

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF ANAHEIM

and

ZELMAN ANAHEIM, LLC

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DISPOSITION AND DEVELOPMENT AGREEMENT

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”) is entered into as of _____, 2016 (“Date of Agreement”), by and between the **CITY OF ANAHEIM**, a California municipal corporation and Charter City (the “City”), and **ZELMAN ANAHEIM, LLC**, a Delaware limited liability company (the “Developer”).

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City is authorized and empowered by its Charter, to enter into agreements for the acquisition, disposition and development of real property.

B. The City is the owner of that certain real property containing approximately 25.2 acres, including leasehold interest in the Loan Pham Property, containing approximately 24,191 square feet of land (together, the “Site”).

C. The City acquired the Site from the Successor Agency pursuant to the Redevelopment Dissolution Act.

D. The Developer intends to construct thereon certain improvements aggregating approximately 200,000 to 300,000 square feet, including general retail and associated tenant improvements, landscaping, pedestrian access, parking, and a Festival Green and Paseo in accordance with the Site Plan, and as described in more detail hereinafter (the “Improvements”).

E. The City and Developer desire by this Agreement to provide for, among other things, the conveyance of the Site to Developer and for Developer to construct, operate and maintain the Improvements in accordance with all covenants, conditions, restrictions and declarations set forth herein.

F. This Agreement is in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements be significantly among which includes the requirement that Remedial Improvements will be implemented with respect to the Site, a portion of which includes former Landfills used for solid waste disposal.

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

100. DEFINITIONS

“**Access Easement**” means a non-exclusive easement across the Site providing access from Beach Boulevard to the WIG Property, as generally shown on the Site Map, including a methodology for the allocation of costs with respect to the operation and maintenance of the Access Easement. The Access Easement will be reserved in each Grant Deed and Environmental Restriction.

“**Actual Knowledge**” of the City means the facts known by John E. Woodhead IV without a duty of further investigation.

“**Agency**” means the former Anaheim Redevelopment Agency, which was a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, Health and Safety Code, Section 33000, *et seq.*, which has been succeeded by the Successor Agency.

“**Agreement**” means this Disposition and Development Agreement between the City and the Developer.

“**Anderson Landfill**” means that portion of the Site consisting of approximately 3.4 acres.

“**Approved RAP**” is defined in Section 207.3(c).

“**Assignment of Leasehold Interest**” means that certain document attached hereto as Attachment No. 12 and incorporated herein by reference assigning the leasehold interest in the Loan Pham Property pursuant to the Loan Pham Lease, to the Developer.

“**Basic Concept Drawings**” are described in Attachment No. 8, Stage I.

“**Block Grant Guidelines**” are attached hereto as Attachment No. 15 and incorporated herein by reference.

“**Brookfield**” is defined in Section 301.3.

“**Brookfield Reimbursement**” is defined in Section 301.3.

“**Brookfield Reimbursement Agreement**” is defined in Section 301.3.

“**City**” means the City of Anaheim, a California municipal corporation and Charter City.

“**City’s Conditions Precedent**” means the conditions precedent to the Closing for the benefit of the City, as set forth in Section 205.1 hereof.

“**Closing**” or “**Close of Escrow**” means the close of Escrow for the Conveyance from the City to the Developer, as set forth in Section 202 hereof.

“**Closing Date**” means the date of the Closing as set forth in Section 202.4 hereof.

“**Completion of Construction**” means the date on which the Developer is entitled to a Release of Construction Covenants for the Improvements.

“**Condition of Title**” is defined in Section 203 hereof.

“**Conditions Precedent**” means the City’s Conditions Precedent and/or the Developer’s Conditions Precedent for the Conveyance.

“**Contractor’s Pollution Liability Insurance**” means insurance regarding the Environmental Condition of the Site during the course of construction.

“**Construction Drawings**” is defined in Section 302.3 hereof.

“**Construction Financing**” is defined in Section 311 hereof.

“**Construction Period**” means the period commencing upon the Date of Agreement and terminating upon Completion of Construction of the Improvements.

“**Conveyance**” means the conveyance of the Site by the City to the Developer and includes the transfer of the leasehold interest in the Loan Pham Property.

“**County Dispute**” is defined below in this Section 100.

“**CRL**” means the Community Redevelopment Law, Health & Safety Code Section 30000 *et seq.*

“**Date of Agreement**” is defined in the first paragraph hereof.

“**Davis Mud Pit**” means that portion of the Site consisting of approximately 2.3 acres.

“**Default**” means the failure of a party hereto to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

“**Deposit**” is defined in Section 201.1.

“**Design Development Drawings**” are described in Attachment 8, Stage II.

“**Design Review Process**” is described in Attachment No. 8 attached hereto and incorporated herein by reference.

“**Developer**” means Zelman Anaheim, LLC, a Delaware limited liability company, the managing member of which is Zelman Retail Partners, Inc., a California corporation, of which Ben Reiling is the owner of at least a 51% share and the Chairman of the Board, and its permitted assignees.

“**Developer Component**” means that portion of the Remedial Improvements, which is the responsibility of Developer hereunder. The Developer Component shall include preparation of the workplan and the construction of the Pile Support System, design and construction of underground utility trench, Vegetative Maintenance Plan and Smart Irrigation Plan, as each such item is described in the Interim Immunity Letter.

“**Developer’s Conditions Precedent**” means the conditions precedent to the Closing for the benefit of the Developer, as set forth in Sections 205.2 and 205.4.

“**Director**” means the Director of the Community and Economic Development Department of the City or his designee who shall represent the City in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the City, the Director is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

“**Effective Date**” means the date set forth above on which City and Developer execute this Agreement.

“Eligible Persons” means any individual, partnership, corporation or association which qualifies as a “displaced person” pursuant to the definition provided in Government Code Section 7260(c) of the California Relocation Assistance Act of 1970, as amended, and any other applicable federal, state, or local regulations or laws.

“Employment Interest List” is defined in Section 404.2 hereof.

“Environmental Condition” is defined in Section 207.3 hereof.

“Environmental Deed Restrictions” means the environmental covenants contained in substantially the same form as Paragraph G of the Grant Deed and Environmental Restriction and such other deed restrictions as may be required by the Interim Immunity Letter and the RWQCB.

“Environmental Liabilities” is defined in Section 208.2.

“Environmental Insurance” is defined in Section 207.10.

“Escrow” is defined in Section 202 hereof.

“Escrow Agent” is defined in Section 202 hereof.

“Exceptions” is defined in Section 203 hereof.

“Festival Green” means that certain area shown on the Basic Concept Drawings as Festival Green to be improved by the Developer as part of the Improvements in accordance with the Scope of Development.

“Focal Public Art Piece” means the Sun Icon contributed to the City by Disney.

“Governmental Requirements” is defined in Section 401(e)(ii) hereof.

“Grant Deed and Environmental Restriction” means the grant deed to be used for each Conveyance, in the form of Attachment No. 3 attached hereto and incorporated herein by reference.

“Guarantor” means (i) Ben Reiling, or (ii) Paul Casey and Brett Foy.

“Guaranty” means that certain guaranty of Guarantor attached hereto as Attachment 10 and incorporated herein by reference.

“Hazardous Materials” means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code,

Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum and breakdown and derivative products thereof, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Chapter 11 of Title 22, Division 4.5 of the California Code of Regulations, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601).

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

“**HUD Jobs Creation National Objective**” is defined in Section 404 hereof.

“**Immunity Letter**” means the issuance by the RWQCB which provides (i) that the remedial work has been completed in accordance with the Approved RAP, and (ii) that the immunity available under Health and Safety Code Section 33459.3 applies.

“**Improvements**” means the Improvements described in the Scope of Development, including the Developer Component.

“**Indemnity**” or “**Indemnify**” is defined in Section 208.2.

“**Indemnitees**” means the City and the Successor Agency, as well as the officers, lawyers, agents, representatives, and consultants of each.

“**Interim Immunity Letter**” means the letter to the Agency from RWQCB dated April 27, 2007.

“**Investigation**” is defined in Section 207.1.

“**Landfills**” means collectively the Sparks Landfill and the Anderson Landfill.

“**Landfill Gas**” means gaseous emissions produced as a by-product of organic waste during decomposition which may contain various chemical components in widely fluctuating quantities including without limitation, methane, carbon dioxide, hydrogen sulfide, carbon monoxide, benzene, ethyl-benzene, toluene, vinyl chloride, dichloromethane, trichloroethylene, 1,2, dichloroethylene, tetrachloroethylene and ammonia.

“**Legal Description**” means the legal description of the Site, including the Loan Pham Property.

“**Liabilities**” is defined in Section 207.6 hereof.

“**Liability Immunity**” is defined in Section 207.5 hereof.

“**Liquidated Damages**” is defined in Section 201.2.

“**List of Environmental Condition Documents**” means the List of Environmental Condition Documents attached hereto as Attachment No. 11 and incorporated herein by reference.

“**Loan Pham Lease**” means the lease previously provided to Developer pursuant to which the City has acquired a leasehold interest in the Loan Pham Property.

“**Loan Pham Property**” means property which is the subject matter of the Loan Pham Lease as shown on the Site Maps as the “Loan Pham Property.”

“**Major Retailer(s)**” means (i) a retailer of approximately 100,000 square feet gross building area, or (ii) three (3) Mid-Sized Retailers.

“**Major Retailer Lease(s)**” means the lease(s) with the Major Retailer(s).

“**Mid-Sized Retailer**” means a retailer of 15,000-45,000 square feet gross building area.

“**Mortgage**” is defined in Section 311.2 hereof.

“**Notice**” shall mean a notice in the form prescribed by Section 601 hereof.

“**OCHCA**” means the Orange County Health Care Agency.

“**Operating Period**” is defined in Section 401(b).

“**Operations, Maintenance and Monitoring Plan**” means the plan, approved by OCHCA on May, 2015, which describes, among other things, the obligation to conduct ongoing monitoring of the landfill gas extraction system, the groundwater and the landfill cap. The obligations of the landowner under the Operations, Maintenance and Monitoring Plan have been included in the Grant Deed and Environmental Restriction as one of the Environmental Deed Restrictions.

