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**Land Disposition and Development Agreement**

**Between**

**The City of Salinas**

**And**

**Taylor Fresh Foods, Inc**

**Dated as of \_\_\_\_\_, 2025**

**Exhibit B**

TOC

DRAFT

## LAND DISPOSITION AND DEVELOPMENT AGREEMENT

This Land Disposition and Development Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2025 ("Effective Date"), by and between the City of Salinas, a California charter city and municipal corporation ("City") and Taylor Fresh Foods, Inc., a Delaware corporation ("Developer", together City and Developer are the "Parties"), with reference to the following facts, understandings and intentions of the Parties, and pursuant to the authority of Government Code section 65864 et. seq., relating to Development Agreements:

### RECITALS

A. To provide a process so that, upon approval of a project, the applicant may proceed with the project in accordance with existing policies, rules, and regulations, subject to the conditions of approval, thus vesting certain development rights in the property, California Government Code section 65864, et seq. (the "Development Agreement Statute") and Salinas Municipal Code Article VI, Division 11 of Chapter 37, authorize the City and any person having a legal or equitable interest in real property to enter into a Development Agreement, establishing certain development rights in the Property.

B. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

C. The City owns property located at Salinas Street, Lincoln Avenue and W. Gabilan Street, a portion of Assessor's Parcel Number 002-244-098 (commonly known as "Lot 8"); and at Lincoln Avenue and W. Gabilan Street, Assessor's Parcel Numbers 022-245-002, 022-245-003, 022-245-004, 022-245-005, 022-245-006, 022-245-007, and 022-245-0038 (commonly known as "Lot 12"), as more particularly shown on Exhibit A (collectively the "Property").

D. On October 27, 2020, the City Council approved Resolution No. 21987 declaring the Property surplus land pursuant to Government Code Sections 54220, et seq. (the "Surplus Lands Act").

E. On November 3, 2020, the City issued a notice of availability of surplus properties, including the above referenced Property, in compliance with the Surplus Lands Act. The City received a letter of interest from an eligible entity for the Property; however, that entity later submitted a letter to the City withdrawing its interest in developing the Property. The City consequently proceeded to make the Property generally available for purchase.

F. With the Property generally available for purchase, the Developer has indicated a desire to acquire the Property and the Developer intends to develop the Property with a hotel/retail/commercial use and a multi-family residential/retail use as

generally described in Section 1.1(dd) and as generally shown on Exhibit E (the "Project").

G. The City's Downtown Vibrancy Plan states "The area surrounding Salinas and Gabilan Street offers an excellent opportunity for development... This area could build on the momentum created with the construction of Taylor Farms' new corporate headquarters building." This area includes both Lot 8 and Lot 12.

H. The Downtown Vibrancy Plan identifies Lot 8 and Lot 12 as "redevelopment site[s]" within the downtown area, and contemplates "structured parking or mixed-use development" on both sites, with Lot 12 further identified as a possible market-rate housing development.

I. The Project will support the revitalization of the downtown neighborhood and Gabilan Street, consistent with the Downtown Revitalization Plan approved by the City Council. The hotel/retail/commercial use will bring jobs and increase revenue generation, and the multi-family residential/retail development will meet the minimum affordable housing allocation requirement of the City's Inclusionary Housing Ordinance in effect as of the Effective Date.

J. The City staff has duly noticed the proposed adoption of this Agreement pursuant to Government Code sections 65090, 65091 and 54954.2(a)(1). The City has approved a resolution in accordance with Municipal Code Section 12-16, stating that the property disposition supports neighborhood revitalization and assists in the provision of low and moderate income housing, finding that public convenience, necessity or welfare and objectives of the City's neighborhood improvement program will benefit from such conveyance or sale and stating the terms and conditions thereof and the reasons therefor.

K. The City has found that the Project, as shown in the plans described in Section 1.1(dd) and this Agreement, is consistent with the City's General Plan (for which an Environmental Impact Report was certified by the City on August 6, 2002, by Resolution No. 18015, and that pursuant to an environmental assessment prepared by Cotton/Bridges/Associates dated August 2002, there are not project-specific significant effects which are peculiar to the Development or the Property which were not addressed in the EIR.

**NOW THEREFORE, the City and the Developer agree as follows:**

ARTICLE 1.  
DEFINITIONS AND EXHIBITS

Section 1.1. Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Affordable Housing Agreement" means a written agreement between the Developer and the City ensuring the continuing affordability of housing on the Project.

(b) "CEQA" means the California Environmental Quality Act (Public Resource Code 21000 *et seq.*), and its implementing regulations.

(c) "Certificate of Completion" means the certificate to be issued by the City pursuant to Section 7.9 of this Agreement.

(d) "City" means the city of Salinas, a California charter city and municipal corporation.

(e) "City Council" means the City Council of the City.

(f) "City Event of Default" has the meaning set forth in Section 10.4.

(g) "City's Response Date" has the meaning set forth in Section 4.2.

(h) "Close of Escrow" means the date the Grant Deed is recorded in the Official Records. It is anticipated that there will be two (2) dates for the Close of Escrow: one for Lot 8 and one for Lot 12.

(i) "Control" means direct or indirect management or control of the: (i) managing member or members in the case of a limited liability company; (ii) the managing general partner or general partners in the case of a partnership; and (iii) boards of directors that overlap by fifty percent (50%) or more of their directors, or a majority of the directors in the case of a corporation.

(j) "Construction Plans" shall mean the construction plans submitted by Developer and approved by the City in connection with the building permits for the Project.

(k) "County" means the County of Monterey, California.

(l) "Disposition Documents" mean, collectively, this Agreement and all other documents required to be executed or acknowledged in writing by the Parties in connection with the transaction contemplated by this Agreement.

(m) "Developer" means Taylor Fresh Foods, Inc., a Delaware corporation, and its successors and assigns as permitted by this Agreement.

(n) "Developer Event of Default" has the meaning set forth in Section 10.5.

(o) "Development" means the development of the Project and that portion of the Property used for the Project.

(p) "Due Diligence Period" means the period, as set forth in Sections 4.1, 4.2 and 4.3, that the Developer shall have to complete its investigation into whether to purchase all or part of the Property. The Due Diligence Period shall automatically expire thirty (30) days after the last of these events to occur: (1) the City and the Developer agree upon a Purchase Price; (2) the Developer accepts the Title Report; (3) the Developer accepts the results of the Phase I and Phase II environmental investigations; (4) the Developer accepts all of the conditions of approval for the part of the Property that is at issue (either Lot 8 or Lot 12), including execution of an Affordable Housing Agreement if applicable to the Lot at issue; and (5) two hundred ten (210) days after the Effective Date.

(q) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(r) "Existing City Laws" means the City General Plan, Zoning, Municipal Code and other rules, regulations and official policies governing the permitted uses of the Property, density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes that are in effect on the Effective Date.

