information. The documentation and statements submitted by the Healthcare Developer to the City, including, but not limited to, the documentation and statements submitted to the City pursuant to Sections 2.2.3(a)(ii)A through F, 4.6.4, 4.6.5 and 4.6.8 of the DDA, are true and correct in all material respects as of the date of this Certificate;

4. Certificate of Incorporation of the Company. Attached hereto as Exhibit B is a true and correct copy of the *{Certificate of Incorporation of the Company/Certificate of Formation}* of the Company and any and all amendments thereto in effect on the date hereof.

5. *{Bylaws/Operating Agreement}* of the Company. Attached hereto as Exhibit C is a true and correct copy of the *{Bylaws/Operating Agreement}* of the Company and any and all amendments thereto in effect on the date hereof.

6. Good Standing. Attached hereto as Exhibit D are true and correct copies of the Certificate of good standing for the Company from *{the _____ Secretary of State and*

the} California Secretary of State and a certificate of tax good standing for the Company from the California Franchise Tax Board, and each attached certificate of good standing is dated not earlier than thirty (30) days prior to the date of this Certificate.

7. *{Certificate of Status of Foreign Corporation of the Company. Attached hereto as Exhibit E is a true and correct copy of the Certificate of Status of Foreign Corporation of the Company and any and all amendments thereto in effect on the date hereof. }*

8. *{Fictitious Business Name Statement. Attached hereto as Exhibit F is a true and correct copy of the County of Orange Fictitious Business Name Statement of the Company and any and all amendments thereto in effect on the date hereof.]*

9. Consents and Approvals. All required approvals, consents, resolutions or other proceedings of the Company to authorize execution and delivery by Healthcare Developer of the Assignment Agreement and the assumption by Healthcare Developer of the obligations under the DDA and the Other Agreements as and to the extent set forth therein, have occurred in accordance with the documents attached hereto as Exhibit G.

10. *{Insert name of individual(s) authorized to execute agreements}* is a _____of the Company and is in such capacity, duly authorized by the Company to execute the Assignment Agreement and any and all instruments, documents and other agreements required in connection therewith by the terms thereof and the terms of the DDA and the Other Agreements on behalf of the Company, and to bind the Company as to the matters stated therein and has the appropriate corporate authority to execute documents, instruments and agreements, in accordance with the *{Resolution/Operation Agreement/Other}* of the Company attached as Exhibit F hereto.

Without the written consent of the Company no Person other than the City may rely on this Certificate for any purpose.

In no event shall the individual executing this Certificate on behalf of the Company have any personal liability hereunder.

[Note: Will need similar certificate for Healthcare Developer and any intermediary entity]

{remainder of page is blank – signature on next page}

"HEALTHCARE DEVELOPER"

Dated: _____

[Name of Healthcare Developer]
a

By: _____

EXHIBIT "A"

{If no qualifications, enter "None"}

ATTACHMENT 19

LIST OF PROHIBITED USES

Prohibited Uses shall include the following:

a) Temporary food or beverage trucks;

b) Any coin operated laundry;

c) Any "dollar" stores such as Family Dollar, Dollar Tree or 99 Cents Only;

d) Any dry cleaning plant; provided, however, that this restriction shall not apply to either (a) a drop off/pick up only type of facility or (b) an operation using a Liquid CO_2 System, a Wet-Dry System or a D5 System or other equal or better environmentally sound process, so long as the operator thereof: (i) uses best management practices intended to avoid Release of Hazardous Materials; (ii) identifies and addresses leaks; (iii) controls emissions of any of these products; and (iv) performs all dry cleaning activities in compliance with all applicable laws, rules, ordinances and regulations (federal, state or local);

e) Any dance hall, night club or billiard parlor, unless operated in conjunction with a restaurant or other food establishment.

f) Any entertainment, pinball, video, or similar arcade, except as incidental to a permitted retail use;

g) Any funeral home or mortuary;

h) Any flea market, except farmers markets and community or charitable events;

i) Any facility for the sale or display of pornographic material (e.g., video or book store selling, renting, or exhibiting primarily material of a pornographic or "adult" nature), except establishments that are not perceived to be, nor hold themselves out as "adult" book stores (e.g., drug stores, grocery stores, newsstands or kiosks, coffee shops or first class book retailers), but which may incidentally sell books, magazines or other periodicals that may contain pornographic materials;

j) Any gambling facility or operation, including, but not limited to, off-track or sports betting parlor, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices, or bingo parlor (this prohibition shall not be applicable to government sponsored gambling activities—e.g., state lottery—or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the permitted occupant or tenant);

k) Any gun shop, except as an incidental part of a sporting goods or outdoor retail stores (e.g., Big 5 Sporting Goods, Dicks Sporting Goods, Sports Authority Sporting Goods or Turner's Outdoorsman);

l) Firearm shooting range;

m) Any store selling paraphernalia used for the consumption of cannabis, tobacco, legal highs, legal party powders and herbs;

n) Any store selling paraphernalia for illegal drugs;

o) Any massage parlor (except for bona fide therapeutic massage, chiropractic care, sports therapy, a beauty salon/day spa and other bona fide massage services in connection with a permitted health club use), adult entertainment restaurant, bar or club (e.g., topless club or "strip joint");

p) Any retail store that primarily sells medical marijuana; and

q) Any pawn shop.

ATTACHMENT 20
DECLARATION OF SPECIAL RESTRICTIONS
FOR PARCEL 1C

CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383.

Recording requested by and When recorded mail to:

The City of Tustin
300 Centennial Way
Tustin, CA 92780
Attn: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DECLARATION OF SPECIAL RESTRICTIONS
FOR DISPOSITION PARCEL 1C

This DECLARATION OF SPECIAL RESTRICTIONS FOR DISPOSITION PARCEL 1C (this "**Declaration**"), is made as of [●] ("**Effective Date**") by the CITY OF TUSTIN, a municipal corporation of the State of California ("**City**"), and is acknowledged by 1C TUSTIN LEGACY, LLC, a Delaware limited liability company ("**Developer**").

A. Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended, the Marine Corps Air Station-Tustin ("**MCAS Tustin**") located substantially in the City of Tustin, California was closed by the United States of America, acting by and through the Department of the Navy (the "**Navy**"). 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.

B. In May 2002, the Navy approved an Economic Development Conveyance of Property at MCAS Tustin and agreed to convey approximately 1,153 acres of MCAS Tustin to the City. 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 in this Declaration as "**Tustin Legacy**".

1. The City owns a fee interest in certain real property comprising approximately 20.92 acres of land located in the City of Tustin, County of Orange, California and comprising a portion of Tustin Legacy as legally described on Exhibit 1 attached hereto and made a part hereof (the "**Land**"). The Land is further divided into the "**Retail Parcel**" and the "**Healthcare**

Parcel", each as legally described on Exhibit 1. The Retail Parcel and the Healthcare Parcel shall each be more particularly described in those certain Quitclaim Deeds For Disposition Parcel 1C and Covenants, Conditions and Restrictions, Including Environmental Restriction Pursuant to Civil Code Section 1472 made by the City in favor of Developer, and Recorded following the recordation of this Declaration (each a "**Quitclaim Deed**" and collectively, the "**Quitclaim Deeds**"), but specifically (a) excluding therefrom each and every oil, gas, mineral, water right and all other rights expressly reserved to the City as set forth in each such Quitclaim Deed (such reserved rights in their entirety as stated in the Quitclaim Deed, the "**Reserved Rights**") and (b) including therein all improvements, now existing or hereafter constructed, located on the Development Parcels, and all appurtenances pertaining to the Development Parcels.

C. The Retail Parcel and the Healthcare Parcel shall be referred to herein collectively as the "**Parcels**" or the "**Development Parcels**" and each individually as a "**Parcel**" or "**Development Parcel**".

D. The City also owns a fee interest in that certain real property legally described on Exhibit 2 attached hereto and made a part hereof ("**City Benefited Property**") located in the City of Tustin, County of Orange, California and comprising a portion of Tustin Legacy. The City Benefited Property is proximate to and directly affected by the use and maintenance of the Development Parcels.

E. The City and Developer entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of [●] pursuant to which Developer has agreed to purchase the Development Parcels from the City upon and subject to the terms and conditions set forth therein (as the same may hereafter be further amended, modified or supplemented in accordance with its terms, the "**DDA**"). The DDA is evidenced by that certain Memorandum of Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C dated as of the Effective Date and Recorded [on [●], in the Office of the County Recorder, Orange County, California (the "**Official Records**") as Instrument No. [●]—or—immediately prior to the Recordation of this Declaration] (as the same may hereafter be amended, modified or supplemented, "**Memorandum of DDA**").

F. Upon the Effective Date, Developer is acquiring the *{Retail Parcel/Development Parcels}* and has agreed, upon acquisition thereof, to develop the *{Retail Parcel/Development Parcels}* as a mixed-use commercial project, including development of the Retail Parcel with a neighborhood commercial shopping center. ***{Delete the following if Regency is only acquiring the Retail Parcel:*** and development of the Healthcare Parcel with medical offices and services, including certain retail uses and related amenities***}.{NOTE: If only Retail Parcel will be acquired by Regency at initial close of escrow, delete all provisions in this agreement related to Healthcare Parcel for the Retail Property Close of Escrow and record solely against Retail Parcel. At Healthcare Property Close of Escrow, record against Healthcare Parcel inserting all Healthcare Parcel provisions and deleting all Retail Parcel provisions}***

G. The City intends that Developer and all Successor Owners (as defined below) shall use and maintain the Development Parcels in accordance with this Declaration and the Restrictions and following the completion of the Project pursuant to the DDA, as a mixed-use

retail and medical use project, as more particularly set forth herein. For purposes of this Declaration, the term "**Property Owner**" shall mean the Developer and each Successor Owner of the Development Parcels or any portion thereof.

H. To create and preserve the value, desirability and attractiveness of the Development Parcels, each Property Owner will hereafter hold and convey title to the Development Parcel or Development Parcels owned by it subject to those certain protective covenants, conditions and restrictions set forth herein.

I. The City now desires to impose on the Development Parcels this Declaration, for the following purposes, among others: (i) to preserve the general plan for the use and maintenance of Tustin Legacy, including of the Development Parcels, through development and maintenance of a Class A Project (as defined below) upon the Development Parcels; (ii) to ensure proper use and maintenance of the Project; (iii) to protect each owner and occupant of any portion of the Development Parcels and nearby owners and residents, including the residents of the City of Tustin, from improper use of the Development Parcels; and (iv) in general, to provide for a Class A quality of maintenance of the Project, in each case upon and subject to the terms of this Declaration.

J. This Declaration also sets forth those rights of the City and, upon acquisition of each Development Parcel, certain obligations of Property Owner as specified in the DDA, each of which shall remain in full force and effect for the period provided herein, notwithstanding the termination of the DDA and/or the Recording by the City of a Certificate of Compliance for all or any portion of the Project. To the extent that the Development Parcels are acquired in more than one closing, the acquiring Developer at each Close of Escrow shall assume and be bound by all of the obligations and liabilities, covenants, conditions, and restrictions contained in this Declaration.

K. Capitalized terms not otherwise defined herein shall have the meanings set forth for such terms on Exhibit 4 attached hereto and incorporated herein by this reference.

NOW, THEREFORE, the City hereby covenants and declares that the Development Parcels are now held and shall hereafter be held, transferred, conveyed, sold, leased, subleased, encumbered, mortgaged, used, occupied and improved subject to the covenants, conditions and restrictions herein set forth in this Declaration, each and all of which is and are for, and shall inure to the benefit of and pass with, the Development Parcels and every portion of or interest in the Project and shall apply to Declarant and each Property Owner, to the extent set forth herein, for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Development Parcels and Tustin Legacy in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale and lease of Tustin Legacy or any portion thereof. The covenants, conditions and restrictions set forth in the Declaration shall run with the Development Parcels and shall be binding upon Developer and each and every Successor Owner having any right, title or interest in the Development Parcels or any part thereof, and shall inure to the benefit of the City and the City Benefited Property, and any future owner of any portion of the City Benefited Property to the extent such future owner is a Governmental Successor.

The City hereby further declares as follows:

1. **Property Affected by this Declaration**. The "**Property**" affected by this Declaration is comprised of: (a) the "**Development Parcels**," as more particularly described in each Quitclaim Deed, (b) all improvements, now existing or hereafter constructed, located on the Development Parcels, and (c) all appurtenances pertaining to the Development Parcels. To the extent that any Improvements located on the Development Parcels are subject to a ground lease, the ground lessee under such ground lease shall be solely responsible for the use, operation and maintenance of such Improvements in accordance with the terms and conditions of the DDA and in compliance with this Declaration and the Restrictions (defined below) set forth herein as if such ground lessee were the applicable Property Owner hereunder, and neither Developer nor the applicable Property Owner shall have any obligation or liability for any violation or noncompliance with this Declaration, the Restrictions or the terms of the DDA of such Improvements to be maintained by such ground lessee.

2. **Covenants, Conditions and Restrictions**. For the benefit of the City Benefited Property and the City, and its successors and assigns that constitute a Governmental Authority(ies) owning all or any portion of such City Benefited Property (the "**Governmental Successors**"), and as an inducement for the City to consummate the transactions contemplated by the DDA, but subject to Section 4.2 below, the violation of any of the Restrictions (as hereinafter defined) set forth in this Section 2 shall at the City's option constitute a Material Default hereunder and entitle the City to exercise any of the rights and remedies set forth herein. The covenants, conditions, restrictions and agreements set forth in this Declaration are collectively referred to herein as the "**Restrictions.**"

2.1. **Use Covenants and Restrictions**. From and after the acquisition of fee title to any portion of the Property by Developer or any Successor Owner, Developer and each Successor Owner shall cause such portion of the Property so acquired to be developed and utilized only as follows:

(a) The Retail Parcel shall be utilized solely for retail uses including (i) lawful sales of goods or services, (ii) restaurants, (iii) a gas station with car wash, and (iv) similar commercial purposes typically included in neighborhood commercial shopping centers ("**Retail Uses**"); provided that: (A) the Retail Uses are not Prohibited Uses as set forth on Exhibit 3 attached hereto, (B) the Retail Uses are also permitted by the Tustin Legacy Specific Plan, as the same may be amended from time to time, and other entitlements and approvals of the City, and (C) Retail Uses may include no more than four (4) drive-through establishments. Notwithstanding anything to the contrary contained in this Declaration or the Other Agreements, the City shall have the right to release all or any portion of the Retail Parcel, or any Property Owner of all or any portion of the Retail Parcel, from compliance with the use restrictions set forth in this Section 2.1(a) by recording a written instrument executed by the City in the Official Records. In no event shall any such release as to any portion of the Retail Parcel or as to any Property Owner constitute a waiver or release of the use restrictions set forth in this Section 2.1(a) as to any other portion of the Retail Parcel or any other Property Owner.

(b) The Healthcare Parcel shall be utilized solely for the following lawful uses (i) medical-related services including rehabilitation facilities, skilled nursing

facilities, urgent care facilities and/or additional medical office uses staffed by doctors, nurses and/or related practitioners, and related amenities, but specifically excluding stand-alone retail, warehousing and manufacturing uses ("**Medical Uses**") and (ii) Healthcare Parcel Retail Uses, but specifically excluding grocery uses and stand-alone drug store use, provided such Healthcare Parcel Retail Uses are only permitted in the Buildings identified as "**Medical Retail Buildings**" on the Site Plan attached hereto as Exhibit 5, and further, in each case provided that: (A) the Medical Uses are not Prohibited Uses as set forth on Exhibit 3 attached hereto, and (B) the Medical Uses are also permitted by the Tustin Legacy Specific Plan, as the same may be amended from time to time, and other entitlements and approvals of the City. Notwithstanding anything to the contrary contained in this Declaration or the Other Agreements, the City shall have the right to release all or any portion of the Healthcare Parcel, or any Property Owner of all or any portion of the Healthcare Parcel, from compliance with the use restrictions set forth in this Section 2.1(b) by recording a written instrument executed by the City in the Official Records. In no event shall any such release as to any portion of the Healthcare Parcel or as to any Property Owner constitute a waiver or release of the use restrictions set forth in this Section 2.1(b) as to any other portion of the Healthcare Parcel or any other Property Owner.

(c) Neither Developer nor any Successor Owner, nor any person claiming by through or under Developer or any Successor Owner including any End User, shall use the Development Parcels or any portion thereof for any Prohibited Use or convey, lease, sell or otherwise transfer any Development Parcel or any portion thereof to any Person intending to utilize the Development Parcel for a Prohibited Use.

(d) The Project shall be designed and constructed as a "**Class A Project**" which shall mean, with respect to (i) the Retail Parcel, a first class retail shopping center equivalent in terms of construction and design with the top ten percent (10%) of neighborhood commercial shopping centers in the market area (i.e., within twenty (20) miles) of the Development Parcels at the time the Project is constructed on the Retail Parcel and containing no Prohibited Uses, and (ii) the Healthcare Parcel, a first class medical facility equivalent in terms of construction and design with the top ten percent (10%) of medical office centers in the market area (i.e., within twenty (20) miles) of the Development Parcels at the time the Project is constructed on the Healthcare Parcel and containing no Prohibited Uses.

(e) In terms of the quality of maintenance, the Project shall be maintained consistent with Class A Project standards ("**Class A Standards**").

(f) Developer and its Successor Owners and all End Users shall be subject to this Declaration.

The covenants in this Section 2.1 shall remain in full force and effect with respect to each Development Parcel until, as to each Parcel, the twenty-fifth (25^{th}) anniversary of the Recording of the last Certificate of Compliance for such Parcel, unless released at an earlier date by the City in writing, and upon the expiration of such twenty-five (25) year period, the provisions of Section 2.1 shall automatically terminate as to such Parcel.

2.2. **Maintenance Covenants and Restrictions**.

2.2.1. From and after the acquisition of fee title to all or any portion of the Development Parcels by Developer, Developer and its Successor Owners shall maintain such portion of the Development Parcels and all Improvements thereon consistent with the following requirements:

(a) Prior to commencement of construction, each Property Owner shall be responsible, at its sole cost and expense, (i) to secure and maintain the Development Parcels in a clean, safe and secure condition, in compliance with all applicable laws, (ii) to abate weeds and other hazards and nuisances on such portion of the Development Parcels as are not then under construction, (iii) to erect and maintain barricades and fencing, and provide security, in each case with respect to the Development Parcels and as reasonably necessary to protect the public and any Improvements already constructed, and (iv) to maintain (in compliance with all Environmental Laws) erosion control on the Development Parcels.

(b) From the date of commencement and during the continuance of construction of any Improvements on the Development Parcels and until Completion thereof, Property Owner shall maintain the Development Parcels and the Improvements thereon then under construction consistent with normal and customary construction industry practice.

(c) From and after the issuance of a certificate of occupancy for any Improvements on the Development Parcels, each Property Owner shall maintain all Improvements on such Property Owner's Parcels not then under construction (including any shared driveways, drive aisles and parking areas located on such Property Owner's Parcel) in a clean, sanitary, orderly and attractive condition, subject to reasonable wear and tear, and further subject to Section 2.2.1(d), change or damage by casualty or condemnation. Property Owner shall be required to meet the standard for the quality of maintenance of the Improvements on the Development Parcels required by this Section 2.2 regardless of whether or not a specific item of maintenance is listed below, except that, in each case, and notwithstanding anything in this Section 2.2 to the contrary, no Property Owner shall have any maintenance obligation under this Declaration with respect to any items owned or controlled by (or on property owned or maintained by) a utility franchisee, any lighting or landscape district or by the City. Representative items of maintenance shall include: (i) maintenance, repair and replacement on a regular schedule, consistent with Class A Standards, of all Improvements; (ii) frequent and regular inspection for graffiti or damage or deterioration or failure, and reasonably prompt (or, in the case of graffiti, within 48 hours) repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; (iii) emptying of trash receptacles and removal of litter; (iv) regular sweeping of private streets, roadways and sidewalks throughout the Development Parcels; (v) fertilizing, irrigating, trimming and replacing vegetation as necessary; (vi) cleaning exterior windows on a regular basis; (vii) painting the Buildings on a regular program and prior to the deterioration of the painted surfaces; (viii) construction, maintenance, repair, and replacement as reasonably necessary of all paved surfaces (including painting and striping), curbs, curb-cuts, gutters, walkways, planters, cart corrals, and medians, curbs, gutters, directional signs, markers, lighting facilities, including the replacement of fixtures and bulbs, storm drains and utility lines.

(d) If a casualty occurs with respect to a Parcel or Improvements thereon following Recording of a Certificate of Compliance by the City for such Parcel, Developer shall, in its sole discretion, either (i) promptly repair the Improvements and prior to commencement of such repair maintain the portions of the Development Property subject to casualty in accordance with Section 2.2.1(a) or (ii) if Property Owner determines in its sole discretion not to repair some or all of the Improvements, maintain the portions of the Development Property subject to casualty in accordance with Section 2.2.1(a). In each case, upon commencement of any construction with respect to the affected portions of the Development Property and until completion of the repair work, Property Owner shall comply with the requirements set forth in Section 2.2.1(b) and upon completion of the repair work, shall comply with the requirements set forth in Section 2.2.1(c). Notwithstanding the foregoing, the portions of the Development Parcels unaffected by any such casualty shall be maintained as otherwise required by this Declaration, including pursuant to Section 2.2 and unless not economically feasible due to cost or physical proximity as demonstrated to the reasonable satisfaction of the City, Property Owner shall provide landscaping or other barriers to shield the portions of the Development Parcels remaining in use and adjacent public roadways from those subject to casualty and from adjoining streets in order to maintain the Class A standards imposed by this Declaration upon the unaffected portions of the Development Parcels and the Improvements thereon as required pursuant to Section 2.2.1(c).

(e) If a Property Owner fails to maintain the Improvements or landscaping located on its Parcel or any portion thereof in accordance with the requirements of this Declaration and the same constitutes a Material Default by such Property Owner hereunder, the City or its designee shall have the right, but not the obligation, subject to applicable notice and cure provisions set forth in Section 4.2 below, to enter such Parcel upon reasonable notice to Property Owner, correct such failure, and hold Property Owner responsible for the cost thereof and such cost, until paid, shall constitute a lien on the applicable portion of such Parcel as and to the extent described in Section 4.

2.2.2. **Maintenance of Easement Areas**. Each Property Owner shall cause to be constructed and shall operate, manage, and maintain (or shall cause to be operated, managed and maintained) any easement areas located on such Property Owner's Parcel for which it is responsible and the Improvements thereon in a state of good repair, free of trash and debris and in a Class A Standard. The duties of each such Property Owner shall include, without limitation, the following, which shall be carried out in accordance with all Governmental Requirements:

(a) construction, maintenance, repair, and replacement of all paved surfaces, in a level, smooth, and evenly covered condition, and repair and/or replacement thereof with the type of surfacing material originally installed, or such substitute as shall in all respects be at least equal to such original material in quality, use, appearance, and durability;

(b) construction, maintenance, repair, and replacement as reasonably necessary, of all curbs, curb-cuts, gutters, walkways, planters, cart corrals, and medians;

(c) painting and striping;

(d) construction, maintenance, repair, and replacement of all directional signs, markers, lighting facilities, including the replacement of fixtures and bulbs;

(e) construction, maintenance, repair, and replacement of any and all storm drains, storm water retention facilities, utility lines, water lines, sewers, and other utility systems; it being understood that where repairs are necessary to prevent disruption of service to any Owner, such repairs shall be undertaken immediately and without prior notice; and

(f) maintenance of all landscaped areas and replacement of shrubbery, plantings, and flowers.

2.2.3. **Cost of Maintenance**. All costs incurred in fulfilling the obligations in Section 2.2.1 and Section 2.2.2 with respect to the Development Parcels shall be paid by the applicable Property Owner of the affected Parcel. Nothing in this Declaration shall prohibit two or more Property Owners from entering into a separate agreement to share the costs for performing the maintenance of Improvements on more than one of the Development Parcels.

2.2.4. **Term of Covenants**. The covenants in this Section 2.2 shall remain in full force and effect with respect to each Development Parcel until the date which is the earlier of (a) the Recording of CC&Rs approved by the City against the entirety of the Development Parcels that address the maintenance of the Development Parcels, in which event the termination of this Declaration shall be effective automatically upon the Recording of such CC&Rs, or (b) as to each Parcel, the twenty-fifth (25^{th}) anniversary of the Recording of the last Certificate of Compliance for such Parcel, unless released at an earlier date by the City in writing, and upon the expiration of such twenty-five (25) year period, the provisions of Section 2.2 shall automatically terminate as to such Parcel.

2.3. **Design of the Project**. Developer acknowledges that the City may now or hereinafter be negotiating with various other developers for the transfer of other portions of Tustin Legacy to such other developers, and through the Specific Plan, intends to coordinate the design and development of the entirety of Tustin Legacy. Accordingly, Developer and each Successor Owner shall comply with the Specific Plan and the Entitlements (as and to the extent required by the DDA and the Development Agreement for the Project between Developer and the City) in connection with its development of the Project and the Development Parcels.

2.4. **Obligation to Refrain from Discrimination**. There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property or in development of the Project, nor shall any Property Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Development Property or in development of the Project.

2.5. **No Obligations**. Nothing in this Declaration shall obligate the City to (a) exercise its approval or enforcement rights with respect to the covenants set forth in this Section 2 or (b) to develop or cause the development of Tustin Legacy or any portion thereof to

proceed in accordance with the Tustin Legacy Specific Plan or any other plan, entitlement, program, policy or agreement, for the benefit of the City or any third parties.

2.6. **DDA Provisions**. Pursuant to the DDA, the City has imposed certain covenants, conditions and restrictions on the Development Parcels, including the releases contained in Section 4.5.2(f) of the DDA (which shall be set forth in their entirety in the Quitclaim Deeds), and certain environmental indemnity and environmental provisions, each of which is set forth verbatim below in italics and each of which is hereby declared to be a covenant running with the land, binding Developer and each Successor Owner in perpetuity except as otherwise set forth herein. Within the italicized language which follows, certain terms shall have the following meanings and the remaining terms shall have the meanings set forth in this Declaration including Exhibit 4 hereto: the term "Agreement" shall mean the DDA, the term "Developer" shall mean the Developer and each and every Successor Owner as defined in this Declaration; the term "City" shall mean the City as defined in this Declaration; the term "Agreement" shall mean the DDA; the term "Close of Escrow" shall mean as to each Parcel the recordation of the Quitclaim Deed for such Parcel; the term "Closing Date" shall mean as to each Parcel, the date of recordation of the Quitclaim Deed for such Parcel; the term "Property" shall mean the "Development Parcels" as defined in this Declaration; the term "Retail Property" shall mean the "Retail Parcel" as defined in this Declaration; "Project" shall mean the "Project" as defined in this Declaration; the term "Quitclaim Deed" shall mean each "Quitclaim Deed" as defined in this Declaration; and the term "City Benefited Property" shall mean the "City Benefited Property" as defined herein. All other terms used and not defined in this Section or elsewhere in this Declaration shall have the meanings set forth in Exhibit 4 hereto. During the term of the DDA, in the event of a conflict between the terms of the DDA and the terms of this Section 2.6, the terms of the DDA shall govern.

2.6.1. **Indemnity.** Section 10.1 of the DDA provides **as** follows:

10.1 Developer's Indemnification. *As a material part of the consideration for this Agreement, to the maximum extent permitted by law, until the date that is the tenth (10th) anniversary of the Recording of the respective Certificate of Compliance each Developer, on behalf of itself and each Successor Owner, hereby agrees that during the period that Developer or a Successor Owner owns a portion of the Property . . ., such party shall indemnify, protect, defend, assume all responsibility for and hold harmless the City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors, consultants, and representatives (collectively referred to as the "City Indemnified Parties"), with counsel reasonably acceptable to the City, from and against any and all Claims resulting or arising from or in any way related to the following:*

(a) The marketing, sale or use of the Property owned by such party in any way;

(b) All acts and omissions of Developer, any of the Developer Representatives or Developer's Tenants under any Ground Lease or Space

Lease in connection with the Project, the Property, or any portion of any of the foregoing;

(c) Any plans or designs for Improvements prepared by or on behalf of Developer or its Ground Lessees or Space Tenants including any errors or omissions with respect to such plans or designs;

(d) Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Developer or resulting from any Default, including Material Default, by Developer under this Agreement;(e) The non-performance or breach by Developer, the Developer Representatives or Developer's Tenants under any Ground Lease or Space Lease of any term or condition of this Agreement; and

(f) Any development or construction of any Improvements by Developer, the Developer Representatives, or Developer's Tenants under any Ground Lease or Space Lease whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any Person furnishing the same, or otherwise.

2.6.2. **Environmental Indemnity.** Section 10.2 of the DDA provides as follows:

*10.2 **Developer's Environmental Indemnification**. As a material part of the consideration for this Agreement, and effective as to the Property upon Developer's acquisition of fee title to all or any portion thereof, Developer on behalf of itself and Successor Owners and each and every Person claiming by, through or under Developer or any Successor Owner, hereby agrees that Developer and each Successor Owner shall, to the maximum extent permitted by law, indemnify, protect, defend (with counsel reasonably acceptable to the City), assume all responsibility for and hold harmless the City Indemnified Parties from and against any and all Claims resulting or arising from or in any way related to the existence, Release, threatened Release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials on, in, under, from, about or adjacent to any portion or portions of said lands, regardless whether any such condition is known or unknown now or upon acquisition and regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring and regardless of how or by whom caused; provided that neither Developer nor any Successor Owner shall be responsible (and such indemnity shall not apply) to the extent of (a) the gross negligence, fraud or willful misconduct of the City Indemnified Parties, or (b) to the extent of the active negligence or willful misconduct of the City or any City Indemnified Parties with respect to Hazardous Materials occurring prior to the Close of Escrow for a Parcel with respect to work performed on such Parcel. This environmental indemnity*

shall be included in the Quitclaim Deed for each component of the Property provided that such indemnity (x) shall not be binding upon Tenants who are End Users under Ground Leases or Space Leases and (y) shall not be deemed to limit in any manner the rights and/or remedies that Developer may have against the Federal Government. Without limiting Developer's obligations under this Section 10.2, Developer agrees to use its commercially reasonable efforts to include within any Ground Leases or Space Leases for the Retail Parcel, or to cause Healthcare Developer to include within any Ground Leases or Space Leases for the Healthcare Parcels, an indemnification from the lessee under Ground Leases or such Space Leases for Developer's and the City's benefit pursuant to which such lessee will indemnify, defend and hold harmless Developer and the City with respect to the Release of any Hazardous Materials during its Lease term."