“**Outside Date**” means January 31, 2018.

“**Participating Employers**” is defined in Section 404.2 hereof.

“**Paseo**” is that certain area shown on the Basic Concept Drawings as the Paseo to be improved by Developer as part of the Improvements in accordance with the Scope of Development.

“**Permanent Financing**” means debt and/or equity financing secured by Developer to repay the obligations under the Construction Loan.

“**Plans**” means the Remedial Action Plan and Operations, Maintenance and Monitoring Plan.

“**Polanco Redevelopment Act**” means the provisions of California Health and Safety Code Sections 33459 – 33459.8, as same may be amended from time to time.

“**Potential Qualifying Job Applicants**” is defined in Section 404.2 hereof.

“**Preliminary Evidence of Financing**” means a preliminary commitment letter from a financial institution which has adequate financial resources, in the reasonable determination of the City, and is in the business of providing construction financing for retail development, and which includes: (i) a term sheet or letter of interest, and (ii) the statement by the prospective lender that such lender has reviewed the Developer’s preliminary loan information and has issued a preliminary letter of interest or term sheet to provide Construction Financing for the Improvements.

“**Project**” means the construction and operation of that certain proposed commercial retail shopping center to be constructed on the Site to be known as “Westgate Center.” The Project is more particularly described herein and in the Scope of Development.

“**Project Jobs Description**” is defined in Section 404.1 hereof.

“**Purchase Price**” is defined in Section 201.4 hereof.

“**Qualified Professional**” means an engineer, geologist or other consultant qualified in accordance with requirements of law to prepare the Operations, Maintenance and Monitoring Plan.

“**Qualifying Project Jobs**” is defined in Section 404.1 hereof.

“**Recognition Agreement**” means the Recognition Agreement with respect to the Loan Pham Lease attached hereto as Attachment No. 14 and incorporated herein by reference.

“**Redevelopment Dissolution Act**” means California Health & Safety Code Section 34170 et seq.

“**Reimbursement Agreement re Successor Agency Component**” means the Reimbursement Agreement attached hereto as Attachment No. 13 and incorporated herein by reference.

“**Related Entity**” means an entity in which a majority ownership interest is held by the Developer.

“**Release of Construction Covenants**” means the document which evidences the Developer’s satisfactory completion of the Improvements, as set forth in Section 310 hereof, in the form of Attachment No. 6 attached hereto and incorporated herein by reference.

“**Remedial Action Plan**” or “**RAP**” means that certain plan for the assessment, evaluation, investigation, removal, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gas including methane in, on, under (including in the groundwater), or migrating from the Landfills initially prepared by Shaw Environmental, Inc., dated December 30, 2004.

“**Remedial Improvements**” means those certain improvements to be designed and constructed on the Site in implementation of the Remedial Action Plan.

“**Report**” means the preliminary title report, as described in Section 203 hereof.

“**Responsible Agency**” or “**Responsible Agencies**” means individually or collectively, as applicable, the RWQCB, the Orange County Health Care Agency-Environmental Health Division (Local Enforcement Agency or LEA), the California Integrated Waste Management Board, the South Coast Air Quality Management District, and the City.

“**Right of Entry Agreement**” means that certain right of entry agreement attached hereto as Attachment No. 9 and incorporated herein by reference which describes the terms under which the Developer may enter the Site for purposes of site preparation and/or grading if Developer wishes to do so prior to the Closing as described in Section 207 hereof.

“**RWQCB**” means the California Regional Water Quality Control Board, Santa Ana Region.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment No. 4 and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to Section 602 and revision from time to time as mutually agreed upon in writing between the Developer and the Director, and the Director is authorized to make such revisions as he or she deems reasonably necessary.

“Scope of Development” means the Scope of Development attached hereto as Attachment No. 5 and incorporated herein by reference, which describes the scope, amount and quality of development of the Improvements.

“Section 108 Loan for the Project” is defined in Section 404 hereof.

“Settlement Agreement” means that certain Settlement and Release Agreement dated October 15, 2008, by and among the County, City, Agency (now Successor Agency), Developer and WIG settling a dispute with the County of Orange concerning the Environmental Condition of the Site (the “County Dispute”) and providing, among other things, for mutual release of the parties thereto.

“Site” means that certain real property located at the northeast corner of Lincoln Ave. and Beach Blvd. shown on the Site Map and described in the Legal Description free and clear of all structures, debris and underground improvements discovered in the course of demolition.

“Site Map” means the map attached hereto as Attachment No. 1, and incorporated herein by reference, showing the Site (including the Loan Pham Property), the WIG Property and the Access Easement.

“Site Plan” is attached hereto as Attachment No. 16 and incorporated herein by reference.

“Sparks Landfill” means that portion of the Site consisting of approximately 10.68 acres.

“Successor Agency” means the Successor Agency to the Anaheim Redevelopment Agency pursuant to Health & Safety Code §34170 *et seq.* Wherever the Successor Agency has an obligation hereunder the City will be responsible for causing the Successor Agency to attempt to perform such obligation.

“Successor Agency Component” means compliance with the Operations, Maintenance and Monitoring Plan until the “Acceptance Date” (as defined in Reimbursement Agreement re Successor Agency Component), as required of the Successor Agency pursuant to the Settlement Agreement.

“Successor Agency Remedial Improvements” are described in Paragraph III of the Scope of Development.

“Title 27” means Title 27 of the California Code of Regulations, Division 2.

“Title Company” is defined in Section 203 hereof.

“Title Policy” or **“Title Policies”** is defined in Section 204 hereof.

“Transfer” is defined in Section 603.1 hereof.

“**WDD**” means the Workforce Development Division of the City of Anaheim.

“**West Anaheim Commercial Corridors Redevelopment Plan Mitigation Monitoring Plan No. 119**” means the Addendum to the Final Impact Report for the West Anaheim Commercial Corridors Redevelopment Project Certified in 1998.

“**WIG**” means the Westgate Investment Group LLC, a California limited liability company.

“**WIG Property**” is that certain parcel(s) of land owned by WIG adjacent to the Site, as shown on the Site Plan.

200. CONVEYANCE OF THE SITE

201. **Assembly and Acquisition.**

201.1 **Good Faith Deposit.** Developer has herewith deposited with City the sum of One Hundred Thousand Dollars (\$100,000) (the “Good Faith Deposit”) by means of cash, a bank cashier’s check made payable to Escrow Holder, or a confirmed wire transfer of funds.

201.2 **Liquidated Damages.** IN THE EVENT OF TERMINATION OF THIS AGREEMENT BY CITY PRIOR TO THE CLOSE OF ESCROW, PURSUANT TO SECTION 503.2(a), (b), (c) OR (e) OF THIS AGREEMENT DUE SOLELY TO DEVELOPER’S DEFAULT AFTER WRITTEN NOTICE TO DEVELOPER AND THE EXPIRATION OF THE CURE PERIOD UNDER THIS AGREEMENT, THE AMOUNT OF THE GOOD FAITH DEPOSIT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) (“LIQUIDATED DAMAGES”), WHICH THE CITY HAS HERETOFORE EXPENDED IN CONNECTION WITH THE SITE, SHALL BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY OF THE CITY HEREUNDER. IN THE EVENT OF SUCH TERMINATION, THE CITY WOULD SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE DELAY OR FRUSTRATION OF TAX REVENUES THEREFROM TO THE CITY AND THE CITY, THE DELAY OR FAILURE OF THE CITY TO FURTHER THE IMPLEMENTATION OF THE REDEVELOPMENT PLAN, AND LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO THE CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD BE APPROXIMATELY THE LIQUIDATED DAMAGES AMOUNT, AND SUCH AMOUNT SHALL BE PAID OVER TO THE CITY OR RETAINED, AS THE CASE MAY BE, UPON TERMINATION OF THIS AGREEMENT UNDER SECTION 503.2 OF THIS AGREEMENT, AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR INITIALS BELOW:

Developer

City

Except as set forth in the next paragraph, provision of this Section 201.2 shall be City's sole and exclusive remedy in the event of termination prior to Close of Escrow and, in such event, City hereby waives the right to specifically enforce this Agreement; provided, however, this liquidated damages provisions shall not limit the City's right to enforce all indemnification provisions contained in this Agreement.

Notwithstanding the foregoing provisions of this Section 201.2, in the event Developer contests the validity or the enforceability of the provisions of this Section 201.2, the City shall be entitled to pursue all available remedies including money damages.

201.3 Disposition of the Parcel. The City agrees to sell the Site and the Developer agrees to purchase the Site from the City, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, including the Conditions Precedent as set forth in Section 205. The Conveyance of the Site from the City to the Developer (the "Conveyance,") shall be accomplished through the execution, delivery and recordation in the official records of Orange County of the Grant Deed and Environmental Restriction, except as to the Loan Pham Property which will be conveyed by the Assignment of Leasehold Interest.

201.4 Purchase Price. The Purchase Price shall be Sixteen Million, Ninety-Eight Thousand, Two Hundred Seven Dollars and Ninety-Seven Cents (\$16,098,207.97). The Purchase Price will be paid all cash at closing.

202. Escrow. The City shall open escrow ("Escrow") with First American Title Insurance Company or another escrow holder mutually satisfactory to both parties (the "Escrow Agent") by depositing one (1) fully executed copy of this Agreement with Escrow Agent.

202.1 Costs of Escrow. City and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 204 hereof, the City shall pay for the documentary transfer taxes, if any, due with respect to the Conveyance, and Developer and City each agree to pay one-half of all other usual fees, charges, and costs which arise from Escrow with respect to the Conveyance.

202.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of the Developer and City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. All funds received in the Escrow shall be deposited in a federally insured interest bearing general escrow account(s) and may be transferred to any other such federally insured interest bearing escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when the Conditions Precedent as set forth in Section 205 have been satisfied or waived.

Escrow Agent is instructed to release City's escrow closing and Developer's escrow closing statements to the respective parties for their respective prior written approval.