(s) "Grant Deed" means the grant deed of the Property, or any portion thereof, to the Developer from the City, substantially in the form attached as Exhibit B.

(t) "Hazardous Materials" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any environmental law as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, under: the California Hazardous Waste Control Law (California Health & Safety Code, Division 20, Chapter 6.5); the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health & Safety Code, Division 20, Chapter 6.6); Underground Storage of Hazardous Substances (California Health & Safety Code, Division 20, Chapter 6.7); Hazardous Substance Account Act (California Health & Safety Code, Division 45); the Hazardous Materials Release Response Plans and Inventory (California Health & Safety Code, Division 20, Chapter 6.95); the Clean Water Act (33 U.S.C. 1251, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. 6901, *et seq.*); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, *et seq.*); the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001, *et seq.*); Control of Radioactive Contamination of the Environment (California Health & Safety Code, Division 104, Part 9, Chapter 5, Article 1); the Clean Air Act (42 U.S.C. 7401, *et seq.*); 40 Code of Federal Regulations Section 302.4; or any federal, state, or local statute, ordinance, regulation, administrative order or decision, or judicial decision interpreting or applying any of these provisions, as well as any amendments of any of these provisions, or any subsequently enacted statutes, ordinances, regulations, or orders, which refer or relate to "Hazardous Substances" as used in this Agreement

("Environmental Laws"); provided, however, that specifically included under this Agreement are asbestos, PCB's, mercury, sulphur dioxide, vinyl chloride, urea formaldehyde, natural gas, compressed natural gas, methanol, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), all petroleum products or byproducts, hydrocarbons, and any components or derivatives thereof, any per- and polyfluoroalkyl substances known as "PFAS."

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, construction, or management of commercial properties, or typically used in office activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Development, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(u) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(v) "Indemnitees" has the meaning set forth in Section 11.6.

(w) "Opening of Escrow" means when the fully executed Agreement has been provided to the Title Company and the Title Company has opened the escrow file for the sale of the Property.

(x) "Official Records" means the official land records of the County of Monterey.

(y) "Parties" means the City and the Developer and either of their permitted successors and assigns.

(z) "Party" means either the City or the Developer and either of their permitted successors and assigns.

(aa) "Passive Investor Member" has the meaning set forth in Section 9.1(b).

(bb) "Project" means the approximately \_\_\_\_ unit Developer intends to build multifamily housing and \_\_\_\_\_ square foot retail/commercial use on Lot 12, and the approximately \_\_\_\_ square foot hotel/retail commercial use that Developer intends to build on Lot 8 as more particularly described in the Agreement and all other agreements concerning the Property.

(cc) "Project Approvals" has the meaning set forth in Section 6.2.

(dd) "Project Area" means the project area more particularly described in Exhibit G.

(ee) "Property" means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Recital B and Exhibit A.

(ff) "Purchase Price" has the meaning set forth in Section 2.1.

(gg) "Released Parties" has the meaning set forth in Section 5.5(d).

(hh) "Revitalization Plan" means the Revitalization Plan for the Central City Revitalization Project Area as amended from time to time.

(ii) "Scope of Development" shall mean a detailed description of the Project to be constructed by Developer pursuant to this Agreement as set forth in Exhibit C attached hereto and incorporated herein.

(jj) "Schedule of Performance" means the schedule attached as Exhibit D, as approved by the City, setting forth the anticipated schedule for the Developer's acquisition of the Property and the development of the Project.

(kk) "Term" means the term of this Agreement, which shall consist of the period commencing as of the Effective Date and continuing until the recordation of a Certificate of Completion for all development of the Project and any other obligations of the Parties; provided, however, the rights to develop under Section 6.2 shall expire thirteen (13) years from the Effective Date, subject to the extensions in Section 11.3.

(ll) "Title Approval Date" has the meaning set forth in Section 4.2.

(mm) "Title Company" means a title company as the Parties may mutually select.

(nn) "Title Report" means a preliminary title report for the Property, dated after the Effective Date.

(oo) "Transfer" has the meaning set forth in Section 9.1.

Section 1.2. Exhibits. The following exhibits are attached to and incorporated in the Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Form of Grant Deed
- Exhibit C: Scope of Development
- Exhibit D: Schedule of Performance
- Exhibit E: Project Renderings
- Exhibit F: License Agreement
- Exhibit G: Project Area

ARTICLE 2.  
PURCHASE PRICE, ESCROW

Section 2.1. Purchase Price.

The purchase price for this Property shall be determined as set forth in Section 4.1 ("Purchase Price"). If the Developer agrees to proceed with the purchase after the Purchase Price is determined, the Purchase Price shall be paid in cash to the City by the Developer at the Close of Escrow.

Section 2.2. Opening Escrow.

To accomplish the purchase and transfer of the Property from the City to the Developer, within five (5) business days of the full execution of this Agreement, the Parties shall complete the Opening of Escrow. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof concurrently with the Opening of Escrow, which instructions shall be consistent with this Agreement.

ARTICLE 3.  
CITY'S PREDISPOSITION REQUIREMENTS FOR  
CONVEYANCE OF THE PROPERTY

Section 3.1. Conditions Precedent to Disposition of Property

The requirements set forth in this Article 3 are conditions precedent to the City's obligation to convey the Property to the Developer. The City shall have no obligation to convey the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 3 in the manner set forth below and within the timeframe set forth below and in the Schedule of Performance.

Section 3.2. Project Renderings.

Prior to the Effective Date, the Developer submitted design plans of the site and the Project to the City, as set forth in the attached Exhibit E, which the City has received and accepted. All future refinements of the plans for the Project must be approved by the City through the City's typical land use entitlement and building permit process. The Developer reserves the right to revise the Project from the renderings, subject to approval of the City.

As set forth in Section 4.4, the Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, or applications, and except as provided in Section 6.3 in no way limits the discretion of the City in the permit allocation and approval process.

Section 3.3. Insurance.

The Developer shall furnish to the City evidence of the insurance coverage

meeting the requirements of Section 8.4 below, no later than the date set forth in the for Close of Escrow in this Agreement.

ARTICLE 4.  
DEVELOPER'S PREDISPOSITION REQUIREMENTS FOR  
PURCHASE OF THE PROPERTY

Section 4.1. Agreement to Purchase Price.

The Purchase Price for each Lot shall be determined through an appraisal process. The City has prepared an appraisal by [NAME], on [DATE]. The Developer shall have thirty (30) days after receiving the appraisal with the Purchase Price for each Lot to either accept the appraisal or retain John Piini (or another appraiser of the Developer's choice) to prepare another appraisal. If the Parties both accept the second appraisal, that shall be the Purchase Price. If the Developer and the City do not agree to accept the second appraisal, then the two appraisals shall be averaged (added together and divided by two (2)) to determine the final Purchase Price. If either Party does not accept the final Purchase Price, the non-consenting Party shall notify the other Party within thirty (30) days of receiving the second appraisal that the final Purchase Price is unacceptable because neither the second appraisal nor the average of the two appraisals is acceptable, and why. The City and the Developer may agree to further negotiate the Purchase Price or either Party can notify the other of the termination of this Agreement.