2.6.3. **Claims Response**. Section 10.4 of the DDA provides as follows:

*"10.4 **Claim Response**. In the event that following the Retail Property Close of Escrow, any Environmental Agency or other third party brings, makes, alleges, or asserts a Claim, arising from or related to any actual, threatened, or suspected presence or Release of Hazardous Materials on or about the Property or Parcel or any Improvements thereon, including any Claim for Investigation or Remediation on the Property or such Improvements, or such Environmental Agency or other third party orders, demands, or otherwise requires that any Investigation or Remediation be conducted on the Property or Parcel or with respect to Improvements thereon, Developer shall promptly upon its receipt of notice thereof, notify the City in writing and thereafter shall promptly and responsibly evaluate and respond to such Claim as provided in Section 10.5 below. Further, upon receipt of such Claim, order, demand or requirement, Developer shall take such reasonable measures, as necessary or appropriate, to reasonably dissuade such Environmental Agency or other third party from bringing, making, alleging, or asserting any Claim against the City arising from or related to the presence or any actual, threatened, or suspected Release of Hazardous Material on or about the Property, Parcel or such Improvements, including any Claim for Investigation or Remediation on the Property, Parcel or Improvements; provided, however, that such obligation shall not apply to those excluded Claims identified in clauses (a) and (b) in Section 10.2."*

2.6.4. **Release Notification and Remedial Actions**. Section 10.5 of the DDA provides as follows:

*"10.5 **Release Notification and Remedial Actions**. If, after the Close of Escrow with respect to a component of the Property or the Development Parcels, there presence or any Release of a Hazardous Material is discovered on such Property or Parcel or any Improvements thereon, and regardless of the cause, Developer shall with respect to the Property, Parcel and/or Improvements promptly provide written notice (or in the event of emergency,*

telephonic notice, followed by written notice) of any such Release to the City. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate any pre-existing condition or Release and the Developer acknowledges that it is obligated to assume responsibility or indemnify the City with respect to such Release pursuant to Section 10.2 or there is a good faith dispute between the City and Developer as to whether Developer is obligated to assume responsibility or indemnify the City with respect to such condition or Release pursuant to Section 10.2, then Developer shall (a) Remediate the condition or Release in compliance with and to the extent required by Environmental Laws and such Environmental Agency, or if such removal is prohibited by any Environmental Laws, take whatever action is required by any Environmental Law and such Environmental Agency; (b) take such other reasonable action as is necessary to have the full use and benefit of the Property as contemplated by this Agreement; and (c) provide the City with satisfactory evidence of the actions taken as required in this Section. To the extent that any Environmental Agency (other than the City) is requiring that the City Remediate such condition Release and the City acknowledges that Developer is not obligated to assume responsibility or indemnify the City with respect to such condition or Release pursuant to Section 10.2 or no Environmental Agency (other than the City) is requiring that the City Remediate such condition or Release, then (as between Developer and the City under this Agreement) Developer may elect in its sole discretion whether to Remediate such condition or Release and/or pursue any rights that Developer has against any Person (including the Federal Government and the City) with respect to such condition or Release. The foregoing shall be without prejudice to Developer's or the City's rights against any responsible party or against the Federal Government pursuant to the Navy Responsibilities and without compromising the applicability of any insurance coverage in regard to such Release. The City and Developer will coordinate any remediation action with appropriate environmental insurance carriers so as not to compromise coverage for the costs of such actions. Nothing set forth herein requires Developer to perform any obligation of the Federal Government and nothing set forth herein shall be deemed to limit or impair (or take any action that might limit or impair) in any manner the rights and/or remedies that Developer or City may have against the Federal Government or any other rights and/or remedies of Developer."

2.6.5. **Conflict with Section 330 and Other Federal Government Obligations**. Section 10.6 of the DDA provides as follows:

"10.6 ***Conflict with Section 330 and Other Federal Government Obligations****. Notwithstanding anything to the contrary contained in this Section 10, in the event that any actions required to be taken by Developer pursuant to this Section 10 [of this Agreement] could potentially result in Developer losing rights, or are contrary to any rights, which it otherwise would have pursuant to Section 330, Fiscal Year 1993, National Defense Authorization Act Public Law 102-484 or otherwise against the Federal*

Government, then the City and Developer shall meet in order to determine the proper course of action to be taken by Developer. The course of action to be agreed upon shall protect the City's interest in the Project and Tustin Legacy, while retaining for Developer its rights pursuant to Section 330 or otherwise against the Federal Government to the maximum extent reasonable under the circumstances. Notwithstanding the foregoing, nothing set forth in this Section 10.6 relieves Developer with respect to Developer's environmental responsibilities and obligations and environmental indemnification of Developer to the City in this Agreement."

3. **Enforcement of Covenants.**

3.1. General Purpose and Constructive Notice. This Declaration and the Restrictions shall run and pass with each and every portion of the Development Parcels and be binding upon each Property Owner and each and every Person claiming by, through or under such Property Owner, for the following terms: (a) with respect to the Restrictions set forth in Sections 2.1 and 2.2, for the time periods set forth in Section 2.1 and 2.2, respectively, (b) with respect to the indemnity set forth in Section 2.6.1 (Section 10.1 of the DDA) for the time period set forth therein and (b) with respect to all other Restrictions set forth herein, in perpetuity. These Restrictions shall benefit the City Benefited Property and the City shall retain the right to enforce the restrictions and equitable servitudes against the Development Parcels and the same shall be enforceable solely by the City notwithstanding any future transfer of the City Benefited Property and/or any interest therein or portion thereof; provided that no private right of action shall exist or be implied by the existence of this Declaration. Except as specifically set forth herein, the Restrictions shall remain in full force and effect for the periods of time specified herein with respect thereto, notwithstanding the City's exercise of any right or remedy herein. Subject to the time limitations set forth herein, each Successor Owner that now or hereafter owns or acquires any right, title or interest in or to any portion of the Development Parcels is and shall be conclusively deemed to have consented to and agreed to every Restriction, provision, covenant, condition, right and limitation contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Successor Owner acquired such interest in the Development Parcels or any portion thereof.

3.2. Transfers and Transfers of Control. Notwithstanding anything to the contrary in this Declaration, except as set forth below, in the event that any Property Owner conveys all or any portion of the Development Parcels to another Person, the Property Owner conveying all or such portion of the Development Parcels shall be released from the obligations of this Declaration first occurring from and after the effective date of such conveyance to another Person; provided, however, that (a) the foregoing shall not be construed to permit any Transfer or Transfer of Control (each as defined in the DDA) by the Property Owner of the Healthcare Parcel or the Retail Parcel or any portion thereof prior to the Recording of a Certificate of Compliance for such Parcel except as expressly permitted by the DDA, (b) during the term of the DDA, notwithstanding any Transfers and/or Transfers of Control, no Property Owner shall be released with respect to matters for which it remains liable pursuant to the DDA, and unless specifically released by the City in writing, each Property Owner shall remain fully liable for the obligations of such Property Owner under this Declaration for such period as it is a Property

Owner and, during the term of the DDA, for such longer period as may be applicable to it during the any Additional Liability Period (as defined in the DDA) under the DDA.

3.3. **Inspection**. Upon forty-eight (48) hours' prior telephonic, electronic mail or written notice, or such longer period as may be explicitly set forth in this Declaration, and subject to reasonable security provisions of the applicable Property Owner and any rights of such Property Owner's tenants, and in addition to any rights that the City may have in its governmental capacity, the City and its authorized representatives may from time to time enter upon and inspect the Development Parcels or any portion thereof or any Improvements thereon for purposes of ascertaining compliance with the Restrictions, but without obligation to do so.

3.4. **Other Restrictions**. This Declaration and the Restrictions contained herein are not the exclusive source of restrictions on the use and maintenance of the Development Parcels. Nothing contained herein shall prejudice or diminish in any way the City's rights under the DDA or any Other Agreements or its authority in its governmental capacity, nor the rights and authority of any other Governmental Authority having jurisdiction over the Project or any portion thereof, and the exercise of any rights or remedies by the City hereunder shall be considered separate from and independent of any breach or violation by Property Owner which is also a breach or violation of any Governmental Requirements.

4. **Potential and Material Defaults**. In the event of any breach, violation or failure to perform or satisfy any of the Restrictions which has not been cured within the applicable cure period set forth below, the City may in its sole discretion enforce any one or more of the remedies set forth in Section 4.3.

4.1. **Potential Defaults.** Except as otherwise provided in this Declaration, it shall be a "**Potential Default**" if:

(a) Property Owner fails to pay timely any sum required to be paid to the City pursuant to this Declaration; or

(b) Property Owner fails to perform, or delays in the performance of, in whole or in part, any obligation required to be performed under, or otherwise violates the provisions of this Declaration, other than as set forth in Section 4.1(a).

4.2. **Material Defaults**.

(a) A Potential Default under Section 4.1(a) shall become a "**Material Default**" if it is not cured within fifteen (15) calendar days after receipt by the defaulting Property Owner of the written notice of Potential Default from the City.

(b) A Potential Default under Section 4.1(b) shall become a "**Material Default**" if it is not cured, at such defaulting Property Owner's expense, (i) within thirty (30) calendar days after the date of receipt by the defaulting Property Owner of written notice of such Potential Default from the City; (ii) if such cure cannot be reasonably accomplished within such thirty (30) calendar day period, within ninety (90) calendar days after receiving written notice of such Potential Default from the City, but only if the defaulting Property Owner has commenced such cure within such thirty (30) calendar day period and

diligently pursues such cure to completion, or (iii) within such longer period of time as may be expressly granted by the City in the City's reasonable discretion, taking into account the nature of the Potential Default and the diligence and good faith efforts of the defaulting Property Owner, as applicable, to cure such Potential Default. The time periods set forth in this Section 4.2(b) to cure a Potential Default shall be extended by Force Majeure Delay.

(c) Following written notice and failure to cure within the time periods set forth in this Section 4.2, each Potential Default shall become a Material Default that shall be deemed to have occurred upon the expiration of the applicable cure period.

4.3. **Certain City Remedies**. In the event of a Material Default, subject to the Mortgagee cure rights set forth in Section 4.5 below, and without limiting the rights and remedies of the City under the DDA, if then in effect, and any Other Agreement, the City may do any or all of the following:

(a) The City may bring a suit for damages for any compensable breach of or noncompliance with any of the Restrictions, or declaratory relief to determine the enforceability of any of the Restrictions; provided, however, that (i) such damages shall be limited to direct (actual) damages to the City for such Material Default and (ii) the City hereby expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary and punitive damages and/or

(b) The City may bring an action in equity or otherwise for specific performance to enforce compliance with the Restrictions or an injunction to enjoin the continuance of any such breach or violation thereof, whether or not the City exercises any other remedy set forth herein, and Property Owner acknowledges that a particular or ongoing violation of one or more of the Restrictions may cause the City to suffer material injury or damage not compensable in money (including irreparable effects on the type and quality of development on the City Benefited Property , Tustin Legacy or portions thereof, and/or the maintenance of the Development Property, including without limitation, the Improvements in accordance with the standards(s) for the quality of maintenance set forth in Section 2.2.1; and/or

(c) Any Material Default of the Restrictions or any provision hereof is hereby declared to be a nuisance, and the City shall be entitled to enter the Development Parcels and summarily abate and remove, without further legal process to the maximum extent permitted by law, any structure, thing or condition that may exist in violation of any of these Restrictions, or to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of the Restrictions, all at the sole cost and expense of Property Owner. Such rights shall include without limitation, the right of the City or its designee to enter the Development Parcels and to correct any Material Default by Property Owner in the maintenance of the Improvements or landscaping on the Development Parcels in accordance with the Restrictions.

4.4. **Failure to Timely Pay Amounts Due**. If there is a monetary Material Default under this Declaration then, in addition to any other remedies conferred upon the City pursuant to this Declaration, the defaulting Property Owner shall pay to the City, in addition to all principal amounts due, interest from the date of such payment or part thereof was due until the

date paid at the default rate of eight percent (8%) per annum, compounded annually, but in no event in excess of the maximum legal rate.

4.5. **Rights of Mortgagees and Mortgagee Protection**.

(a) No breach or violation of the Restrictions shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the permanent financing of the Project or any portion thereof on a Parcel following Recording of a Certificate of Compliance for such Parcel; provided, however, that this Declaration and all provisions hereof shall be binding upon and effective against Developer and each and every Successor Owner of such Parcel or portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, but (i) such subsequent owner shall have a reasonable time after acquiring title in which to cure any violations or correct and change any facts giving rise to the City's rights under this Declaration occurring prior to such transfer of title or occupancy and which are reasonably capable of being cured or changed provided that such Successor Owner diligently acts to effect such cure or change (and in the event of such diligent and timely cure, such Successor Owner shall have no further liability in connection with such prior violation or the continued existence of such violation until such cure is completed), and (ii) Sections 4.1(a) and 4.1(b) shall not be applicable as to such Successor Owner with regard to any non-curable default occurring prior to the time such Successor Owner acquired title. Notwithstanding the foregoing, each Successor Owner shall be required to use the Parcel in accordance with the restrictions set forth in Section 2.

(b) If Developer or a Successor Owner grants a mortgage to a mortgagee, such mortgagee may inform the City of the existence of such mortgage by delivering written notice to the City confirming the existence of the mortgage on the Property in favor of such mortgagee, together with the mailing address for such mortgagee (an "**Identified Mortgagee**"). Prior to the Recordation of the Certificate of Compliance there shall be only one Identified Mortgagee with respect to the Healthcare Parcel, which shall be the Permitted Mortgagee under the DDA, and no Permitted Mortgagees with respect to the Retail Parcel without the prior written consent of the City in its sole discretion.

(c) If there is a Material Default by Developer or a Successor Owner, the City shall not exercise any of its remedies under Section 4.3 until the expiration of the cure period provided to Identified Mortgagees under this Section 4.5.

(d) At any time after a Potential Default by Developer or Successor Owner, the City shall deliver written notice to each Identified Mortgagee, stating that a Potential Default has occurred, and if such Potential Default has become a Material Default by the date of the notice, that a Material Default has occurred (a "**Notice to Mortgagee**"). Each Identified Mortgagee shall have a cure period of ninety (90) days in addition to the cure period provided to Developer pursuant to Section 4.2 above (the "**Mortgagee Cure Period**"), which cure period shall commence on the date that is the later of (i) the date of the Notice to Mortgagee and (ii) the date of the Material Default, during which the Identified Mortgagees may cure the Material Default.

(e) No mortgagee shall have the right to use the failure of the City to

provide a Notice to Mortgagee to any other mortgagee as a claim, defense or estoppel to application of these provisions with respect to the first such mortgagee.

(f) Each mortgagee shall have the right, but not the obligation, during the Mortgagee Cure Period to cure a Material Default, including the payment of any amounts due to the City, to make any repairs or improvements, to do any other act or thing required of Developer under this Declaration or which may be necessary and proper to be done in the performance and observance of this Declaration to rectify a Potential Default or a Material Default.

4.6. **Lien Rights**. The delinquent amount of any payments due hereunder, together with any late charges or interest due on any such delinquent payment, reasonable attorneys' fees, experts' fees and consultants' fees and collection costs related to such delinquent payment shall, to the greatest extent permitted by applicable law, be a lien and charge upon the Development Parcels and shall be a continuing lien upon the Development Parcels in favor of the City; provided that such lien and charge shall at all times be subordinate to the lien and charge of any Permitted Mortgage upon the Property given to a bona fide lender for value.

4.7. **Priority of Declaration**. This Declaration, except the lien rights of the City described in Section 4.6, shall be superior in priority to all Mortgages. Notwithstanding the foregoing, no breach or violation of the Restrictions shall defeat or render invalid the lien of any Mortgage or similar instrument securing a loan made in good faith and for value with respect to the permanent financing of the Project or any portion thereof; provided, however, that this Declaration and all provisions hereof shall be binding upon and effective against each Property Owner and each and every other occupant of the Development Parcels or portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, but (such subsequent owner shall have a reasonable time after acquiring title in which to cure any violations or correct and change any facts giving rise to the City's rights under this Declaration occurring prior to such transfer of title or occupancy and which are reasonably capable of being cured or changed provided that such Property Owner diligently acts to effect such cure or change (and in the event of such diligent and timely cure, such Property Owner shall have no further liability in connection with such prior violation or the continued existence of such violation until such cure is completed). Notwithstanding the foregoing, each Property Owner shall be required to use the Development Parcels in accordance with the Restrictions set forth in this Declaration.

4.8. **No Damages Payable by City**. The City would not have executed this Declaration if the City could become liable for damages under or with respect to this Declaration, the DDA or the Other Agreements. Consequently, and notwithstanding any other provision of this Declaration, except as specifically set forth in Section 18.5.3 of the DDA for the term thereof, the City shall not be liable in damages under this Declaration, the DDA or any Other Agreement to Property Owner, or any Person claiming by, through or under such Property Owner and by acceptance of this Declaration, Developer, on behalf of itself and each Successor Owner, hereby expressly waives, releases, and relinquishes any and all rights to claim damages of any kind or nature from the City except, during the term of the DDA, as set forth in Section 18.5.3 of the DDA, including without limitation, any and all right to any expectation, anticipation, indirect, consequential, exemplary and punitive damages.

5. **Miscellaneous**.

5.1. **Modification**. From and after the transfer of fee title to the Development Parcels to Developer, no amendment, change, modification or supplement to this Declaration shall be valid and binding unless (a) it is represented in writing and signed by (i) the City, as the first party, and (ii) Developer and/or any Successor Owners then owning any portion of the Development Parcels or any interest in the Project, as the second parties; provided such instrument is signed by the first party and all of the second parties then holding an interest in the Development Parcels and/or the Project, and (b) is duly recorded in the Official Records. This Declaration shall be administered by the City Manager of the City. Any matter to be approved by the City shall be deemed approved, and any action to be taken by the City shall be deemed taken, upon the written approval by the City Manager (or his or her designee). The City Manager or his or her designee shall have the authority to issue interpretations with respect to this Declaration and to determine whether any action requires the approval of the City Council.

5.2. **Applicable Law**. This Declaration shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles.

5.3. **Attorneys' Fees and Costs.** In the event any legal or equitable action or proceeding shall be instituted between the City and Developer or any Successor Owner relating to this Declaration, the Party prevailing in such action shall be entitled to recover from the losing Party all of its costs, including court costs and reasonable attorneys' fees.

5.4. **Conflict of Interest**. No appointed or elected official or employee of the City shall have any personal interest, direct or indirect, in this Declaration nor shall any official or employee participate in any decision relating to the Declaration which affects his or her interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. Developer warrants that it has not paid or given and will not pay or give any third person any money or other consideration for obtaining this Declaration.

5.5. **Non-liability of City Officials and Employees**. No elected or appointed official, representative, employee, agent, consultant, legal counsel or employee of the City shall be personally liable under this Declaration.

5.6. **Construction and Interpretation of Declaration**.

(a) The language in all parts of this Declaration shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Person.

(b) Any provision of this Declaration that is deemed to be illegal, invalid or unenforceable by an arbitrator or court of competent jurisdiction shall be ineffective to the extent of the invalidity or unenforceability of such provision and shall be deemed stricken from this Declaration. Any stricken provision shall not affect the legality, enforceability or validity of the remainder of this Declaration. If any provision or part thereof of this Declaration is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in

tenor and intent to the stricken provision as is legally possible.

(c) The captions of the sections and subsections in this Declaration are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to "this Declaration" mean, refer to and include this instrument as well as any riders, schedules, exhibits, addenda and attachments hereto (which are hereby incorporated in this Declaration by this reference). Any references to any covenant, conditions, obligation and/or undertaking, "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to and include the covenants, obligations and undertakings existing pursuant to this Declaration and any riders, schedules, exhibits, addenda, attachments or other documents affixed to this instrument.

(e) As used in this Declaration and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and vice versa.

(f) As used in this Declaration the words "include" and "including" mean respectively "include, without limitation" and "including, without limitation".

(g) Unless otherwise indicated, references in this Declaration to sections, paragraphs, clauses, exhibits, attachments and schedules are to the same contained in or attached to this Declaration.

5.7. **Time of Essence**. Time is of the essence with respect to all provisions of this Declaration in which a definite time for performance is specified.

5.8. **Counterparts**. This Declaration may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Declaration shall not be effective until the execution by the City and Developer of at least one set of counterparts. Any one of such completely executed counterparts shall be sufficient proof of this Declaration.

5.9. **Estoppel**. City shall, from time to time upon not less than twenty (20) calendar days' notice from Property Owner, but not more often than annually unless in connection with a sale or refinancing of the Development Parcels and/or Improvements, execute and deliver to Property Owner a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, that this Declaration is in full force and effect, as modified, and stating the modifications and stating whether or not, to the actual knowledge of the City Manager (and without duty of inquiry), (a) a Potential Default or Material Default by Property Owner has occurred and is continuing and (b) if a Potential Default or Material Default by Property Owner has occurred and is continuing, specifying the same. Any such certificate may be relied upon by Property Owner or any prospective purchaser or lender of Property Owner. Property Owner shall promptly pay to the City all of the City's actual out of pocket third party expenses, including legal fees, and staff costs incurred with respect to the preparation, review, and delivery of each City estoppel, provided that such expenses, fees and costs shall not exceed

Five Thousand Dollars ($5,000.00) with respect to any single estoppel.

5.10. **Force Majeure Procedures**. If any party (the "**First Party**") believes that it is entitled to an extension of time due to Force Majeure Delay, it shall notify the other party (the "**Second Party**") in writing within ninety (90) calendar days from the date upon which the First Party becomes aware of such Force Majeure Delay, generally describing the Force Majeure Delay and its date of commencement. Upon written request from the Second Party, the First Party shall promptly provide the following information with respect to such Force Majeure Delay: a more detailed description of the Force Majeure Delay, when and how the First Party obtained knowledge thereof, the steps the First Party anticipates taking to respond to such Force Majeure Delay, and the estimated delay resulting from such Force Majeure Delay and response and such other information as the Second Party may reasonable request. The extension for Force Majeure Delay shall be granted or denied in the Second Party's reasonable discretion. If the First Party fails to notify the Second Party in writing of its request for a given Force Majeure Delay within the ninety (90) calendar days specified above, there shall be no extension for such Force Majeure Delay.

[signatures on next page]

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

CITY OF TUSTIN:

Dated:_____ By: _____
Jeffrey C. Parker, City Manager

ATTEST:

_____
Erica N. Rabe, City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

APPROVED AS TO FORM

By:_____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

[signatures continued on next page]

BY EXECUTING THIS DECLARATION OF SPECIAL RESTRICTIONS FOR ***DEVELOPMENT PARCEL 1C***, DEVELOPER ACKNOWLEDGES AND AGREES THAT, UPON OBTAINING TITLE TO THE PROPERTY, DEVELOPER SHALL ASSUME AND BE BOUND BY ALL OF THE OBLIGATIONS AND LIABILITIES, COVENANTS, CONDITIONS, AND RESTRICTIONS HEREIN:

DEVELOPER:

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
a Delaware limited partnership,
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation,
Its General Partner

Date: _____

By: _____
Name: John Mehigan
Title: Vice President

[Notary Acknowledgements on Next Page]

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT 1
LEGAL DESCRIPTION OF LAND

[To Be Attached]

EXHIBIT 2
LEGAL DESCRIPTION OF CITY BENEFITED PARCEL

[To Be Attached]

EXHIBIT 3
PROHIBITED USES

[attach Attachment 19 from DDA here]

EXHIBIT 4
DEFINED TERMS
[Note: Parties to add other applicable definitions from DDA prior to execution]

"**Approved Plans**" shall mean collectively the approvals required by the City which govern development of Improvements on the Property, including approval of plans by the City in its Governmental Capacity pursuant to the concept plan and design review process and approval by the City of construction levels drawings as required to obtain the Entitlements.

"**Building**" shall mean each building and structure on any Development Parcels.

"**Developer**" shall mean and include the Person acknowledging this Declaration as "Developer" and each Successor Owner of all or a portion of the Development Parcels, in each case for so long as such Person owns fee title to the Development Parcels or any portion thereof.

"**Base Closure Law**" shall mean the Defense Base Closure and Realignment Act of 1990, (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 Note), as amended.

"**Business Day(s)**" shall mean any day on which City Hall is open for business and shall specifically exclude Fridays when City Hall is officially closed, Saturday, Sunday or a legal holiday.

"**CEQA**" shall mean the California Environmental Quality Act and implementing regulations and guidelines, contained in Cal. Public Resources Code Section 21000 et seq., and Cal. Code of Regulations, title 14, Section 15000 et seq., respectively.

"**Certificate of Compliance**" shall mean the certificate of compliance for each of the Retail Parcel and for the Healthcare Parcel, which shall each have been recorded by the City against the Development Parcels in accordance with the DDA (and evidencing the termination of the DDA as to such Parcel in accordance with its terms) upon the satisfaction of the conditions precedent to the City's Recording of such certificate set forth in the DDA.

"**City Code**" shall mean the Tustin City Code for the City of Tustin, California, as the same may be amended from time to time.

"**City Council**" shall mean the City Council of the City of Tustin which serves as the City's legislative body.

"**City Indemnified Parties"** shall mean the City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors, consultants and representatives.

"**Claim**" or "**Claims**" shall mean any and all claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including attorneys' fees, fees of expert witnesses, and consultants' and court and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes, or any type of compensation whatsoever, direct or

indirect, known or unknown, foreseen or unforeseen.

"**Class A Standards**" shall mean in terms of the quality of maintenance, standards consistent with a Class A Project.

"**Complete**" and "**Completion**" shall mean, with respect to the Project or, if the Project is constructed in Phases, with respect to a given Phase, the point in time when all of the following shall have occurred with respect to the Project or such Phase: (a) the Improvements with respect thereto have been substantially completed in accordance with this Agreement; (b) the issuance of a permanent certificate of occupancy by the City or, to the extent a certificate of occupancy is not required by the City for a particular Improvement, the equivalent inspection, signoff or other permit activity with respect to such Improvement, (c) the Recording of a Notice of Completion (California Civil Code Section 3043) by Developer, its Successor Owner or such Person's contractor; (d) a certification by the Project architect that such Improvements (with the exception of minor "punch list" items) have been completed in a good and workmanlike manner and substantially in accordance with the Approved Plans and specifications; and (e) all contractors, subcontractors, laborers, suppliers, Architects, and engineers who performed work on the relevant Improvements shall have been paid in full and shall have executed final unconditional lien waivers and any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against.

"**Developer Representatives**" shall mean Developer and its officers, directors, employees, agents, representatives, tenants, prospective tenants, prospective purchasers, contractors, and other Persons accessing property owned by the City by, through or with the permission or under the direction or auspices of Developer, and when used in the context of the Healthcare Developer shall mean the officers, directors, employees, agents, representatives, tenants, prospective tenants, prospective purchasers, contractors, and other Persons accessing the property owned by the City by, through or with the permission or under the direction or auspices of Healthcare Developer.

"**Development Parcels**" shall mean the Retail Parcel and the Healthcare Parcel collectively.

"**Development Permits**" shall include any grading permit, foundation permit, construction permit, building permit or other permit type as may be necessary pursuant to Chapter 4 of the Specific Plan and/or the City Code.

"**DTSC**" shall mean the California Department of Toxic and Substance Control.

"**Due Diligence Information**" shall mean any and all information or documentation relating to the Property furnished to Developer by the City, or its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors or consultants, in connection with Developer's due diligence pursuant to the DDA.

"**End User**" shall mean a Person operating a retail business, or a Healthcare User, in any Improvement including any Building or Leasable Space, whether such Person holds a fee interest in a Building Pad, a ground leasehold interest in a Building Pad, or a leasehold interest in a Leasable Space or is leasing office space in a Building.

"**Entitlements**" shall mean the City General Plan, the Specific Plan and all discretionary land use approvals and entitlements legally required by the City or any other Governmental Authority as a condition of subdivision and development of the Property and construction of Improvements.

"**Environmental Agency**" shall mean the United States Environmental Protection Agency; the California Environmental Protection Agency and all of its sub-entities, including any Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Toxic Substances Control, the South Coast Air Quality Management District, and the California Air Resources Board; the City; any Fire Department or Health Department with jurisdiction over the Property; and/or any other federal, state, regional or local governmental agency or entity that has or asserts jurisdiction over Hazardous Substance Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Materials in, on, under, about, or affecting the Project, the Development Parcels or any Improvements thereon.

"**Environmental Laws**" shall mean any federal, state, regional or local laws, ordinances, rules, regulations, requirements, orders, directives, guidelines, or permit conditions, in existence as of October [●] 2015 or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Materials, and all applicable judicial, administrative and regulatory decrees, judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Materials. Environmental Laws shall include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("**CERCLA**"); the Resource Conservation and Recovery Act, as amended, (42 U.S.C. Section 6901 et seq.) ("**RCRA**"); the federal Water Pollution Control Act, as amended, (33 U.S.C. Section 1251 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. Section 2601 et seq.); the Hazardous Substances Account Act (Chapter 6.8 of the California Health and Safety Code Section 25300 et seq.); Chapter 6.5 commencing with Section 25100 (Hazardous Waste Control) and Chapter 6.7 commencing with Section 25280 (Underground Storage of Hazardous Substances) of the California Health and Safety Code; and the California Water Code, Sections 13000 et seq.

"**Federal Deed**" shall mean that certain Quitclaim Deed H and Environmental Restriction Pursuant to Civil Code Section 1471 dated May 13, 2002, that was Recorded on May 14, 2002 as Instrument Number 20020404598.

"**Federal Government**" shall mean the United States of America (including the Navy), by and through the Secretary of the Navy, or designee.

"**Force Majeure Delay**" shall mean (a) prior to Recording of a Certificate of Compliance for the Healthcare Parcel and/or the Retail Parcel, as to such Parcel, have the meaning set forth in the DDA, and (b) following Recording of a Certificate of Compliance for each Parcel, as to such Parcel, shall mean the occurrence of any of the following events when such event is beyond the control of the First Party and such Party's contractors and consultants and is not due to an act or omission of such Party or any consultant, contractor or other Person for whom such Party may be contractually or legally responsible, which directly, materially and adversely affects the ability of the First Party to meet its non-monetary obligations under this Declaration and which events (or the effect of which events) could not reasonably have been avoided by due diligence and use of reasonable efforts by the Party claiming Force Majeure Delay, provided, however, that failure of Property Owner to perform any obligation to be performed by such Property Owner hereunder as the result of adverse changes in the financial condition of such Property Owner or any other Person or failure to perform any obligation to be performed by Property Owner or other Person hereunder as the result of adverse changes in market conditions shall not constitute Force Majeure Delay: any act of God, materially adverse weather conditions, strikes, lockouts, labor troubles, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, casualty causing material physical destruction or damage on the Property, any delay caused by the other Party's failure to respond in accordance with the terms of this Declaration, or other reasons of a like nature beyond the reasonable control of the Party delayed in performing works or doing acts required under this Declaration.