202.3 Authority of Escrow Agent. When the Conditions Precedent have been fulfilled or waived by the party for whose benefit such conditions are imposed, Escrow Agent is authorized to, and shall, with respect to the Closing:

(a) Pay and charge Developer and City for their respective shares of the premium of the Title Policy and any endorsements thereto as set forth in Section 204.

(b) Pay and charge Developer and City for their respective shares of any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.

(c) Disburse funds, deliver and record in the following order of priority: the Operations, Maintenance and Monitoring Plan, the Grant Deed and Environmental Restriction, and Assignment of Leasehold Interest; and all deeds of trust and other security documents required by Developer's lender financing the construction and/or development of the Site and the Improvements with instructions for the Recorder of Orange County, California to deliver conforming copies to the parties.

(d) Do such other actions as necessary to fulfill its obligations under this Agreement.

(e) Direct City to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. City agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and comparable forms respecting the State of California as may be required by Escrow Agent, on forms to be supplied by Escrow Agent.

(f) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

202.4 Closing. The "Closing" or "Close of Escrow" shall occur within thirty (30) days after the satisfaction of the Conditions Precedent, subject to extension under Section 602, or such later date as may be mutually agreed upon by the City and Developer in writing; provided however in no event shall the Closing occur later than January, 2018 (the "Outside Closing Date"). The Closing or close of Escrow shall mean the time and day the Grant Deed and Environmental Restriction (and, the Assignment of Leasehold Interest) are recorded in the official records of the Orange County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

202.5 Closing Procedure. Escrow Agent shall close Escrow for the Site as follows:

(a) Record in order the Operations, Maintenance and Monitoring Plan against the Site; the Grant Deed, Environmental Restriction, (and Assignment of Leasehold Interest); all deeds of trust and other security documents required by Developer's lender financing the

construction and/or development of the Improvements with instructions for the Recorder of Orange County, California to deliver conforming copies to the parties;

(b) Instruct the Title Company to forthwith deliver the Title Policy to Developer with a copy to the City;

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

(d) Deliver the FIRPTA Certificate and other certificate(s) and statement(s) described in Section 202.3(f), if any, to the Developer;

(e) Disburse any funds and documents as may be held in Escrow following the Closing to the party entitled thereto; and

(f) Deliver to both Developer and City a separate accounting of all funds received and disbursed for each party and conformed copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

203. **Review of Title.** Prior to the Date of Agreement, the City has caused First American Title Insurance Company (the "Title Company"), to deliver to Developer a standard preliminary title report (the "Report") with respect to title to the Site dated no more than ten (10) days prior to the Date of Agreement, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Report. The Developer shall have the right to approve or disapprove the Exceptions in its sole discretion; provided, however, that the Developer hereby approves the following Exceptions:

(a) The Redevelopment Plan.

(b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow).

(c) The provisions of the Grant Deed and Environmental Restriction.

Developer shall have sixty (60) days from the later to occur of (i) the Effective Date, or (ii) the date of its receipt of the Report and legible copies of all Exceptions to give written notice to City and Escrow Holder of Developer's approval or disapproval of any of such Exceptions. Developer shall have right to obtain, at its expense, an ALTA survey of the Site and to approve or disapprove the survey and all Exceptions to title shown on the survey. Developer's failure to give written approval of the Report within such time limit shall be deemed disapproval of the Report. If Developer notifies City of its disapproval of any Exceptions in the Report, the City shall have thirty (30) days from the receipt of written notice of disapproval by the Developer to determine whether or not it will undertake the removal of any disapproved Exceptions. If the City elects to remove such Exceptions, it shall diligently proceed to effect the removal of such Exceptions. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have thirty (30) days after the expiration of such thirty (30) day period to either give the City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the City written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by

Developer as provided herein shall hereinafter be referred to as the “Condition of Title.” Developer shall have the right to approve or disapprove any additional and previously unreported Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer), except for any covenant recorded against the Site with respect to the Landfill Gases, which covenant Developer shall have the right to reasonably approve in advance of recordation, City shall not voluntarily create any new exceptions to title following the Date of Agreement.

204. **Title Insurance.** Concurrently with recordation of a Grant Deed, Environmental Restriction, and, the Assignment of Leasehold Interest, there shall be issued by Title Company to Developer, CLTA title insurance policies for the Site or, at Developer’s request, an ALTA extended coverage owner’s policy of title insurance (6-17-06) and an ALTA 13 Leasehold Owner’s Endorsement (4-2-12) with respect to the Loan Pham Property (together, the “Title Policy”), collectively in the amount of the Purchase Price, together with such endorsements as are requested by the Developer, insuring that as of the date and time of recordation of such Grant Deed, Environmental Restriction and Assignment of Leasehold Interest, title to or all right of possession for the Site is vested in Developer in the condition required by Section 203 of this Agreement. The City agrees to remove on or before the Closing any deeds of trust or other monetary liens against the Site. The City shall pay that portion of the premium for the Title Policy equal to the cost of a CLTA title policy in the amount of the Purchase Price. Any additional costs, including the cost of endorsements requested by the Developer which are not necessary to obtain the CLTA title policy, or additional premiums to obtain an ALTA policy, shall be borne by the Developer.

205. **Conditions of Closing.** The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below (collectively “Conditions Precedent”). Except for a breach of one of the party’s obligations under this Agreement, the failure of any Conditions Precedent set forth in this Section 205 to be either satisfied or waived prior to the date specified below shall not constitute a Default pursuant to Section 401, but shall be cause for termination of this Agreement by the party for whose benefit such condition has been imposed.

205.1 **City’s Conditions of Closing.** City’s obligation to proceed with the Closing is subject to the fulfillment, or waiver by City, of each and all of the conditions precedent (a) through (u), inclusive, described below (“City’s Conditions Precedent”), which are solely for the benefit of City, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time frame is provided, prior to the Outside Date:

- (a) No Default. Developer shall not be in Default.
- (b) Execution and Delivery of Documents. Developer shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.
- (c) Payment of Funds. The Developer has deposited all of Developer’s required costs of Closing into Escrow in accordance with Section 202.2 hereof.
- (d) Basic Concept Drawings and Design Development Drawings. The Developer shall have obtained approval by the City of the Basic Concept Drawings and Design Development Drawings as set forth in Section 302 hereof.

(e) Commercial General Liability Insurance. The Developer shall have provided proof of commercial general liability insurance as required by Section 306 hereof.

(f) Construction Financing. The City shall have approved, which approval shall not be unreasonably withheld, the Preliminary Evidence of Financing for the Improvements. City shall also have approved the loan documents to confirm that the Construction Financing shall contain substantially similar terms as the Preliminary Evidence of Financing. The Construction Financing for the Improvements shall be on substantially similar terms as the approved Preliminary Evidence of Financing unless approved by City, which approval shall not be unreasonably withheld, and such Construction Financing shall be ready to record and fund concurrently with the Closing.

(g) Plans and Permits. Developer shall have (i) submitted completed Construction Drawings for the Improvements set forth in item ___ of the Schedule of Performance (the "Construction Drawings"), (ii) obtained RWQCB, and City approval of final Construction Drawings, (iii) grading and building permits for the work described in the Construction Drawings shall be ready to be issued and necessary fees and security posted for the Improvements, (iv) the Major Retailer shall have submitted building plans and permit applications to the City, and (v) the Major Retailer(s) shall have waived its lease contingencies (other than the Major Retailer(s)' receipt of building and other permits.

(h) General Contractor Contract. The Developer shall have provided or caused to be provided to the Director a copy of a valid and binding contract between the Developer and one or more California-licensed general contractors for the construction of the Improvements (other than improvements to be constructed by tenants or occupants of the Improvements), certified by the Developer to be a true and correct copy thereof.

(i) Executed Leases. City shall have approved, acting in its sole and absolute discretion, the Major Retailer(s) and Developer shall have provided to the City executed the Major Retailer Lease(s) with all environmental and soils review periods in connection with such Major Retailer Lease(s) either waived or satisfied.

(j) Guaranty. The completion guaranty of Guarantor with respect to the Improvements, in substantially the form attached hereto as Attachment No. 10 and incorporated herein by reference, shall be executed and delivered to City.

(k) Environmental Insurance. City has obtained Contractor's Pollution Liability Insurance pursuant to Section 207.09, and Environmental Insurance pursuant to Section 207.10.

(l) Developer Obligations. The Developer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Developer prior to the Closing.

(m) Developer Representations. All representations and warranties made by the Developer in this Agreement shall be true and correct as of the date of this Agreement and the Close of Escrow subject to the Developer's right to modify its representations as set forth in Section 206 below.

(n) Access Easement. The parties shall have agreed upon the terms of the Access Easement.

(o) CC&Rs. A Declaration of Covenants, Conditions and Restrictions and Grant of Easements (“CC&Rs”) shall be recorded prior to or concurrently with the Closing. The CC&Rs shall provide, among other things, that the common area of Site shall be maintained in accordance with the Maintenance Standards set forth in Section 401 of this Agreement.

(p) Approval of Operations, Maintenance and Monitoring Plan. City, Developer and the Responsible Agencies have approved the Operations, Maintenance and Monitoring Plan for the Site.

(q) Brookfield Reimbursement. The Developer shall at the Close of Escrow deposit with the Escrow Agent the all cash amount of the Brookfield Reimbursement. Escrow Agent shall disburse Brookfield Reimbursement at the direction of the City upon the Close of Escrow.

(r) Reimbursement Agreement re Successor Agency Component. Developer has executed the Reimbursement Agreement re Successor Agency Component.

(s) Environmental Condition.

(i) The Responsible Agencies shall have approved the Operations, Maintenance and Monitoring Plan and the parties’ proposal for the implementation of the Approved RAP or conditions approval thereof in a manner consistent in all material respects with the Remedial Action Plan, within the time set forth in the Schedule of Performance in accordance with Section 207.3(d).