Section 4.2. Acceptance of Title Exceptions.

Within five (5) days after the Opening of Escrow, Title Company shall provide the City and the Developer with a Title Report covering each Lot within the Property together with copies of all documents referred to therein. The Developer shall approve the Title Report in writing on or before the date ("Title Approval Date") that is thirty (30) days after the Developer has received the Title Report. The Developer's approval or disapproval shall be subject to the judgment and personal satisfaction of the Developer in its sole discretion and shall not be controlled by any standard of reasonableness. The Developer's failure to approve or disapprove the Title Report by delivery of written notice thereof to the City and Title Company on or before the Title Approval Date shall be deemed the Developer's disapproval of all matters set forth in the Title Report. If the Developer delivers written notice of disapproval or is deemed to have delivered written notice of disapproval, the City shall have until 5:00 p.m. Pacific Time on the date that is fourteen (14) days after its receipt of the Developer's written notice of disapproval ("City's Response Date"), within which to notify the Developer in writing of its intention to attempt to remove or otherwise cure prior to the Close of Escrow the disapproved exceptions (or portions thereof) as exceptions to title. If for any reason, by the City's Response Date, the City does not provide the Developer with such notice, the City shall be deemed to have elected to not remove or otherwise cure such disapproved exceptions. If the City does not agree, or is deemed not to have agreed, to so attempt to remove or otherwise cure any disapproved exceptions, then the Developer shall have the right to either (a) waive such disapproved items and proceed with this Agreement or

(b) terminate this Agreement prior to the expiration of the Due Diligence Period.

#### Section 4.3. Acceptance of Phase I/Phase II Environmental Reports.

Within sixty (60) days after the Effective Date, the City shall retain, and Developer shall fully reimburse the City for, an environmental consultant to complete a Phase I environmental report for each Lot. Such reports must be completed within two (2) months of the Effective Date. Within thirty (30) days after receiving the final environmental reports, the Developer shall notify the City of whether it needs the City to retain a consultant to complete a Phase II environmental report on either or both Lots. If the Developer fails to provide such notification, it shall be conclusively deemed the Developer's election to terminate this Agreement as a result of the Property's environmental condition. If the Developer asks the City to obtain a Phase II environmental report on either part or both parts of the Property, such report(s) must be completed within four (4) months after the City receives the notice to retain the consultant to complete the Phase II environmental report(s). Within fifteen (15) days after receiving the Phase II environmental report(s), the Developer shall notify the City of whether it accepts the Property's environmental condition. If the Developer fails to provide such notification, it shall be conclusively deemed the Developer's election to terminate this Agreement as a result of the Property's environmental condition. If the Developer only provides such notification accepting the environmental condition of one of the Lots, then it shall be conclusively deemed the Developer's election to terminate this Agreement as to the other Lot.

#### Section 4.4. Approvals.

It is anticipated that Lot 8 and Lot 12 shall Close Escrow at different times, with Lot 12 closing first and Lot 8 thereafter. The Developer shall have the right (directly or through its affiliates) to process all applications for Project Approvals as contemplated by the Developer in its sole and absolute discretion for each part of the Project. The City and the Developer shall work cooperatively in order to try to reach agreement on the appropriate Project Approvals for each Lot. The City shall endeavor to provide the Developer with the Project Approvals at least sixty (60) days prior to the City finalizing such Project Approvals. Within thirty (30) days of receiving all conditions of approval for the necessary Project Approvals for the construction of each Lot, the Developer shall notify the City as to whether it accepts the conditions of approval or whether further discussion is necessary. The intention is that before the conditions of approval are finalized at a public hearing, the City and the Developer will be in agreement that the conditions are appropriate. If, during a public hearing where the conditions are discussed, the City changes the conditions, and the Developer does not agree to the changes, the Developer shall notify the City within seven (7) days of the hearing. If the City is not able or willing to reverse the changes or come to agreement with the Developer on other conditions, the Developer shall have until the thirtieth (30<sup>th</sup>) day after the hearing to terminate this Agreement as to the Lot for which the Parties cannot agree to the conditions of approval.

#### Section 4.5. Affordable Housing.

The Project Approvals for the construction of the Project shall include an Affordable Housing Agreement for the Property.

ARTICLE 5.  
DISPOSITION OF PROPERTY

Section 5.1. Sale and Purchase.

Provided the pre-disposition requirements set forth in Articles 3 and 4 have been satisfied in the manner set forth above and by the dates set forth in Articles 3 and 4, the City shall sell to the Developer, and the Developer shall purchase from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement.

Section 5.2. Purchase Price.

The Purchase Price for the Property, as determined pursuant to Section 4.1, shall be paid in cash to the City by the Developer at the Close of Escrow.

Section 5.3. Close of Escrow.

The close of Escrow for each Lot shall occur no later than the date thirty (30) days after the expiration of the Due Diligence Period for that Lot and only in the event that all conditions precedent to conveyance set forth in Articles 3 and 4 have been satisfied or waived by the City or the Developer, respectively. In addition to the conditions precedent set forth in Articles 3 and 4, the following conditions shall be satisfied prior to or concurrently with, and as conditions of, the Close of Escrow:

(a) The Developer had provided the City with copies of the Developer's organizational documents satisfactory to the City to demonstrate the Developer's power and authority to purchase the Property as set forth herein.

(b) The Developer shall have executed and delivered to the City or the Title Company the Disposition Documents, and any other documents and instruments required to be executed and delivered, all in form and substance satisfactory to the City.

(c) The Developer shall have furnished the City with evidence of the insurance coverage meeting the insurance requirements set forth in Section 8.4.

(d) The Developer and the City shall have entered into **[RESERVED IF LICENSE, RIGHT OF ENTRY OR EASEMENT IS NEEDED]**, substantially, in the form of the attached Exhibit F.

(e) The following documents shall have been recorded in the Official Records of Monterey County: Affordable Housing Agreement (if applicable for the Lot closing escrow).

(f) There shall exist no condition, event or act which would constitute a

breach or default under this Agreement, or any other Disposition Document or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default.

(g) All representations and warranties of the Parties contained in any Disposition Document shall be true and correct as of the Close of Escrow.

Ad valorem taxes, if any, shall be prorated as of the date of conveyance of the Property from the City to the Developer. The Developer shall pay the cost of an ALTA standard owner's policy of title insurance, transfer tax, Title Company document preparation, recordation fees, premiums of owners and lenders title insurance and the escrow fees of the Title Company, if any, and any additional costs to close the escrow. The costs borne by the Developer are in addition to the Purchase Price for the Property.