"**Foreclosure**" shall mean the foreclosure of any Permitted Mortgage (or any sale thereunder), whether by judicial proceedings, by virtue of any power of sale under the Permitted Mortgage, by acceptance of a deed-in-lieu of foreclosure, or by any other conveyance of all or any portion of the Property and/or Improvements by other appropriate proceedings in the nature of a foreclosure, resulting in the Transfer of all or any portion of the Property and/or Improvements to (a) any Permitted Mortgagee, (b) any entity that Controls Permitted Mortgagee, is Controlled by Permitted Mortgagee, or is Controlled by an entity that also Controls Permitted Mortgagee, (c) any participating lender in the Construction Loan (excluding Developer or any Developer Affiliate), and/or (d) any agent or nominee for one or more of the lenders in clauses (a) through (c) under the Permitted Mortgage that secures the Construction Loan.

"**FOST**" shall mean the Department of Navy findings and determinations that the Development Parcels were suitable for transfer to the City, pursuant to the document entitled "Final Finding of Suitability to Transfer For Southern Parcels 4-8, 10-12, 14, and 42, and Parcels 25, 26, 30-33, 37, and Portions of 40 and 41 Marine Corps Air Station Tustin, California" dated September 28, 2001.

"**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 Developer, the Project, the Property and/or such portions of the foregoing as the context indicates.

"**Governmental Requirements**" shall mean all laws, statutes, codes, ordinances, rules, regulations, standards, guidelines and other requirements issued by any Governmental Authority having jurisdiction over, governing, applying to or other affecting Developer, the Project, the Improvements, the Property and/or any component thereof and including without limitation: (i) Tustin City Code and the Entitlements.

"**Ground Lease**" shall mean a lease of real property comprising all or a portion of a Parcel to an End User for construction and/or occupancy of one or more Buildings thereon.

"**Hazardous Materials**" shall mean and include the following:

(a) "**Hazardous Substance**", "**Hazardous Material**", "**Hazardous Waste**", or "**Toxic Substance**" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. subsection 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. subsection 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. subsection 6901, et seq.;

(b) An "**Extremely Hazardous Waste**", a "**Hazardous Waste**", or a "**Restricted Hazardous Waste**", under subsections 25115, 25117, or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to subsection 25140 or 44321 of the California Health and Safety Code;

(c) "**Hazardous Material**", "**Hazardous Substance**", "**Hazardous Waste**", "**Toxic Air Contaminant**", or "**Medical Waste**" under subsections 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

(d) "**Oil**" or a "**Hazardous Substance**" listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydro carbonic substance or by-product;

(e) Listed or defined as a "**Hazardous Waste**", "**Extremely Hazardous Waste**", or an "**Acutely Hazardous Waste**" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(f) Listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.9(a) of the California Health and Safety Code;

(g) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(h) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual,

whether or not the presence of such material resulted from a leaking underground fuel tank;

(i) Pesticides regulated under the Feral Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. subsections 136 et seq.;

(j) Asbestos, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. subsections 2601 et seq.;

(k) Any radioactive material including any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. subsection 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. subsection 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code Section 114960 et seq.;

(l) Regulated under the Occupational Safety and Health Act, 29 U.S.C. subsection 651 et seq., or the California Occupational Safety and Health Act, California Labor Code subsection 6300 et seq.; and/or

(m) Regulated under the Clean Air Act, 42 U.S.C. subsection 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"**Healthcare User**" shall mean any entity that operates a non-residential hospital, medical office, office, skilled nursing or other healthcare related facility.

"**Healthcare Parcel**" shall mean the real property described in Recital C and legally described on Exhibit 1 hereto.

"**Healthcare Parcel Retail Uses**" shall mean any retail uses permitted pursuant to the Specific Plan but specifically excluding grocery uses and stand-alone drug store use.

"**Improvements**" shall mean all Buildings, structures, private streets, roads, drives, bike paths, alleyways, sidewalks, utilities, common areas, landscaping, hardscaping, fountains and similar improvements constructed on the Development Parcels from time to time.

"**Investigation(s)**" shall mean any observation, inquiry, examination, sampling, monitoring, analysis, exploration, research, inspection, canvassing, questioning, and/or surveying of or concerning the Property, including the air, soil, surface water, and groundwater, and the surrounding population or properties, or any of them, to characterize or evaluate the nature, extent or impact of Hazardous Materials.

"**Land**" shall have the meaning set forth in Recital C.

"**Lease**" shall mean, as a noun, an agreement between Developer and a Tenant to lease, sublease or license a Parcel or any portion thereof or any Building or portion thereof thereon, including any Ground Lease or Space Lease, and, as a verb, shall mean the leasing by Developer of any Parcel or Improvement or portion thereof, including any space within a Building, to a

Tenant.

"**Memorandum of Agreement**" shall mean 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.

"**Mortgage**" shall mean any indenture of mortgage or deed of trust, bond, grant of taxable or tax exempt funds from a governmental agency or other security interest affecting the Development Parcels or any portion thereof and the documents governing a sale-leaseback transaction, together with all loan documents related thereto, but excluding any community facilities districts, assessment districts, landscape and lighting districts or other assessments created or imposed by any Governmental Authority.

"**Other Agreements**" shall mean the Quitclaim Deed(s), the Special Restrictions, the Memorandum of DDA, License Agreement, the Slope Parcel Easement and Landscape Installation and Maintenance Agreement, the CC&Rs and the DA, each of which shall be or shall have been Recorded.

"**Parcel**" shall mean each of the Retail Parcel and Healthcare Parcel, individually.

"**Permitted Exceptions**" shall mean those exceptions to title shown in the ALTA title policy issued to Developer with respect to a Parcel at the Close of Escrow for such Parcel.

"**Permitted Mortgage**" shall mean, (a) prior to Recording of a Certificate of Compliance for the Healthcare Parcel, any indenture of mortgage or deed of trust, bonds, grant of taxable or tax-exempt funds from a governmental agency or other conveyance of a security interest in the Healthcare Parcel, or any portion thereof to a Permitted Mortgagee or the conveyance of the Healthcare Parcel or any portion thereof to the Permitted Mortgagee or its Successor Owner or purchaser in connection with a Foreclosure which satisfies all of the criteria set forth in Section 2 and Section 17 and (b) following Recording of a Certificate of Compliance for any Parcel, a Mortgage Recorded against such Parcel.

"**Permitted Mortgagee**" shall mean (a) prior to Recording of a Certificate of Compliance for the Healthcare Parcel, a Mortgagee meeting the criteria set forth in Section 17.1.2 of the DDA and accordingly entitled to the Permitted Mortgagee protections provided by this Agreement and (b) following Recording of a Certificate of Compliance for any Parcel, a Person holding a Mortgage Recorded against such Parcel. For purposes of any acts under a Permitted Mortgage with respect to and/or following a Foreclosure thereunder, "Permitted Mortgagee" means such Permitted Mortgagee or any wholly-owned subsidiary thereof designated by the Permitted Mortgagee to take title to the foreclosed property. The participation, securitization or assignment of a loan (or any portion thereof) by a Permitted Mortgagee (acting in an individual capacity or as agent for other lenders) shall not give rise to any requirement that each lender participating in such participation, securitization or assignment itself be a Permitted Mortgagee (acting in an individual capacity or as agent for other lenders), so long as (a) at the inception of the loan, the originating and agent lender is a Permitted Mortgagee, and (b) at the time of any subsequent assignment of the loan, the successor owner and agent lender is a Permitted

Mortgagee.

"**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.

"**Prohibited Use**" is defined on Exhibit 3.

"**Project**" shall mean the construction and installation on the Development Parcels of the Improvements.

"**Property Owner**" shall have the meaning set forth in Recital G. In addition, with respect to the obligations imposed under Sections 2.2 and 2.3 of this Declaration, if a Development Parcel is subject to a ground lease, the term "Property Owner" shall also include the ground lessee under such ground lease.

"**Record**", "**Recording**" and "**Recorded**" shall mean to record the specified instrument, or the current or past recording of the specified instrument, in the official records of Orange County California.

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

Remediate" or "**Remediation**" shall mean any response or remedial action as defined under Section 101(25) of CERCLA, and similar actions with respect to Hazardous Materials as defined under comparable state and local laws, and any other cleanup, removal, containment, abatement, recycling, transfer, monitoring, storage, treatment, disposal, closure, restoration or other mitigation or remediation of Hazardous Materials or Releases required by any Environmental Agency or within the purview of any Environmental Laws.

"**Retail Parcel**" shall mean the real property described in Recital C and legally described on Exhibit 1 hereto.

"**Space Lease**" shall mean each Lease for Retail Use of a portion of an improved Building located on the Retail Parcel and each Lease for Medical Use or Healthcare Parcel Retail Use of a portion of an improved Building located on the Healthcare Parcel, but in each case excluding leases of real property or ground leases.

"**Specific Plan**" shall mean the MCAS Tustin Specific Plan/Reuse Plan adopted by the City as the same has been or shall be amended from time to time.

"**Successor Owner**" shall mean each and every Person owning or acquiring fee title to all or any portion of the Development Parcels. In addition, with respect to the obligations imposed under Sections 2.2 and 2.3 of this Declaration, and specifically excluding any insurance and

indemnity obligations under this Declaration, if a Development Parcel is subject to a ground lease, the term "Successor Owner" shall also include the ground lessee under such ground lease.

"**Tenant**" shall mean any Person who Leases any land and/or space on the Development Parcels and thereunder operates (or is constructing improvements with the intent to operate) Retail Uses, Healthcare Parcel Retail Uses or Medical Uses in such space.

"**Tustin Legacy**" shall have the meaning set forth in Recital B.

"**Tustin Legacy Backbone Infrastructure Program**" shall mean the backbone infrastructure program developed by the City with respect to Tustin Legacy, which includes a program for contribution by landowners in Tustin Legacy for backbone infrastructure, including Tustin Legacy roadway improvements; traffic and circulation mitigation to support the Tustin Legacy project; domestic and reclaimed water; sewer; telemetry; storm drains and flood control channels; utilities backbone (electricity, gas, telephone, cable, telecommunications, etc.) (as such program is in effect as of the Effective Date).

EXHIBIT 5

SITE PLAN

[To be attached]

ATTACHMENT 21

RETAIL PARCEL PRE-APPROVED TENANTS

Pre-Approved Tenants shall mean any of the Anchor Tenants identified below, including any subsidiaries, affiliates or partners thereof (meaning, any entity controlling, controlled by or under common control of any of the foregoing):

Grocers

a) 99 Ranch Market
b) Albertsons
c) Bristol Farms
d) Gelson's Market
e) Mothers Market
f) Pavilions
g) Ralphs
h) Smart & Final Extra
i) Sprouts Farmers Market
j) Stater Bros.
k) The Fresh Market
l) Trader Joe's
m) Vons
n) 99 Ranch
o) Northgate Market
p) El Super
q) Wal-Mart Neighborhood Grocery
r) Wholesome Choice

Drug Stores

a) CVS
b) Pharmaca
c) Rite Aid
d) Walgreens

Pre-Schools/Day Care

a) Children's Learning Adventure

b) Learning Care Group

c) Primrose Schools

d) Great Foundations

Other Tenants

a) Bed Bath & Beyond

b) Orchard Supply

c) Petsmart

d) Petco

e) Beverages & More

f) Crate & Barrel

g) Cost Plus World Market

h) Huntington Surf & Sport

i) Jacks Surf & Sport

j) Marshalls

k) Tilly's

l) TJ Max

m) Total Wine & More

n) Williams-Sonoma

Pad Tenants

a) Wells Fargo

b) Citibank

c) Union Bank

d) School's First Credit Union

e) Comerica

f) East West Bank

g) Bank of America

h) Chase

i) PDQ

j) Raising Cain's

k) Taco Bell

l) Burger King

m) McDonald's

n) Del Taco

o) Starbuck's

p) Carl's Jr

q) Panda Express

r) Wendy's

s) Dunkin Donuts

t) Lemonade

u) Mendocino Farms

ATTACHMENT NO. 22A

CITY NON-DISTURBANCE AND ATTORNMENT AGREEMENT
FOR PAD TRANSFEREES

CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383. RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Tustin 300 Centennial Way Tustin, CA 92780 Attention: City Manager	

Space Above This Line Reserved for Recorder's Use

RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(Pad Transferee)

THIS RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Pad Transferee) (this "**Agreement**") is entered into this _____ day of _____ , _____, ("**Effective Date**") by and among _____, a _____("**Pad Transferee**"), ***[1C TUSTIN LEGACY LLC,, a Florida limited liability company, the Developer under the DDA (defined below)/or _____ the Healthcare Developer under the DDA (defined below]*** ("**Developer**"), and THE CITY OF TUSTIN, CALIFORNIA, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the "**City**"). Each of Pad Transferee, Developer, and the City are referred to as a "**Party**" and all of them are sometimes referred to as the "**Parties**."

WITNESSETH:

A. The City and Developer have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____ (including all attachments thereto), which, as the same may be amended, updated or modified from time to time is referred to herein as the "**DDA**", with respect to the real property described therein as the "**Development Parcels**." The Development Parcels include certain land described in the DDA as the ***["Retail Parcels"/"Healthcare Parcels"]*** as legally described on Exhibit A attached hereto and incorporated herein by this reference, which pursuant to the DDA, were

previously conveyed by the City to Developer.

B. A Memorandum of Tustin Legacy Disposition and Development Agreement for Parcel 1C (the "**Memorandum**") executed by the City and Developer has been recorded against the Development Parcels as Instrument No. _____ in the official records of Orange County, California (the "**Official Records**"). Initially capitalized terms set forth in this Agreement and not defined herein shall have the meanings set forth therefor in the DDA.

C. Pursuant to the DDA, the following documents have been recorded in the Official Records against all of the Development Parcels: (i) that certain Declaration of Special Restrictions, dated as of _____, 20__ and recorded as Instrument No. _____ in the Official Records (the "**Special Restrictions**"), (ii) that certain Slope Easement and Landscape Installation and Maintenance Agreement dated as of _____, 20__ and recorded as Instrument No. _____ (the "**Slope/Landscape Agreement"**) and (iii) Declaration of Covenants, Conditions and Restrictions dated as of _____, 20__ and recorded as Instrument No. _____ (the "**CC&Rs**").

D. Developer intends to *[sell/ground lease* to Pad Transferee the portion of the *[Retail Parcels/Healthcare Parcels]* legally described on Exhibit B attached hereto and incorporated herein by this reference (the "**Building Pad**") pursuant to that certain {*specify written agreement*}, dated as of _____ *(the "**Conveyance Agreement**"/"**Ground Lease**").* Under the terms and provisions of the DDA, Pad Transferee (i) is an End User and (ii) does not intend to engage in a Prohibited Use upon the Building Pad.

E. Pursuant to the DDA, Developer agreed to complete or cause to be completed construction of certain improvements on the *[Retail Parcels/Healthcare Parcels]*, including on the Building Pad, within the time periods and subject to the additional terms and conditions set forth in the DDA.

F. Under the terms of the DDA, Pad Transferee is obligated to comply with certain of the requirements of the Special Restrictions, the CC&Rs**, [the Slope/Landscape Agreement]** and the DDA which apply to the Building Pad and/or the Pad Transferee including without limitation the following: (i) the obligations of Developer under the DDA relating to the Building Pad; (ii) the obligation to construct the Vertical Improvements and the On-Lot Improvements required to be constructed on the Building Pad pursuant to the *[Conveyance Agreement/Lease]* ("**Pad Improvements**") within the time period set forth for the Completion of such Pad Improvements by Developer in the Schedule of Performance; and (iii) the City's Right of Repurchase and the City's Right of Reversion.

G. The Parties desire to enter into this Agreement in order to (i) provide certain rights and remedies in favor of the City with respect to failure of Pad Transferee to comply with the requirements of the DDA, (ii) establish certain rights and remedies of City and Pad Transferee with respect to each other, and (iii) establish certain revised (a) Schedule of Performance dates pertaining to the commencement of construction and Completion of the Pad Improvements carried out by Pad Transferee (and not Developer) and (b) Reversion Action Triggers and Reversion Action Trigger Dates pertaining to the commencement of construction

and Completion of the Pad Improvements carried out by Pad Transferee (and not Developer), all on the terms and conditions specified in this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Non-Disturbance and Attornment. This Agreement shall become effective on the date of delivery of the Building Pad by Developer to Pad Transferee (the "**Pad Transfer Date**"). If the City succeeds to the Developer's interest as *[seller under the Conveyance Agreement/ landlord under the Ground Lease]* following the Pad Transfer Date, then as further set forth in and subject to the terms of this Agreement, including without limitation, the provisions of Sections 5.2 and 5.3, the City shall not terminate or disturb Pad Transferee's occupancy or possession of the Building Pad and Pad Transferee shall attorn to City and recognize City as *[seller under the Conveyance Agreement/ landlord under the Ground Lease]*.

2. Completion Date Modification. Notwithstanding any provision of the DDA, including without limitation, the Schedule of Performance, the following shall comprise the required Schedule of Performance dates applicable to construction and Completion of the Pad Improvements that are required by the terms of the *[Conveyance Agreement/Lease]* to be constructed by Pad Transferee on the Building Pad; provided that the following dates shall apply solely with respect to the Pad Transferee's construction of Pad Improvements on the Building Pad (and for avoidance of doubt, the dates applicable to Developer's construction of Improvements on the Developer Parcels, including the Building Pad, shall be subject to the dates set forth in the Schedule of Performance attached to the DDA):

2.1. The Pad Improvements shall be commenced on or before the date that is one hundred and eighty (180) calendar days from the Pad Transfer Date, subject to Force Majeure Delay (but with any extension for Force Majeure Delay in no event to exceed one (1) year, even if the item or items of Force Majeure Delay exist for a longer period) ("**Pad Construction Commencement Trigger Date**"); and

2.2. The Pad Improvements shall be Completed on or before the date that the earlier of the following: (i) eighteen months (18) months following the Construction Commencement Trigger Date or (ii) two (2) years from the Pad Transfer Date, in each case subject to Force Majeure Delay (but with any extension for Force Majeure Delay in no event to exceed one (1) year, even if the item or items of Force Majeure Delay exist for a longer period) (such earlier date, the "**Pad Completion Trigger Date**").

3. The City's Rights.

3.1. Right of Repurchase. If Developer and/or Pad Transferee shall be in default under this Agreement, or in Material Default under any of the DDA, the Quitclaim Deed, the CC&Rs or the Special Restrictions (collectively, the "**Property Documents**"), the City shall have available to it all remedies set forth in this Agreement and the Property Documents, as the case may be. Notwithstanding the foregoing sentence, from and after the Pad Transfer Date, but with respect to the Pad Transferee and Pad Transferee's interest in the Building Pad ("**Pad**

Transferee Interests") only, the City's Right of Repurchase with respect to the Pad Transferee Interests shall continue in full force and effect; provided that:

(a) the City shall have no right to exercise the Right of Repurchase with respect to the Pad Transferee Interests prior to the earlier of: (i) the occurrence of a default by Pad Transferee under this Agreement, (ii) the occurrence of a Material Default by Pad Transferee under the Property Documents or (iii) if construction of the Pad Improvements on the Building Pad has not commenced on or before such date, the Pad Construction Commencement Trigger Date;

(b) if construction of the Pad Improvements has commenced by the Pad Construction Commencement Trigger Date, the City shall have no right to exercise its Right of Repurchase with respect to the Pad Transferee Interests until the earlier of: (i) the occurrence of a default by Pad Transferee under this Agreement, (ii) the occurrence of a Material Default by Pad Transferee under the Property Documents or (iii) the failure to Complete the construction of the Pad Improvements by the Pad Completion Trigger Date, and

(c) the Repurchase Price (as such term is used in the DDA) shall be modified with respect to exercise of the Right of Repurchase of the Pad Transferee Interests and shall be equal to (a) the Pad Transferee's Book Value for its interest in the Building Pad and the Pad Improvements and On-Lot Improvements constructed by Pad Transferee thereon; it being agreed that "**Book Value**", shall mean the book value of the Building Pad on the records of the Pad Transferee owning such Building Pad on the date of calculation thereof, and shall be comprised of: (i) the applicable land account for the property which encompasses, among other items, purchase price, if applicable, and soft costs, and (ii) the applicable building account which encompasses, among other things, hard initial construction and renovation costs and soft costs, less accumulated depreciation on the building and applicable secured equipment, ***less*** (b) Lien Release Amounts applicable to the Building Pad and/or the Building Pad Interests.

(d) if the Pad Improvements and On-Lot Improvements on the Building Pad are Completed on or before the Pad Completion Trigger Date then the City shall have no further right to exercise the Right of Repurchase with respect to the Building Pad.

3.2. Right of Reversion. The City's Right of Reversion shall continue in full force and effect; provided that as to the Pad Transferee Interests only, the Reversion Action Triggers set forth in Section 16.4.1 shall be replaced with the following, which shall be effective solely as to the Pad Transferee Interests:

(a) Construction of the Pad Improvements has not commenced on or before the date that is one hundred and eighty (180) calendar days following the Pad Construction Commencement Trigger Date; as such date may be extended for Force Majeure Delay; provided that such Completion date shall not under any circumstances be later than the date that is one (1) year following the Pad Construction Commencement Trigger Date (which date shall not be extended for Force Majeure Delay);

(b) construction of the Pad Improvements has not been Completed on or before the date that is two (2) years after the Pad Construction Commencement Trigger Date as

such date may be extended for Force Majeure Delay; provided that such Completion date shall not under any circumstances be later than the date that is three (3) years after the Pad Construction Commencement Trigger Date (which date shall not be extended for Force Majeure Delay);

(c) Pad Transferee commits waste on the Transfer Pad and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2 of the DDA, subject to extension for Force Majeure Delay;

(d) Pad Transferee abandons or substantially suspends (except for suspensions resulting from Force Majeure Delay) construction of the Pad Improvements for a total period of one (1) year, and such becomes a Material Default in accordance with the notice and cure provisions of Section 14.2 of the DDA;

(e) The occurrence of an Insolvency Event with respect to Pad Transferee; or

(f) A Material Default arises because of a voluntary or involuntary Transfer or Transfer of Control of Pad Transferee.

If the Pad Improvements on the Building Pad are Completed by the date set forth in Section 3.2(b), then upon such Completion, the City shall have no further right to exercise the Right of Reversion.

3.3. Limitation on Force Majeure Delay. Notwithstanding any other provision of this Agreement or the Property Documents to the contrary, the dates set forth in Section 3.1 with respect to the Right of Repurchase and the Reversion Action Trigger Dates set forth in Section 3.2 shall be extended for Force Majeure Delays only to the extent specifically set forth in such Sections.

3.4. Additional Rights of City. Nothing in this Agreement shall impair or modify, as to Developer, Developer's interest in the Development Parcels, Pad Transferee and/or Pad Transferee Interests: (a) the City's rights and remedies under the Property Documents with respect to the Right of Repurchase or Right of Reversion, except to the extent specifically set forth in Section 3.1, 3.2 and 3.3 with respect to the Pad Transferee Interests and (b) all other City rights and remedies contained in the Property Documents. Without limiting the foregoing, Pad Transferee acknowledges that the DDA contains provisions that may, among other things, result in the City exercising the Right of Reversion or Right of Repurchase as to other portions of the Development Parcels and/or as to interests of other Persons in the Building Pad, or exercising its other remedies set forth in the Property Documents, and such exercise may result in, among other things, all or any portion of the Development Parcels being developed by a Person other than Developer or Healthcare Developer and being developed for currently unforeseen uses.

3.5. Exercise of Remedies Voluntary. Nothing in this Agreement shall obligate the City to exercise the Right of Repurchase or Right of Reversion or to exercise any other remedy against Developer, Pad Transferee, the Development Parcels or the Pad Transferee Interests and the exercise of such remedies by the City shall be a right and not an obligation of the City.

4. On-Going Obligations of Developer.

4.1. Notwithstanding anything to the contrary contained in this Agreement or in the *[Conveyance Agreement/Ground Lease]*: (a) Developer, its successors and assigns, Pad Transferee, its successors and assigns, and the Building Pad are and shall remain subject to this Agreement, the DDA (except as expressly modified herein as to the Pad Transferee), the Special Restrictions, the Slope/Landscape Agreement and the CC&Rs; and (b) Developer hereby acknowledges and agrees that it retains all the obligations under the DDA, the Special Restrictions, the Slope/Landscape Agreement and the CC&Rs relating to the Building Pad, including, but not limited to, construction of the Improvements and performance of Developer's maintenance and indemnity obligations.

4.2. The Parties specifically acknowledge the provisions of DDA Section 2.2.3(c)(vii), which provide that the Developer will use its commercially reasonable efforts to enforce such terms in the *[Conveyance Agreement/Ground Lease]*,to the extent Developer has the right to enforce the same pursuant to the *[Conveyance Agreement/Ground Lease]*,; provided, however, the City may exercise its rights under this Agreement without waiting for Developer to enforce such rights. The City shall have the express right to seek specific performance (a) against Developer to require Developer to exercise its rights and remedies under the *[Conveyance Agreement/Ground Lease]*, with respect to the Pad Transferee or its successor in interest, and (b) against the Pad Transferee or its successor in interest including, without limitation, the City's Right of Repurchase or Right of Reversion contained in the DDA as modified by this Agreement with respect to the Building Pad without having any obligation to wait for Developer to enforce its rights.

5. City as Successor to Developer. If the City succeeds to the interest of Developer under the *[Conveyance Agreement/Ground Lease]*, whether through or in lieu of the exercise by the City of any of its rights and/or remedies pursuant to this Agreement, the *[Conveyance Agreement/Ground Lease]* or the Property Documents or otherwise (the "**Remedies**"), then in such event (and only in such event):

5.1. The City, in its capacity as the successor to Developer's interest under the *[Conveyance Agreement/Ground Lease]*, and any other successor in interest to such interest under the *[Conveyance Agreement/Ground Lease]*, and their respective successors and assigns, and any person claiming the same by, through or under any of the foregoing (any of the foregoing, the "**City Successor**") shall be subject to and shall comply with the terms and provisions of this Section 5.

5.2. Provided that (i) Pad Transferee is not in default of its payment or performance obligations under this Agreement or under the *[Conveyance Agreement/Ground Lease]* beyond any applicable grace or cure period set forth herein or therein and (ii) Pad Transferee is not in Material Default in the performance or observance of any term, covenant or condition of the Property Documents , City Successor shall not terminate or disturb Pad Transferee's occupancy or possession of the Building Pad, and the rights of Pad Transferee under the *[Conveyance Agreement/Ground Lease]* shall remain in full force and effect, except as otherwise expressly permitted in accordance with the terms of this Agreement or the terms of the *[Conveyance Agreement/Ground Lease]*; provided that (i) Pad Transferee is not in default of its payment or performance obligations under this Agreement or under the *[Conveyance Agreement/Ground Lease]* beyond any applicable grace or cure period set forth herein or therein and (ii) Pad

Transferee is not in Material Default in the performance or observance of any term, covenant or condition of the DDA or in default in the performance or observance of any term, covenant or condition of the other Property Documents.

5.3. Pad Transferee shall attorn to the City Successor and recognize the City Successor as *["seller" under the [Conveyance Agreement/ "landlord" under the Ground Lease]*. Pad Transferee shall perform, and be bound under, all of the terms, covenants and conditions of the *[Conveyance Agreement/Ground Lease]*, including, but not limited to, the obligation to pay all amounts owed under the *[Conveyance Agreement/Ground Lease]*, *{if Ground Lease: [including without limitation, rent and any percentage rent]}*, until the expiration or earlier termination of the *[Conveyance Agreement/Ground Lease]*, including any renewal options which are exercised in accordance with the terms of the *[Conveyance Agreement/Ground Lease]*. Pad Transferee shall execute and deliver to the City Successor such further assurance and other documents, including a new lease upon the same terms and conditions as the *[Conveyance Agreement/Ground Lease]*, confirming the foregoing, as the City Successor may reasonably request. Notwithstanding the foregoing and except as specifically set forth in Sections 2 and 3of this Agreement with respect to the Pad Transferee Interests, nothing contained in this Agreement shall be interpreted to release Developer, the Building Pad and/or Pad Transferee from the obligations imposed under the Property Documents.

5.4. Any interest of the City Successor under the *[Conveyance Agreement/Ground Lease]* acquired by the City shall not merge with any other interests of City in the Building Pad, including without limitation any right, title or interest of the City under the Property Documents, the Right of Repurchase and the Right of Reversion and/or other rights or remedies available to the City under any of the Property Documents.

5.5. The following shall apply to each City Successor:

5.5.1. The City Successor shall not be liable for or bound by any act or omission of Developer or any predecessor in interest to such City Successor.

5.5.2. The City Successor shall not be liable for payment of any sums due from Developer to Pad Transferee including, without limitation, (x) any payment or credit in the nature of a *[construction/tenant]* improvement allowance or comparable item, any security deposit (unless the City Successor shall have actually received and failed to refund such deposit in accordance with the terms of the *[Conveyance Agreement/Ground Lease]*), (y) payments *{if Ground Lease: [including without limitation, payments of rent or additional rent]}* made by Pad Transferee for more than (1) month in advance of the due date thereunder to Developer or any predecessor in interest to such a City Successor or (z) payments of any kind owing from Developer to Pad Transferee under the *[Conveyance Agreement/Ground Lease]* or otherwise, including, without limitation, any refunds, payment, reimbursement or damages owed from Developer to Pad Transferee. Without limiting the foregoing, with respect to all such items, Pad Transferee agrees to look solely to Developer and any Guarantor of Developer and not to any City Successor.