(ii) The Responsible Agencies shall have received from the Successor Agency, City and Developer all additional information outlined in the Interim Immunity Letter that such Responsible Agencies deem necessary to commencement of construction of the Major Retailer(s), site work and Remedial Improvements, and shall have approved, all reports (i.e., geotechnical, groundwater and landfill gas perimeter probe monitoring), design plans (i.e., final cover, drainage system, groundwater monitoring system, landfill gas monitoring and control systems, monitoring well security, irrigation plan and monitoring system), construction plans and workplans necessary for each construction element.

(iii) The Responsible Agencies shall have issued approval of (aa) the closure and post-closure plan for the Landfills, and (bb) that construction of the Improvements can commence.

(iv) The Agency (now Successor Agency) has entered into an agreement with the owner of WIG Property pursuant to which (i) such owner has agreed to allow the recordation of the Environmental Deed Restrictions against the WIG Property and to participate in the Approved RAP and (ii) the Agency (now Successor Agency) has committed to perform the Remedial Improvements on the WIG Property or the Responsible Agencies shall have agreed that the Remediation of the WIG Property is not a condition of approval of or certifications for completion for the Improvements (including, without limitation, closure, post-closure or maintenance and monitoring).

(v) The RWQCB shall have approved the financial assurance mechanism required for post-closure maintenance and monitoring of the Site.

(vi) The Developer, the City, the Successor Agency and the RWQCB shall have agreed upon the form of Environmental Deed Restriction required for the Site, as referenced in the Interim Immunity Letter.

(vii) The Developer and City shall have entered into an agreement for the City's reimbursement of the WIG Property's share of the annual costs incurred by Developer of implementing Operations, Maintenance and Monitoring Plan

(t) Conveyance by the Successor Agency. The City shall have received conveyance of the Site from the Successor Agency following necessary approvals by the California Department of Finance.

(u) Developer/Successor Agency Contract re Successor Agency Component. Successor Agency and Developer shall have entered into a contract with respect to the Successor Agency Component.

Any waiver by the City of any of the preceding conditions must be expressly made in writing.

205.2 Developer's Conditions of Closing. Developer's obligation to proceed with the Closing is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (u), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time is set forth, by the Outside Date:

(a) No Default. City shall not be in Default.

(b) Execution and Delivery of Documents. City shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the Condition of Title of the Site, as provided in Section 203 hereof.

(d) Basic Concept Drawings and Design Development Drawing Approvals. The Developer shall have obtained approval by the City of the Basic Concept Drawings and Design Development Drawings as set forth in Section 302.2 hereof.

(e) Construction Financing. Developer shall have obtained, and the City shall have approved, Construction Financing for the Improvements as provided in Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing.

(f) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have irrevocably agreed to issue to the Developer the Title Policy for the Parcel upon the Close of Escrow, in accordance with Section 204 hereof.

(g) Plans and Permits. Developer shall have (i) submitted completed Site Construction Drawings, (ii) obtained RWQCB, and City approval of final Site Construction Drawings, (iii) grading and building permits for the work described in the Site Construction Drawings shall be ready to be issued and necessary fees and security posted for the Improvements, (iv) the Major Retailer shall have submitted building plans and permit applications to the City, and (v) the Major Retailer shall have waived its lease contingencies.

(h) Executed Leases. Developer shall have provided to the City executed Major Retailer(s) with all environmental and soils review periods and all other contingencies either approved or waived by the Major Retailer(s).

(i) Adverse Conditions. No lawsuit, moratoria or similar judicial or administrative proceeding or government action shall exist or have been threatened which would materially delay or significantly increase the cost of constructing the Developer Improvements or expose Developer to additional significant economic liability.

(j) City Obligations. The City shall have timely performed all of the obligations required by the terms of this Agreement to be performed by the City.

(k) City Representations. All representations and warranties made by the City in this Agreement shall be true and correct as of the date of the Agreement and Close of Escrow, subject to the City's right to modify its representations as set forth in Section 206 below.

(l) Acquisition and Settlement Documents. The City has provided to Developer copies of any and all documents pursuant to which the City has acquired title to all portions of the Site, including the Loan Pham Lease (collectively, "Acquisition Documents"). The City shall have also provided to Developer copies of any and all settlement agreements between the City and any other party, if any, including without limitation, the County of Orange, and the Integrated Waste Management Department with respect to Environmental Condition on the Site (collectively, "Settlement Agreements"). Developer shall have reasonably determined that the terms and conditions of such Acquisition Documents and Settlement Agreements do not materially affect, reduce or limit Developer's rights, or materially increase Developer's obligations or liability, with respect to the Site.

(m) Environmental Insurance. City has obtained Contractor's Pollution Liability Insurance pursuant to Section 207.09, and Environmental Insurance pursuant to Section 207.10.

(n) Access Easement. The City and the Developer shall have entered into the Access Easement on mutually acceptable terms.

(o) Parcel Map; CC&Rs. Developer, at its sole cost, shall have effected the recordation of a parcel map ("Map") subdividing the existing parcel(s) comprising the Site in order that the parcels containing the Major Tenants, the remaining buildings and the Loan Pham Property shall constitute separate legal parcels in accordance with the provisions of applicable law. It is a condition to Developer's obligation to consummate the transaction contemplated hereby that the Map and a Declaration of Covenants, Conditions and Restrictions and Grant of Easements ("CC&Rs") shall be recorded prior to or concurrently with the closing contemplated hereby, and that Developer shall have approved, in Developer's sole discretion, in writing prior to the recordation of the Map, all conditions imposed on the Site as a result of such Map. The CC&Rs shall provide, among other things,

that the common area of Site shall be maintained in accordance with the Maintenance Standards set forth in Section 401 of this Agreement. City hereby agrees to reasonably cooperate with Developer in obtaining the recordation of such Map and shall execute all applications and related documents (including the Map) necessary for obtaining approval of the Map and causing the Map to be recorded. Developer shall be solely responsible for all engineering, permit and other fees and costs in connection with preparing and obtaining approval of the Map.

(p) Developer/Successor Agency Contract re Successor Agency Component. Successor Agency and Developer shall have entered into a contract with respect to the Successor Agency Component.

(q) Approval of Operations, Maintenance and Monitoring Plan. Successor Agency, City, Developer and the Responsible Agencies have approved the Operations, Maintenance and Monitoring Plan.

(r) Reimbursement Agreement re Successor Agency Component. Successor Agency has executed the Reimbursement Agreement re Successor Agency Component.

(s) Environmental Condition.
(i) The Responsible Agencies shall have approved the Operations, Maintenance and Monitoring Plan and the parties' proposal for the implementation of the Approved RAP or conditions approval thereof in a manner consistent in all material respects with the Remedial Action Plan, within the time set forth in the Schedule of Performance in accordance with Section 207.3(d).

(ii) The Responsible Agencies shall have received from the Successor Agency, City and Developer all additional information outlined in the Interim Immunity Letter that such Responsible Agencies deem necessary to commencement of construction of the Major Retailer(s), site work and Remedial Improvements, and shall have approved, all reports (i.e., geotechnical, groundwater and landfill gas perimeter probe monitoring), design plans (i.e., final cover, drainage system, groundwater monitoring system, landfill gas monitoring and control systems, monitoring well security, irrigation plan and monitoring system), construction plans and workplans necessary for each construction element.

(iii) The Responsible Agencies shall have issued approval of (aa) the closure and post-closure plan for the Landfills, and (bb) that construction of the Improvements can commence.

(iv) The RWQCB shall have approved the financial assurance mechanism required for post-closure maintenance and monitoring of the Site.

(v) The Developer, the City, the Successor Agency and the RWQCB shall have agreed upon the form of the Environmental Deed Restrictions and such Environmental Deed Restrictions shall have been incorporated in the Grant Deed and Environmental Restriction, which will run with the land and be binding on owners during their respective periods of ownership.

(vi) The Developer shall have reviewed (a) the results of the Agency's testing of the Davis Mud Pit, (b) the documents shown in the List of Environmental Condition of the Site, (c) the hydraulic hoist removal, and (d) any "New Reports" (as defined in Section 206.1(f)) and be satisfied, in its reasonable discretion, with the requirements imposed, if any, by the Responsible Agencies in connection therewith.

(vii) The Developer and City shall have entered into an agreement for the City's reimbursement of the WIG Property's share of the of the annual costs incurred by Developer of implementing the Operations, Maintenance and Monitoring Plan

(t) Loan Pham Lease Amendment and Recognition Agreement. The City shall cooperate with the Developer to obtain (i) an amendment to the Loan Pham Lease which shall provide, among other things, that the landlord under the Loan Pham Lease shall execute a Recognition Agreement at the request of the tenant under the Loan Pham Lease, and (ii) the landlord under the Loan Pham Lease shall execute a Recognition Agreement with the subtenant of the Loan Pham Property substantially in the form attached hereto as Attachment No. 14

(u) Conveyance by the Successor Agency. The City shall have received conveyance of the Site from the Successor Agency.

(v) Actions of the Successor Agency. All required actions of the Successor Agency have been performed and, if applicable, approved by the California Department of Finance.

Any waiver by the Developer of any of the preceding conditions must be expressly made in writing. City and Developer agree that if the parties have not obtained all Responsible Agencies' (including the RWQCB) approvals pursuant to Sections 205.1 and 205.2 (the "Required Approvals") at least ten (10) days prior to the Outside Date, either party may, at its election, extend the Escrow and the Outside Date for up to ninety (90) days upon delivering to the other party and Escrow Agent written notice of its intention to so extend the Escrow and the Outside Date prior to the Outside Date in order to provide parties with additional time to obtain the Required Approvals. The parties agree to cooperate with each other and use diligent efforts during the Escrow period, as extended, to obtain the Required Approvals.

206. **Representations and Warranties.**

206.1 **City Representations.** City represents and warrants to Developer as follows:

(a) Authority. City is a California municipal corporation and Charter City.

(b) FIRPTA. City is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute.