#### Section 5.4. Condition of Title.

Upon the Close of Escrow, the Developer shall have insurable title, pursuant to an ALTA standard owner's policy, to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement.
- (c) The Affordable Housing Agreement;
- (d) the Grant Deed;
- (e) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; and
- (f) any title exceptions approved by the Developer in writing.

#### Section 5.5. Condition of Property.

(a) "AS IS" PURCHASE. PRIOR TO THE CLOSE OF ESCROW, THE DEVELOPER WAS PROVIDED THE OPPORTUNITY TO INVESTIGATE THE PROPERTY, AND HAS APPROVED THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS SELLING AND THE DEVELOPER IS BUYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (1) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION,

TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY FACILITIES AND SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (2) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (3) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY; (4) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (5) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY; (6) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY; (7) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS OR HAZARDOUS WASTE AS DEFINED BY STATE AND FEDERAL LAW, ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY; AND (8) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL CITY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Survival. The terms and conditions of this Section 5.5 shall survive the Close of Escrow, shall not merge with the provisions of the Grant Deed, or any other closing documents and shall be deemed to be incorporated by reference into the Grant Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or

other adverse matters that may be associated with the Property, including without limitation those identified in this Section 5.5. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(c) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in this Section 5.5 are "conspicuous" disclaimers for purpose of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Purchase Price has been adjusted to reflect the same and that the City would not have agreed to sell the Property to the Developer for the Purchase Price without the disclaimers and other agreements set forth in this Section 5.5.

(d) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby waives its right to recover from and fully and irrevocably releases the City and their council members, board members, employees, consultants, contractors, officers, directors, representatives, and agents ("Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(e) Scope of Release. The release set forth in Section 5.5(d) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principal of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to cause of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waiver and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.”**

**Developer’s Initials: \_\_\_\_\_**

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City’s actual fraud or misrepresentation.

(f) Utility Relocation. Without limiting the other provisions of this Section 5.5, the City agrees to use its reasonable good faith efforts to support any utility relocation request submitted by Developer to applicable utility providers.

(g) Soils Removal. Without limiting the other provisions of this Section 5.5 or the provisions of Section 8.3, the City agrees to reasonably consider any reasonable request by Developer to move low-level contaminated soils from the Property to other City-owned properties to the extent such removal is consistent with all statutory and regulatory requirements and provided that the City shall not bear any cost or liability for such removal, transportation or storage, including any liability as result of placing such soils on another property owned by the City or liability for any required additional transport from such other property.

## ARTICLE 6. POST-DISPOSITION AND PRE-CONSTRUCTION CONDITIONS

### Section 6.1. Conditions Subsequent After Conveyance of Property.

The requirements set forth in this Article 6 are conditions subsequent after the conveyance of the Property until they are completed or waived by the City in the manner set forth below and within the timeframes set forth below and in the Schedule of Performance and are conditions precedent to Developer’s commencement of construction of the Project.

### Section 6.2. Governmental Project Approvals.

In order to develop the Project as contemplated in this Agreement, the Project will require land use approvals, entitlements, development permits, and use and/or construction approvals, which may include, without limitation: vesting tentative maps, development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, and \_\_\_\_\_, and amendments thereto and to the Project Approvals; and excluding building permits, \_\_\_\_\_, and \_\_\_\_\_. For purposes of this Agreement, the term “Project Approvals” means all of the approvals, plans and agreements described in this Section 6.2. The Developer shall apply for all Project Approvals related to Lot 12 within one (1) year of the Effective Date, and the Developer shall apply for all Project Approvals related to Lot 8 within five (5)

years of the Effective Date. The City and the Developer agree to work diligently and in good faith toward processing Project Approvals. If the Developer closes escrow on the Lots, the Developer shall commence construction of the multifamily housing and retail/commercial use on Lot 12 within 1-5 years of receiving the Project Approvals, and the Developer shall commence construction of the hotel/retail commercial use on Lot 8 within 3-8 years of receiving the Project Approvals. Both Parties acknowledge that the timeframes set forth herein may be subject to change due to forces outside the Parties' control as set forth in Section 11.3.

Section 6.3. Vested Rights.

(a) The Developer shall have the vested right to proceed with development of the Property in accordance with Existing City Laws and to have all Project Approvals considered by the City in accordance with the Existing City Laws and this Agreement.

(b) Permitted Uses, Density and Intensity, Maximum Height and Size of Structures, and Reservation or Dedication of Land Vested. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, set-backs, provisions for reservation or dedication of land or payment of fees in lieu of dedication for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, and other terms and conditions of Development shall be those set forth in the Existing City Laws.

(c) Vested Against Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, City agrees that, except as otherwise provided in or limited by the provisions of this Agreement, any City ordinances, resolutions, rules, regulations, initiatives, and official policies and orders enacted after the Effective Date that directly or indirectly limit the rate, timing, or sequencing of Development, or prevent or conflict with the Existing City Laws, shall not be applied by the City to the Project Approvals. To the extent allowed by the laws pertaining to development agreements, however, Developer will be subject to any growth limitation ordinance, resolution, rule, regulation, policy or order which is adopted on a uniformly applied, Citywide or area-wide basis, and directly concerns an imminent public health or safety condition, in which case City shall treat in a uniform, equitable, and proportionate manner all properties, public and private, which are impacted by that public health or safety issue.

(d) Vested Rights Exclude Design and Construction. All ordinances, resolutions, rules, regulations, initiatives, and official policies governing design, improvement, and construction standards and specifications applicable to the Project, and any public improvements to be constructed by the Developer shall be those in force and effect at the time the applicable Project Approval is granted.

(e) Vested Rights Exclude Changes in State or Federal Law. This Agreement shall not preclude the application to the Project Approvals of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and

required by changes in state or federal law or regulation. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or any Project Approvals, such provisions of the Agreement shall be modified or suspended insofar as it is necessary to comply with such state or federal laws, regulations, plans, or policies. Any such amendment or suspension of this Agreement or Project Approvals shall be approved by the City Council in accordance with the Municipal Code and this Agreement.

(f) Vested Rights Exclude Building and Fire Codes. The Project shall be constructed in accordance with all applicable local, state, and federal building codes and standards, including the Building, Mechanical, Plumbing, Electrical, and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations (collectively "Building Code"), in effect at the time the Project Approval is granted. If no permits are required for infrastructure improvements, such improvements will be constructed in accordance with the provisions of the Building Code in effect at the time of approval by City of the improvement plans for such infrastructure. If a permit that has been granted expires, the Project shall be required to be constructed in accordance with the provisions of the Building Code in effect at the time the applicable replacement permit to the expired building, grading, encroachment or other construction permit is granted for the Project.