5.5.3. Pad Transferee hereby waives and relinquishes with respect to each City Successor all offsets, counterclaims and defenses which Pad Transferee may have

against Developer or any predecessor in interest thereof (including, without limitation, any offset, abatement or right of deduction provided for under the terms of the *[Conveyance Agreement/Ground Lease]*); provided that nothing herein shall be deemed to relieve a City Successor from performing its obligations as *[seller under the Conveyance Agreement/ landlord under the Ground Lease]* with respect to obligations that arise solely from and after the date such City Successor succeeds to the position of *[seller under the Conveyance Agreement/ landlord under the Ground Lease]* unless specifically set forth in this Agreement. **{INSERT ANY SPECIFIC CONVEYANCE AGREEMENT/GROUND LEASE PROVISIONS HERE}**

5.5.4. The City Successor shall not be bound by any agreement between Developer and Pad Transferee purporting to cancel, surrender, amend or modify the *[Conveyance Agreement/Ground Lease]*, unless such change has been approved in writing by the City pursuant to Section 6 below.

5.5.5. The City Successor shall not be required to rebuild, repair or restore any damage to the Building Pad or any portion thereof caused by the occurrence of an uninsured casualty or following a condemnation of all or any portion of the Building Pad for which there are insufficient condemnation proceeds to pay the cost of such rebuilding, repair or restoration.

5.5.6. The City Successor shall not be liable with respect to any obligation to complete any site work or build out any improvements for the Building Pad including, without limitation, any portion of the Pad Improvements, Minimum Horizontal Improvements, any other Horizontal Improvements, the On-Lot Improvements, the Vertical Improvements, any *[construction/tenant]* improvements or any other improvements to be built upon the Building Pad or the Development Parcels, and/or any obligation to pay any *[construction/tenant]* improvement allowance to Pad Transferee in connection with the *[Conveyance Agreement/Ground Lease]*.

5.5.7. Without limiting the applicability of any other provision of this Agreement, in no event shall City Successor be liable for any payments required to be made by the *[seller under the Conveyance Agreement/ landlord under the Ground Lease]* for any period prior to the date the City Successor obtains title to the Building Pad.

5.5.8. Each City Successor shall be relieved of any obligation of the *[seller under the Conveyance Agreement/ landlord under the Ground Lease]* accruing after its transfer, sale, assignment or conveyance to another person or entity of the title to the Building Pad and the *[seller's interest under the Conveyance Agreement/ landlord's interest under the Ground Lease]*.

5.6. Hazardous Materials.

5.6.1. Developer and Pad Transferee hereby waive and release the City Successor from any claims either of them may have arising out of or related to Hazardous Materials located in, on, under, or around the Building Pad.

5.6.2. Nothing in this Agreement shall be construed to limit or restrict in any way Developer's and Pad Transferee's environmental indemnities contained in Section 10.2 of the DDA, which remain in full force and effect, unmodified.

5.6.3. The City Successor shall not be liable or responsible for any enforcement, cleanup, removal, remedial or other governmental or regulatory actions, or for any agreements or orders threatened, instituted or completed pursuant to any federal, state or local laws, ordinances, regulations or policies relating to any Hazardous Materials, or for any indemnities under the *[Conveyance Agreement/Ground Lease]* concerning the presence, release or discharge of any Hazardous Materials on, under or about the Building Pad, or for any permits and waste discharge requirements issued to and/or required of Pad Transferee or Developer by any governmental body or by the City, or any claims made or threatened by any person or governmental body or by the City against Pad Transferee or Developer or the Building Pad relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials on, under or about the Building Pad.

6. Additional Pad Transferee Agreements. Pad Transferee and Developer, as applicable make the covenants and agreements to the City set forth in this Section 6 and Developer makes the agreement in Section 6.4 below.

6.1. Pad Transferee shall not modify, terminate or amend the *[Conveyance Agreement/Ground Lease]* or enter into any agreement that has the effect of modifying, terminating or amending the *[Conveyance Agreement/Ground Lease]* without the prior written consent of the City (which consent may be granted or withheld in the City's sole discretion).

6.2. Except {*if Conveyance Agreement:* a*dd/modify as to any agreed upon payment to be exclude]] {if Ground Lease: for the payment of the first month's rent,*]} Pad Transferee shall not pay, and Developer shall not accept, any payment [{*if Conveyance Agreement:} of* _____*]{if Ground Lease}: of rent or additional rent]* more than thirty (30) calendar days in advance of the applicable due date under the *[Conveyance Agreement/Ground Lease]*.

6.3. Pad Transferee shall send a copy of any notice or statement under the *[Conveyance Agreement/Ground Lease]* pertaining to Developer's default thereunder to City at the same time such default notice or statement is sent to Developer. If Developer shall have failed to cure such default within the time period provided for in the *[Conveyance Agreement/Ground Lease]*, Pad Transferee shall not exercise any remedies available by virtue of such default unless (x) Pad Transferee shall have notified City in writing of Developer's failure to cure such default and (y) Pad Transferee shall have afforded the City an additional sixty (60) calendar days from the receipt of such notice to cure such default or if such default cannot be cured within sixty (60) calendar days, then such additional time as may be necessary if, within such sixty (60) day period, the City commences and thereafter diligently pursues the cure of such default (including, without limitation, commencement of possessory proceedings, if necessary to effect such cure). If the City commences to cure a Developer default, the *[Conveyance Agreement/Ground Lease]* shall remain in full force and effect during the period that such cure is being diligently pursued. Nothing in this Agreement shall require the City to cure any Developer default under the *[Conveyance Agreement/Ground Lease]*, and the exercise of such cure rights by the City shall be a right and not an obligation of the City.

6.4. Developer shall not modify, terminate, or amend the *[Conveyance Agreement/Ground Lease]* or enter into any agreement that would have the effect of modifying, terminating or amending the *[Conveyance Agreement/Ground Lease]* without the prior written consent of the City (which consent may be granted or withheld in the City's sole discretion). If the City does attempt to cure a Developer default under the *[Conveyance Agreement/Ground Lease]*, Developer shall pay to the City all of the costs and expenses incurred by the City in curing or attempting to cure such default.

6.5. Pad Transferee shall, upon the execution of this Agreement and thereafter upon the request of a City Successor, provide the City or another City Successor with an estoppel certificate, in form and substance attached to the *[Conveyance Agreement/Ground Lease]* or otherwise reasonably acceptable to the City Successor, stating, among other things, the following: (i) that a complete, true and correct copy of the *[Conveyance Agreement/Ground Lease]* is attached thereto and is unmodified and in full force and effect (or, if there have been modifications, that such *[Conveyance Agreement/Ground Lease]* is in full force and effect, as modified and stating the modifications or if such *[Conveyance Agreement/Ground Lease]* is not in full force and effect, so stating); (ii) the dates, if any, to which any rent and other sums payable under the *[Conveyance Agreement/Ground Lease]* have been paid; (iii) to Pad Transferee's knowledge, there are no defaults, claims thereof, any condition which, with the giving of notice and/or the passage of time or both, could become a default by either the *[seller under the Conveyance Agreement/ landlord under the Ground Lease]* or Pad Transferee with respect to their respective obligations under the *[Conveyance Agreement/Ground Lease]* or under the performance of any term, covenant or condition contained in the *[Conveyance Agreement/Ground Lease]*; (iv) Pad Transferee has no claim, charge, defense or offset against any amounts *{if Ground Lease: [, including without limitation, rents}]* payable under the *[Conveyance Agreement/Ground Lease]*; (v) that Pad Transferee is not aware of any default which has not been cured, except as to defaults specified in said certificate; (vi) that Pad Transferee has no right to terminate the *[Conveyance Agreement/Ground Lease]*.

6.6. All claims, demands or causes of action which Pad Transferee may have or may have had against Developer as of the date City succeeds to the position of Developer under the *[Conveyance Agreement/Ground Lease]* , under any provisions of, or with respect to the *[Conveyance Agreement/Ground Lease]*, or on account of any matter, condition or circumstance arising out of the relationship of Developer and Pad Transferee under the *[Conveyance Agreement/Ground Lease]*, Pad Transferee's occupancy of the Building Pad or Developer's prior ownership thereof, shall be enforceable solely against Developer to the extent provided in the *[Conveyance Agreement/Ground Lease]*, and neither the City nor any other City Successor shall be subject to any such claim, demand or cause of action.

7. Certain Agreements by Developer and Pad Transferee. Developer, as Developer under the DDA and *[seller under the Conveyance Agreement/ landlord under the Ground Lease]*, and Pad Transferee, as *[purchaser under the Conveyance Agreement/tenant under the Ground Lease]*], each represent, warrant, covenant, acknowledge and agree for themselves and their heirs, successors and assigns, that:

7.1. Except as expressly set forth herein, this Agreement does not constitute a waiver by City of any of its rights under the Property Documents. Except as expressly set forth herein,

this Agreement does not in any way release Developer and/or Pad Transferee from their respective obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Property Documents, including, without limitation, the release set forth in Section 4.5.2(f) of the DDA, the indemnity set forth in Section 5.5 of the DDA, the insurance required in Section 11 of the DDA and the indemnity, environmental indemnity and related requirements set forth in Section 10.1 through 10.7 of the DDA.

7.2. The provisions of this Agreement do not impair or modify the City's Right of Repurchase or Right of Reversion contained in the DDA with respect to property other than the Building Pad.

7.3. City has no obligation nor shall the City incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the *[Conveyance Agreement/Ground Lease]* or otherwise, including, but not limited to, any warranties respecting suitability for development, use, compliance with zoning, Developer's title, Developer's authority, habitability, fitness for purpose or possession of the Building Pad.

7.4. Pad Transferee is an End User and has not engaged and will not engage in a Prohibited Use upon the Building Pad.

8. Notices. All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered to the other Party; (b) three (3) Business Days after such notice has been sent by U.S. Postal Service via certified mail, return receipt requested, postage prepaid, and addressed to the other Party as set forth below; (c) the next Business Day after such notice has been deposited with an overnight delivery service reasonably approved by the Parties (Federal Express, Overnite Express, United Parcel Service and U.S. Postal Service are deemed approved by the Parties), postage prepaid, addressed to the Party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (d) when transmitted if sent by facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section 18.6 other than by facsimile or email (provided that the recipient Party need not receive such duplicate copy prior to any deadline set forth herein); or (ii) the receiving Party delivers a written confirmation of receipt for such notice either by facsimile, email or any other method permitted under this Section. Any notice given by facsimile or email shall be deemed received on the next Business Day if such notice is received after 5:00 p.m. (recipient's time) or on a non-Business Day. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

City:	Jeffrey C. Parker, City Manager City of Tustin 300 Centennial Way Tustin, CA 92780 Fax: 714-838-1602 Email: jparker@tustinca.org
With a copy to:	David Kendig Woodruff Spradlin & Smart, APC 555 Anton Boulevard, #1200 Costa Mesa, CA 92626 Fax: (714) 415-1183 Email: dkendig@wss-law.com
Developer:	_____ _____ _____ _____
With a copy to:	_____ _____ _____ _____
Pad Transferee:	_____ _____ _____ _____
With a copy to:	_____ _____ _____ _____

Any Party may by written notice to the other Party in the manner specified in this Agreement change the address to which notices to such Party shall be delivered.

9. Preparation Costs. Developer shall pay to the City the City's out-of-pocket fees and expenses, including legal fees, incurred with respect to the preparation and delivery of this Agreement.

10. Miscellaneous.

10.1. Agreement Supersedes. This Agreement supersedes any inconsistent provision of the *[Conveyance Agreement/Ground Lease]*.

10.2. Modification. No amendment, change, modification or supplement to this Agreement shall be valid and binding on the Parties unless in writing, signed by all of the Parties, acknowledged by a notary public and duly recorded in the Official Records.

10.3. Applicable Law. This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles. The parties hereto agree that the resolution of any dispute between or among them, or any of them, shall be resolved in accordance with the procedures and in the venue and subject to the service of process and other provisions set forth in Section 18.1 of the DDA.

10.4. Legal Fees and Costs. If any Party to this Agreement institutes any action, suit, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an "**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including reasonable attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "**Costs**") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) post judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. "**Prevailing Party**" within the meaning of this Section 18.2 includes a Party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such Party.

10.5. No Partnership. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other relationship between the parties or cause the City to be responsible in any way for the debts or obligations of Developer or Pad Transferee.

10.6. Construction and Interpretation of Agreement. This Agreement shall be construed and interpreted pursuant to the provisions of Section 18.11 of the DDA.

10.7. Limitations on Damages Payable by the City. The provisions of Section 18.5.1, 18.5.2 and 18.5.3 of the DDA, are incorporated herein by this reference and as used therein, the term "Developer" shall mean "e Developer and/or the Pad Transferee."

10.8. No Waiver. No waiver of any provision or consent to any action under this Agreement shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically set forth in writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities for the City and Developer and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

10.9. Successors and Assigns. This Agreement and the covenants, conditions, restrictions, obligations, rights and benefits contained herein are hereby agreed by Developer, Pad Transferee and the City to be covenants running with the land and enforceable as equitable servitudes for the benefit of the City and against the *[Retail Parcels/Healthcare Parcels]* and the Building Pad, and are hereby declared to be and shall be binding upon the Building Pad, Developer, Pad Transferee and the successors and assigns of Developer and/or Pad Transferee owning or leasing all or any portion of the Building Pad. Notwithstanding the foregoing, no Transfer, including by Transfer of Control, shall be valid or have any force or effect unless the City shall have provided its prior written consent thereto as may be required by the DDA.

10.10. Counterparts. This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and shall be one and the same instrument. This Agreement shall not be effective until the execution and delivery by the Parties of at least one set of counterparts. The Parties agree to recognize execution of this Agreement by facsimile or other electronically transmitted signatures; provided that such execution by facsimile or electronic transmission shall not be effective unless a manually executed copy of the signature page is promptly sent by U.S. Postal Service, postage prepaid or overnight delivery service or is hand delivered to the Parties. The Parties hereby authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

{signatures commence on following page}

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above set forth.

"CITY"
City of Tustin

Dated: _____

By: _____
Jeffrey C. Parker
City Manager

ATTEST:

By:_____
Erica Rabe, City Clerk

APPROVED AS TO FORM

By:_____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By:_____
Amy E. Freilich

DEVELOPER:

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
a Delaware limited partnership
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation
Its General Partner

Dated: _____

By: _____
John Mehigan
Vice President

"

"PAD TRANSFEREE"

[_____],
a [_____]

Dated: _____

By: _____
Name: _____
Title: _____

ATTACHMENT NO. 22B

CITY NON-DISTURBANCE AND ATTORNMENT AGREEMENT FOR SPACE TENANT

CITY OF TUSTIN OFFICIAL BUSINESS REQUEST DOCUMENT TO BE RECORDED AND TO BE EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE 6103 AND 27383.

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of Tustin
300 Centennial Way
Tustin, CA 92780
Attention: City Manager

Space Above This Line Reserved for Recorder's Use

RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Space Tenant)

THIS RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Space Tenant) (this "**Agreement**") is entered into this _____ day of _____, _____, (the "**Effective Date**") by and among _____, a _____ ("**Space Tenant**"), *[1C TUSTIN LEGACY, LLC, a Delaware limited liability company, the Developer under the DDA (defined below) / or* _____ *the Healthcare Developer under the DDA (defined below)]* ("**Developer**"), and THE CITY OF TUSTIN, CALIFORNIA, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the "**City**"). Each of Space Tenant, Developer, and the City are referred to as a "**Party**" and all of them are sometimes referred to as the "**Parties**."

WITNESSETH:

A. The City and Developer have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C, dated as of _____, 20__ (including all attachments thereto), which, as the same may be amended, updated or modified from time to time is referred to herein as the "**DDA**", with respect to the real property described therein as the "**Development Parcels**." The Development Parcels include certain land described in the DDA as the ***["Retail Parcels"/"Healthcare Parcels"]*** as legally described on Exhibit A attached hereto and incorporated herein by this reference, which pursuant to the DDA, were previously conveyed by the City to Developer.

B. A Memorandum of Tustin Legacy Disposition and Development Agreement for Parcel 1C (the "**Memorandum**") executed by the City and Developer has been recorded against the Development Parcels as Instrument No. _____ in the official records of Orange County, California (the "**Official Records**"). Initially capitalized terms set forth in this Agreement and not defined herein shall have the meanings set forth therefor in the DDA.

C. Pursuant to the DDA, the following documents have been recorded in the Official Records against all of the Development Parcels: (i) that certain Declaration of Special Restrictions, dated as of _____, 20__ and recorded as Instrument No. _____ in the Official Records (the "**Special Restrictions**"), (ii) that certain Slope Parcel Easement and Landscape Installation and Maintenance Agreement dated as of _____, 20__ and recorded as Instrument No. _____ (the "**Slope/Landscape Agreement**"); and (iii) that certain Declaration of Covenants, Conditions and Restrictions dated as of _____, 20__ and recorded as Instrument No. _____ (the "**CC&Rs**").

D. Developer intends to lease to Space Tenant a portion of the ***[Retail Parcels/Healthcare Parcels]*** commonly known as Suite ___ and consisting of approximately _____ rentable square feet, as more particularly ***[described/depicted]*** on Exhibit B attached hereto and incorporated herein by this reference (the "**Premises**") pursuant to that certain Lease, dated as of _____, 20__ (the "**Lease**"). The legal parcel upon which the Premises are located is referred to herein as the "**Building Pad**". Under the terms and provisions of the DDA, Space Tenant (i) is an End User and (ii) does not intend to engage in a Prohibited Use upon the Parcel or the Premises.

E. Pursuant to the DDA, Developer agreed to complete or cause to be completed construction of certain improvements on the ***[Retail Parcels/Healthcare Parcels]***, including on the Building Pad, within the time periods and subject to the additional terms and conditions set forth in the DDA.

F. Under the terms of the DDA, Developer is obligated to comply with certain of the requirements of the Special Restrictions, the CC&Rs, the Slope/Landscape Agreement, and the DDA which apply to the Building Pad including, without limitation, the following: (i) the obligations of Developer under the DDA relating to the Building Pad; and (ii) the City's Right of Repurchase and the City's Right of Reversion.

G. The Parties desire to enter into this Agreement in order to (i) establish certain rights and remedies of City and Space Tenant with respect to each other, and (ii) acknowledge the City's Right of Repurchase and Right of Reversion with respect to the Parcel and the Premises under the DDA, all on the terms and conditions specified in this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Non-Disturbance and Attornment. This Agreement shall become effective on the date of delivery of the Premises by Developer to Space Tenant (the "**Lease Commencement Date**"). If the City succeeds to the Developer's interest as landlord under the Lease following the Lease Commencement Date then, as further set forth in and subject to the terms of this Agreement, including without limitation, the provisions of Sections 5.2 and 5.3 below, the City shall not terminate or disturb Space Tenant's occupancy or possession of the Building Pad and the Premises and Space Tenant shall attorn to City and recognize City as landlord under the Lease.

2. The City's Rights.

2.1. Right of Repurchase. Space Tenant hereby acknowledges that if Developer shall be in Material Default under any of the DDA, the Quitclaim Deed, the CC&Rs or the Special Restrictions (collectively, the "**Property Documents**"), the City shall have available to it all remedies set forth in the Property Documents, as the case may be.

2.2. Right of Reversion. Space Tenant acknowledges that the City has the right, but not the obligation, to exercise the Right of Repurchase under Section 16.3 of the DDA and Right of Reversion under Section 16.4 of the DDA shall continue in full force and effect.

2.3. Additional Rights of City. Nothing in this Agreement shall impair or modify, as to Developer, Developer's interest in the Development Parcels, Space Tenant or Space Tenant's interests in the Building Pad and the Premises (the "**Space Tenant Interests**"). Space Tenant acknowledges that the DDA contains provisions that may, among other things, result in the City exercising the Right of Reversion or Right of Repurchase as to other portions of the Development Parcels and/or as to interests of other Persons in the Building Pad, or exercising its other remedies set forth in the Property Documents, and such exercise may result in, among other things, all or any portion of the Development Parcels being developed by a Person other than Developer or Healthcare Developer and being developed for currently unforeseen uses.

2.4. On-Going Obligations of Developer. Notwithstanding anything to the contrary contained in this Agreement or in the Lease: (a) Developer, its successors and assigns, Space Tenant, its successors and assigns, and the Building Pad and the Premises are and shall remain subject to this Agreement, the DDA, the Special Restrictions, the Slope/ Landscape Agreement, and the CC&Rs; and (b) Developer hereby acknowledges and agrees that it retains all the obligations under the DDA, the Special Restrictions, the Slope/Landscape Agreement and the CC&Rs relating to the Building Pad, including, but not limited to, construction of the Improvements and performance of Developer's maintenance and indemnity obligations.

3. City as Successor to Developer. If the City succeeds to the interest of Developer under the Lease, whether through or in lieu of the exercise by the City of any of its rights and/or remedies pursuant to this Agreement, the Lease or the Property Documents or otherwise (the "**Remedies**"), then in such event (and only in such event):

3.1. The City, in its capacity as the successor to Developer's interest under the Lease, and any other successor in interest to such interest under the Lease, and their respective successors and assigns, and any person claiming the same by, through or under any of the

foregoing (any of the foregoing, the "**City Successor**") shall be subject to and shall comply with the terms and provisions of this Section 4.

3.2. Provided that (i) Space Tenant is not in default of its payment or performance obligations under this Agreement or under the Lease beyond any applicable grace or cure period set forth herein or therein, and (ii) Space Tenant is not in Material Default in the performance or observance of any term, covenant or condition of the Property Documents, to the extent applicable to Space Tenant, City Successor shall not terminate or disturb Space Tenant's occupancy or possession of the Building Pad or the Premises, and the rights of Space Tenant under the Lease shall remain in full force and effect, except as otherwise expressly permitted in accordance with the terms of this Agreement or the terms of the Lease.

3.3. Space Tenant shall attorn to the City Successor and recognize the City Successor as "landlord" under the Lease. Space Tenant shall perform, and be bound under, all of the terms, covenants and conditions of the Lease, including, but not limited to, the obligation to pay all amounts owed under the Lease, including without limitation, rent and any percentage rent, until the expiration or earlier termination of the Lease, including any renewal options which are exercised in accordance with the terms of the Lease. Space Tenant shall execute and deliver to the City Successor such further assurance and other documents, including a new lease upon the same terms and conditions as the Lease, confirming the foregoing, as the City Successor may reasonably request. Notwithstanding the foregoing, nothing contained in this Agreement shall be interpreted to release Developer, the Building Pad and/or Space Tenant from the obligations imposed under the Property Documents.

3.4. Any interest of the City Successor under the Lease acquired by the City shall not merge with any other interests of City in the Building Pad, including without limitation any right, title or interest of the City under the Property Documents, the Right of Repurchase and the Right of Reversion and/or other rights or remedies available to the City under any of the Property Documents.

3.5. The following shall apply to each City Successor:

3.5.1. The City Successor shall not be liable for or bound by any act or omission of Developer or any predecessor in interest to such City Successor.

3.5.2. The City Successor shall not be liable for payment of any sums due from Developer to Space Tenant including, without limitation, (x) any payment or credit in the nature of a tenant improvement allowance or comparable item, any security deposit (unless the City Successor shall have actually received and failed to refund such deposit in accordance with the terms of the Lease), (y) payments, including, without limitation, payments of rent or additional rent made by Space Tenant for more than one (1) month in advance of the due date thereunder to Developer or any predecessor in interest to such a City Successor, or (z) payments of any kind owing from Developer to Space Tenant under the Lease or otherwise, including, without limitation, any refunds, payment, reimbursement or damages owed from Developer to Space Tenant. Without limiting the foregoing, with respect to all such items, Space Tenant agrees to look solely to Developer and any Guarantor of Developer and not to any City Successor.

3.5.3. Space Tenant hereby waives and relinquishes with respect to each City Successor all offsets, counterclaims and defenses which Space Tenant may have against Developer or any predecessor in interest thereof (including, without limitation, any offset, abatement or right of deduction provided for under the terms of the Lease); provided that nothing herein shall be deemed to relieve a City Successor from performing its obligations as landlord under the Lease with respect to obligations that arise solely from and after the date such City Successor succeeds to the position of landlord under the Lease unless specifically set forth in this Agreement. **{INSERT ANY SPECIFIC LEASE PROVISIONS HERE}**

3.5.4. The City Successor shall not be required to rebuild, repair or restore any damage to the Building Pad or the Premises, or any portion thereof, caused by the occurrence of an uninsured casualty or following a condemnation of all or any portion of the Building Pad for which there are insufficient condemnation proceeds to pay the cost of such rebuilding, repair or restoration.

3.5.5. The City Successor shall not be liable with respect to any obligation to complete any site work or build out any improvements for the Building Pad or the Premises, including, without limitation, any portion of the Minimum Horizontal Improvements, any other Horizontal Improvements, the On-Lot Improvements, the Vertical Improvements, any tenant improvements, or any other improvements to be built upon the Building Pad or the Development Parcels, and/or any obligation to pay any tenant improvement allowance to Space Tenant in connection with the Lease.

3.5.6. Without limiting the applicability of any other provision of this Agreement, in no event shall City Successor be liable for any payments required to be made by the landlord under the Lease for any period prior to the date the City Successor obtains title to the Building Pad.

3.5.7. Each City Successor shall be relieved of any obligation of the landlord under the Lease accruing after its transfer, sale, assignment or conveyance to another person or entity of the title to the Building Pad and the landlord's interest under the Lease.

3.6. Hazardous Materials.

3.6.1. Developer and Space Tenant hereby waive and release the City Successor from any claims either of them may have arising out of or related to Hazardous Materials located in, on, under, or around the Building Pad and/or the Premises.

3.6.2. Nothing in this Agreement shall be construed to limit or restrict in any way Developer's environmental indemnities contained in Section 10.2 of the DDA, which remain in full force and effect, unmodified.

3.6.3. The City Successor shall not be liable or responsible for any enforcement, cleanup, removal, remedial or other governmental or regulatory actions, or for any agreements or orders threatened, instituted or completed pursuant to any federal, state or local laws, ordinances, regulations or policies relating to any Hazardous Materials, or for any indemnities under the Lease concerning the presence, release or discharge of any Hazardous

Materials on, under or about the Building Pad and/or the Premises, or for any permits and waste discharge requirements issued to and/or required of Space Tenant or Developer by any governmental body or by the City, or any claims made or threatened by any person or governmental body or by the City against Space Tenant or Developer or the Building Pad or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials on, under or about the Building Pad and/or the Premises.

4. Additional Space Tenant Agreements. Space Tenant and Developer, as applicable, each makes the covenants and agreements to the City set forth in this Section 5.

4.1. Except for the payment of the first month's rent, Space Tenant shall not pay, and Developer shall not accept, any payment of rent or additional rent more than thirty (30) calendar days in advance of the applicable due date under the Lease.

4.2. Space Tenant shall send a copy of any notice or statement under the Lease pertaining to Developer's default thereunder to City at the same time such default notice or statement is sent to Developer. If Developer shall have failed to cure such default within the time period provided for in the Lease, Space Tenant shall not exercise any remedies available by virtue of such default unless (x) Space Tenant shall have notified City in writing of Developer's failure to cure such default and (y) Space Tenant shall have afforded the City an additional sixty (60) calendar days from the receipt of such notice to cure such default or if such default cannot be cured within sixty (60) calendar days, then such additional time as may be necessary if, within such sixty (60)-day period, the City commences and thereafter diligently pursues the cure of such default (including, without limitation, commencement of possessory proceedings, if necessary to effect such cure). If the City commences to cure a Developer default, the Lease shall remain in full force and effect during the period that such cure is being diligently pursued. Nothing in this Agreement shall require the City to cure any Developer default under the Lease, and the exercise of such cure rights by the City shall be a right and not an obligation of the City.

4.3. Space Tenant shall, upon the execution of this Agreement and thereafter upon the request of a City Successor, provide the City or another City Successor with an estoppel certificate, in form and substance attached to the Lease or otherwise reasonably acceptable to the City Successor, stating, among other things, the following: (i) that a complete, true and correct copy of the Lease is attached thereto and is unmodified and in full force and effect (or, if there have been modifications, that such Lease is in full force and effect, as modified and stating the modifications or if such Lease is not in full force and effect, so stating); (ii) the dates, if any, to which any rent and other sums payable under the Lease have been paid; (iii) to Space Tenant's knowledge, there are no defaults, claims thereof, any condition which, with the giving of notice and/or the passage of time, or both, could become a default by either the landlord or Space Tenant with respect to their respective obligations under the Lease or under the performance of any term, covenant or condition contained in the Lease; (iv) Space Tenant has no claim, charge, defense or offset against any amounts, including, without limitation, rents payable under the Lease; (v) that Space Tenant is not aware of any default which has not been cured, except as to defaults specified in said certificate; (vi) that Space Tenant has no right to terminate the Lease before its stated termination date.

4.4. All claims, demands or causes of action which Space Tenant may have or may have had against Developer as of the date City succeeds to the position of Developer under the Lease, under any provisions of, or with respect to the Lease, or on account of any matter, condition or circumstance arising out of the relationship of Developer and Space Tenant under the Lease, Space Tenant's occupancy of the Building Pad and the Premises, or Developer's prior ownership thereof, shall be enforceable solely against Developer to the extent provided in the Lease and neither the City nor any other City Successor shall be subject to any such claim, demand or cause of action.

5. Certain Agreements by Developer and Space Tenant. Developer, as Developer under the DDA and as landlord under the Lease, and Space Tenant, as tenant under the Lease, each represent, warrant, covenant, acknowledge and agree for themselves and their heirs, successors and assigns, that:

5.1. Except as expressly set forth herein, this Agreement does not constitute a waiver by City of any of its rights under the Property Documents. Except as expressly set forth herein, this Agreement does not in any way release Developer and/or Space Tenant, as applicable, from their respective obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Property Documents, including, without limitation, the release set forth in Section 4.5.2(f) of the DDA, the indemnity set forth in Section 5.5 of the DDA, the insurance required in Section 11 of the DDA and the indemnity, environmental indemnity and related requirements set forth in Sections 10.1 through 10.7 of the DDA.

5.2. City has no obligation nor shall the City incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, but not limited to, any warranties respecting suitability for development, use, compliance with zoning, Developer's title, Developer's authority, habitability, fitness for purpose or possession of the Building Pad or the Premises.

5.3. Space Tenant is an End User and has not engaged and will not engage in a Prohibited Use upon the Building Pad or within the Premises.