(c) No Conflict. City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) Litigation. City has no Actual Knowledge of, nor has City received any notice of or know of any basis for, any actual, threatened or pending litigation or proceeding by any organization, person, individual or governmental agency against City with respect to the Site or against the Site or with respect to the City's authority under or implementation of the Polanco Redevelopment Act. In the event City receives notice of any such actual, threatened or pending litigation or proceeding prior to the Closing, City shall promptly notify Developer thereof.

(e) Notices of Violation. Except as to the items included in the List of Environmental Condition Documents, City has no Actual Knowledge of, nor has City received any notice of any basis for, any violations of laws, statutes, regulations, ordinances, other legal requirements with respect to the Site (or any part thereof), or with respect to the use, occupancy or construction thereof, or any investigations by any governmental or quasi-governmental authority into potential violations thereof. In the event City receives notice of any such violations or investigations affecting the Site prior to the Closing, City promptly shall notify Developer thereof. On August 26, 2010, OCHCA issued a Notice and Order to the City and WIG alleging violations to Site Minimum Standards. City appealed the Notice and Order, WIG has not responded.

(f) Environmental Condition. City will provide Developer with access to, and Developer will have the opportunity to make copies of, the reports, investigations, studies, lab results, and documents, pertaining to the existing or past Environmental Condition of the Site, as shown in the List of Environmental Conditions Documents and shall provide to Developer any reports, investigations, studies, lab results, and documents, pertaining to the existing or past Environmental Condition of the Site not listed on the List of Environmental Conditions Documents that are generated by the City after the date of this Agreement within ten (10) business days of City's receipt thereof ("New Reports"). City has installed Landfill Gas collection systems at the Site in accordance with the RAP..

Until Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of the Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation or warranty shall not be deemed a breach by City hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if Developer, in its reasonable discretion, determines such exception would materially adversely affect the value, development, insurability, financing, maintenance, and/or operation of the Site by Developer or the Developer's exposure to risk or liability with respect to the Site. If Developer elects, acting in its sole discretion, to close the Escrow following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Developer, acting in its sole discretion, elects to not close Escrow, then Developer shall give notice to City of such election within thirty (30) days after disclosure of such information, and this Agreement and the Escrow shall thereafter automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.1, subject to any such exceptions, shall survive the Closing.

206.2 Developer's Representations. Developer represents and warrants to City as follows:

(a) Authority. Developer is a duly organized limited liability company established within and in good standing under the laws of the State of Delaware, and is

authorized to do business in the State of California. The copies of the documents evidencing the organization of the Developer which have been delivered to the City are true and complete copies of the originals, as amended to the Date of this Agreement. The execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer.

(b) Experience. Developer is an experienced developer of commercial retail projects similar in size, scope, and quality to the Improvements.

(c) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

(d) No Developer Bankruptcy. Developer is not the subject of a bankruptcy proceeding.

(e) Environmental Condition. Developer has provided City with the reports, investigations, studies, results and documents pertaining to the existing or past Environmental Condition of the Site which are within the possession of Developer and/or its tenants or lender, if provided to Developer, and not otherwise provided by City to Developer and Developer has provided the City with that certain Environmental Site Assessment Proposed Westgate Center dated June 23, 2008, prepared by ENVIRON Corporation on behalf of Developer.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of the Closing, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if City, in its reasonable discretion, determines that such exception would have an effect on the value and/or operation of the Improvements. If City, acting in its reasonable discretion, elects to close the Escrow following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, City elects, acting in its reasonable discretion, to not close the Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.2, subject to such exception(s), shall survive the Closing.

207. **Condition of the Site.**

207.1 **Studies and Reports.** At any time after the Date of Agreement, representatives of Developer, on its own behalf and/or on behalf of its prospective tenants and/or lender, or its prospective tenants and/or lender shall have the right of access to all portions of the Site for the purpose of obtaining data and making surveys and tests relating to the condition of the Site, including the environmental condition thereof which includes the mitigation of the Landfill and/or whether or not the refuse contains Hazardous Materials ("Investigation"). Any preliminary work undertaken on the Site by Developer on its own behalf and/or on behalf of its prospective tenants and/or lender prior to the Closing shall be done at the sole expense of the Developer and/or its prospective tenants and/or lender and only after securing any necessary permits from the appropriate governmental agencies, and the Developer's execution of the Right of Entry Agreement.

207.2 **Soils and Geotechnical Conditions.** Developer has heretofore investigated the soils and geotechnical condition of the Site and approved same.

207.3 **Environmental Condition and Mitigation/Remediation.**

(a) Environmental Disclosure. California Health & Safety Code Section 25359.7 requires owners of nonresidential real property who know, or have reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the real property to provide written notice of same to the buyer of real property. The City hereby discloses that the Site, or portions of the Site were used as Landfills or as the Davis Mud Pit containing municipal solid waste, construction debris, oil well drilling, mud and fluid and other liquid wastes and Landfill Gases which Landfills and the Landfill Gases may contain Hazardous Materials (the “Environmental Condition”). To the extent the City has copies of investigation reports, it will provide copies to Developer upon request; but the Parties acknowledge that the City will not be conducting a public records search of the RWQCB’s (or any other Responsible City) files – although the City urges Developer to do so to satisfy itself regarding the Environmental Condition of the Site. By execution of this Agreement, Developer (i) acknowledges its receipt of the foregoing notice given pursuant to California Health & Safety Code Section 25359.7; (ii) acknowledges that it has conducted its own independent review and investigation of the Site prior to the Close of Escrow; (iii) agrees to rely solely on its own experts in assessing the Environmental Condition of the Site and its sufficiency for its intended use; and (iv) waives any and all rights Developer may have to assert that the City has not complied with the requirements of Health & Safety Code Section 25359.7.

(b) Environmental Condition of the Site. Based on the disclosure of the City as described in (a) above, and the Developer’s investigation of the Site, it is acknowledged by the parties that the List of Environmental Condition Documents disclose that: (i) the Anderson Landfill was formerly used for disposal of primarily construction debris and demolition wastes, (ii) the Sparks Landfill was formerly used for the disposal of primarily solid waste, (iii) the Davis Mud Pit was formerly used for the disposal of oil well drilling fluid and other liquid wastes, and (iv) Landfill Gases, including methane, associated with the Anderson Landfill and the Sparks Landfill are presently being mitigated using Landfill Gas collection systems.

(c) Preparation, Submittal and Processing of the Plans. The City and Developer are aware that the environmental impacts to the air, soil and groundwater arising from the Landfills and the remediation of Hazardous Materials and Landfill Gases is required. The City has commenced proceedings pursuant to the Polanco Redevelopment Act and in connection therewith has submitted and RWQCB has conditionally approved the Remedial Action Plan pursuant to the letter from RWQCB dated April 27, 2007 (“Approved RAP”). The parties intend to seek further direction and approvals regarding the implementation of the Approved RAP.

(d) Action by RWQCB on the Plans. Subject to the satisfaction of the conditions set forth in Section 205.2(g), the Developer shall be deemed to have approved the Environmental Condition of the Site. The Developer’s approval of the Environmental Condition of the Site shall be a Developer’s Condition Precedent to the Closing as set forth in Section 205.2 hereof and shall be fulfilled, or waived by Developer, not later than the earlier of the Outside Date or the Close of Escrow. If the Environmental Condition is not approved as set forth above either party may terminate this Agreement by written Notice to the other within thirty (30) days after delivery of written notice of one of the events described in the sentence immediately above.

207.4 Mitigation/Remediation of the Site. The Developer will construct the “Developer Remedial Improvements” (as defined in the Scope of Development). The City will construct or cause to be constructed the “Successor Agency Remedial Improvements” (as defined in the Scope of Development).

Subject to City’s performance of the Successor Agency Component, the Developer will satisfy the conditions of the West Anaheim Commercial Corridors Redevelopment Plan Mitigation Monitoring Plan No. 119.

207.5 Polanco Redevelopment Act. The Agency (now Successor Agency) has heretofore submitted its application to RWQCB for approval under the Polanco Redevelopment Act with the intention that the Remedial Action Plan be undertaken in accordance with the Polanco Redevelopment Act so as to effectuate reuse of the Landfills in accordance with the Merged Redevelopment Plan and to provide the Agency (now Successor Agency), the Developer, subsequent purchasers of any portion of the Site and the lenders of the Developer and any subsequent purchasers with the immunity from any release or releases of hazardous substances identified in the Remedial Action Plan pursuant to Section 33459.3 of the Polanco Redevelopment Act (“Liability Immunity”). Provided neither party has elected to terminate this Agreement as permitted herein, the parties agree to implement the Remedial Action Plan in compliance with the Approved RAP. The Developer acknowledges that the final construction drawings for the Remedial Improvements and the contents of the Approved RAP are intended to provide the basis for RWQCB to acknowledge in writing that, following completion of the Approved RAP, the Liability Immunity will apply under Section 33459.3(b) of the Polanco Redevelopment Act. The Developer acknowledges that completion of the Approved RAP will be the basis for the issuance of the Immunity Letter at which time the Liability Immunity will attach to the Successor Agency and the Developer. The parties further agree that the Developer will not have a cause of action against the City and/ or Successor Agency if the Liability Immunity under the Polanco Redevelopment Act is limited or denied in any way by any decision or opinion of any court, administrative body or any action of the Responsible Agencies.

207.6 No Warranties As To Site; Release of City and/ or Successor Agency. Except as otherwise expressly provided herein, the physical condition of the Site is and shall be delivered from City to Developer in an “as-is” condition, with no warranty expressed or implied by City and/ or Successor Agency, including without limitation, the presence of Hazardous Materials, Landfill Gases, the existence of refuse, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder. To the extent authorized by contract or law, the City and Successor Agency shall assign to the Developer all warranties, indemnities, guaranties, claims and causes of action with respect to the Environmental Condition of the Site, if any, that the City and/ or Successor Agency has received from or has against prior owners or operators of the Site, except that Developer’s rights to pursue such parties shall be subject to the terms of the Settlement Agreement, if one is entered.