(g) Vested Rights Exclude Processing Fees and Charges. Developer shall pay those processing, inspection, and plan check fees and charges required by City under ordinances, resolutions, rules, regulations, initiatives, and official policies which are in effect when such fees or charges are due at the time they are charged to the Developer.

(h) Vested Rights for Development Impact Fees, Exactions and Dedications. Development impact fees, exactions and dedications required by City to be paid or provided by Developer shall only be those that were in effect on the Effective Date.

#### Section 6.4. Building Permits.

No later than one (1) year after the City provides the Project Approvals for Lot 12 and prior to commencement of construction of the Project, the Developer shall apply for building permits for the multifamily housing and retail/commercial use for Lot 12. Not later than three (3) years after the City provides the Project Approvals for Lot 8 and prior to commencement of the part of the Project on Lot 8, the Developer shall apply for building permits for the hotel/retail commercial use for Lot 8. After receiving the applications for these building permits, the City shall exercise diligent good faith efforts to process such applications. Both Parties acknowledge that the timeframes set forth herein may be subject to change due to forces outside the Parties' control as set forth in Section 11.3.

#### Section 6.5. CEQA.

This Agreement is not intended to limit in any manner the discretion of City or other agency, as applicable, in connection with the issuance of approvals and entitlements for the Property, including, without limitation, the undertaking and completion of any required environmental review pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), as applicable, and the review and approval of plans and specifications relating to the Property. Prior to approval of any Project Approval for the Property, City, acting as lead agency or co-lead agency, shall complete any environmental review required under CEQA or NEPA.

Section 6.6. City Review and Approval.

Nothing in this Agreement shall be construed as the City's approval of any or all of the Project Approvals. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving Project Approvals and other required submittals with respect to the Project.

Section 6.7. Defects in Plans.

The City shall not be responsible either to the Developer or to third parties in any way for any defects in the Plans, nor for any structural or other defects in any work done according to the approved Plans, nor for any delays reasonably caused by the review and approval processes established by this Article 6.

Section 6.8. Tenant Commitments.

As the Project is better defined during the entitlement process, the Developer shall provide the City regular and at least quarterly status updates on retail and other office prospective tenants through the Term of this Agreement.

Section 6.9. Extension of Time.

The Developer shall have the right to extend each of the deadlines set forth in Section 6.2 and 6.3 for up to one hundred and eighty (180) days. To exercise its right to extend, the Developer shall send written notice to the City Manager at least fifteen (15) days before the applicable deadline.

Section 6.10. Annual Review.

(a) Annual Review. City shall annually monitor and review each Developer's good faith compliance with the terms of this Agreement and the Project Approvals.

(b) Monitoring. City has discretion to monitor the continuing compliance of the terms of this Agreement and the Project Approvals by updating

decision-makers, conducting field inspections in compliance with applicable laws, implementing and interpreting requirements, monitoring any litigation relating to the Property, and taking any other actions that are within the City's exercise of its legal, permit or contractual obligations.

(c) Annual Review Date. City intends to conduct an annual review each year during the term of this Agreement on the date this Agreement is executed, each year after the Effective Date.

(d) Initiation of Review. The City Planner will initiate the annual review by giving Developer written notice that City will conduct the annual review. The City Planner's written notice will include an estimate of the total costs City expects to incur in connection with the review. Within thirty (30) days of City's notice, Developer must provide evidence to the City Planner to demonstrate good faith compliance with this Agreement. The burden of proof, by substantial evidence of compliance, is upon the Developer. City's failure to timely initiate the annual review is not a waiver of the right to conduct a review at a later date or otherwise enforce the provisions of this Agreement. Developer is not in default under this Agreement by virtue of a failure by City to timely initiate review.

(e) Costs. Costs reasonably and directly incurred by City in connection with the annual review and monitoring shall be paid by Developer in accordance with the City's schedule of fees and billing rates in effect at the time of review.

(f) Non-compliance with Agreement; Hearing. If the City Planner determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms and conditions of this Agreement during the period under review, the City Council may initiate proceedings to modify or terminate the Agreement, at which time an administrative hearing shall be conducted before the City Council in accordance with the procedures of state law (Government Code sections 65090 and 65091). As part of that final determination, the City Council may impose conditions on the Project that it considers necessary and appropriate to protect the interests of City. The City Council may refer the matter to the planning commission for further proceedings or for report and recommendations. Developer shall notify the City in writing at least seven (7) days before the hearing of any and all issues of non-compliance by City with the terms of this Agreement, and the City Council shall review and make findings concerning the compliance of all Parties to the Agreement. If the City contends that Developer has not complied in good faith with the terms and conditions of this Agreement, City shall provide Developer in writing the basis for that conclusion no later than seven (7) business days before the hearing of any and all issues of noncompliance by the City Council.

(g) Appeal of Determination. The decision of the City Council as to a Developer's compliance shall be final. Any court action or proceeding to challenge, review, set aside, void, or annul any compliance determination by the City Council must be commenced within ninety (90) days of the final decision of the City Council in accordance with the California Code of Civil Procedure, or the Developer forfeits the

right to seek judicial review. Modification or termination of the development agreement by the City Council shall be filed by the city clerk for recordation with the Monterey County recorder's office.

## ARTICLE 7. CONSTRUCTION OF PROJECT

### Section 7.1. Construction Pursuant to Plans.

The Project shall be constructed substantially in accordance with the terms and conditions of the City's land use permits and approvals and building permits, including and variances granted and in accordance with Exhibit C "Scope of Development".

### Section 7.2. Commencement of Project.

The Developer shall commence construction of the Project no later than the dates in Section 6.2.

### Section 7.3. Completion of the Project.

Developer shall complete the Project in accordance with the timelines in Section 6.2 of this Agreement. Equal Opportunity.

During the construction of the Project, the Developer, the contractor and their successors, assigns and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction of the Project because of race, color, religion, ethnic group identification, sex, sexual preference, marital status, ancestry or national origin, in all construction activities.

### Section 7.4. Construction Pursuant to Laws.

(a) Developer shall cause all work performed in connection with the Property to be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter.

(b) Cost-effective energy conservation standards, including provision of renewable energy sources, are encouraged. The Developer shall use Green Building Code standards as required by the Salinas Municipal Code.

### Section 7.5. Persons with Disabilities.

The Property shall be constructed to comply with all applicable federal, state, and local requirements for access for disabled persons.

#### Section 7.6. Progress Reports.

Until such time as the Developer has completed construction of the Project, as evidenced by the Certificate of Completion for the Project, the Developer shall provide the City with regular and at least quarterly progress reports in form and detail reasonably acceptable to the City.