6. Notices. All notices, demands, consents, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered to the other Party; (b) three (3) Business Days after such notice has been sent by U.S. Postal Service via certified mail, return receipt requested, postage prepaid, and addressed to the other Party as set forth below; (c) the next Business Day after such notice has been deposited with an overnight delivery service reasonably approved by the Parties (Federal Express, Overnite Express, United Parcel Service and U.S. Postal Service are deemed approved by the Parties), postage prepaid, addressed to the Party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (d) when transmitted if sent by facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section 18.6 other than by facsimile or email (provided that the recipient Party need not receive such duplicate copy prior to any deadline set forth herein); or (ii) the receiving Party delivers a written

confirmation of receipt for such notice either by facsimile, email or any other method permitted under this Section. Any notice given by facsimile or email shall be deemed received on the next Business Day if such notice is received after 5:00 p.m. (recipient's time) or on a non-Business Day. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

City:	Jeffrey C. Parker, City Manager City of Tustin 300 Centennial Way Tustin, CA 92780 Fax: 714-838-1602 Email: jparker@tustinca.org
With a copy to:	David Kendig Woodruff Spradlin & Smart, APC 555 Anton Boulevard, #1200 Costa Mesa, CA 92626 Fax: (714) 415-1183 Email: dkendig@wss-law.com
Developer:	_____ _____ _____ _____
With a copy to:	_____ _____ _____ _____
Space Tenant:	_____ _____ _____ _____
With a copy to:	_____ _____ _____ _____

Any Party may by written notice to the other Party in the manner specified in this Agreement change the address to which notices to such Party shall be delivered.

7. Preparation Costs. Developer shall pay to the City the City's out-of-pocket fees and expenses, including legal fees, incurred with respect to the preparation and delivery of this

Agreement.

8. Miscellaneous.

8.1. Agreement Supersedes. This Agreement supersedes any inconsistent provision of the Lease.

8.2. Modification. No amendment, change, modification or supplement to this Agreement shall be valid and binding on the Parties unless in writing, signed by all of the Parties, acknowledged by a notary public and duly recorded in the Official Records.

8.3. Applicable Law. This Agreement shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California, irrespective of California's choice-of-law principles. The parties hereto agree that the resolution of any dispute between or among them, or any of them, shall be resolved in accordance with the procedures and in the venue and subject to the service of process and other provisions set forth in Section 18.1 of the DDA.

8.4. Legal Fees and Costs. If any Party to this Agreement institutes any action, suit, counterclaim or other proceeding for any relief against another Party, declaratory or otherwise (collectively an "**Action**"), to enforce the terms hereof or to declare rights hereunder or with respect to any inaccuracies or material omissions in connection with any of the covenants, representations, warranties or obligations on the part of the other Party to this Agreement, then the Prevailing Party in such Action shall be entitled to have and recover of and from the other Party all costs and expenses of the Action, including reasonable attorneys' fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling or award (collectively, a "**Decision**") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including reasonable attorneys' fees and expert fees and costs (collectively "**Costs**") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include in addition to Costs incurred in prosecution or defense of the underlying action, reasonable attorneys' fees, costs, expenses and expert fees and costs incurred in the following: (a) post judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, debtor and third party examinations; (d) discovery; (e) bankruptcy litigation; and (f) appeals of any order or judgment. "**Prevailing Party**" within the meaning of this Section 18.2 includes a Party who agrees to dismiss an Action in consideration for the other Party's payment of the amounts allegedly due or performance of the covenants allegedly breached, or obtains substantially the relief sought by such Party.

8.5. No Partnership. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other relationship between the parties or cause the City to be responsible in any way for the debts or obligations of Developer or Space Tenant.

8.6. Construction and Interpretation of Agreement. This Agreement shall be construed and interpreted pursuant to the provisions of Section 18.11 of the DDA.

8.7. Limitations on Damages Payable by the City. The provisions of Sections 18.5.1, 18.5.2 and 18.5.3 of the DDA, are incorporated herein by this reference and as used therein, the term "Developer" shall mean "Developer and/or Space Tenant."

8.8. No Waiver. No waiver of any provision or consent to any action under this Agreement shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically set forth in writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities for the City and Developer and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

8.9. Successors and Assigns. This Agreement and the covenants, conditions, restrictions, obligations, rights and benefits contained herein are hereby agreed by Developer, Space Tenant and the City to be covenants running with the land and enforceable as equitable servitudes for the benefit of the City and against the *[Retail Parcels/Healthcare Parcels]* and the Building Pad, and are hereby declared to be and shall be binding upon the Building Pad, Developer, Space Tenant and the successors and assigns of Developer and/or Space Tenant owning or leasing all or any portion of the Building Pad and the Premises, as applicable. Notwithstanding the foregoing, no Transfer, including by Transfer of Control, shall be valid or have any force or effect unless the City shall have provided its prior written consent thereto as may be required by the DDA.

8.10. Counterparts. This Agreement may be executed in two or more separate counterparts, each of which, when so executed, shall be deemed to be an original, and all of which, when taken together, constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery by the Parties of at least one set of counterparts. The Parties agree to recognize execution of this Agreement by facsimile or other electronically transmitted signatures; provided that such execution by facsimile or electronic transmission shall not be effective unless a manually executed copy of the signature page is promptly sent by U.S. Postal Service, postage prepaid or overnight delivery service or is hand delivered to the Parties. The Parties hereby authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

{signatures commence on following page}

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above set forth.

"CITY"
City of Tustin

Dated: _____

By: _____
Jeffrey C. Parker
City Manager

ATTEST:

By:_____
Erica Rabe, City Clerk

APPROVED AS TO FORM

By:_____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By:_____
Amy E. Freilich

DEVELOPER:

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
a Delaware limited partnership
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation
Its General Partner

Dated: _____

By: _____
John Mehigan
Vice President

"SPACE TENANT"

[_____],
a [_____]

Dated: _____

By: _____
Name: _____
Title: _____

{Notary acknowledgements on following pages}

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A"
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Legal Description of *[Retail Parcels / Healthcare Parcels]*

[to be inserted]

EXHIBIT "B"
TO
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

***[Depiction/Description]* of Premises**

[to be inserted]

ATTACHMENT 23
FORM OF HEALTHCARE PERMITTED MORTGAGEE
SUBORDINATION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into as of the ___ day of _____, 20__, by and between _____ (the "**Lender**"), and **THE CITY OF TUSTIN, CALIFORNIA**, a municipal corporation duly organized and existing under the laws of the State of California (the "**City**").

RECITALS

A. The City and 1C Tustin Legacy LLC, a Delaware limited liability company ("**Developer** ") entered into that certain Tustin Legacy Disposition and Development Agreement For Parcel 1C dated as of _____, 2015 (the "**DDA**"), pursuant to which the City has conveyed to Developer certain real property including the real property legally described on Exhibit A attached hereto (the "**Land**"). Thereafter Developer assigned its rights and obligations with respect to the Land to _____ **[insert name of Healthcare Developer]** ("**Borrower**") by an Assignment and Assumption Agreement (Healthcare Parcel) dated _____. In accordance with the DDA, the Land is or will be improved with a Healthcare Project (the "**Improvements**"). The Land, the Improvements and related personal and other property described in the Senior Security Instrument (defined herein) and defined therein constitute the "**Mortgaged Property**". Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the DDA.

B. Prior to the recordation of this Agreement, the City and the Borrower have executed and have caused to be recorded against title to the Land in the official records of the Office of the Orange County Recorder, in Orange County, California ("**Official Records**") the following: (a) those certain Declaration for Special Restrictions, dated as of _____ (the "**Special Restrictions**") and recorded in the Official Records on _____ as Instrument No. _____; (b) that certain Quitclaim Deed ("**Quitclaim Deed**"), dated _____and recorded in the Official Records on _____ as Instrument No. _____, which Quitclaim Deed conveyed to Developer the fee title to the Land , subject to

certain restrictions and limitations set forth in the Quitclaim Deed; (c) that certain Memorandum of DDA, dated as of _____ ("**Memorandum**") and recorded in the Official Records on _____ as Instrument No. _____; (d) that certain Development Agreement, dated as of _____ ("**Development Agreement**") and recorded in the Official Records on _____ as Instrument No. _____; (e) that certain Slope Parcel Easement and Landscape Installation and Maintenance Agreement dated as of _____ ("**Landscape Agreement**") and recorded in the Official Records on _____ as Instrument No. _____ , and (f) that certain Declaration of Covenants, Conditions and Restrictions dated as of _____ ("**CC&R's**") and recorded in the Official Records on _____ as Instrument No._____.. The Special Restrictions were recorded prior to the Quitclaim Deed and Developer's fee title to the Land is subject to the encumbrance of the Special Restrictions.

C. Borrower has applied to _____ ("**Lender**") for a loan in the maximum principal amount of $_____ (the "**Loan**") for the acquisition, construction, rehabilitation, development, equipping and/or operation of a Healthcare Project on the Land.

D. The Loan is evidenced by the Note (as defined below) and shall be advanced pursuant to that certain Loan Agreement dated as of _____ between Borrower and Lender ("**Loan Agreement**").

E. The Loan is secured by, among other things, the Security Instrument (as hereinafter defined), and the proceeds of the Loan will be advanced to Borrower pursuant to the Loan Agreement.

F. As a condition to the making of the Loan, Lender requires and Borrower requests that the City and Lender execute and deliver this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS. The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), shall have the following meanings.

(a) **"Bankruptcy Proceeding"** means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to the Borrower, any guarantor of any of the Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(b) **"Borrower"** means all Persons identified as "Borrower" in the Recitals of this Agreement, together with their successors and assigns, and any other Person who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" shall not include the Lender in the event that the Lender may acquire title to the Mortgaged Property.

(c) **"Casualty"** means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

(d) **"City"** means the Person named as such in the first paragraph of this Agreement.

(e) **"Enforcement Action"** means any of the following actions taken by or at the direction of the City: the exercise of the City's Right of Reversion under Section 16.4 of the DDA, the exercise of the City's Right of Repurchase under Section 16.3 of the DDA, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest or charges, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Property Documents, or the exercise of any other remedy against the Borrower, excepting, however, any rights or actions taken by the City in the exercise of its police powers.

(f) **"Enforcement Action Notice"** means a written notice from the City to the Lender, given following one or more Property Document Breaches setting forth in reasonable detail the nature of the breach by Borrower

(g) "**Foreclosure Event**" shall mean the foreclosure of the Security Instrument (or any sale thereunder), whether by judicial proceedings, by virtue of any power of sale under the Security Instrument, by acceptance of a deed-in-lieu of foreclosure (or similar consensual conveyance of the Mortgaged Property to Lender or any of its affiliates or nominees or designees), or by any other conveyance of all or any portion of the Mortgaged Property and/or Improvements by other appropriate proceedings in the nature of a foreclosure, resulting in the sale, lease or other conveyance of all or any portion of the Mortgaged Property and/or Improvements to Lender or any of its affiliates or nominees or designees.

(h) **"Indebtedness"** means the "Indebtedness" as defined in the Security Instrument.

(i) **"Lender"** means the entity named as such in the first paragraph of this Agreement and any other Person which subsequently becomes the holder of the Note.

(j) **"Loan Documents"** means the "Loan Documents" as defined in the Loan Agreement.

(k) **"Loan Default"** means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an "Event of Default" as defined in the Security Instrument.

(l) **"Note"** means the Promissory Note, dated as of _____ by Borrower in favor of Lender, as endorsed to Lender.

(m) **"Property Documents"** means the DDA, the Memorandum, the Development Agreement, the Landscape Agreement, the CC&R's and all other

documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the DDA, as the same may be amended from time to time.

(n) **"Property Document Breach"** means any act, failure to act, event, condition, or occurrence that allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), the City to take an Enforcement Action.

(o) **"Property Document Default"** means the City has delivered to Lender an Enforcement Action Notice and Developer and Lender have failed to cure the Property Document Breach within the cure period granted to Lender as a Permitted Mortgagee under the applicable Property Document for the applicable type of Property Document Breach.

(p) **"Security Instrument"** means that certain [Deed of Trust], recorded _____ on _____ in the Official Records as Instrument Number _____.

(q)

2. SUBORDINATION.

(a) Subject to the provisions of Section 2(e) below, Lender hereby subordinates the Security Instrument to the terms, covenants, conditions, operations, and effects of each of the Property Documents.

(b) Without limiting the generality of the foregoing Section 2(a), Lender expressly acknowledges and specifically subordinates the Security Instrument to all of the following specific provisions of the DDA:

(i) The rights of the City under the DDA with respect to the Right of Purchase in favor of the City as set forth in Section 16.3 of the DDA and the Right of Reversion in favor of the City, as set forth in Section 16.4 of the DDA. Lender acknowledges that the City's Right of Reversion is subject to termination under certain conditions as set forth in Section 16.4.8 of the DDA.

(ii) The rights of the City in Section 2 and in Section 17 of the DDA;

(iii) Any other provisions of the DDA or any of the attachments to the DDA required to interpret Sections 2, 16 or 17 of the DDA;

(iv) The Lender, alone, shall have the authority to act under the DDA and the Security Instrument as the Permitted Mortgagee and the City shall be entitled to rely on the authority of the Lender acting alone for all such purposes. All other lenders and creditors of Borrower shall not be Permitted Mortgagees under the DDA or be able to act for or on behalf of the Permitted Mortgagee. The foregoing shall be true

even if the Lender is acting as agent or lead lender pursuant to a participation agreement, agency agreement, intra-creditor agreement or comparable arrangement.

(c) The foregoing subordination in Section 2(a) and in Section 2(b) shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Loan Documents and each of the Property Documents, and (ii) the respective rights of the Lender and the City to obtain a security interest in any collateral, including any collateral other than the Mortgaged Property.

(d) Lender acknowledges that the Special Restrictions were recorded prior to the Quitclaim Deed and constitute a lien on the Mortgaged Property prior in time and superior to the lien of (i) any of the Property Documents and (ii) all of the Loan Documents.

3. PERMITTED MORTGAGEE.

(a) The City hereby (a) consents to Borrower entering into the Loan and (b) approves Lender as the "Permitted Mortgagee" (as such term is defined in the DDA) under the Loan with respect to the Mortgaged Property. City hereby approves the Security Instrument, after it is properly recorded as a first lien security instrument against title to the Mortgaged Property, as a "Permitted Mortgage" (as such term is defined in the DDA).

(b) Lender enters into this Agreement with the understanding that Lender has certain rights as a Permitted Mortgagee under the DDA and that the exercise of those rights are subject to the terms and conditions set forth in the DDA, including without limitation the following: (i) the City's Right of Repurchase and the City's Right of Reversion, each as set forth in Section 16 of the DDA and (ii) the terms and conditions in Section 17 of the DDA (as of the date of this Agreement). If and to the extent that the City exercises the City's Right of Reversion, (i) the City shall take title to the Mortgaged Property subject to the lien of the Security Instrument, (ii) the City shall not assume any obligations of the Borrower under the Loan Documents or be obligated to comply with any of the terms of any of the Loan Documents, and (iii) the City shall have the right, but not the obligation, to cure any defaults under the Loan Documents pursuant to and in accordance with Section 5 below. The City acknowledges that if the City consummates an Enforcement Action, and the Security Instrument is not released as a result of the Enforcement Action, in such case the Lender shall (subject to the limitations in Section 5(f) below) retain its remedies under the Loan Documents, because (A) the Person (including the City) acquiring title to some or all of the Mortgaged Property shall not be deemed to be a permitted transferee solely for purposes of interpreting Lender's available remedies under the Loan Documents and (B) the Enforcement Action shall not be deemed to be a permitted transfer of the Mortgaged Property solely for purposes of interpreting Lender's available remedies under the Loan Documents.

4. ADDITIONAL CITY REPRESENTATIONS AND COVENANTS OF THE CITY AND LENDER.

(a) The City represents and warrants to the Lender as follows: (i) that as of the date of this Agreement, to the actual knowledge of the City Manager (without a duty of inquiry), the Property Documents are in full force and effect; (ii) that the Property Documents have not been modified or amended from the executed copies of the Property Documents delivered by the City to the Lender concurrently with the date of this Agreement; and (iii) that the City has not delivered to Borrower any written notice of a default or breach by Borrower under any Property Document; and (iv) that to the actual knowledge of the City Manager (without a duty of inquiry), the City has not received written notice from Borrower that any event has occurred, which with the giving of notice or the passage of time, or both, would constitute a default under any Property Document.

(b) The City shall deliver to the Lender a copy of each notice delivered by the City to Borrower pursuant to the Property Documents promptly after the City's delivery of such notice. The Lender shall deliver to the City in the manner required in Section 5(b) a copy of each notice of a Loan Default delivered to the Borrower by the Lender. Neither giving nor failing to give a notice to the Lender or City pursuant to this Section 4(a) shall affect the validity of any notice given by the Lender or City to the Borrower, as between the Borrower and such of the Lender or the City as provided the notice to the Borrower.

(c) Within ten (10) days after request by the Lender, the City shall furnish the Lender with a statement, duly acknowledged and certified confirming that there exists no default under the Property Documents (or describing any default that does exist), and certifying to such other information with respect to the Property Documents as the Lender may request.

(d) Within ten (10) days after request by the City, the Lender shall furnish the City with a statement, duly acknowledged and certified confirming that there exists no default under the Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Loan Documents as the City may request.

(e) Except to the extent any of the following may be limited or restricted as Transfers or Transfers of Control (as defined in the DDA) set forth in Section 2 of the DDA, the Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Loan Documents without the necessity of obtaining the consent of or providing notice to the City, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Lender may not modify any provision of any of the Loan Documents that increases the Indebtedness, increases the interest rate due under the Note, increases any of the economic covenants in the Loan Documents (such as debt service coverage ratio and loan to value ratio), materially increases the obligations or liabilities of Borrower under the Loan, except for increases in the Indebtedness that result from advances made by the Lender to protect the

security or lien priority of the Lender under the Loan Documents or to cure defaults under the Property Documents.

5. DEFAULT UNDER LOAN DOCUMENTS.

(a) Lender shall have the right to cure any Property Document Default in the manner and to the extent provided for in Section 17 of the DDA and the City's ability to commence any Enforcement Action shall be limited as and to the extent provided for in Section 16, 17.6 and 17.7 of the DDA. The Lender shall not have any obligation whatsoever to cure any Property Document Default. The Lender shall not be subrogated to the rights of the City under the Property Documents by reason of the Senior Lender having cured any Property Document Default. However, the City acknowledges that all amounts advanced or expended by the Lender in accordance with the Senior Loan Documents or to cure a Property Document Default shall be added to and become a part of the Indebtedness under Section 12 of the Security Instrument and shall be secured by the lien of, the Security Instrument.

(b) The Lender shall deliver to the City a copy of any notice sent by the Lender to the Borrower of a Loan Default within five (5) business days of sending such notice to the Borrower. Failure of the Lender to send notice to the City shall not prevent the exercise of the Lender's rights and remedies under the Loan Documents. The City shall have the right, but not the obligation, to cure any monetary Loan Default within thirty (30) days following the date of such notice; provided, however, that the Lender shall be entitled during such 30-day period to continue to pursue its remedies under the Loan Documents. The City may have up to ninety (90) days from the date of the notice to cure a non-monetary Loan Default. In the event that such a non-monetary Loan Default creates an unacceptable level of risk relative to the Mortgaged Property, or the Lender's secured position relative to the Mortgaged Property, as determined by the Lender in its sole discretion, then the Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. The City shall not be subrogated to the rights of the Lender under the Loan Documents by reason of the City having cured any Loan Default. However, the Lender acknowledges that all amounts paid by the City to the Lender to cure a Loan Default shall be deemed to have been advanced by the City pursuant to, and shall be secured by the lien of, the Property Document.

(c) Lender shall not be obligated to perform any of the Borrower's obligations under the DDA to construct or complete any Improvements or to guarantee such construction or completion thereof. Notwithstanding the foregoing, if any Person acquires title to any part of the Mortgaged Property or the Improvements as a result of a Foreclosure Event or from Lender after a Foreclosure Event, then such person or entity shall be subject to all of the Property Documents. If the Lender elects to construct any Improvements on the Mortgaged Property, the Lender must first acquire title to the Mortgaged Property and assume all of the obligations of Borrower under all of the Property Documents, and terminate this Agreement, and the Improvements may only be those Improvements that Borrower would be permitted to construct under the DDA. In

all events, Lender shall only be liable to the City under the DDA after the date of a Foreclosure Event to the extent of Lender's interest (whether fee or leasehold) in the portion of Mortgaged Property and the Improvements thereon owned by Lender; provided that such limitation shall not apply to any Person who acquires title to any part of the Mortgaged Property or the Improvements as a result of a Foreclosure Event or from Lender after a Foreclosure Event.

(d) The City acknowledges that the provisions of this Section 5 are fair and reasonable under the circumstances, that the City has received a substantial benefit from the Lender having provided the Loan, and that the Lender would not have provided the Loan without the inclusion of these provisions in this Agreement.

(e) The Lender may pursue all rights and remedies available to it under the Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by the City. No action or failure to act on the part of the Lender in the event of a Property Document Default or commencement of an Enforcement Action shall constitute a waiver on the part of the Lender of any provision of the Loan Documents or this Agreement.

(f) Notwithstanding anything to the contrary in the Loan Documents, this Agreement or in the DDA, if the City consummates an Enforcement Action and the Security Instrument is not released as a result of the Enforcement Action, then Lender shall not exercise any of its rights or remedies under the Loan Documents that would result in any Foreclosure Event prior to the date that is ninety (90) days after the date the City acquires fee title to the any portion of the Mortgaged Property pursuant to the Enforcement Action.

(g) [IF APPLICABLE: Notwithstanding any other provision of this Agreement, any actions taken by Lender under any provision of the Loan Documents which provide for an assignment to Lender of the interests in Borrower now held by [Managing General Partner's or Co-General Partner] which result in Lender acquiring the interests in Borrower now held by [Managing General Partner and Co-General Partner] shall not constitute a Foreclosure Event. In the event that Lender acquires such interests in Borrower, such acquisition shall be deemed a Permitted Transfer of Control of Developer under the DDA, but shall not alter in any manner the rights or obligations of Developer under the Property Documents, and Developer shall remain fully obligated as "Developer" under the Property Documents (and shall not enjoy the protections of a Permitted Mortgagee under the Property Documents) notwithstanding the acquisition of an interest or controlling interest by Lender in Developer.]

6. MISCELLANEOUS PROVISIONS

(a) In the event of any conflict or inconsistency between the terms of the Property Documents and the terms of this Agreement, the terms of this Agreement shall control.

(b) This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors and permitted assigns of the parties hereto. No

other party shall be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

(c) This Agreement does not constitute an approval by the Lender of the terms of the Property Documents.

(d) Each notice, request, demand, consent, approval or other communication (collectively, "**notices**," and singly, a "**notice**") which is required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

(i) Notices intended for the Lender shall be addressed to:

If to Lender:

With a copy to:

:

(ii) Notices intended for the City shall be addressed to:

If to the City:

Tustin City Hall
300 Centennial Way
Tustin, CA 92780
Attention: City Manager
Facsimile: (714) 838-1602

With a copy to:

City of Tustin City Attorney
Woodruff Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attn: David E. Kendig
Facsimile: (714) 835-7787
Email: dkendig@wss-law.com

Any party, by notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Neither party shall refuse or reject delivery of any notice given in accordance with this Section.

(e) Nothing herein or in any of the Loan Documents or Property Documents shall be deemed to constitute the Lender as a joint venturer or partner of the City.

(f) Upon notice from the Lender from time to time, the City shall execute and deliver such additional instruments and documents, and shall take such actions, as are required by the Lender in order to further evidence or effectuate the provisions and intent of this Agreement.

(g) This Agreement shall be governed by the laws of the State of California, irrespective of California's choice-of-law principles.

(h) The Parties agree to submit to personal jurisdiction in the State of California in any action or proceeding arising out of this Agreement. The Parties hereby agree and consent that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Parties in any such action or proceeding may be obtained within or without the jurisdiction of any court located in California and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the parties by registered or certified mail to or by personal service at the last known address of the Parties, whether such address be within or without the jurisdiction of any such court. Any legal suit, action or other proceeding by one Party to this Agreement against the other arising out of or relating to this Agreement shall be instituted only in the courts of the State of California, County of Orange or the United States District Court for the Central District of California, and each Party hereby waives any objections which it may now or hereafter have based on venue and/or forum non-conveniens of any such suit, action or proceeding and submits to the jurisdiction of such courts.

(i) To the extent permitted by law, Lender and the City each waive their respective rights to a trial by jury of any claim or cause of action based on, arising from, or related to or arising out of this Agreement, in any action, proceeding, or other litigation of any type brought by either party against the other, whether with respect to any cause of action in law or equity. Lender and the City agree that any such claim or cause of action shall be tried by a court trial without a jury. Without limiting the foregoing, the parties further agree that their respective right to a trial by jury is waived by operation of this section as to any action, claim, counter-claim, or other proceeding that seeks, in whole or in part, to challenge the validity or enforceability of this Agreement. This waiver shall apply to any future amendments, renewals, supplements, or modifications to this Agreement.

(j) If any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

(k) The term of this Agreement shall commence on the date hereof and shall continue until the earlier to occur of the following events: (i) the payment of all of the Indebtedness; provided that this Agreement shall be reinstated in the event any payment on account of the Indebtedness is avoided, set aside, rescinded or repaid by the Lender as described in Section 2(e) hereof; or (ii) issuance by the City of a Certificate of Compliance in accordance with Section 9 of the DDA.

(l) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

(m) Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

(n) Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the exercise by the City of its governmental powers (including but not limited to police, regulatory and taxing powers) with respect to the Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated hereby.

(o) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties of this Agreement.

(p) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[*Signature and Acknowledgement Pages to Follow*]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

LENDER:

By: _____
Name:
Title:

CITY:

CITY OF TUSTIN

Dated: _____

By: _____
Jeffrey C. Parker
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By:_____
David Kendig, City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

CONSENT OF BORROWER

The Borrower hereby acknowledges receipt of a copy of this Subordination Agreement, dated _____, by and between **[ADD _____]** and The City of Tustin and consents to the agreement of the parties set forth herein.

1C TUSTIN LEGACY LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

ATTACHMENT 24

LAND REPURCHASE AMOUNT

Material Default Scenario	Land Repurchase Amount
Material Default by **Developer** following Retail Property Close of Escrow and prior to Healthcare Property Close of Escrow	$2,750,000 (Retail Property Land Repurchase Amount)
Material Default by **Developer** (a) following both Retail Property Close of Escrow and Healthcare Property Close of Escrow; and (b) prior to sale/assignment to Healthcare Developer	$2,750,000 (Retail Property Land Repurchase Amount) $11,025,491 (Healthcare Property Land Repurchase Amount)
Material Default by **Developer** following (a) Retail Property Close of Escrow; and (b) Healthcare Property Close of Escrow; **and** (c) sale/assignment to Healthcare Developer of Healthcare Property Close of Escrow (and with no Default by Healthcare Developer)	$2,750,000 (Retail Property Land Repurchase Amount only) No payment with respect to Healthcare Property
Material Default by **Healthcare Developer** following (a) Retail Property Close of Escrow; and (b) Healthcare Property Close of Escrow; **and** (c) sale/assignment to Healthcare Developer of Healthcare Property Close of Escrow	$11,025,491 (Healthcare Property Land Repurchase Amount)

**CITY OF TUSTIN OFFICIAL BUSINESS
REQUEST DOCUMENT TO BE
RECORDED AND TO BE EXEMPT
FROM RECORDING FEES PER
GOVERNMENT CODE 6103 AND 27383.**

**Recording requested by and
When recorded mail to:**

The City of Tustin
300 Centennial Way
Tustin, CA 92780
Attn: City Manager

Space above This Line Reserved for Recorder's Use

SLOPE PARCEL EASEMENT AND LANDSCAPE INSTALLATION AND MAINTENANCE AGREEMENT

This Slope Parcel Easement and Landscape Installation and Maintenance Agreement ("**Agreement**") is entered into this _____, 20__ ("**Effective Date**") by and between the City of Tustin, a municipal corporation ("**City**") and 1C Tustin Legacy LLC ("**Developer**").

RECITALS

A. City and Developer have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C dated as of ____, 2015 ("**DDA**") pursuant to which Developer has acquired from City that certain real property described and depicted on Exhibit "A-1" ("**Retail Parcel**") and intends to acquire from the City that certain real property described and depicted on Exhibit "A-2" ("**Healthcare Parcel**"). The Retail Parcel and the Healthcare Parcel are referred to herein individually as a "**Development Parcel**" and collectively as the "**Development Parcels**".

B. City is the owner of certain real property adjacent to the Development Parcels described on Exhibit "B" ("**Slope Parcel**") and certain additional real property located between the property line of the Development Parcels and the adjacent public sidewalk as depicted on Exhibit "C" (the "**Perimeter Landscape Area**").

C. City has approved certain entitlements with respect to the Development Parcels pursuant to Resolution No. _____ adopted by the Tustin City Council on_____, 2015 ("**Entitlements**"). Conditions to the approval of the Entitlements imposed by the City include the following: (1) condition 2.13 requiring Developer to enter into a landscape maintenance agreement with the City of Tustin for maintenance of parkway improvements within public rights-of-way adjacent to the project along Valencia Avenue, Kensington Park Drive, Edinger Avenue, Tustin Ranch Road and the Tustin Ranch Road slope and (2) conditions 4.1, 4.2, 4,3, 4.4, 9.3, 9.5, 9.7 and 9.10, requiring that Developer

install and maintain, among other things, certain landscape, and irrigation improvements within the Slope Parcel and the Perimeter Landscape Area and imposing certain additional conditions with respect thereto (collectively, "**Conditions**") **[Numbering reflects Planning Commission Conditions to be revised prior to execution to reflect City Council conditions]**.

D. Developer has agreed to install and maintain landscaping on the Slope Parcel and the Perimeter Landscape Area and has agreed to execute this Agreement in order to provide for maintenance of the Landscape Areas (as defined below) by Developer and its Successor Owners (as defined below). This Agreement shall be a covenant running with the land and burdening the Development Parcels and each Successor Owner thereof, for the benefit of the Slope Parcel and the Perimeter Landscape Area and the City and each successor owner thereof.

NOW, THEREFORE, in consideration of the benefits conferred, the mutual covenants and conditions contained herein, and the duties and obligations incurred, the parties hereto agree as follows:

AGREEMENT

1 **Definitions**. For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"**City Easement Users**" shall have the meaning set forth in Section 12.1.

"**City Indemnified Parties**" shall mean City and its appointed and elected officials, agents, attorneys, affiliates, employees, contractors, consultants and representatives.

"**Default Interest Rate**" shall mean an interest rate of eight percent (8%) per annum, compounded annually, but in no event in excess of the maximum legal rate.

"**Easement Users**" shall mean each Owner and their respective employees, consultants, contractors, subcontractors, representatives and agents.

"**Easements**" means the Slope Parcel Easement, the Perimeter Landscape Area Easement and the City Easement, collectively.