207.7 Developer Release. As of the Close of Escrow, Developer agrees, with respect to the Site, to release the Successor Agency and City from and against any Environmental Liabilities except as to (i) the County Dispute which has been dealt with in the Settlement Agreement, and/or (ii) liabilities arising out of the negligence or willful misconduct of the Successor Agency and/or City occurring after the Close of Escrow or occurring prior to the Close of Escrow but discovered after the Close of Escrow, and/or (iii) liabilities of the City and/or Successor Agency arising out of the Reimbursement Agreement re Successor Agency Component which liabilities, if any, are covered in the Reimbursement Agreement re Successor Agency Component. The Developer shall establish, by

the preponderance of the evidence, the date that the Environmental Liability occurred. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement and, without limiting the foregoing, shall survive the Closing.

The Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

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

As such relates to this Section 207.6, effective as of the Closing, the Developer waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

207.8 Relocation; Obligations. The City has heretofore caused all occupants of the Site to vacate the Site, and, in doing so, has complied with all applicable federal, state and local laws and regulations concerning the displacement and/or relocation of, all Eligible Persons and/or businesses from the Site, if any, including without limitation, the California Relocation Assistance Law, California Government Code Section 7260, *et seq.*, all state and local regulations implementing such laws, and all other applicable federal, state, and local laws and regulations relating to Eligible Persons. The City shall indemnify, defend, and hold Developer and its members, representatives, officers, employees, agents, permitted assigns, tenants and any of their lenders harmless from any and all claims, losses, liabilities or demands related to or arising from the vacation of all occupants of the Site aforementioned. This indemnity shall survive the termination, expiration, invalidation, or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing.

207.9 Contractor’s Pollution Liability Insurance. Developer shall, at its sole cost and expense, provide or cause the provision of Contractor’s Pollution Liability Insurance with respect to construction of those portions of the Improvements to be constructed (i) by the Major Retailer(s) in an amount equal to or in excess of that provided by the Successor Agency’s CPL Policy and (ii) by other ground tenants in the amount of not less than One Million Dollars (\$1,000,000), for the longer of twelve (12) months or the Major Retailer(s) and/or ground tenant’s construction period, as applicable.

207.10 Environmental Insurance. The Successor Agency has obtained, at its cost and expense, a Pollution Legal Liability Insurance issued by AIG, Policy Number 13307592 (“Environmental Insurance”) naming the Successor Agency as the First Named Insured and the Developer, Guarantor, the City, the County and WIG as “Named Insured.” The City shall timely provide to the Successor Agency, County, Developer, Guarantor and WIG copies of all notices from AIG and/or notify the County, Developer, Guarantor and WIG of any notices or other communications

from AIG pertaining to the Environmental Insurance. The following shall be “additional insureds:” other major and/or ground tenants of the Project, Developer’s lenders and WIG’s lender(s) but only those lenders permitted under this Agreement and OPA, respectively. No changes shall be made to the Environmental Insurance other than the addition of additional insured parties as provided above without the prior written approval of the “named insureds,” which approval shall not be unreasonably withheld, conditioned or delayed. In the case of the transfer of the Site, the City shall cooperate, at no cost to the City, with the then owner of the Site in connection with the addition of such transferees to the Environmental Insurance as “named insureds.” The City agrees to reasonably cooperate and to execute such documents as are reasonably necessary in connection with the addition of tenants or other parties with an insurable interest in the Site as additional insureds and in the issuance of any additional endorsements.

208. Post Closing Obligations.

208.1 Developer Precautions After Closing. Upon and after the Closing, the Developer shall implement, or, if applicable, shall cause the Major Retailer(s) to implement, the Developer Remedial Improvements and Operations, Maintenance and Monitoring Plan to mitigate the effects of the Environmental Condition as provided in the Approved RAP and Operations, Maintenance and Monitoring Plan. Upon and after the Closing, the Developer shall exercise all reasonable precautions in an effort to prevent the release into the environment of any Hazardous Materials and/or Landfill Gases in violation of applicable environmental Governmental Requirements. Such precautions shall include compliance with the Environmental Deed Restrictions and the Governmental Requirements and the operations, maintenance and monitoring requirements set forth in the Operations, Maintenance and Monitoring Plan as evidenced by the Operation, Maintenance and Monitoring Plan, a memorandum of which will be recorded against the Site. Developer further agrees to comply with all Governmental Requirements in connection with the disclosure, storage, use, removal and disposal of any Hazardous Materials or Landfill Gases.

208.2 Developer and City Indemnities. As of the Close of Escrow, Developer agrees, with respect to the Site, to indemnify, defend and hold Indemnitees harmless from and against (“Indemnity” or “Indemnify”) any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys’ fees) by third parties but expressly excluding the County Dispute and the City’s and Developer’s performance of the Successor Agency Component, which performance is governed by the Reimbursement Agreement re Successor Agency Component, for bodily injury or property damage, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials and Landfill Gases including methane on, under, in, about, or from or the transportation of any such Hazardous Materials and Landfill Gases including methane to or from, the Site, and (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials and Landfill Gases including methane on, under, in or about, to or from the Site; and (iii) damage to person or property arising out of or related to the Investigations of the Site pursuant to this Section 208 (collectively “Environmental Liabilities”) except the Environmental Liabilities arising out of (i) the negligence or willful misconduct of the Successor Agency or the City occurring after the Close of Escrow or occurring prior to the Close of Escrow but discovered after the Close of Escrow, (ii) the transportation and/or disposal of any Hazardous Materials from the Site, and (iii) liabilities of the City and/or Successor Agency arising out of the Reimbursement Agreement re Successor Agency Component which liabilities, if any, are covered in the Reimbursement Agreement re Successor Agency Component. The Developer shall establish with

substantial evidence the date that the Environmental Liability occurred. This Indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment by any third party other than the County Dispute. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such Environmental Liability; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. City agrees to indemnify, defend and hold Developer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees) resulting from, arising out of, or based upon the County Dispute. The foregoing Indemnities shall survive the termination, expiration, invalidation, or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing. Notwithstanding the foregoing or anything contained herein to the contrary, the Parties acknowledge and agree that the Developer's Indemnity set forth in this Section 208.2 shall exclude the Developer's performance of the Successor Agency Improvements (including, without limitation, the Developer's construction and/or installation of the Successor Agency Improvements), which performance is governed by the Reimbursement Agreement re Successor Agency Component.

300. DEVELOPMENT OF THE SITE

301. **Development of the Site.**

301.1 Developer's Obligation to Construct Improvements. Following the Closing, the Developer shall develop or cause the development of the Improvements in accordance with the Scope of Development, the City Municipal Code, and the plans, drawings and documents submitted by the Developer and approved by the City as set forth herein. The Developer acknowledges that the requirements set forth in the Scope of Development are material considerations for the participation by the City in this Agreement, and that but for such requirements, the City would not have entered into this Agreement. The identity of the Major Retailer, Mid-Sized Retailers, 50% of the fast casual eateries on the Paseo, one (1) sit-down table service restaurant, and the concept of the Festival Green shall be approved by the Director acting in his/her reasonable discretion. City acknowledges that part of the Project may be constructed by Major Retailer and/or Mid-Sized Retailers, and/or ground lessees following the leasing of such pads to such Major Retailer and/or Mid-Sized Retailers, and the restaurants and other eateries located on the Paseo; provided that Developer shall be responsible for insuring any such construction is in conformity with the Approved RAP. In no event shall the construction of all or any portion of the Project by parties other than Developer relieve Developer of its obligations under this Agreement; provided, however, in the event that (i) a Major Retailer and/or Mid-Sized Retailers, fails to construct the improvements as required under its lease, through no fault of Developer, Developer shall not be in Default hereunder provided that Developer uses diligent efforts to enforce the terms of such Major Retailer Lease(s) and cause such Major Retailer and/or Mid-Sized Retailers, to commence construction of the improvements and diligently prosecute the same to completion, or Developer terminates such Major Retailer Lease(s) and enters into a letter of intent with a replacement Major Retailer and/or Mid-Sized Retailers, approved by the City, within six (6) months after Developer's receipt of written notice from City, and thereafter enters into a lease with such replacement Major Retailer and/or Mid-Sized Retailers, within twelve (12) months after Developer's receipt of such written notice from City and the replacement Major Retailer and/or Mid-Sized Retailers, has an obligation in its lease to commence construction within a reasonable period

thereafter, and (ii) in the event that a pad tenant fails to construct the improvements as required under its lease, through no fault of Developer, Developer shall not be in Default hereunder provided that Developer uses diligent efforts to enforce the terms of such tenant's lease and cause such pad tenant to commence construction of the improvements and diligently prosecute the same to completion, or Developer terminates such pad tenant's lease and uses diligent efforts to procure a replacement pad tenant and the replacement pad tenant has an obligation to commence construction within a reasonable period following execution of such tenant's lease.

301.2 Successor Agency Component. As part of its obligation to prepare the Site for delivery to the Developer, whether or not accomplished before or after Close of Escrow, City shall complete the Successor Agency Remedial Improvements described in the Scope of Development within the time set forth in the Schedule of Performance. The City may elect, based on direction from the Successor Agency, on or before the time set forth in the Schedule of Performance, to require the Developer to construct and/or install the Successor Agency Component provided that the City provides access to the Site to Developer and reimburses Developer for the costs thereof pursuant to the Reimbursement Agreement re Successor Agency Component. In the event of such election, City hereby grants the Developer, its employees, consultants, contractors, subcontractors, agents and designees, permission to enter upon Site for the purpose of performing the Successor Agency Component (it being acknowledged and agreed that Developer's entry upon the Site pursuant to this Section 301.2 shall not be subject to the terms and conditions of the Right of Entry Agreement), and City may further elect whether to require the Developer to complete the Successor Agency Component prior to the Close of Escrow or following the Close of Escrow.