#### Section 7.7. Compliance with Mitigation Measures.

During the construction of the Project and thereafter during the operation of the Project, the Developer shall comply with the requirements, mitigation measures and conditions of approval, as set forth in the any governmental approvals and/or the Construction Plans.

#### Section 7.8. Certificate of Completion.

Promptly after completion of the Project in accordance with those provisions of this Agreement relating solely to the obligations of Developer to construct the Project, the City will provide a Certificate of Completion so certifying. Such certification shall be conclusive determination that certain covenants in this Agreement with respect to the obligations of the Developer to construct the Project have been satisfied. Such certification shall be in such form as will enable it to be recorded among the Official Records. Such certification and determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of deed of trust securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code.

### ARTICLE 8. ONGOING DEVELOPER OBLIGATIONS

#### Section 8.1. Applicability.

The conditions and obligations set forth in this Article 8 shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation.

#### Section 8.2. Taxes and Assessments.

The Developer shall require that the contractor and its subcontractors exercise their option to obtain a California Department of Tax and Fee Administration sub permit for the jobsite and allocate all eligible use tax payments to the City. Prior to beginning the construction of the Project, the Developer shall require that the contractor and subcontractors provide the City with either a copy of the sub permit or a statement that use tax does not apply to their portion of the job. The Developer shall review the direct payment process established under California Revenue and Taxation Code 7051.3 and, if eligible, use the permit so that the local share of its use tax payments is allocated to the City. The Developer shall provide the City with either a copy of the direct payment

permit or a statement certifying ineligibility to qualify for the permit.

Section 8.3. Hazardous Materials.

(a) Compliance with Laws. The Developer hereby covenants and agrees to comply with all Hazardous Laws applicable to it.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 11.6 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, their council and board members, officers, contractors, consultants, agents, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement action of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, it not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, whether arising or accruing before, on, or after the Close of Escrow, and whether attributable to events or circumstances which arise or occur before, on or after the Close of Escrow, including, without limitation: (i) any and all liabilities with respect to the physical or environmental condition of the Property, including, without limitation, all liabilities relating to the release, presence, discovery or removal of any hazardous or regulated substance, chemical, waste or material, including any Hazardous Material that may be located in, at, about or under the Property, or connected with or arising out of any and all claims or causes of action based upon any Environmental Laws (defined in this Agreement), or any other related claims or causes of action; and (ii) any implied or statutory warranties or guaranties of fitness, merchantability or any other statutory or implied warranty or guaranty of any kind or nature regarding or relating to any portion of the Property. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(c) Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Developer has been advised by its legal counsel and understands the significance of this waiver of section 1542 relating to unknown, unsuspected and concealed claims. By executing this Agreement, Developer acknowledges that it fully understands, appreciates and accepts all of the terms of this section.

(d) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsections (a), (b), and (c) above, are in no way limited or otherwise affected by any information the City may have concerning the Property and/or

the presence within the Property of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 8.4. Insurance Requirements.

(a) Developer's Insurance. Concurrently with the execution hereof, Developer shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Prior to the commencement of work under this Agreement, Developer's contractor(s) shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Developer shall not allow any contractor(s) to commence work under this Agreement until all insurance required for Developer and Developer's contractor(s) shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by City. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

(b) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

(c) Minimum Limits of Insurance. Developer shall maintain limits no less than (unless otherwise approved by the City's Risk Manager):

1. General Liability: \$3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and

Employers Liability limits of \$1,000,000 per accident.

(d) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(e) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

a. The City, its officers, agents, officials, employees and volunteers shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer, premises owned, occupied or used by the Developer, or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.

b. The Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

d. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Developer for the City.

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with an A.M. Best rating of A- or better.

(g) Verification of Coverage. Developer shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City reserves the right to modify these insurance requirements as the best interests of the City dictate.

(h) Subcontractors. Developer and/or Developer's contractor(s) shall provide separate certificates and endorsements subject to all of the requirements stated herein.

## ARTICLE 9. ASSIGNMENT AND TRANSFERS

### Section 9.1. Definitions.

As used in this Article 9, the term "Transfer" means

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any Party thereof or any interest therein or any contract or agreement to do any of the same during the Term of this Agreement, except where such assignment is to an entity controlled by Developer; or

(b) Any significant change of ownership without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than fifty percent (50%) in aggregate of the present ownership and /or control of Developer in the Project, taking all transfers into account on a cumulative basis; provided however, neither the admission of investor limited partners, nor the transfer of beneficial or ownership interests by an investor limited partner to subsequent limited partners shall be restricted by this provision, nor shall the admission of a Passive Investor Member nor the transfer of a beneficial or ownership interest by a Passive Investor Member to another Passive Investor Member be restricted by this provision. "Passive Investor Member" means a member who pursuant to Developer's operating agreement is not authorized to actively manage or otherwise operate the business of the company; or

(c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer during the Term of this Agreement.

#### Section 9.2. Transfer Restrictions.

The Parties understand and anticipate that Developer may seek to Transfer its rights and responsibilities under this Agreement with respect to one or more specific elements of the Project to a person or entity with experience in the development of the type of element proposed to be transferred. Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any Transfer of the whole or any part of the Property, the Project, or this Agreement prior to the completion of the Project, without the prior written approval of City, which approval shall not be unreasonably withheld by the City Council.

#### Section 9.3. Process for City Approval of Transfer.

Prior to any Transfer hereunder, Developer shall submit to City detailed written information regarding the proposed transferee's development experience as relevant to the proposed Transfer, detailed information with respect to the financial capacity of the proposed transferee, and the form of a proposed assignment and assumption agreement which requires the assignee to comply with the assigned sections of this Agreement. Upon receipt of Developer's submission City may request further information regarding the experience and financial capacity of the proposed transferee in the City's reasonable discretion.

#### Section 9.4. Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of the conveyance of the Property and the development of the Project. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the City, in view of:

- (a) The importance of the Development to the general welfare of the community; and
- (b) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for the Development and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property; and
- (c) The fact that a change in ownership or control of the Developer as owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof during the Term of this Agreement, is for practical purposes a transfer or disposition of the Property; and
- (d) The fact that the portion of the Property utilized for the Project is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

(e) The importance to the City and the community of the standards of use, operation and maintenance of the Property.

The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

#### Section 9.5. Assignment and Assumption Agreement.

Any such assignment made in compliance with this Article shall be evidenced by a written assignment and assumption agreement in a form approved by the City Attorney, which agreement shall set forth in detail the assignee's specific duties under this Agreement.

#### Section 9.6. Covenants Binding on Successors and Assigns.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

#### Section 9.7. Prohibited and Permitted Transfers.

The limitations on Transfers set forth in this Article shall apply throughout the Term of this Agreement and the Affordable Housing Agreement, and are extinguished thereafter. The Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law that, without the prior written approval of the City, creates any Transfer that shall be deemed a default of this Article 9, whether or not the Developer knew of or participated in such Transfer. All other Transfers shall be permitted and are hereby approved by the City. Any approval of a Transfer by City shall not be deemed a release of the Developer from its obligations under this Agreement.