"**Entry Landscape Area**" shall mean that certain area located on the Development Parcels as depicted on Exhibit "C".

"**Healthcare Parcel Landscape Area**" shall mean that certain portion of the Healthcare Parcel: (a) immediately adjacent to and contiguous with the Perimeter Landscape Area and (b) adjacent to the front entry on Kensington Park Drive, as generally depicted on Exhibit "C", which shall be subject to this Agreement only during the time period that the City holds fee title to the Healthcare Parcel.

"**Landscape Areas**" shall mean the Slope Parcel, the Perimeter Landscape Area, the Healthcare Parcel Landscape Area, and the Entry Landscape Area, collectively.

"**Landscape Improvements**" shall mean any and all landscaping and irrigation to be constructed and/or installed in connection with the Project upon the Landscape Areas as required by this Agreement, the Conditions, any applicable laws and federal state, or local governmental agency having jurisdiction to abate or prevent pollution.

"**Owner**" shall mean the Developer and each Successor Owner of all or any portion of the Development Parcels, during such person or entity's ownership thereof.

"**Owner Representatives**" shall mean the officers, directors, employees, agents, representatives, consultants, contractors, and other persons accessing the Landscape Areas through or with the permission or under the direction or auspices of Developer and Successor Owners during the time period that each holds fee title to the Development Parcels or any portion thereof.

"**Slope Parcel**" shall have the meaning set forth in Recital B.

"**Slope Parcel Easement**" shall have the meaning set forth in Section 2.1.

"**Successor Healthcare Owners**" shall mean the successors and assigns of Developer owning all or any portion of the Healthcare Parcel.

"**Successor Owners**" shall mean the Successor Retail Owners and the Successor Healthcare Owners collectively.

"**Successor Retail Owners**" shall mean the successors and assigns of Developer owning all or any portion of the Retail Parcel.

2 **Access and Easements**.

2.1 **Slope Parcel and Perimeter Landscape Area Easements**. The City hereby grants ***[if concurrent Retail and Healthcare Parcel closings:*** *for the benefit of Developer and Successor Owners and their Easement Users]* ***[if not concurrent closings:*** *(a) for the benefit of Developer and Successor Retail Owners and their Easement Users and (b) upon acquisition of the Healthcare Parcel by Developer, for the benefit of Developer and the Successor Healthcare Owners and their Easements Users (and as further described in Section 2.7)]*, and binding upon each successor in interest of City owning all or any portion of the burdened parcel the following easements appurtenant to the Development Parcels:

2.1.1 a perpetual, non-exclusive easement (the "**Slope Parcel Easement**") in, on, over, across, through and under the Slope Parcel for the purpose of installing and maintaining Landscape Improvements thereon, and repairing and replacing any Landscape Improvements thereon and for use, installation, maintenance, repair and replacement of utilities (including without limitation, electrical, water, storm drains and/or drainage) required to maintain the Slope Parcel and landscaping and improvements thereon, in each case as may be required or reasonably necessary for the installation, construction, use, maintenance, repair and replacement of the Landscape Improvements.

2.1.2 a perpetual, non-exclusive easement (the "**Perimeter Landscape Area Easement**") in, on, over, across, through and under the Perimeter Landscape Area for the purpose of installing and maintaining Landscape Improvements thereon, and repairing and replacing any Landscape Improvements thereon and for use, installation, maintenance, repair and replacement of utilities (including without limitation, electrical, water, storm drains and/or drainage) required to maintain the Perimeter Landscape Area and landscaping and improvements thereon, in each case as may be required or reasonably necessary for the installation, construction, use, maintenance, repair and replacement of the Landscape Improvements.

2.2 **No Interference with Slope Parcel**. Unless otherwise permitted by this Agreement, each Owner shall cause all work performed on the Slope Parcel to be performed in a manner so as not to: (a) cause any material increase in the cost of any construction or maintenance by the City with respect to the Slope Parcel; (b) unreasonably interfere with and to provide continual access to, use, occupancy or enjoyment of the Slope Parcel by the City or (c) lead to or cause erosion of the land comprising the Slope Parcel.

2.3 **Damage**. Any damage occurring to the Slope Parcel or the Perimeter Landscape Area as a result of construction work on another Development Parcel shall be the responsibility of the Owner performing such construction and shall be repaired promptly by such Owner, at such Owner's sole cost and expense, to substantially the same condition as existed immediately prior to such work. No Owner shall be responsible for the repair of any damage to the Landscape Areas including the City Improvements (as defined in Section 12.1) to the extent such damage is caused by the City or any of the City Easement Users (defined below) exercising the rights granted to the City pursuant to Section 12 or otherwise entering the Landscape Areas and neither Developer nor any Successor Owners shall have any obligation or responsibility in connection with such damage or the failure to repair or replace the same.

2.4 **Maintenance**. In addition to the maintenance standards and requirements set forth in Section 3 and Section 4, the following maintenance standards and requirements shall apply with respect to the Slope Parcel. Each Owner shall: (a) maintain the Slope Parcel in a manner and to a standard that does not cause or create erosion of the Slope Parcel; (b) to the extent required by applicable municipal ordinance and/or any Condition to the extent applicable, install irrigation infrastructure as needed to utilize reclaimed water and water the Slope Parcel utilizing reclaimed water; (c) prior to installation or replacement thereof, obtain the approval of the City's Public Works Department (unless released from such obligation by the City Manager in writing) to all plant and landscaping materials proposed to be used on the Slope Parcel (including during initial installation and for all replacements); (d) promptly remove and replace all dead plant material with an approved replacement and (e) cause pruning and trimming of vegetation to be carried out on a regularly scheduled basis by a licensed landscape contractor. The Owners shall cause all landscaping within each separate Landscape Areas to be maintained in a consistent manner so that all landscaping within each Landscape Area is consistent in appearance, regardless of which Development Parcel, or portion thereof, such Landscape Area is located upon and in the event of a default by any Owner with respect to this obligation, each Owner shall pay to the City the costs incurred by the City to conform the Landscaping Areas to a uniform appearance.

2.5 **License for Access to Healthcare Parcel Landscape Area**. City hereby grants to Developer and the Successor Retail Owners a revocable license for installation, maintenance, repair and replacement of landscape within the Healthcare Parcel Landscape Area, to access and maintain the Healthcare Parcel Landscape Area in accordance with the requirements of this Agreement.

2.6 **Termination of Healthcare Parcel Landscape Area**. From and after a conveyance of the Healthcare Parcel to Developer or any Successor Healthcare Owner, the License granted pursuant to Section 2.5 for the Healthcare Parcel Landscape Area and Developer's obligation to maintain the Healthcare Parcel Landscape Area for the benefit of the City shall terminate and be of no further force or effect and the Successor Healthcare Owner shall be responsible for the maintenance of the Healthcare Parcel Landscape Area.

2.7 ***[ONLY IF NON-CONCURRENT CONVEYANCE OF RETAIL AND HEALTHCARE PARCELS: Creation of Easements in Healthcare Parcel**. At the time of execution and recording of this Agreement, the Healthcare Parcel is owned by the City but is subject to purchase and sale agreement (pursuant to the DDA) in favor of Developer. Developer and the City intend that the easements, rights, restrictions, obligations, servitudes, conditions and covenants created in this Agreement for the benefit of and burdening the Healthcare Parcel, including without limitation the Slope Parcel Easement and the Landscape Area Easement and the burdens imposed by the City Easement and the maintenance obligations and all other rights and obligations imposed on the Healthcare Parcel and the Healthcare Successor Owners hereunder (collectively, the "**Healthcare Restrictions**") be presently created as of the Effective Date, but agree that the obligations imposed upon Healthcare Successor Owners under this Agreement shall not apply to the City during its period of ownership of the Healthcare Parcel. For avoidance of doubt, the City and Developer hereby also provide that to the extent not previously created, upon acquisition of the Healthcare Parcel by Developer, the Healthcare Restrictions shall automatically spring into being and shall be binding upon the Healthcare Parcel and each Owner thereof in accordance with the terms of this Agreement. To assure the enforceability of the Healthcare Restrictions, the parties hereby agree that immediately following the recording of the Healthcare Property Quitclaim Deed, they shall record against the Development Parcels, the Slope Parcel and the Perimeter Landscape Area such documents as are reasonably necessary in the opinion of any party to effectuate the Healthcare Restrictions, to grant the Easements and to provide notice of such actions.]*

3 **Installation, Construction and Maintenance Obligation**.

3.1 **Installation**. Developer, or its Successor Owner(s), shall install and construct the Landscape Improvements upon the Landscape Areas in accordance with the requirements established by the Conditions, the DDA and the CC&Rs. Upon completion by Developer of the installation and construction of Landscape Improvements for all or any portion of the Landscape Areas, Developer and each Successor Owner shall maintain, repair, replace and restore, at its sole cost and expense, the Landscape Improvements and the Landscape Areas, including, without limitation any hardscape and paving materials upon the Entry Landscape Area in the same aesthetic and sound condition or better as the condition of such improvements at the time of their acceptance by the City, excepting only reasonable

wear and tear and any necessary replacement of Landscape Improvements pursuant to this Agreement. Any necessary replacements of Landscape Improvements shall be consistent with the Conditions and the quality of improvements originally approved by City and nothing herein shall limit the City's right to review and approve such Landscape Improvements to ensure compliance with the terms hereof and the Conditions. Landscape Areas shall be maintained in accordance with the terms and conditions set forth in this Section 4 and Section 5 and the Slope Parcel shall in addition be maintained in accordance with the requirements of Section 2. All utilities required to maintain the Landscape Improvements including, without limitation, water and electrical, shall be paid for by, or caused to be paid by, the Owners and such utilities may at the discretion of the Owners, be on separate meters.

3.2 **Separate Agreement**. Nothing in this Agreement shall prohibit two or more Owners of the Development Parcels from entering into a separate agreement to allocate the responsibilities and obligations under this Agreement or to share the costs for performing the maintenance of Landscape Improvements on the Landscape Areas.

4 Standard of Maintenance.

4.1 **Standards**. The standard for the quality of maintenance of the Landscape Areas and Landscape Improvements set forth in Section 4 shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include: (a) proper maintenance of all Landscape Areas and Landscape Improvements such that they are evenly cut and evenly edged, where appropriate, reasonably free of bare and brown spots, debris, trash, litter, droppings and weeds; (b) maintenance, repair and replacement on a regular schedule, of landscaping, irrigation systems and utilities; (c) fertilizing, irrigating and replacing vegetation, as necessary; (d) use and replacement of vegetation of a type and amount as may reasonably be required to maintain the Landscape Areas in accordance with the Conditions and the Tustin Legacy Specific Plan; (e) adequate maintenance of all Landscape Areas and Landscape Improvements such as not to be detrimental to public health, safety, or general welfare; and (f) regular and even trimming and pruning of all trees and shrubs so they do not impede vehicular or pedestrian traffic, do not intrude into neighboring properties, do not create nuisances to neighboring properties, including but not limited also to root pruning to eliminate exposed surface roots and damage to curbs and gutters, sidewalks, driveways, utilities and other structures or improvements.

4.2 **Joint and Several Liability**. Notwithstanding anything herein to the contrary, if any portion of the Slope Parcel required to be maintained by Developer or its Successor Owners, is not maintained in accordance with the terms of this Agreement, the Owners shall be jointly and severally liable for such breach, and the City shall have the right to enforce the terms of this Agreement against either or all of Developer, Successor Retail Owners and Successor Healthcare Owners in order to cause the Slope Parcel to be maintained in accordance with the terms hereof, including, without limitation, Sections 2.3, 2.4, 4.1, 5 and 6.

5 **Allocation of Maintenance Responsibilities**. Notwithstanding the fact that there may be multiple ownerships of the Development Parcels, the maintenance responsibilities set forth in this Agreement shall be vested in one entity for each of the respective Development Parcels at any given time during the Term.

6 **Term**. The term of this Agreement shall be perpetual, unless termination is consented to by the City, in its sole discretion (the "**Term**"). Notwithstanding the foregoing, the City shall have the right at any time to terminate the Slope Parcel Easement and/or the Perimeter Landscape Easement as to all or any portion of the Development Parcels upon provision of written notice to the Owner of such Development Parcel and effective upon the date of such termination, the Owner(s) of such Development Parcel(s) shall be released from the responsibility to maintain the Landscape Improvements upon the Slope Parcel and/or Perimeter Landscape Area, as applicable. Upon such termination, the Landscape Improvements, utilities and other improvements installed upon the Slope Parcel and the Perimeter Landscape Area, as applicable, shall become the property of the City at no cost or expense to the City. The termination of all or any portion of the Slope Parcel Easement and/or the Perimeter Landscape Easement shall not affect or terminate the City Easement, which shall remain in effect in perpetuity unless termination is consented to by the City.

7 **Insurance**. From and after the Effective Date, each Owner , at its cost, shall maintain public liability and property damage insurance with a single combined liability of not less than $1,000,000 and property damage limits of not less than $500,000 insuring against all liability of Owner and its Owner Representatives arising out of or in connection with the presence, activities or work on or use of the Landscape Improvements and/or Landscape Areas or any act or omission to act of any Owner and/or its Owner Representatives with respect to the Landscape Areas and/or Landscape Improvements. In addition, each Owner shall provide workers' compensation insurance meeting statutory limits for all persons employed by Developer in connection with obligations under this Agreement. The foregoing may be satisfied during the term of the DDA by insurance required thereby but shall not subtract from any insurance obligations of Developer or any Successor Owner to City under the DDA. Each Owner will furnish to City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A-/VII" (if an admitted carrier) or A-/X (if offered by a surplus line broker). An Accord certificate evidencing the foregoing and providing the following endorsements signed by the authorized representative of the underwriter and approved by City shall be delivered within seven (7) Business Days following the Effective Date of this Agreement and annually evidencing renewals of each policy. 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 City and (3) a waiver of subrogation for the benefit of the City. Such insurance will be on an "occurrence," not a "claims made" and will be prepaid on an annual basis. The procuring of such insurance and the delivery of policies, certificates or endorsements evidencing the same shall not be construed as a limitation of an Owner's obligation to indemnify City as set forth herein.

8 **Indemnity**. Developer on behalf of itself and each Successor Owner, hereby agrees that each Owner shall protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all claims, actions, damages, costs (including, without limitation, attorneys' fees), injuries, or liability, arising out of or in connection with: (a) the presence, activities or work on the Landscape Improvements and/or Landscape Areas by each Owner and/or its Owner Representatives, (b) any act or omission to act of any Owner and/or its Owner Representatives with respect to the Landscape Areas and/or Landscape Improvements, (c) entry onto the Landscape Areas by any Owner or its Owner Representatives in connection with this Agreement, (d) bodily injury to or death of any person (including any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of an Owner or any Owner Representative with respect to the Landscape Areas and/or Landscape Improvements and (e) costs to remove or bond mechanic's liens, stop notices and/or bonded stop notices that are recorded and/or served by contractors, subcontractors (of all tiers) and suppliers with respect to work performed or caused to be performed by such Owner affecting the Landscape Areas; provided that the indemnity under clauses (a) through (d) shall not apply to the extent of the gross negligence, willful misconduct or fraud of the City or any City Indemnified Party. The provisions of this Section shall survive the termination of this Agreement only with respect to events occurring while this Agreement is in effect.

9 **Mechanic's Liens**. Each Owner shall keep the Landscape Areas on the portion of the Development Parcels owned by it free and clear of any mechanics' liens or materialmen's liens.

10 **Compliance with Laws**. Each Owner shall comply with all Conditions and all laws and regulations affecting the Landscape Areas and the Landscape Improvements, including without limitation, those issued by the Environmental Protection Agency, or any federal, state, interstate, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Landscape Areas is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any federal, state, interstate, or local governmental agency shall be complied with by each Owner. Each Owner shall not discharge waste or effluent from the Landscape Areas in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The foregoing shall not subtract from any environmental responsibilities of Developer to City under the DDA.

11 **City Remedies**. In the event of a breach of any provision of this Agreement, City may demand by written notice (**"Default Notice"**) that the violation be cured. Except for utility service interruptions or similar emergencies which shall not require advance notice or cure periods hereunder, if an Owner does not cure the violation within thirty (30) days after receipt of the Default Notice, or if such default is of a kind which cannot reasonably be cured within thirty (30) days, and such Owner does not within such thirty (30) day period commence to cure such default and diligently thereafter prosecute such cure to completion, then City shall have the right, but not the obligation, to (a) institute legal action against such Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law, (b) pay any sum owed by such Owner to the party entitled to such payment and/or (c) enter upon the Landscape Areas (and upon the Development Parcels, to the extent reasonably necessary to enforce its rights hereunder) and to summarily abate, remove or otherwise remedy any improvement, and/or repair or modify any improvement which violates the terms of this Agreement and/or perform

any obligation of such Owner under this Agreement to be performed thereon. An Owner shall pay to the City, within thirty (30) calendar days of written demand by City (which demand is accompanied by appropriate supporting documentation), an amount equal to all costs and expenses incurred by City in undertaking any of the actions permitted by the preceding sentence, including without limitation, third party costs and City hourly wages and benefits reasonably allocable to the time expended by City in taking such actions, together with interest thereon at the rate equal to the Default Interest Rate, from the date such costs and expenses were advanced or incurred by the City. The rights and remedies given to City by this Agreement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which City might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any City shall not impair the City's standing to exercise any other right or remedy. Until such Owner has paid in full all of the costs incurred by the City, the unpaid cost thereof shall constitute a lien on the respective Development Parcel.

12 **Access Easement in Favor of City**.

12.1 **Access Easement**. Developer hereby grants for the benefit of the City and its successors and assigns owning all or any portion of the Slope Parcel and Perimeter Landscape Areas ("**Successor Slope Owners**") and their respective employees, consultants, contractors, subcontractors, representatives and agents (collectively with the City and Successor Slope Owners, the "**City Easement Users**"), and binding upon each Owner of the Development Parcels or any portion thereof, a perpetual, non-exclusive pedestrian and vehicular access easement, utility easement (for the limited purpose of providing storm drainage and utilities including electric, water and recycled water required to serve the Slope Parcel and Perimeter Landscape Areas ("**Utilities**") and parking easement (collectively, the "**City Easement**") each appurtenant to the Slope Parcel and Perimeter Landscape Area, in, on, over, across, under (as to the utilities only) and through the roadways, parking areas and sidewalks located on the Development Parcels from time to time ("**City Easement Area**") to provide access to and entry upon the Slope Parcel and the Perimeter Landscape Areas for the purpose of constructing, installing, maintaining, repairing and replacing the Slope Parcel, the Perimeter Landscape Areas, any Landscape Improvements, any other improvements installed upon the Slope Parcel and/or the Perimeter Landscape Areas by the City (the "**City Improvements**") from time to time (including, without limitation, signage) and vegetation thereon and for use, installation, maintenance, repair and replacement of the Utilities, in each case as may be required or reasonably necessary for the installation, construction, use, maintenance, repair and replacement of the Landscape Improvements and Utilities by the City and the City Easement Users, and including, without limitation, in the event City is required to exercise any of its remedies with respect to maintenance of any one or more of the Landscape Areas due to default by any Owner under the terms of this Agreement. The foregoing City Easement shall be used for the following: (a) pedestrian and vehicular access, ingress and egress to and from, upon and across each of the Development Parcels and all streets and roads, public or private, abutting or upon such Development Parcels, to the Slope Parcel and Perimeter Landscape Area by City Easement Users, including, but not limited to, ingress and egress for parking purposes, delivery and service trucks and for all other purposes described in this Agreement while work is being performed on or in connection with the Slope Parcel

and/or Perimeter Landscape Area; (b) parking by City Easement Users on the portion of such City Easement Areas designated as parking areas for invitees and guests of Developer and its Successor Owners (the location of such parking areas may be modified from time to time by the then fee owner(s) of such parking areas, provided that such modifications shall not prohibit reasonable parking access and use by City Easement Users adjacent to the Slope Parcel and Perimeter Landscape Areas) while and for the purpose of accessing, inspecting, evaluating, designing, surveying, planting, replanting, maintaining or otherwise conducting work, including without limitation, Utility work, or performing services on the Slope Parcel and/or Perimeter Landscape Area or in connection therewith; and (c) repair, restoration and maintenance of the Slope Parcel, the Perimeter Landscape Area and/or the Utilities. The City Easement Areas and the access to and right to park thereon shall be made available to City and its successors and assigns at no charge.

12.2 **Insurance**. If any City Easement User exercises its rights under this Section 12, then, notwithstanding anything in this Agreement to the contrary prior to such entry by such City Easement User shall provide the Owner of the affected Development Parcel with evidence that it is carrying insurance satisfying the requirements set forth in Section 7 of this Agreement, provided that the City shall not be required to provide such insurance provided that it can provide evidence of self-insurance.

12.3 **Indemnity**.

12.3.1 Except as set forth in section 12.3.2 below, if the City or any Easement User exercises its rights under this Section 12 (the "**Indemnifying Party**"), such party shall protect, indemnify, defend and hold harmless Developer and any Successor Owner from and against any and all claims, actions, damages, costs (including, without limitation, attorneys' fees), injuries, or liability, arising out of or in connection with (a) the presence, activities or use of the City Easement Area by or on behalf of the Indemnifying Party, (b) entry onto the on the Development Parcels by or on behalf of the Indemnifying Party in connection with this Agreement, and (c) bodily injury to or death of any person (including any employee or contractor of the Indemnifying Party) or damage to or loss of use of property resulting from such acts or omissions of Indemnifying Party (including any employee or contractor of the Indemnifying Party) with respect to the Development Parcels; provided that the foregoing indemnity shall not apply to the extent of the negligence, willful misconduct or fraud of the party that would otherwise be entitled to be indemnified pursuant to the terms hereof. The provisions of this Section shall survive the termination of this Agreement only with respect to events occurring while this Agreement is in effect.

12.3.2 In the event the City or City Easement Users (the "**Affected Party**") are exercising their respective rights under this Section 12 due to or arising out of a default by any Owner, the provisions of Section 1.2.31 shall not apply and the following provisions shall instead apply: The Affected Party shall protect, indemnify, defend and hold harmless Developer and any Successor Owner from and against any and all claims, actions, damages, costs (including, without limitation, attorneys' fees), injuries, or liability, arising out of or in connection with (a) the negligent activities or use of the City Easement Area by or on behalf of the Affected Party, and (b) bodily injury to or death of any person (including any employee or contractor of the Affected Party) or damage to or loss of use of property resulting from such

negligent acts or omissions of Affected Party with respect to the Development Parcels; provided that the foregoing indemnity shall not apply to the extent of the acts, negligence, willful misconduct or fraud of the party that would otherwise be entitled to be indemnified pursuant to the terms hereof. The provisions of this Section shall survive the termination of this Agreement only with respect to events occurring while this Agreement is in effect.

12.4 **Survival**. The provisions of this Section 12 survive the termination of this Agreement.

13 **Estoppel Certificate**. Each party hereby covenants that within ten (10) business days of the written request of any other party it will issue to such other party an Estoppel Certificate stating: (a) whether the party to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof; (b) whether to its knowledge this Agreement has been assigned, modified, or amended in any way (and if it has, then stating the nature thereof); and whether to the party's knowledge this Agreement is as of that date is in full force and effect.

14 **Excuse for Non-Performance**. Each party shall be excused from performing any obligation or undertaking provided in this Agreement except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, retarded, or hindered by act of God, including, without limitation, inclement weather, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials, or supplies in the ordinary course on the open market; failure of normal transportation strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military authorities.

15 **Effect on Third Parties**. Except as herein specifically provided, no rights, privileges or immunities conferred upon the parties to this Agreement shall inure to the benefit of nor shall any person be deemed to be a third party beneficiary of any of the provisions contained herein.

16 **Entire Agreement**. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. Prior agreements, representations, negotiations, and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

17 **Modification**. This Agreement may not be modified in any respect or rescinded, in whole or in part, except by an instrument in writing, duly executed and acknowledged by the parties hereto, or their successors or assigns that are the record owners of the Landscape Areas. Any change, modification, amendment or rescission which is made without the written consent of such owners shall be null and void and of no effect. No consent or approval of any owner other than those owners described in the first sentence of this Section shall be required in order to modify or amend any provisions of this Agreement.

18 **Severability**. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms,

covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19 **Governing Law**. This Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

20 **Waiver and Default**. The waiver by one party of the performance of any provision of this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other provision under this Agreement or of any subsequent breach by the other party of the same provision.

21 **References to Sections, Clauses and Exhibits**. Unless otherwise indicated, references in this Agreement to sections, clauses and exhibits are to the same contained in or attached to this Agreement and all exhibits referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section.

22 **Counterparts**. This Agreement may be executed in one or more counterparts. All counterparts so executed shall constitute one agreement, binding on all parties, even though all parties are not signatory to the same counterpart.

23 **Runs With the Land; Release and Termination**. This Agreement and agreements, rights, covenants, conditions, restrictions and grants of easements hereof shall constitute equitable servitudes and covenants running with the land comprising the Development Parcels, the Slope Parcel and the Perimeter Landscape Areas (collectively, the "**Parcels**") and each and every portion thereof and shall be binding upon or inure to the benefit of (as the case may require) the parties hereto, and their respective heirs, successors, and assigns who become owners of the Parcels from time to time, and all other persons acquiring their respective Parcels or any part thereof, whether by operation of law or in any other manner whatsoever and shall continue to be imposed upon the Parcels and each portion thereof as a servitude in favor of each and every other portion of the Parcels, as the dominant tenement or tenements, as the case may be. All references in this Agreement to "City", "Developer" and "Owner" shall include their respective heirs, representatives, successors and assigns. This Agreement and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of the Slope Parcel and the Perimeter Landscape Areas and any portion thereof. All references in this Agreement to "Developer" shall mean and refer to each successor owner of each Development Parcel, including without limitation, the Successor Healthcare Owner with respect to the Healthcare Parcel.

[signature page follows]

IN WITNESS WHEREOF, City and Developer have signed this Agreement as of the date first set forth above.

CITY OF TUSTIN:

By: _____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica N. Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

DEVELOPER:

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
a Delaware limited partnership
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation
Its General Partner

By: _____
John Mehigan
Vice President

ACKNOWLEDGMENT

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT "A-1"

LEGAL DESCRIPTION OF RETAIL PARCEL

EXHIBIT "A-2"

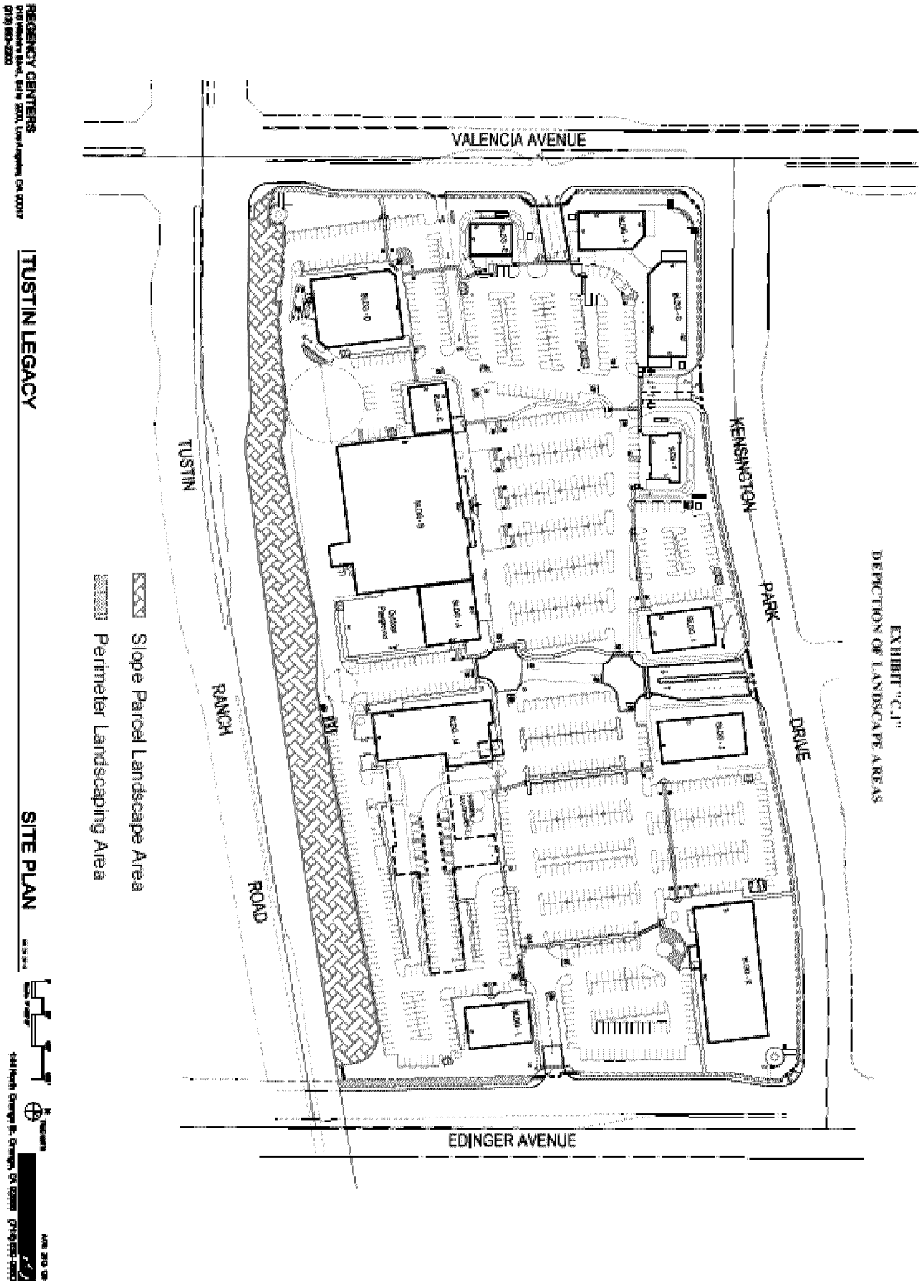
LEGAL DESCRIPTION OF HEALTHCARE PARCEL

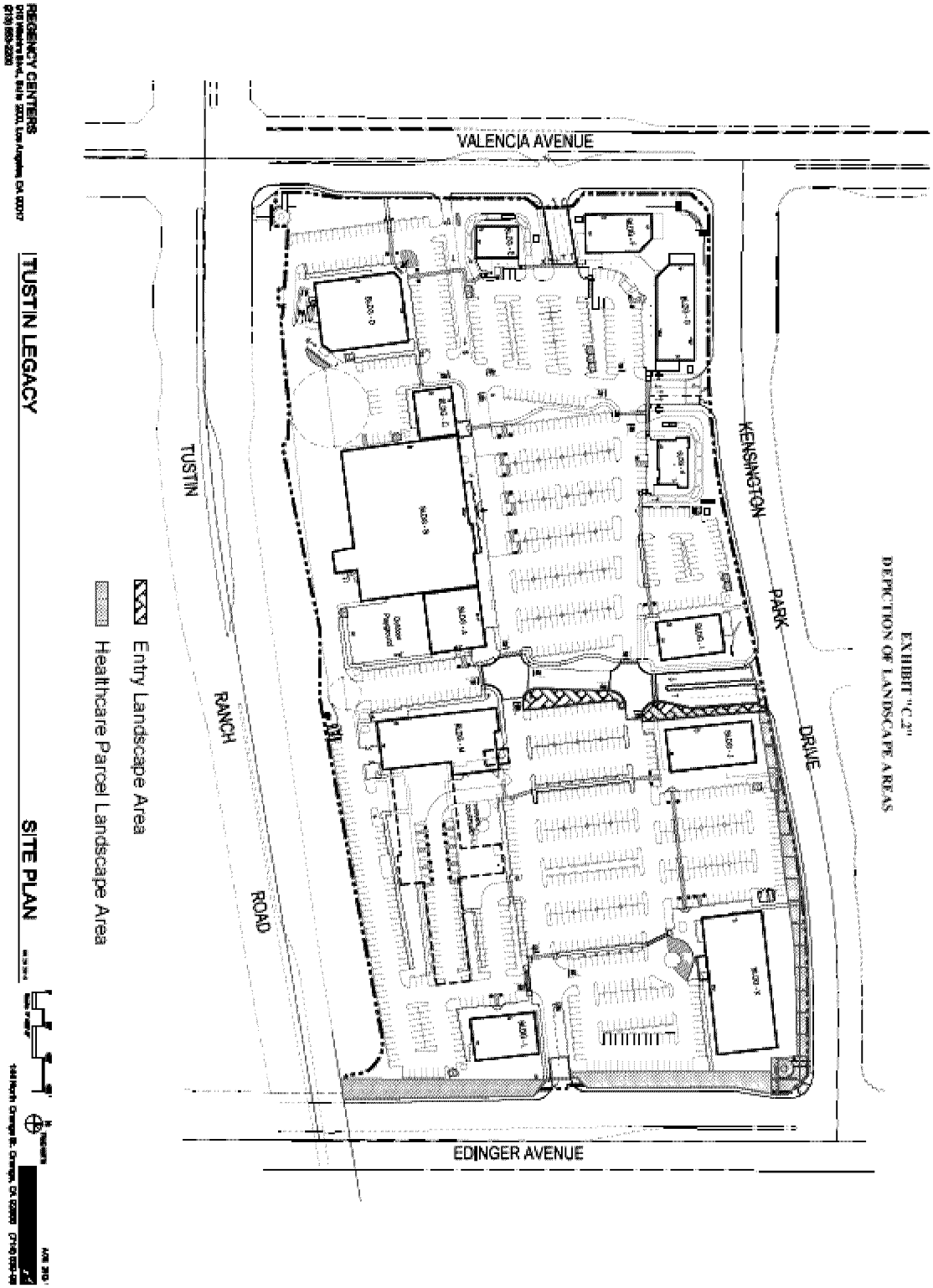
EXHIBIT "B"