301.3 Brookfield Reimbursement Obligation. City and Brookfield Beach Boulevard LLC, a California limited liability corporation ("Brookfield") are parties to that certain reimbursement agreement dated May 1, 2006 (the "Brookfield Reimbursement Agreement"), pursuant to which Brookfield constructed certain improvements that benefited the Site in return for which City has agreed to cause the "Westgate Developer," as defined in the Brookfield Reimbursement Agreement ("Developer," hereunder), to reimburse Brookfield upon issuance of building permits in the sum of Seven Hundred Eighty-Six Thousand, Two Hundred Twenty-Five Dollars and Eighty-Two Cents (\$786,225.82) at the Closing (the "Brookfield Reimbursement"). Developer shall pay such amount into Escrow at closing for the benefit of Brookfield.

301.4 Festival Green. The Improvements shall include the Festival Green and the Paseo, as described in the Scope of Development. The Festival Green shall be made available to the customers of the Project, but shall not be available for public use. The City owns the property formerly located in Sunshine Plaza in the Disney California Adventure Theme Park known as "Sun Icon." The Parties may, upon mutual written agreement, locate the Sun Icon within the Sun Icon Easement, as hereinafter defined. To this end, the Legal Description reserves to the City the easement within the Festival Green in its favor for the placement and maintenance of the Sun Icon ("Sun Icon Easement"), provided that the City shall not remove the Sun Icon without Developer's prior written consent. In the event the Parties agree to locate the Sun Icon within the Sun Icon Easement, the City shall pay for the costs to transport the Sun Icon to the Site and to reassemble the Sun Icon, and the Developer shall, at its cost and expense, construct the proper foundation for and cause the installation of the Sun Icon within the Sun Icon Easement and maintain same in a manner reasonably satisfactory to the City, as long as the Festival Green is operational, all in accordance with an installation and maintenance agreement to be entered into by the parties prior to the Closing. If the Developer consents to the City's removal of the Sun Icon from the Sun Icon Easement, then the City shall reimburse the Developer for

the cost to remove the Sun Icon from the Sun Icon Easement within thirty (30) days after receipt of copies of contractor's invoices or other written evidence of the costs incurred by Developer.

302. Design Review.

302.1 Site Plan. Concurrently herewith, the City has approved a draft site plan.

302.2 Basic Concept Drawings and Design Development Drawings. Within the time set forth in the Schedule of Performance, the Developer shall submit to the City, the RWQCB, and any other appropriate Responsible Agency, the Basic Concept Drawings and the Design Development Drawings. The City shall approve or disapprove the Basic Concept Drawings and the Design Development Drawings, in accordance with Attachment 8.

302.3 Construction Drawings and Related Documents. After the City's and City's Design Development Drawings approval and execution of the Major Retailer Lease(s), and within the time set forth therefor in the Schedule of Performance, the Developer shall prepare or cause to be prepared and submit to the City and RWQCB, and any other appropriate Responsible Agency detailed construction plans sufficient for the issuance of building permits for the Improvements which shall have been prepared by a registered civil engineer (the "Construction Drawings"). The City shall approve or disapprove the Construction Drawings within the time set forth therefor in the Schedule of Performance.

302.4 Standards for Disapproval. The Developer acknowledges and agrees that the City is entitled to approve or disapprove the Basic Concept Drawings and Design Review Submittals in order to satisfy the City's obligation to promote the sound development of land within the City, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and the Project.

302.5 Consultation and Coordination. During the Design Review Process, staff of the City and the Developer shall hold joint progress meetings to coordinate the preparation of, submission to, and review of the Design Review Submittals by the Director and the City. The City shall designate an City employee to serve as the City's project manager who is responsible for the coordination of the City's activities under this Agreement and for coordinating the land use approval and permitting process with the Developer's representatives and consultants.

302.6 Revisions. If the Developer desires to propose any substantial exterior revisions to the approved Basic Concept Drawings or as approved pursuant to the Design Review Process, it shall submit such proposed changes to the City, and shall also proceed in accordance with any and all state and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance for the submittal of the Drawings and Design Review Process. Any change proposed in the Design Development Drawings may be disapproved by the City in its sole and absolute discretion. Any and all change orders or revisions required by the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Basic Concept Drawings, the Design Review Submittals, or the Construction Drawings and completed during the construction of the Project.

302.7 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 Basic Concept Drawings, the Design Review Submittals, or the Construction Drawings nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Design Review Submittals, or Construction Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 302. Subject to the other limitations of this Agreement, the Developer shall hold harmless, indemnify and defend the Indemnitees from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Basic Concept Drawings, the Design Review Submittals, and the Construction Drawings, including without limitation the violation of any laws, or arising out of or in any way relating to any defects in any work done according to the approved Basic Concept Drawings, Design Review Submittals or Construction Drawings.

302.8 Use of Architectural Plans. If Developer terminates this Agreement for any reason, other than the City's Default, Developer shall transfer its interest in the Basic Concept Drawings, Design Development Drawings and to the City, subject to the rights of Developer's architect.

303. Land Use Approvals. Before commencement of construction of the Improvements or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Project by the City or any other governmental agency affected by such construction or work. The Developer shall, without limitation, apply for and secure all permits, and pay all costs, charges and fees associated therewith (except to the extent such fees are imposed as a condition of the Successor Agency Component), required by the City, County of Orange, and other governmental agencies and Responsible Agencies with jurisdiction over the Project. The City staff shall use reasonable efforts to assist the Developer in obtaining all such entitlements, permits and approvals; provided that the City staff shall not incur any expenses or costs in connection therewith. The City staff shall have no responsibility concerning any conditional use permit(s) required in connection with the activities or uses of the Site, except to provide reasonable efforts to assist the Developer as provided herein. Nothing herein shall be construed to limit the City's exercise of its police power.

304. Schedule of Performance. The Developer shall submit all Design Development Drawings, and Construction Drawings (and City shall provide written responses to such submittals), and shall commence and complete all construction of the Improvements, and Developer and City shall satisfy all other respective obligations and conditions of this Agreement, within the times established therefor in the Schedule of Performance, as the same is subject to Section 602. In the event that City fails to provide written responses to such submittals or to satisfy any of its obligations or conditions of this Agreement within the times established therefor in the Schedule of Performance, the deadlines set forth in the Schedule of Performance for Developer's performance of its obligations under this Agreement shall be extended on a day-for-day basis for each day of delay by the City in providing such responses to Developer's submittals or performing the City's obligations under this Agreement.

305. Cost of Construction. Except to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, developing and constructing all of the Improvements, site preparation and grading shall be borne solely by the Developer and/or Developer's retail tenants, as the case may be.

306. Insurance Requirements. The Developer shall secure from a company or companies licensed to conduct insurance business in the State of California, pay for, and maintain in full force

and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, a policy of commercial general liability insurance issued by an "A:VI" or better rated insurance carrier as rated by A.M. Best Company as of the date that Developer obtains or renews its insurance policies, on an occurrence basis, in which the Indemnitees are named as additional insureds with the Developer. Developer shall furnish a certificate of insurance to the City prior to the Close of Escrow, and shall furnish complete copies of such policy or policies upon request by the City. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection offered by the policy shall:

(a) Include an endorsement naming the Indemnitees as additional insureds;

(b) Provide a combined single limit policy for both personal injury and property damage in the amount of \$2,000,000, which will be considered equivalent to the required minimum limits;

(c) Bear an endorsement or shall have attached a rider providing that the City shall be notified not less than thirty (30) days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium

The Developer shall also file with the City the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Developer shall comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City before the commencement of construction. The City, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of Developer to comply with this section. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, the City shall be notified, giving the Developer a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium; provided, however, if such endorsement or rider is not available from Developer's insurance carrier, then the certificate of insurance shall provide that should the policy be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

307. Developer's and City's Indemnities.

307.1 Developer's Indemnity. The Developer shall defend, indemnify, assume all responsibility for, and hold the Indemnitees, harmless from all claims, demands, damages, defense costs or liability for any damages to property or injuries to persons, including accidental death

(including reasonable attorneys' fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement and/or with respect to the development, ownership and/or operation of the Site and Improvements by the Developer, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination or expiration of this Agreement. Notwithstanding the foregoing, the Developer shall not be liable for property damage or bodily injury to the extent caused by the negligence or acts or omissions of the Indemnitees or arising from or relating to the Successor Agency's Component and/or Developer's construction of the Successor Agency Remedial Improvements which liability shall be governed by the Reimbursement Agreement re Successor Agency Component. This indemnity shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing. The City and Developer acknowledge and agree that the indemnity obligations set forth in this Section 307.1 shall not apply to any Environmental Liabilities and that such Environmental Liabilities shall be governed solely by Section 208.2 hereof.

308. **Rights of Access.** Following the Close of Escrow, and prior to the issuance of the Release of Construction Covenants (as specified in Section 310 of this Agreement), for purposes of assuring compliance with this Agreement, and without limitation as to the City and City employees engaged in planning and building functions, representatives of the City, upon at least 24 hours' notice to Developer or its onsite construction manager, or in case of an emergency, without notice, shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Project, so long as City representatives comply with all safety rules and do not in any way interfere with the work or attempt to give instructions or directions to any contractors or workers.

309. **Compliance With Laws.** The Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including applicable state labor standards (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

309.1 **Liens and Stop Notices.** Prior to the issuance of Release of Construction Covenants for the Improvements, the Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice except for liens to secure financing approved pursuant to Section 311 hereof. If a claim of a lien or stop notice is given or recorded affecting the Site or the Project, except as set forth above, the Developer shall within thirty (30) days of such recording or service or within five (5) days of the City's demand, whichever first occurs:

- (a) pay and discharge the same; or
- (b) affect the release thereof by recording and delivering to the City a statutory surety bond in sufficient form and amount, or otherwise; or
- (c) cause the Title Company to issue an updated title policy, dated as of the date of the Release of Construction Covenants, which Title Policy does not include such claim as an exception to title to the Site or the Project; or

(d) provide the City with other assurance which the City deems, in its sole and absolute discretion, to be satisfactory for the payment or discharge of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

310. Release of Construction Covenants. Promptly after completion of the Improvements or any portion thereof in conformity with this Agreement other than the Developer's on-going operations, maintenance and monitoring requirements as set forth in the Operations, Maintenance and Monitoring Plan, if any, which shall be recorded as a covenant against the Site, the City shall deliver to the Developer and/or its permitted successors or assigns a "Release of Construction Covenants," substantially in the form of Attachment No. 6 hereto which is incorporated herein by reference, with respect to the Improvements or such portion thereof completed, executed and acknowledged by City. Such Release of Construction Covenants as to the Improvements shall serve to release the Guaranty under Section 205.1(j). The City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements or such portion thereof, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants or Partial Release of Construction Covenants as to the Improvements or any portion or any pad located therein, as applicable, any party then or thereafter owning, purchasing, leasing or otherwise acquiring any interest in the Site and/or Improvements shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement as to any portion of the Site and/or Improvements to which the Release of Construction Covenants has been issued including, without limitation, the obligations under Section 302 hereof except for those continuing covenants described in Section 406 of this Agreement.