### ARTICLE 10. DEFAULT AND REMEDIES

#### Section 10.1. General Applicability.

The provisions of this Article 10 shall govern the Parties' remedies for breach or failure of this Agreement.

#### Section 10.2. Meet and Confer.

During the time periods specified in this Article 10 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend this time period for this meet and confer obligation beyond the cure periods in this Article 10, unless the Parties agree otherwise in writing.

#### Section 10.3. No Fault of Parties.

The following event constitutes a basis for a Party to terminate this Agreement without the fault of the other: The City, despite good faith and diligent effort, is unable to convey the Property to the Developer or perform any other of its obligation under this Agreement, and the Developer is otherwise entitled to such conveyance.

Upon the happening of the above-described event and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After such termination of this Agreement, neither Party shall have any rights against or liability to the other under this Agreement, except those provisions as specified in this Agreement that shall survive such termination and remain in full force and effect.

#### Section 10.4. Fault of City.

Except as to the event constituting a basis for termination under Section 10.3, the following events each constitute a "City Event of Default" and a basis for the Developer to take action against the defaulting entity:

- (a) The City, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 5 and the Developer is otherwise entitled by this Agreement to such conveyance; or
- (b) City breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of the purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded only the following remedies: (1) terminating in writing this Agreement (provided, however, that the indemnification provisions of this Agreement shall survive such termination); and (2) instituting an action for specific performance and/or declaratory relief, concerning the terms of this Agreement. In no event shall the Developer have the right, and the Developer

expressly waives the right, to seek consequential damages and lost profits.

Section 10.5. Fault of Developer.

The following events each constitute a "Developer Event of Default" and a basis for the City to take action against the Developer:

(a) The Developer fails to exercise diligent good faith efforts to satisfy one or more of the conditions, within the time and in the manner, set forth in Article 3, 5 and 6; or

(b) The Developer refuses to accept conveyance from the City of the Property within the time periods and under the terms set forth in Article 5; or

(c) Unless otherwise excused or allowed an extension through Section 11.3, the Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Project by the date set in Section 7.2 of this Agreement, or fails to commence or complete construction of the Project by the date set forth in 7.3 of this Agreement, or abandons or suspends construction of any portion of the Project by the dates set forth in Section 7.3 prior to completion of all construction for a period of sixty (60) days after written notice by the City of such abandonment or suspension; or

(d) The court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (d) as well; or the Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clause (1) to (4), inclusive; or

(e) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection (e) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer, is diligently working to obtain a return or release of the Property and the City's interests under the Disposition Documents are not immediately

threatened, in the City's reasonable business judgment, the City shall not declare a default under this subsection; or

(f) The Developer shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated; or

(g) The Developer breaches any material provision of this Agreement or any other Disposition Document.

Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter, then the City shall be afforded only the following remedies:

1. Termination of this Agreement by written notice to the Developer; provided, however, that the City's remedies pursuant to this Article 10 or any other Disposition Document and the provisions as specified in this Agreement shall survive such termination; and

2. Any of the remedies specified in Section 10.6 and 10.7.

Notwithstanding the notice and cure periods set forth above, if a lesser cure period or notice requirement is allowed before a default occurs under any other Disposition Document, such periods shall control in this Agreement as well.

#### Section 10.6. Termination

(a) Expiration of Term. Except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement as set forth in Section 1.1(ii).

(b) Survival of Obligations. Upon the termination or expiration of this Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals.

#### Section 10.7. Option to Repurchase, Reenter and Repossess

(a) The City shall have right at its option to repurchase, reenter and take possession of the Property or any portion thereof owned by the Developer, if after conveyance of title to Lot 8 and/or Lot 12 and prior to the start of construction of the

conveyed Lot at issue, there is an uncured Developer Event of Default pursuant to Section 10.5.

(b) To exercise its right to repurchase, reenter and take possession with respect to the Property owned by the Developer, the City shall pay to the Developer in cash an amount equal to:

1. the Purchase Price paid to the City for the applicable portion of the Property pursuant to Section 2.1; less

2. the value of any unpaid liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to said encumbrances.

#### Section 10.8. Construction Plans.

If the Agreement is terminated pursuant to Section 10.3 or 10.5, the Developer, at no cost to the City, shall deliver to the City copies of any Construction Plans and studies in the Developer's possession or to which Developer is entitled related to development of the Project on the Property.

#### Section 10.9. Waiver of Terms and Conditions.

The City Manager may at his or her discretion, on behalf of the City, waive in writing any of the terms and conditions of this Agreement, or the other Disposition Documents, without the City and the Developer completing an amendment to this Agreement. No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to, or of any, subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or waiver of any default under this Agreement or the Disposition Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under the Disposition Documents, unless in the exercise of any such right, power, or remedy all obligations of the Developer to City are paid and discharged in full.

ARTICLE 11.  
GENERAL PROVISIONS

Section 11.1. Notices, Demands and Communications.

Formal notice, demands, and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, or delivered personally, to the principal offices of the City and the Developer as follows:

City: City of Salinas  
200 Lincoln Avenue  
Salinas, CA 93901  
Attention: City Manager

With a copy to: City Attorney  
City of Salinas  
200 Lincoln Avenue  
Salinas, California 93901

Developer: Taylor Fresh Foods, Inc.  
911-B Blanco Circle  
Salinas, CA 93902  
Attention: Chief Financial Officer

With a copy to Anthony Lombardo and Associates, PC  
144 West Gabilan Street  
Salinas, CA 93901  
Attention: Anthony L. Lombardo, Esq.

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 11.1.

Section 11.2. Non-Liability of City Officials, Employees and Agents.

No member, official, employee, consultant or agent of the City shall be personally liable to the Developer, on behalf of itself and anyone claiming by, through or under the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 11.3. Forced Delay.

In addition to specific provisions of this Agreement, the time period for performance by either Party hereunder shall be extended where delays or defaults are

due to events beyond a Party's reasonable control, including but not limited to due to war; insurrection; strikes or other labor disputes; civil disobedience or disturbance; lock-outs; riots; accident; floods; earthquakes; fires; casualties; acts of God; or other deities; acts of terrorism or the public enemy; pandemics or epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; governmental or judicial actions; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather conditions which, in the opinion of the Developer's commercially reasonable judgement, will necessitate delays; delays of any contractor, sub-contractor or supplier; inability to secure necessary labor, materials or tools; acts of the other Party that constitute a default under this Agreement or Disposition Documents; acts or failure to act of any public or governmental agency or entity (other than an act or failure to act of the City which shall give rise to the delaying act described above); or any other causes (other than Developer's inability to obtain financing for the Project). An extension of time for any cause shall be for the period of the delay and will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. If a notice under this Section 11.3 is timely rejected in writing, then the Parties shall meet and confer under Section 10.2 and mediate the matter under Section 11.11 before pursuing their rights under Article 10. Times of performance under this Agreement may also be extended in writing by the City Manager and the Developer, and a Party's consent to such extension shall not be unreasonably withheld, conditioned or delayed. In no event shall the total extensions granted under this Section 11.3 exceed one (1) year.