LEGAL DESCRIPTION OF SLOPE PARCEL

EXHIBIT "C"

DEPICTION OF LANDSCAPE AREAS




REGENCY CENTERS
TUSTIN LEGACY
SITE PLAN
VALENCIA AVENUE
TUSTIN RANCH ROAD
KENSINGTON PARK DRIVE
EDINGER AVENUE
Entry Landscape Area
Healthcare Parcel Landscape Area
EXHIBIT "C-2"
DEPICTION OF LANDSCAPE AREAS

ATTACHMENT 26

TRIP ALLOCATION

TRAFFIC GENERATION FORECAST COMPARISON
ENTITLED LAND USE VS. PROPOSED PROJECT
PLANNING AREA 7 - NEIGHBORHOOD B OF THE TUSTIN LEGACY SPECIFIC PLAN

Description	Daily 2-Way	AM Peak Hour			PM Peak Hour		
		Enter	Exit	Total	Enter	Exit	Total
Entitled Land Use:							
▪ General Office (144,840 SF)	1,922	239	33	272	44	217	261
▪ Retail (103,460 SF)	7,052	104	66	170	295	320	615
Total Entitled Land Use Trip Generation	**8,974**	**343**	**99**	**442**	**339**	**537**	**876**
Proposed Project:							
▪ Retail Shops (98,292 SF)	4,197	58	36	94	175	190	365
▪ Retail / Office (15,000 SF)	641	9	5	14	27	29	56
▪ Medical Office Building (60,000 SF)	2,168	113	30	143	60	154	214
▪ Skilled Nursing Facility/Acute Care (80 Beds)	213	7	4	11	8	10	18
Total Proposed Project Trip Generation	**7,219**	**187**	**75**	**262**	**270**	**383**	**653**
Net Difference in Trip Generation (Proposed minus Entitled)	**-1,755**	**-156**	**-24**	**-180**	**-69**	**-154**	**-223**

ATTACHMENT 27

FORM OF
LICENSE FOR SITE DEVELOPMENT

THIS LICENSE FOR SITE DEVELOPMENT (this "**Agreement**") is made and entered into as of _____, 20__ (the "**Effective Date**"), by and between 1C TUSTIN LEGACY, LLC, a Delaware limited liability company ("**Developer**"), and the CITY OF TUSTIN (the "**City**"), with reference to the facts set forth below:

RECITALS

A. WHEREAS, the City and Developer have entered into that certain Tustin Legacy Disposition and Development Agreement for Disposition Parcel 1C dated as of _____, 2015 (the "**DDA**"), for the purchase by Developer of certain real property located in the City of Tustin, County of Orange, State of California described therein as the "**Development Parcels**", upon which Developer intends to construct certain retail and healthcare improvements. Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the DDA.

B. WHEREAS, in connection with the acquisition and development of the Development Parcels, the City has agreed to grant a construction license to Developer in accordance with the provisions of Section 8.2.5 of the DDA to permit Developer to enter upon the Healthcare Parcel as more particularly described on **Exhibit "A"** attached hereto and depicted on **Exhibit "B"** attached hereto (the "**Healthcare Parcel**") prior to the Healthcare Property Close of Escrow to construct the Minimum Horizontal Improvements (as defined below) thereon.

NOW THEREFORE, in consideration of the promises and mutual covenants, agreements and conditions hereof, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as set forth below.

AGREEMENT

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Term. The term of this Agreement and the License shall commence as of the Effective Date and, unless extended by the Parties in writing or terminated earlier in accordance with this Agreement, shall remain in effect only until the earlier to occur of the following (the "**Termination Date**"): (a) the Healthcare Property Close of Escrow under the DDA; (b) 5:00 pm on the Healthcare Property Outside Closing Date (as the same may be extended pursuant to Section 7.1.3 of the DDA) provided that the Close of Escrow has not then occurred; (c) the completion of the Minimum Horizontal Improvements; or (d) once Developer has commenced construction of the Minimum Horizontal Improvements, the thirtieth (30^{th}) calendar day after Developer ceases to perform the Minimum Horizontal Improvements upon the Healthcare Property, unless such failure to prosecute the work to completion is due to a Force Majeure

Delay. Upon the Termination Date, Developer shall return the Healthcare Parcel to the City in the condition described in Section 8 and, in the event the Close of Escrow under the DDA has not occurred, shall relinquish all right, title and interest in and to the Healthcare Parcel and any Minimum Horizontal Improvements performed and Developer and the City agree that any such Minimum Horizontal Improvements shall be transferred to the City without compensation to Developer and the City shall accept possession of any such Minimum Horizontal Improvements.

3. Construction License. The City hereby grants to Developer and to the Developer Representatives a non-exclusive, revocable license (the "**License**") over the Healthcare Parcel for purposes of carrying out the Minimum Horizontal Improvements. Developer is granted control of the Healthcare Parcel for this purpose. Notwithstanding the foregoing, the License and this Agreement shall be revocable by the City prior to the Termination Date only in accordance with Section 19 of this Agreement.

4. Commencement of Work. Developer may not enter the Healthcare Parcel or commence the Minimum Horizontal Improvements until each of the following has occurred: (a) the Retail Property Close of Escrow shall have occurred; (b) the City's issuance of grading permits with respect to the grading and incidental work proposed by Developer and approved by the City ("**Grading Permit**"); (c) to the extent required under the DDA and the conditions of approval for the Project adopted by the ***[Planning Commission/City Council]*** with respect the Applicable Approvals, the provision by Developer of the Construction Bond (as defined in the DDA); (d) the execution of any subdivision improvement agreement required by the City in its Governmental Capacity as a condition to commencement of the Minimum Horizontal Improvements, if any; (e) the provision of the insurance required by this Agreement, and (f) the satisfaction of all other conditions to commencement of construction of the Minimum Horizontal Improvements described in the Entitlements, the DDA and the Schedule of Performance. This Agreement and the License shall each become null and void unless construction of the Minimum Horizontal Improvements begins on or prior to the date set forth therefor in the Schedule of Performance attached to the DDA, as such date may be extended for Force Majeure Delay. For purposes of this Agreement, the term "**Minimum Horizontal Improvements**" shall mean the Healthcare Rough Grading (as defined in the DDA) and the Healthcare Perimeter Landscaping (as defined in that certain Slope Parcel Easement Agreement and Landscape Installation and Maintenance Agreement dated _____, by and between Developer and City and recorded as Instrument No. _____ in the Official Records of Orange County).

5. Repair. Except as authorized by this License and/or the Grading Permit, in the event that Developer's performance of the Minimum Horizontal Improvements damages or destroys any improvements located on City-owned property (other than on the Healthcare Parcel) or on public streets or rights of way, Developer shall repair such damage to as near a condition as existed prior to the performance of such Minimum Horizontal Improvements as is reasonably practicable at Developer's sole cost and expense.

6. Insurance. Prior to Developer exercising the License, Developer shall, at its own expense, cause to be procured and maintained the policies of insurance required pursuant to Section 11.1 of the DDA. Specifically, Developer shall obtain Pollution Legal Liability ("**PLL**") insurance meeting the requirements in Section 11.1.4 of the DDA. Developer shall not rely upon or have rights to claim for reimbursement, payment, or coverage under any PLL insurance

presently maintained by City. The provisions of Section 11 of the DDA shall apply with respect to this Agreement as though fully set forth herein. In addition, to the extent the contractor performing the Minimum Horizontal Improvements on behalf of the Developer has or obtains a Contractor Pollution Liability Policy with respect to the Minimum Horizontal Improvements ("**CPL**"), Developer shall use commercially reasonable efforts to have the contractor cause its policy be primary and the PLL policy and City policies to be non-contributory with respect to matters covered by the CPL policy. Developer shall be responsible for all self-insured retention or deductible amounts due under the PLL policy.

7. "As-Is, Where-Is" License. Developer acknowledges that (a) the City makes no representations or warranties as to the condition or suitability of the Healthcare Parcel, the soil located thereon, any hazards or Hazardous Materials, contaminants or pollutants that may be present on or below grade at the Healthcare Parcel, or otherwise; (b) Developer's use of the Healthcare Parcel and the soil thereon and its license of the Healthcare Parcel is "as is, where is" as described in Section 4.5.2 of the DDA, in its present condition and subject to and without liability to City, without any representation, promise, agreement or warranty on the part of the City regarding such condition and state of repair needed for the exercise of this License. Developer acknowledges that it has inspected the Healthcare Parcel and its determination to engage in this undertaking is based solely on its own investigation and is not based on reliance of any statements, suggestions or information provided by the City, its agents, officers, employees or contractors. Developer further acknowledges that the City shall not be liable for any latent or patent defects in the Healthcare Parcel, whether disclosed or not.

8. Condition of Healthcare Parcel at Termination of License; Construction Bonds.

8.1 Condition of Healthcare Parcel. At the Termination Date or upon any earlier termination of the License and this Agreement (other than termination due to the occurrence of the Close of Escrow), Developer shall (a) remove its property from the Healthcare Parcel, including, without limitation, all Hazardous Materials it brought to or is required to remove from the Healthcare Parcel in accordance with Sections 10 and 12 of this Agreement; (b) report, contain, remove and Remediate in accordance with Sections 10 and 12 of this Agreement any land, air or water pollution (c) deliver the Healthcare Parcel to the City in lien free condition; (d) cause the Healthcare Parcel, including without limitation, all Minimum Horizontal Improvements, to be delivered in a condition consistent with the Grading Permit (but in the final condition specified in the Grading Permit only to the extent the Minimum Horizontal Improvements has been completed as of the date of termination) and all Governmental Requirements, and (e) deliver the Healthcare Parcel in a condition meeting all requirements of the City of Tustin Water Quality Ordinance, and all federal, state, and Regional Water Quality Control Board and Regional Air Quality rules, permits and regulations and applicable Mitigation Monitoring and Reporting Requirements relating to such standards, including, without limitation, keeping the adjoining public roadways clear of any dirt or mud.

8.2 Construction Bond. Upon termination of this Agreement for any reason other than Close of Escrow under the DDA, if Developer shall have failed in any manner to comply with the requirements of Section 8.1 of this Agreement, the City shall have the right, in its sole discretion, after giving Developer written notice of such failure and an opportunity to cure the same in accordance with the terms and conditions of Section 31 below, to cause the

surety under the Minimum Horizontal Improvements Construction Bond to satisfy the requirements of Section 8.1 (including without limitation, to restore the condition of the Healthcare Parcel to the condition specified by Section 8.1 of this Agreement and to pay in full all contractors and subcontractors performing the Minimum Horizontal Improvements or any other work performed pursuant to this Agreement) or to seek reimbursement under such bond for work performed or amounts paid by the City in satisfaction of the foregoing. Upon payment in full of all amounts due and release of all liens (or bonding of outstanding liens in the amounts required by the DDA) and performance by Developer or the surety under the Minimum Horizontal Improvements Construction Bond of the work required by this Section 8, the City shall release the Minimum Horizontal Improvements Construction Bond.

8.3 Survival. The provisions of this Section 8 shall survive termination of this Agreement.

9. Release. Developer, on behalf of itself, its members, principals, officers, elected officials beneficiaries, trustees, shareholders, partners, heirs, personal representatives, successors and assigns (collectively, the "**Releasing Parties**"), as the case may be, hereby waives the right to recover from and fully and irrevocably releases City and its officers, elected officials, employees, consultants, agents, representatives and contractors (collectively, the "**Released Parties**"), from and against any and all Claims that each of the Releasing Parties may now have or hereafter acquire arising from or related to the activities of Developer and any damage or destruction of any improvements located on the Healthcare Parcel, excepting from the foregoing release: (a) any Claim that is the result of the gross negligence, willful misconduct or fraud of the City or any of a Released Party; (b) any breach by the City of any of the covenants or obligations set forth in this Agreement, and (c) any other Claims to the extent such claims are based upon the active negligence of the City or any Released Parties. This release includes Claims of which the Releasing Parties are presently unaware or which the Releasing Parties do not presently suspect to exist which, if known by the Releasing Parties, would materially affect the Releasing Parties' decision to release the Released Parties. The Releasing Parties specifically waive the protection of California Civil Code Section 1542, which provides as follows:

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

In this connection and to the extent permitted by law, the Releasing Parties realize and acknowledge that factual matters now unknown to it may have given or may hereafter give rise to Claims or controversies which are presently unknown, unanticipated and unsuspected, and the Releasing Parties further agree that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Releasing Parties nevertheless hereby intend to release, discharge and acquit the Released Parties from any such unknown Claims and controversies to the extent set forth above. To the extent permitted by law, the foregoing provisions of this Section 9 shall survive the termination of this Agreement.

CITY HAS AGREED TO ENTER INTO THIS AGREEMENT AND HAS GIVEN THE RELEASING PARTIES MATERIAL CONCESSIONS REGARDING THIS TRANSACTION

IN EXCHANGE FOR THE RELEASING PARTIES AGREEING TO THE PROVISIONS OF THIS SECTION. BY INITIALING BELOW, DEVELOPER ACKNOWLEDGES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

CITY	DEVELOPER

10. Indemnity. Developer hereby agrees to protect, indemnify, defend and hold harmless the City Indemnified Parties from and against any and all Claims accruing during the term of this Agreement to the extent arising from or related to Developer's or Developer Representatives' activities during the term of this Agreement including, but not limited to (a) the acts or omissions to act of Developer or the Developer Representatives arising from the presence, activities or work on or use of the Healthcare Parcel by Developer or the Developer Representatives, including without limitation with respect to any Minimum Horizontal Improvements performed by Developer or any Developer Representatives on the Healthcare Parcel pursuant to this Agreement, any inspections, surveys, tests, Investigations and studies carried out by Developer or the Developer Representatives on the Healthcare Parcel during the term of this Agreement or from the exercise of the License by Developer or the Developer Representatives; (b) entry onto the Healthcare Parcel by Developer or the Developer Representatives in connection with this Agreement, (c) bodily injury to or death of any person (including without limitation any employee or contractor of the City Indemnified Parties) or damage to or loss of use of property resulting from such acts or omissions of Developer or any of the Developer Representatives and (d) the cost of Remediation of Hazardous Materials as may be required by and compliance with any Construction Conditions (defined in Section 12.1.3 below) established by any Environmental Agency or Environmental Law and accepted by the City and Developer pursuant to Section 12.1.3; provided that Developer shall not be responsible for and shall have no obligation to defend or indemnify the City Indemnified Parties to the extent a Claim relates to or arises from: (i) the active negligence, gross negligence or willful misconduct of a City Indemnified Party and/or (ii) the mere discovery of existing conditions, contamination or Hazardous Materials at, on, under or emanating from the Healthcare Parcel (subsections (i) and (ii) of this paragraph being, collectively, "**Excluded Claims**"). If the City is served or otherwise presented with a Claim or potential Claim for which it believes it is entitled to defense and/or indemnity under this Section, City will notify Developer of such Claim or potential Claim within ten (10) Business Days of receipt of such claim. Selection of counsel and defense of a Claim shall be conducted in accordance with the provisions of Section 10.1 of the DDA. The provisions of this Section shall survive termination of this Agreement.

11. Costs; No Liens. Developer shall bear all costs relating to the Minimum Horizontal Improvements. Developer and the Developer Representatives shall not place, allow to be placed on, or incur any liens against the Healthcare Parcel or any portion thereof in connection with the Minimum Horizontal Improvements or in any way attributable to the acts of Developer and/or the Developer Representatives on the Healthcare Parcel. Developer agrees to indemnify, defend, and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from

and against any and all Claims arising with respect to payment of liens assessed or levied against the Healthcare Parcel and/or the Improvements in connection with the Minimum Horizontal Improvements performed, materials furnished, or any other activities under control of Developer or the Developer Representatives which, pursuant to the laws of California, may become a lien on the Healthcare Parcel. Should any lien be filed against the Healthcare Parcel in connection with the Minimum Horizontal Improvements, Developer shall promptly bond around the lien as part of disputing the lien with the party asserting the lien. The provisions of this Section shall survive termination of the License and this Agreement. The City may post notices of non-responsibility on the Healthcare Parcel prior to Developer's commencement of any work under this Agreement.

12. Environmental Remediation.

12.1 Remediation.

12.1.1 Loss or Damage to Improvements. In the event of damage to or loss of any improvements or personal property situated on the Healthcare Parcel, Developer shall take all appropriate steps to erect fences to preclude unauthorized access to the Healthcare Parcel and otherwise mitigate hazardous and unsafe conditions within the Healthcare Parcel caused by the damage and destruction.

12.1.2 Pre-Existing Environmental Conditions. If as a result of performing any of the work permitted by this Agreement Developer discovers the presence of Hazardous Materials on the Healthcare Parcel that was present prior to any Developer entry or activity upon the Healthcare Parcel that was not caused by a Developer Release (as defined below) or such pre-existing Hazardous Material is exacerbated by Developer or any Developer Representative, then promptly upon becoming aware of the same, Developer shall (a) provide written notice to the City of such pre-existing or exacerbated Hazardous Material, and (b) tender a claim for the Remediation of such pre-existing or exacerbated Hazardous Material under Developer's PLL insurance policy maintained pursuant to and in accordance with Section 6 of this Agreement and Section 11.1.4 of the DDA and diligently pursue such claim. Except as provided for in this Section 12.1.2, and if Developer has maintained the PLL policy with at least the limits of insurance required in, and at all times required by, Section 6 of this Agreement and Section 11.1.4 of the DDA and such policy is in effect and has not been cancelled when such claim is tendered, then neither Developer nor any Developer Representatives shall have any further obligations or liabilities in connection with or related to such pre-existing or exacerbated Hazardous Materials.

12.1.3 Environmental Conditions Arising During Occupancy. If any release of Hazardous Materials on the Healthcare Parcel occurs during the term of Developer's entry or activities upon, the Healthcare Parcel, (a "**Developer Release**") during the term of this Agreement, then Developer shall (a) promptly upon becoming aware of same, provide written notice (or in the event of emergency, telephonic notice, followed by written notice) of any such Developer Release to the City; and (b) tender a claim for the Remediation of such Developer Release under Developer's PLL insurance policy maintained pursuant to and in accordance with Section 6 of this Agreement and Section 11.1.4 of the DDA and diligently pursue such claim; and (c) indemnify the City for the costs of such Remediation in accordance with Section 10

above; and (d) Remediate the Developer Release in compliance with and to the extent required by Environmental Laws and any Environmental Agency or Agencies to the level required by Governmental Agencies for commercial development as described by the Applicable Approvals, or if such removal is prohibited by any Environmental Laws, take whatever action is required by applicable Environmental Law and such applicable Environmental Agency or Agencies; and (e) take such other action as is reasonably necessary to have the full use and benefit of the Healthcare Parcel as contemplated by this Agreement; and (f) to the extent a No Further Action Letter is required by the applicable Governmental Agency as evidence of completion, provide the City with satisfactory evidence of the actions taken as required in this Section 12. Developer's obligation to Remediate with respect to any affected area under this Section 12.1.3 shall be considered fully satisfied upon receipt of a No Further Action Letter with respect to such affected area. For purposes of this Agreement, the term "**No Further Action Letter**" shall mean a "No Further Action Letter," "Closure Letter" or other equivalent document to be issued by the appropriate Governmental Agency, which letter is to generally confirm that "no further action" is to be required to address the existence of Hazardous Materials within the affected area and there are no constraints or restrictions on future use. The City shall have a right to have an observer present during all such testing and remediation work. City may provide comments to any remedial action plan prepared by Developer for any remediation (a "**RAP**"), and Developer shall not unreasonably decline to incorporate such comments in such RAP; provided, however, that City shall not have approval or consent rights with respect to such RAP unless the applicable Governmental Agency requires the consent of the City for the approval of any RAP or issuance of a No Further Action Letter, in which event the City shall have a right to consent but agrees not to unreasonably withhold, delay or condition such consent. Notwithstanding the immediately preceding sentence, in the event that the applicable Governmental Agency requires the consent of the City for the approval of any RAP or issuance of a No Further Action Letter, the City shall have the right to withhold such consent only to the extent necessary to assure that there shall be no land use control, constraint, limitation or restriction on the construction and sale of commercial medical uses, including without limitation Medical Uses on the Healthcare Parcel ("**Constraints**"); provided, however, that the City shall not unreasonably withhold its consent to Construction Conditions (defined below) that meet the requirements of clauses (a) and (b) below. Examples of Constraints that the City may reject in its sole discretion are Constraints that affect the ability of any Person to construct Medical Uses on the Healthcare Parcel, to dig 12 feet or less below the surface of the land and the like. On the other hand, the Parties recognize that certain remedial or removal action to address Hazardous Materials at the Healthcare Parcel may not be feasible economically or from an engineering perspective without imposition of certain conditions. Such conditions that will not provide Constraints on the use of the Healthcare Parcel are referred to herein as "**Construction Conditions**". As an example, if methane exists below the surface of the Healthcare Parcel, in lieu of removal of the methane, use of a methane boot may be required. If Developer proposes a Construction Condition and the City does not agree to Developer's assertion and withholds consent on that basis, then Developer will obtain and submit to the City estimates from at least two contractors as to the cost to Remediate the Healthcare Parcel to a level without Constraints without Construction Conditions and the cost to Remediate to such level with Construction Conditions. If (a) the cost to Remediate the pre-existing Hazardous Materials without imposition of Construction Conditions is more than 15% greater than the cost to Remediate with the imposition of Construction Conditions and (b) following Remediation to the standard required with imposition of the Construction Condition there is no

Constraint on the ability to construct and sell the Healthcare Parcel for Medical Uses consistent with the Applicable Approvals, then failure of the City to agree to such Construction Condition will be deemed unreasonable absent another basis for denial asserted by the City.

12.1.4 Environmental Reports. Upon written request from the City for the same, Developer shall at no cost to the City provide the City with copies of (a) all test results and data obtained in connection with testing related to Hazardous Materials, and (b) any final environmental and/or consulting reports prepared in connection with, any investigation and/or Remediation of the pre-existing or exacerbated Hazardous Material or a Developer Release.

12.2 Assignment of Rights. City hereby assigns to Developer, to the extent such rights are assignable, on a non-exclusive basis and as the Parties' interests may appear, any rights that City has against any Person with respect to any Remediation, indemnification or liability with respect to Hazardous Materials located on or about the Healthcare Parcel that Developer is responsible for under this Agreement, excluding any rights with respect to City's existing pollution legal liability insurance policies.

12.3 Cooperation; Further Assurances. City shall reasonably cooperate with Developer in pursuing and/or processing any claim against any insurer (excluding claims under City's existing pollution legal liability insurance policies) or any other Person with respect to Developer's obligations under this Agreement, including, without limitation, by making a claim against any insurer in City's name for the benefit of Developer with respect to any costs, liability or damages incurred by Developer under this Agreement, all at Developer's cost and expense. Developer shall have full authority to pursue such claims in its own name and without consent or approval from City, and shall have the right to make all decisions in connection with the pursuit of any such claim. In the event that for any reason the assignment of rights set forth in Section 12.2 above is ineffective or incomplete, City agrees: (a) upon written request of Developer, to pursue claims against any Person for whom the assignment of rights is ineffective or incomplete on behalf of the Developer in City's own name for the benefit of Developer (a "**Third Party Claim**") subject to the provisions of this Section, (b) to initiate a Third Party Claim requested by Developer, which may include an action, arbitration, reference or other alternative dispute resolution mechanism and (c) if the City has no claim, to cooperate with Developer in pursuing any such matter initiated by Developer. If City fails to initiate a Third Party Claim where the City has such a claim, as required hereunder, Developer shall be excused from its obligations to remediate under Section 12.1 above. City shall not unreasonably withhold, condition or delay its compliance with Developer's requests in connection with the prosecution and resolution of such Third Party Claim including, without limitation, with respect to venue, strategy, law and motion and settlement. The City shall use its commercially reasonable diligence in prosecuting such claim to conclusion. City's prosecution of any Third Party Claim or other compliance with the provisions of this Section 12 shall be at Developer's sole cost and expense, and if applicable, with the assistance of counsel selected by Developer who shall represent the City as well as Developer as the real party in interest, except in the event of a conflict of or disparate interest. Such cost and expense of City shall include reimbursement for time of City personnel and counsel incurred in connection with such pursuit, to be charged at the then existing rates charged by City with respect to such personnel. Each of the Parties shall execute and deliver any and all additional papers, documents or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of its obligations under this Section

12 in order to carry out the intent and purpose of this Agreement. City shall promptly pay over to Developer any award, payment, judgment or settlement received by it in respect of any Third Party Claim. In the event the Healthcare Property Close of Escrow occurs under the DDA, this Section 12.3 shall survive the termination of this Agreement.

12.4 Survival. In the event this Agreement terminates due to the Healthcare Property Close of Escrow under the DDA, the terms of the DDA shall govern the Remediation of the Healthcare Parcel by Developer and the provisions of this Section 12 shall not survive other than Sections 12.2 and 12.3 which shall survive only with respect to any pre-existing Hazardous Materials discovered on the Healthcare Parcel by Developer during the term of this Agreement or a Developer Release. In the event this Agreement terminates in accordance with subsections (b), (c) or (d) under Section 2 of this Agreement, the parties' rights and obligations under Sections 12.1.1, 12.1.2 and 12.1.3 shall survive the termination of this Agreement and the parties' obligations under Sections 12.2 and 12.3 shall survive only with respect to any pre-existing Hazardous Materials discovered on the Healthcare Parcel or exacerbated by Developer during the term of this Agreement or any Developer Release. To the extent that completion of any Remediation is required pursuant to the foregoing, Developer will complete such Remediation obligations in full and shall not be relieved of its obligations as a result of the termination of this Agreement or for any other reason.

13. No Supervision or Control. The City (whether acting in its Governmental Capacity or its Proprietary Capacity) does not have any right, and hereby expressly disclaims any right, of supervision or control over the architects, designers, engineers or persons responsible for drafting or formulating of any plans, drawings and related documents of Developer.

14. No Waiver. Nothing contained in this Agreement shall be deemed to waive the right of the City to act in its Governmental Capacity with respect to the consideration and approval of the Entitlements and all other permits, licenses and approvals requested by Developer from time to time in connection with the Project

15. Bailee Disclaimer and Waiver of Claims. Developer acknowledges and agrees that City has granted its permission for use of the Healthcare Parcel only for the purposes and in accordance with the provisions of this Agreement. By entering into this Agreement, City is not agreeing in any manner to accept obligations or responsibility for the safekeeping of the vehicles or other property of Developer or of Developer's agents, contractors, officers, employees or invitees. This Agreement is not a contract for bailment or deposit of goods for safekeeping and City in no manner whatsoever purports to be a bailee. As a material part of the consideration to be rendered to City for this Agreement, Developer hereby waives any and all claims or causes of action against City, its officers, agents, or employees which it may now or hereafter have for damages to, loss of, or theft of Developer's vehicles or other property anywhere in, about, or on Tustin Legacy, including, but not limited to, the Healthcare Parcel, from any cause whatsoever, unless such damage, loss, or theft results from the sole negligence, gross negligence or willful misconduct of City, its officers, agents, or employees.

16. Compliance with Laws and Terms of DDA. Developer will at all times during the term of this Agreement promptly observe and comply, at its sole cost and expense, and shall maintain the Healthcare Parcel and cause its use of the Healthcare Parcel, including without

limitation, all Minimum Horizontal Improvements, to be performed in accordance with the requirements of the DDA, the Grading Permit and all Governmental Requirements, including without limitation all applicable federal and state labor laws and regulations, and all permits required to perform the Minimum Horizontal Improvements. Without limiting the generality of the foregoing, the provisions of Sections 8.8 through 8.12, inclusive, of the DDA and the indemnities set forth in Sections 4.6.4(f), 8.8.5, 8.9, 8.11, 8.12 and 10.1 of the DDA shall apply as though fully set forth herein.

17. Data Sharing. Developer agrees to provide the City with copies of all soil test results. Notwithstanding the provisions of Section 17, and except for the routine reporting of data incident to a permit application, should Developer discover conditions on the Healthcare Parcel during the conduct of the Minimum Horizontal Improvements, that Developer believes may require reporting to any Governmental Authority (local, regional, state, or federal), Developer shall, as promptly as reasonably practical, advise the City of such discovery and thereafter provide City with the field and/or laboratory data pertaining to such discovery. The City shall be responsible for making whatever report or reports may be required in light of such discovery(ies).

18. Rights of City to Revoke License for Default. This Agreement and the License granted hereby may be revoked by the City by provision of written notice to Developer, (a) during the continuation of any default by Developer under this Agreement beyond the notice and cure period set forth in Section 32, or (b) at any time if the City determines, in its sole discretion, that the conduct or activities of Developer create health or safety concerns requiring stoppage of the work. If Developer disputes the City's revocation of the License pursuant clause (b) above, Developer shall have the right to provide the City with written notice within three (3) calendar day(s) following delivery of such revocation notice setting forth Developer's basis for the dispute. Developer and City shall meet and confer within five (5) Business Days from the delivery of Developer's notice, in order to identify specific actions and remedies to be taken by Developer to cure the default asserted by the City and provided that Developer agrees in writing to take such actions and to promptly prosecute them to completion in a manner satisfactory to the City in its reasonable discretion, the City shall not unreasonably withhold the reinstatement of the License and this Agreement.

19. Additional Rules and Regulations Applicable to Use of Healthcare Parcel. In connection with its use of the Healthcare Parcel, Developer shall comply with the rules and regulations of the City attached as **Exhibit "C"** to this Agreement.

20. Dispute Resolution. In the event of a dispute between the Parties with respect to this Agreement, the Parties agree that they shall resolve such dispute in accordance with the provisions of Section 18.1 of the DDA, and the cost of any such proceeding shall be borne in accordance with the provisions of Section 18.2 of the DDA and the provisions of Section 18.9 of the DDA shall apply with respect to such dispute.

21. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

22. Relationship of Parties; Not an Easement or Interest in Land. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other relationship between the Parties. Nothing in this Agreement shall create or constitute an easement in the Healthcare Parcel and this Agreement shall be considered nothing other than a license as set forth herein.

23. Notices. All notices required by this Agreement shall be provided in writing and shall be deemed received when (a) personally served, (b) two (2) days after being sent by registered or certified mail, return receipt requested, postage or charges prepaid, or by recognized overnight carrier, or one (1) day after receipt by facsimile machine or electronic mail, with transmission and receipt acknowledged in writing by facsimile, email or any other method permitted under this Section, and addressed to the Party for whom intended at such Party's address herein specified, or at such other address as such Party may have substituted therefore by proper notice to the other.

If to Developer:

1C Tustin Legacy, LLC
915 Wilshire Blvd., Suite 2200
Los Angeles, CA 90017
Attn: John Mehigan
Fax: (213) 624-2279
Email: jmehigan@regencycenters.com

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, California 92614-7321
Attn: Drew Emmel, Esq.
Fax: (949) 553-8354
Email: demmel@allenmatkins.com

If to the City:

City of Tustin
Attn: Jeffrey C. Parker, City Manager
300 Centennial Way
Tustin, CA 92780
Fax: (714) 838-1602
Email: jparker@tustinca.org

With a copy to:

Woodruff Spradlin & Smart, APC
Attn: David Kendig, Esq., City Attorney
555 Anton Boulevard, #1200
Costa Mesa, CA 92626
Fax: (714) 415-1183
Email: dkendig@wss-law.com

and:

Armbruster Goldsmith & Delvac LLP
Attn: Amy E. Freilich, Esq., Special Counsel
11611 San Vicente Blvd., Suite 900
Los Angeles, CA 90049
Fax: (310) 209-8801
Email: amy@agd-landuse.com

24. No Assignment. This Agreement shall not be assigned by Developer except with the prior written consent of the City in its sole discretion.

25. Exhibits Incorporated. Each exhibit attached and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

26. Severability. If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

27. Entire Agreement. This Agreement and the DDA contain the entire agreement of the Parties with respect to the subject matter and no amendment, change, modification or supplement to this Agreement shall be valid and binding on any of the Parties unless it is represented in writing and signed by each of the Parties hereto.

28. Counterparts. This Agreement and any amendments hereto may be executed in counterparts, each of which is deemed an original and all of which, when taken together, shall constitute one and the same instrument.

29. Further Assurances. Each of the Parties hereto shall execute and deliver at their own cost and expense, any and all additional papers, documents, or instruments, and shall do any and all acts and things reasonably necessary or appropriate in connection with the performance of its obligations hereunder in order to carry out the intents and purposes of this Agreement.

30. Authority. Each Party warrants that it has the power and authority to enter into this Agreement and to perform its obligations hereunder. Each individual who signs this

Agreement on behalf of an entity warrants that he/she has been duly authorized to do so and to bind such entity.

31. Default Procedure. The non-defaulting party (the "**Non-Defaulting Party**") at its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of any other party (the "**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed to be in "default" of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cure the default within ten (10) Business Days after the date of such notice or, with respect to a default which by its nature cannot be cured within such ten (10)-Business Day period, then the Defaulting Party shall be deemed to be "default" of its obligations hereunder if the Defaulting Party has failed to commence to cure within such ten (10)-Business Day period and thereafter diligently pursue to completion.

32. Limitation on Damages. Developer acknowledges that the City would not have entered into this Agreement if the City could become liable for damages under or with respect to this Agreement. Consequently, and notwithstanding any other provision of this Agreement, except for the payment of attorneys' fees in accordance with Section 21 of this Agreement and court costs, the City shall not be liable in damages under this Agreement to Developer and Developer, on behalf of itself and each Developer Representative hereby waives any and all rights to claim damages of any other kind or nature from the City including without limitation, Claims for lost profits, consequential, incidental, indirect, special, collateral, exemplary or punitive damages. Except as otherwise set forth in this Agreement, in no event shall Developer be liable to the City for any lost profits, consequential, incidental, indirect, special, collateral, exemplary or punitive damages in connection with this Agreement or the Minimum Horizontal Improvements.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.
SIGNATURES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

DEVELOPER:

1C TUSTIN LEGACY, LLC,
a Delaware limited liability company

By: Regency Centers, L.P.,
Delaware limited partnership,
Its Sole Member

By: Regency Centers Corporation,
a Florida corporation,
Its General Partner

By: _____
John Mehigan,
Vice President

CITY OF TUSTIN:

By:_____
Jeffrey C. Parker,
City Manager

ATTEST:

By: _____
Erica Rabe
City Clerk

APPROVED AS TO FORM

By: _____
David Kendig,
City Attorney

Armbruster Goldsmith & Delvac LLP
Special Tustin Counsel

By: _____
Amy E. Freilich

EXHIBIT "A
LEGAL DESCRIPTION OF HEALTHCARE PARCEL

EXHIBIT "B"
DEPICTION OF HEALTHCARE PARCEL

EXHIBIT "C"
RULES AND REGULATIONS

1. Developer shall comply with all requirements of the Occupational Safety and Health Administration.

2. Trash disposal shall comply with CR&R Incorporated and City of Tustin standards.

3. Developer shall be required to have and maintain a valid City of Tustin Business License.

4. All requirements of the City's Noise Ordinance (Chapter 6 of the City Code) shall be met at all times.

5. Developer may not access any other areas on the adjacent Tustin Legacy properties and may not enter any of the buildings on the Tustin Legacy site for any purpose.

6. Developer shall ensure controlled access to the Healthcare Parcel is maintained. Developer shall ensure the access gates remain closed all times while not in use. Developer understands and agrees that this access may be disturbed in the future. The City makes no guarantees that there will be continuing access that can be provided at the current location.

7. Except for ingress and egress, Developer must keep the vehicle gates and adjacent roadway free and clear at all times. Developer shall install a temporary (mobile) chain-link fence around the Healthcare Parcel at its sole cost and expense subject to inspection and approval of the installation by the City. Developer shall remove said installation upon termination of this Agreement. The vehicle gate shall be installed to open into the parking lot so as not open outward and obstruct the internal circulation access route between the Healthcare Parcel and Tustin Ranch Road.

8. Security and access to Tustin Legacy is currently performed by the City of Tustin Police Department. The City of Tustin is not responsible for providing security services for Developer, Developer's equipment or property, or the Healthcare Parcel during the license period. Access to the Healthcare Parcel shall be permitted only during daylight hours only from 7:00 a.m. until 6:00 p.m., Monday through Friday, 9:00 a.m. until 5:00 p.m. on Saturdays. Developer is responsible for securing the Healthcare Parcel; including without limitation keeping the vehicle gate closed and locked during hours when use of the Healthcare Parcel is not permitted.

9. Hours of operation shall be according to Tustin City Code Section 4616 which limits construction activities to between 7:00 a.m. and 6:00 p.m. Monday through Friday, and between 9:00 a.m. and 5:00 p.m. on Saturdays, and at no time on Sundays unless otherwise approved by the City. Construction activities are prohibited on New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

10. This development shall comply with all provisions of the City of Tustin Water Quality Ordinance and all Federal, State, and Regional Water Quality Control Board rules and regulations, including keeping the Healthcare Parcel, and public roadways, including but not limited to Tustin Ranch Road and Warner Avenue, clear of any dirt or mud tracked out of the parking area.

11. In addition to access required under other provisions of this Agreement, the City, and the Department of Navy and their representatives shall be allowed access to the Healthcare Parcel at all times throughout the term of this Agreement, for any purpose without prior written notice to Developer. Developer shall ensure that the City has a current roster of on-call personnel and their phone numbers. Developer shall have no claim against the City for exercise of their rights of access hereunder.

12. Developer shall not make or permit to be made any use of the Healthcare Parcel or any part thereof (i) which would violate any of the covenants, agreements, terms, provisions, and conditions of this Agreement; or (ii) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; or (iii) which will suffer or permit the Healthcare Parcel or any part thereof to be used in any manner or permit anything to be brought onto or kept thereon which, in the reasonable judgment of City, shall in any way impair or tend to impair the character, reputation or appearance of the Healthcare Parcel or which will impair or interfere with or tend to impair or interfere with any of the services performed by City.

13. Developer shall not display, inscribe, print, maintain or affix on any place in or about the Healthcare Parcel any sign, notice, legend, direction, figure or advertisement, except as may be approved by City in writing.

14. Developer shall comply with all laws, enactments, rules, ordinances and regulations of all governmental authorities relating or applicable to Developer's occupancy of the Healthcare Parcel governing use of the Healthcare Parcel. Developer shall obtain all permits and licenses required by the City of Tustin and shall pay all required fees.

15. Developer's work on the Healthcare Parcel will be coordinated and performed with the work contemplated in and in accordance with the Soil License Agreement.

16. Developer shall allow no dangerous or hazardous condition to be created or caused on the Healthcare Parcel.

ATTACHMENT 28

APPLICABLE APPROVALS

1. Development Agreement 2015-001

2. Specific Plan Amendment 2015-002: To amend the Specific Plan to allow Acute Care/Rehabilitation facilities and similar uses as a conditionally permitted medical office use and to increase the maximum building height from 45' to a proposed height of 60' for the acute care building (Building M) and to 54 feet for the medical office building (Building K).

3. Concept Plan 2015-003

4. Design Review 2015-014

5. Tentative Parcel Map 2015-127: This Tentative Parcel Map is a subdivision of the approximately 20 acre site into 13 numbered lots and four lettered lots for the development of a multiple-use commercial center. Reciprocal access easements are identified for shared access among the lots of the commercial center.

6. Conditional Use Permit 2015-11: A Conditional Use Permit to allow development of a 75,000 square foot/80 bed acute care/rehabilitation facility/rehabilitation/convalescent care facility (Building M) subject to approval of the Specific Plan Amendment 2015-00X, which adds this use to the list of conditionally permitted office uses and with parking to meet Tustin Code requirements for hospitals.

7. Conditional Use Permit 2015-12: A Conditional Use Permit to allow development of a drive-thru associated with a 14,576 square foot drug store/pharmacy (Building D).

8. Conditional Use Permit 2015-13: A Conditional Use Permit to allow development of a drive-thru associated with a 3,300 square foot restaurant pad (Building E).

9. Conditional Use Permit 2015-14: A Conditional Use Permit to allow development of a drive-thru associated with a 3,324 square foot band/financial institution (Building H).

10. Conditional Use Permit 2015-15: A Conditional Use Permit to allow development of a drive-thru associated with a 4,500 square foot restaurant, as an alternate use for Building I.

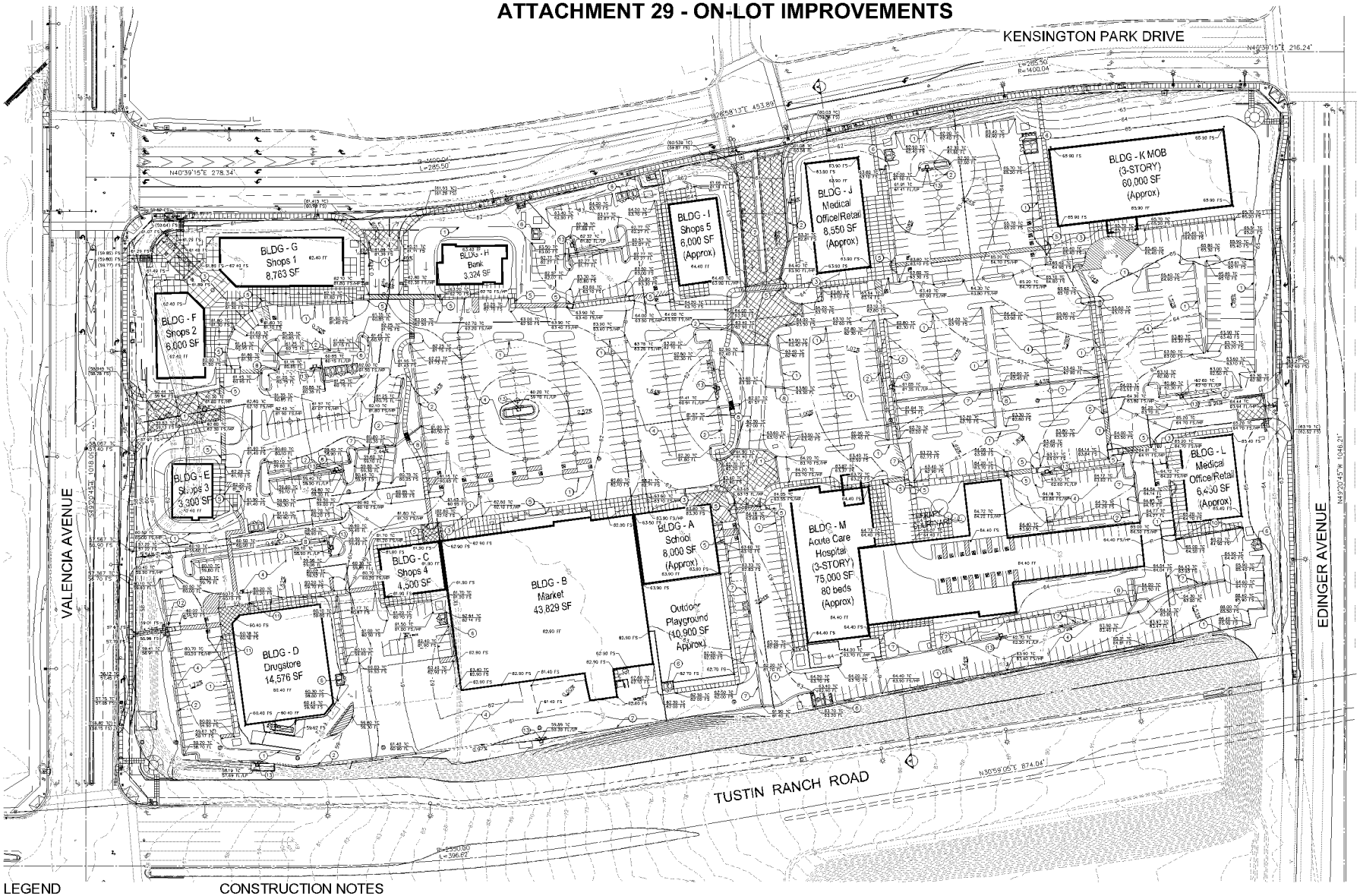
11. Conditional Use Permit 2015-16: A Conditional Use Permit related to a master sign program for the commercial center.

12. Conditional Use Permit 2015-17: A Conditional Use Permit to allow development of an 8,000 square foot childcare center/school with 10,968 square foot outdoor playground (Building A).

13. General Plan Conformity to determine that the location, purpose, and extent of the proposed disposition of an approximately 22.7-acre site within Neighborhood B of the MCAS Tustin Specific Plan for the development of 248,292 square feet of a neighborhood commercial center is in conformance with the approved General Plan.

14. Conditional Use Permit 2015-23 for the establishment of joint use parking for Parcels 10, 11, 12 and 13 (15000, 15020, 15100 and 15120 Kensington Park Drive).

ATTACHMENT 29 - ON-LOT IMPROVEMENTS



LEGEND

- CENTER LINE
- PROPERTY LINE
- EASEMENT LINE
- CIVIL LIMIT OF WORK LINE
- GB — GRADE BREAK LINE
- R — RIDGE LINE
- F — FLOW LINE
- 2:1 SLOPE (MAX)
- 49.50 TC / 49.00 FS — PROPOSED SPOT GRADE
- (49.50 TC) / (49.00 FS) — EXISTING SPOT GRADE
- 49.50 TC / 49.00 FS/HP — HIGH POINT SPOT GRADE
- 49.50 TC / 49.00 FS/LP — LOW POINT SPOT GRADE
- 2.00% — PROPOSED FLOW (DIRECTION AND SLOPE)
- PROPOSED CATCH BASIN
- PROPOSED STORM DRAIN MANHOLE

CONSTRUCTION NOTES

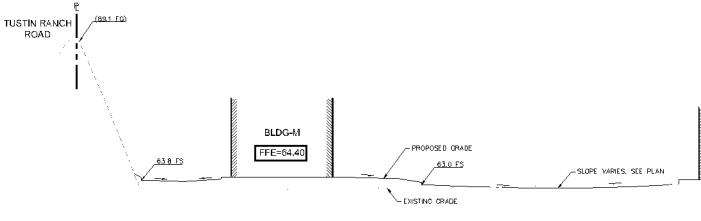
1. CONSTRUCT 6" CURB
2. CONSTRUCT 6" CURB AND GUTTER
3. HARDSCAPE TO BE DETERMINED
4. CONSTRUCT AC PAVEMENT
5. CONSTRUCT ADA CURB RAMP
6. TRASH ENCLOSURE PER ARCHITECT'S PLANS
7. CONSTRUCT 3" VALLEY GUTTER
8. CONSTRUCT 2' DOUBLE CURB CHANNEL
9. TRANSITION 6" CURB TO 8" CURB
10. TRANSITION 6" CURB TO 4" CURB
11. TRANSITION 6" CURB TO 0" CURB
12. PARKWAY DRAIN
13. INSTALL CATCH BASIN

BENCHMARK

COUNTY OF ORANGE BENCHMARK NO: 3B-97-85

DESCRIBED BY OCS 2002 - FOUND 3 3/4" OCS ALUMINUM BENCHMARK DISK STAMPED "3B-97-85", SET IN THE SOUTHEASTERLY END OF A 1 FT. BY 24 FT. CONCRETE HEADWALL. MONUMENT IS LOCATED ALONG THE NORTHEASTERLY SIDE OF EDINGER AVENUE, 0.75 MILES NORTHWESTERLY OF THE CENTERLINE OF HARVARD AVENUE, 80FT NORTHEASTERLY OF THE CENTERLINE OF EDINGER AND 52 FT SOUTHWESTERLY OF THE SOUTHWEST RAIL ALONG THE ATCHINSON TOPEKA AND SANTA FE RAILWAY. MONUMENT IS SET 7.0 FT. BELOW THE RAILROAD TRACKS

ELEVATION: 58.713 FEET (NAVD 88)



GRAPHIC SCALE IN FEET
0 20 40 80

No.	REVISIONS	DATE	BY

Kimley»Horn
© 2015 KIMLEY-HORN AND ASSOCIATES, INC.
765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: (714) 939-1030 FAX: (714) 938-9488
WWW.KIMLEY-HORN.COM

KHA PROJECT	095432001
DATE	7/17/2015
SCALE	AS SHOWN
DESIGNED BY	WS
DRAWN BY	WS
CHECKED BY	JB

LICENSED PROFESSIONAL
JASON MURDOCK
CA LICENSE NUMBER
63164
7/17/2015
DATE

TENTATIVE PARCEL MAP
2015-127
CONCEPTUAL GRADING SHEET

TUSTIN LEGACY
PREPARED FOR
REGENCY CENTERS
8115 KILBY SHORE BOULEVARD, SUITE 2200
JACKSONVILLE, FL 32211
(904) 598-1600
LUKE.GOMEZ@REGENCYCENTERS.COM

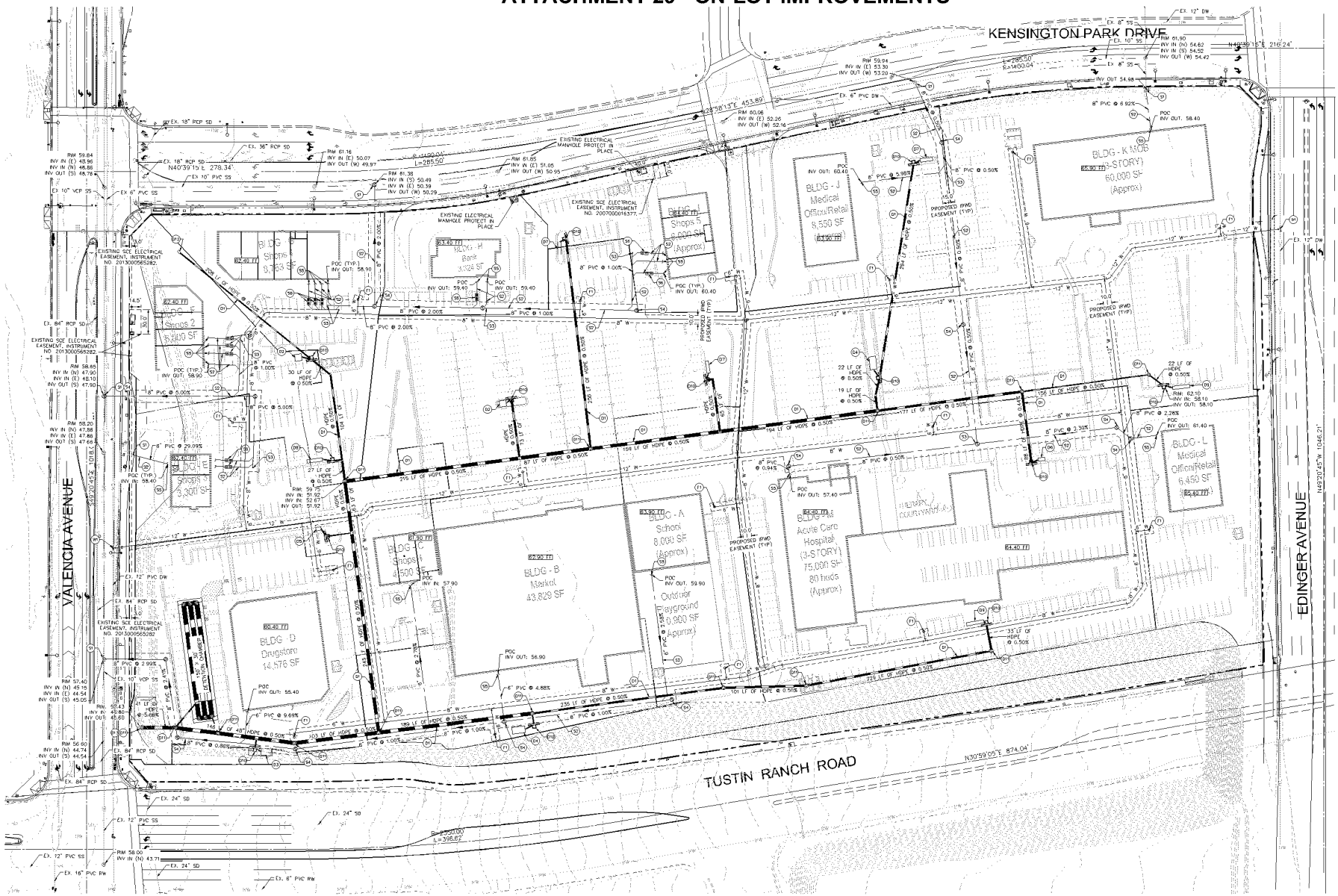
TUSTIN CA

SHEET NUMBER
C-201

Plotted By: Kevin Yee - Chinese Street Set: TUSTIN LEGACY Layout: CONCEPTUAL GRADING SHEET July 17, 2015 03:21:05pm K:\ORA_LGE\095432001 - Tustin Legacy\CAD\Landscape\Tentative Parcel Map\CONCEPTUAL GRADING SHEET.dwg

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

ATTACHMENT 29 - ON-LOT IMPROVEMENTS



LEGEND

- CENTER LINE
- PROPERTY LINE
- IRWD EASEMENT LINE
- SS — EXISTING SANITARY SEWER PIPE
- SD — EXISTING STORM DRAIN PIPE
- W — EXISTING DOMESTIC WATER PIPE
- RW — EXISTING RECLAIMED WATER PIPE
- S — PROPOSED SANITARY SEWER PIPE
- PROPOSED STORM DRAIN PIPE
- W — PROPOSED DOMESTIC WATER PIPE
- POINT OF CONNECTION (@ BLDG)
- POINT OF CONNECTION (TO EXISTING)
- PROPOSED SEWER CLEANOUT
- PROPOSED REDUCED PRESSURE DETECTOR BACKFLOW ASSEMBLY
- 2.00% PROPOSED FLOW (DIRECTION AND SLOPE)

DOMESTIC WATER

- (W) HOT TAP EXISTING WATER MAIN. COORDINATE TAP WITH LOCAL WATER PURVEYOR.
- (W2) INSTALL DOMESTIC WATER METER. COORDINATE WITH LOCAL WATER PURVEYOR.
- (W3) BUILDING POINT OF CONNECTION (5-FT FROM BUILDING FACE). REFER TO PLUMBING PLANS FOR CONTINUATION.

FIRE WATER

- (F1) INSTALL FIRE HYDRANT ASSEMBLY (6"x4"x2½"x2½").
- (F2) INSTALL FIRE DEPARTMENT CONNECTION (6"x2½"x2½") POTTER ROEMER MODEL NO. 5765, OR APPROVED EQUAL.

SEWER CONSTRUCTION NOTES

- (S1) CONNECT TO EXISTING SEWER MAIN / BREAK INTO EXISTING SSMH PER SSPWC CONSTRUCTION STD PLANS
- (S2) INSTALL 6" SDR-35 PVC SEWER LATERAL AT 1.00% SLOPE.
- (S3) INSTALL SEWER CLEANOUT PER DETAIL X, SHEET X.
- (S4) CONSTRUCT SEWER MANHOLE PER SSPWC STD PLANS
- (S5) BUILDING POINT OF CONNECTION. REFER TO PLUMBING PLANS FOR CONTINUATION.
- (S6) INSTALL GREASE INTERCEPTOR.

STORM DRAIN

- (D1) PROPOSED STORM DRAIN PIPING AND APPURTENANCES. CONTRACTOR TO REFER TO DRAINAGE PLAN FOR INFORMATION.
- (D2) MODULAR WETLAND MODEL NO. MWS-L-8-8
- (D3) MODULAR WETLAND MODEL NO. MWS-L-8-12
- (D4) MODULAR WETLAND MODEL NO. MWS-L-8-16
- (D5) MODULAR WETLAND MODEL NO. MWS-L-4-6
- (D6) MODULAR WETLAND MODEL NO. MWS-L-4-8
- (D7) MODULAR WETLAND MODEL NO. MWS-L-4-15
- (D8) MODULAR WETLAND MODEL NO. MWS-L-4-19
- (D9) MODULAR WETLAND MODEL NO. MWS-L-4-21
- (D10) INSTALL CURB INLET
- (D11) INSTALL STORM DRAIN MANHOLE
- (D12) INSTALL GRATE INLET
- (D13) REMOVE EXISTING BRICK AND MORTAR PLUG AND CONNECT TO EXITING SDL

GENERAL NOTES:

1. SEE SITE PHOTOMETRIC PLAN FOR LIGHT POLE LOCATION.
2. FRANCHISED UTILITY ROUTING (ELECTRICAL, PHONE, GAS, AND CABLE TV) TO BE DETERMINED AT A LATER DATE DURING THE CONSTRUCTION DOCUMENT PHASE.

GRAPHIC SCALE IN FEET
0 20 40 80

TUSTIN LEGACY
PREPARED FOR
REGENCY CENTERS
855 WILSHIRE BOULEVARD, SUITE 2200
LOS ANGELES, CA 90017
T 213.683.3200
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WWW.KIMLEY-HORN.COM

No.	REVISIONS	DATE	BY

KHA PROJECT 095432001
DATE 7/15/15
SCALE AS SHOWN
DESIGNED BY WS
DRAWN BY WS
CHECKED BY JB

LICENSED PROFESSIONAL
JASON BURDEKIN
CA LICENSE NUMBER 63164
7/15/2015
DATE

TENTATIVE PARCEL MAP 2015-127
CONCEPTUAL UTILITY PLAN

SHEET NUMBER C-202

Plotted By: Kevin Thomas Street Set: TUSTIN LEGACY Layout: CONCEPTUAL UTILITY PLAN July 13, 2015 03:26:54pm K:\ORA_LDEV\095432001 — Tustin Legacy\CAD\Easements\Tentative Parcel Map\CONCEPTUAL UTILITY PLAN.dwg

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