Wherever this Agreement refers to performance by a specific time, or in accordance with the Schedule of Performance, such times shall include any extensions pursuant to this Section 11.3. Subject to this Section 11.3, time is of the essence with respect to each provision of this Agreement.

#### Section 11.4. Provision Not Merged with Deeds.

None of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

#### Section 11.5. Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall not be disregarded in construing or interpreting any part of its provision.

#### Section 11.6. General Indemnification.

- (a) Except for claims described in (b) below, the Developer, for itself

and all assigns hereunder, hereby agrees to indemnify, defend (with counsel reasonably selected by the City) and hold the City and its City council members, officers, directors, representatives, contractors, consultants, employees and agents ("Indemnitees") harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against all or any of the Indemnitees, and expenses (including the City's attorneys' fees and attorney's fees awarded to the plaintiff in any litigation) which arise out of or in connection with this Agreement.

(b) The provisions of this Section 11.6 survive both the issuance of a Certificate of Completion by the City and the expiration of the term or other termination of this Agreement, and shall remain in full force and effect.

Section 11.7. Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.8. No Brokers.

Each Party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the Party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified Party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section 11.8 shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 11.9. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 11.9(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information, including confidential closed session or privileged information, with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Developer shall exercise due diligence to ensure that the prohibition in this Section 11.9(a) is followed.

(b) The conflict of interest provisions of Section 11.9(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family

member of such person, or any elected or appointed official of the City.

(c) In accordance with the Political Reform Act, California Government Code Section 87100 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, California Government Code Section 87100 *et seq.*, its implementing regulations manual and codes.

(d) In accordance with the Levine Act, Government Code Section 84308 *et seq.*, no person who is a director, officer, partner, trustee or employee or consultant of the Developer has contributed over five hundred dollars (\$500), as that amount may be amended, over the last twelve (12) months, and any such person will not contribute for twelve (12) months following a final decision on this Agreement, to any public official of the City.

Section 11.10. Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11. Mediation. The Parties agree to mediate any dispute or claim arising between them out of this Agreement before resorting to court action; provided, however, the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver nor violation of the requirements of this Section 11.11. The mediation shall be conducted in accordance with JAMS Rules, with a JAMS neutral. The Parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in the costs and fees of the mediator. Any Party refusing to mediate shall not be entitled to receive its attorneys' fees, even if deemed the prevailing party pursuant to Section 11.12. All applicable statutes of limitation, defenses based upon the passage of time, and the time periods under within this Agreement shall be tolled while the mediation is pending and for 15 calendar days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

Section 11.12. Legal Actions and Attorneys' Fees.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County of Monterey. In the event of

any action of proceeding brought by either Party against the other under this Agreement, the prevailing Party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. Attorneys' fees for in-house City Attorney staff, if awarded, shall be calculated at the market rate. The provisions of this Section 11.12 shall survive the expiration of the Term or other termination of this Agreement.

Section 11.13.      Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto, except that there shall be no transfer of any interest of the Developer except pursuant to the terms of this Agreement or Disposition Documents. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the expiration of the Term or other termination of this Agreement, such covenants and restrictions shall expire, except as provided herein in Sections \_\_\_\_, \_\_\_\_, \_\_\_\_ and \_\_\_\_\_. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

Section 11.14.      Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.15.      Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 11.16.      Action by the City Manager.

Except as may be otherwise specifically provided in this Agreement or another Disposition Document, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or another Disposition Document, such action may be given, made, or taken by the City Manager or by any person who shall have been designated in writing to the Developer by the City Manager without further approval by the City Council. Any such action shall be in writing.

Section 11.17.      Representations and Warranties of Developer.

The Developer hereby represents and warrants to the City as follows:

(a) Organization. The Developer is a duly organized, validly existing Delaware corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business and now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, including the Disposition Documents, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

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

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, including the Disposition Documents, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws: Consents and Approvals. The construction of the Project will comply with all applicable laws, ordinances, rules and regulation of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency which would materially affect the Developer's ability to develop the Project, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Project.

Section 11.18. Conflict Among Disposition Documents.

In the event of a conflict between the terms of this Agreement and any other Disposition Document, the terms of this Agreement shall control to the extent of such conflict.

Section 11.19. Entry by the City.

The Developer shall permit the City, through its officers, agents, or employees, upon twenty-four (24) hours written notice, to enter into the Development to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement and Disposition Documents, and following completion of construction to inspect the ongoing operation and management of the Project to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the City is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the City thereof. Any inspection by the City, in its role as City, during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. This Section shall in no way limit the Annual Review procedures in Section 6.10 of this Agreement.

Section 11.20. Confidentiality of Information.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the City will need sufficient, detailed information about the proposed development of the Property to make informed decisions about the Property and the Project. The City will use its best efforts to maintain the confidentiality of proprietary information subject to the requirements imposed on the City by the Public Records Act (Government Code Section 7920.000 *et seq.*). The Developer acknowledges that the City may share information provided by the Developer of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise the City concerning matters related to this Agreement and to City Council as part of its decision-making process. If any litigation is filed seeking to make public any information Developer submitted to the City in confidence, the City and Developer shall cooperate in

defending the litigation. The Developer shall indemnify and pay the City's costs of defending such litigation and shall indemnify the City against all costs and attorney's fees awarded to the plaintiff in any such litigation pursuant to Section 11.6.

Section 11.21. Entire Understanding of the Parties.

This Agreement constitutes the entire understanding and agreement of the Parties. All prior discussions, understandings and written agreements are superseded by this Agreement. The Developer and the Developer's counsel have read and reviewed this Agreement and agree that any rule of constitution (including, but not limited to Civil Code Section 1654, as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

Section 11.22. Operation Memoranda: Implementation Agreements.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement and may include extensions of time to perform as specified in the Schedule of Performance. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of operating memoranda or implementation agreements may be appropriate.

(b) Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the Purchase Price, actions that materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, shall be processed as an amendment of this Agreement in accordance with Section 11.23 and must be approved by the City Council. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration or action any matter under the City Manager's authority if the City Manager desires to do so.

Section 11.23. Amendments.

The Parties can amend this Agreement only by means of a writing executed by the Developer and the City, which execution is subject to the approval by the City