If the City refuses or fails to furnish a Release of Construction Covenants or Partial Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within fifteen (15) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants or Partial Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. Even if the City shall have failed to provide such written statement within such fifteen (15) day period, the Developer shall not be deemed entitled to the Release of Construction Covenants unless the Developer, upon expiration of such fifteen (15) day period provides City with a written demand that the City furnish such Release of Construction Covenants as to the Improvements or partial Release of Construction Covenants as to any portion of the Improvements upon which construction has been completed, or provide a written statement as to the basis for denial thereof (a "Developer Notice"), which Developer Notice sets forth the terms of this Section 310 in full, and the City fails to either furnish such Release of Construction Covenants or Partial Release of Construction Covenants, provide a written explanation of the denial thereof, with fifteen (15) days following City's receipt of the Developer Notice, in which case the Developer shall be entitled to a Release of Construction Covenants or Partial Release of Construction Covenants as to such Pad or portion of the Improvements which is the subject of the Developer Notice. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 8182 of the California Civil Code.

311. **Financing of the Project.**

311.1 Approval of Construction Financing. As required herein and as both a City and Developer Condition Precedent to the Closing, Developer shall submit to City Preliminary Evidence of Financing that Developer has obtained sufficient equity capital or has arranged for financing necessary to undertake the development and construction of the Improvements in accordance with this Agreement (“Construction Financing”).

The Director shall reasonably approve or disapprove Preliminary Evidence of Financing within fifteen (15) days of receipt thereof. If City shall disapprove any such Preliminary Evidence of Financing, City shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall endeavor to promptly obtain and submit to City new Preliminary Evidence of Financing. Any material and adverse changes to the terms of the Construction Financing from the approved Preliminary Evidence of Financing shall be subject to the City written approval, which shall not be unreasonably withheld. Developer shall close the approved Construction Financing prior to or concurrently with the Closing.

311.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Mortgages, deeds of trust and sales and lease-backs shall be permitted before the completion of the Improvements only with the Director’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed in accordance with Section 311.1 above, and only for the purpose of securing loans of funds to be used for financing the acquisition, construction and operation of the Site and/or Improvements (including architecture, engineering, legal, construction period carrying costs such as property taxes, insurance and interest, and related direct costs as well as indirect costs), permanent financing, and refinancing and any other purposes necessary and appropriate in connection with development under this Agreement and operation of the Improvements. No such approval shall be required for mortgages, deeds of trust, or sales and lease-backs encumbering any portion of the Site for which a Release of Construction Covenants has been issued or for which City has approved the Preliminary Evidence of Financing so long as such mortgages, deeds of trust, or sales and lease-backs do not materially and adversely differ from the approved Preliminary Evidence of Financing. In no event, however, shall the amount or amounts of indebtedness secured by mortgages or deeds of trust on the Site prior to completion of the Improvements exceed the projected cost of developing the Improvements, as evidenced by a pro forma and a construction contract which have been delivered to the Director prior to the Director’s approval of such financing, setting forth such costs, unless the written approval of the Director is first obtained. The Developer shall notify the Director in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Improvements. The words “mortgage” and “trust deed” as used hereinafter shall include sale and lease-back. Notwithstanding the foregoing, Developer shall have the right to record or cause to be recorded a memorandum of lease for any lease approved by the City or otherwise permitted under this Agreement.

311.3 Holder Not Obligated to Construct Improvements. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct, complete, or operate the Improvements or any portion thereof, or to guarantee such construction, completion or operation; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

311.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.

Whenever the City may deliver any notice or demand to Developer with respect to any breach or default by the Developer under this Agreement, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement and approved by the City a copy of such notice or demand; provided that the failure to notify any holder of record shall not vitiate or affect the effectiveness of notice to the Developer. Each such holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy such default or to the extent such default cannot be cured or remedied within such thirty (30) day period, to thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage or deed of trust. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and thereafter cures or remedies the default.

311.5 Failure of Holder to Complete Project. In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from City of a Default by the Developer in completion of construction of any of the Improvements under this Agreement, and such holder is not vested with ownership of the Site and has not exercised the option to construct as set forth in Section 311, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the City may (but shall not be obligated to) purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City of so much of the Site as has vested in such holder upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The net expense, if any, incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any improvements made by such holder;

(e) An amount equivalent to the interest that would have accrued at the rate(s) specified in the holder's loan documents on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City;

(f) Any prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Developer; and

(g) Any or all other amounts, costs and/or expenses payable to the holder under the holder's loan documents approved pursuant to Section 311.1 above.

The City's right to such conveyance shall expire if: (i) City fails to notify the holder in writing within thirty (30) days after City receives written notice from the holder that such holder has obtained ownership of the Site, or (ii) within sixty (60) days after the City receives written notice from the holder that such holder has obtained ownership of the Site (or portion thereof), the City nevertheless fails to tender full payment for the Site. All of the foregoing rights and protections of the holder as set forth in this Section 311.5 shall also apply and be available to any Developer (other than an entity in which any interest is held by the Developer, or a Related Entity) pursuant to foreclosure or deed in lieu of foreclosure of the mortgage or deed of trust.

311.6 Right of the City to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of the Improvements or any part thereof, Developer shall immediately deliver to City a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the City shall have the right but no obligation to cure the default within ten (10) days following the expiration of the Developer's cure period under this Agreement (or, if the nature of the Developer's obligation is such that it reasonably requires more than ten (10) days to cure, commence to cure with such ten (10) day period and diligently prosecute such cure to completion). In such event, the City shall be entitled to reimbursement from the Developer of all reasonable and proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust permitted pursuant to this Section 311.

312. Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

313. **Taxes and Assessments.** Following the Closing, the Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site which accrue subsequent to the Closing. The Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time.

400. COVENANTS, RESTRICTIONS AND OTHER OBLIGATIONS

401. **Construction, Use, Operating, Maintenance and Restrictive Covenants.**

(a) Construction Covenant. Subject to extensions of the time periods for Developer's performance set forth in Section 602 below, Developer shall cause the completion of the Improvements by the dates set forth therefor in the Schedule of Performance.

(b) Operating Covenants. Commencing on the opening for business of the Improvements and terminating 20 years thereafter (the "**Operating Period**"), Developer hereby covenants and agrees to construct and maintain for operation a retail/commercial center on the Site; provided, however, nothing contained herein shall require any occupant of the Improvements to operate its business on the Site.

(c) Maintenance Covenants. Commencing on the Close of Escrow and terminating 30 years thereafter, the Developer shall maintain the Site and all improvements thereon, including the Festival Green and all landscaping, in full compliance with the terms of all applicable provisions of the City Municipal Code, and in compliance with industry standards for a first class retail shopping center. Without limiting the forgoing, the Developer shall specifically maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the "Maintenance Standards" hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site. To accomplish the maintenance, Developer shall either staff or contract with and hire qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. In addition, Developer shall comply with the Environmental Deed Restrictions during the term of its ownership.

The following maintenance standards (the "Maintenance Standards") shall be complied with by Developer and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the Responsible Agencies:

(i) All improvements to the Site shall be maintained in conformance and in compliance with the reasonable commercial development maintenance standards for similar first quality retail commercial shopping centers in California, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin.

(ii) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials;

control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(iii) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(iv) Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City or the City, then Developer shall have forty-eight (48) hours to rectify the problem.

(d) Restrictive Covenants.

(i) During the Operating Period, Developer shall not permit any business to relocate within the Site exceeding 20,000 square feet in size (except Major Retailer and/or Mid-Sized Retailers which are hereby pre-approved as initial tenants) from any other location within the City and within 5 miles of the Site without the prior approval of the City; provided further that no store of greater than 75,000 square feet of buildable area shall be permitted to relocate to the Site from a county or city (other than the City of Anaheim) within the same market area as the Site as proscribed by Health & Safety Code Section 33426.7, Government Code Section 53084, and Government Code Section 53084.5.

(ii) Developer shall carry out the design, construction and operation of the Improvements in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer, or the Site, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City Zoning and Development Standards (as they apply to the Site and the Improvements), building, plumbing, mechanical and electrical codes, as they apply to the Site and the Improvements, and all other provisions of the City of Anaheim and its Municipal Code, (as they apply to the Site and the Improvements), and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 *et seq.*, Government Code §4450 *et seq.*, and the Unruh Civil Rights Act, Civil Code §51 *et seq.* (“Governmental Requirements”).

(e) Environmental Covenants. Commencing on the completion of the Improvements or earlier as directed by any of the Responsible Agencies, the Developer will cause the implementation of the Operations, Maintenance and Monitoring Plan, except to extent paid for by the Successor Agency until the Acceptance Date as set forth in the description of the Successor Agency Component and the Reimbursement Agreement re Successor Agency Component.

402. **Nondiscrimination Covenants.** The Developer covenants by and for itself and any successors in interest to all or any portion of the Site that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Site. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Site any portion thereof on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **In deeds:** “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

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

“There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) **In contracts:** “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

403. **Effect of Violation of the Terms and Provisions of this Agreement.** Subject to the limitations provided elsewhere in this Agreement, Successor Agency and City are deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land,

for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether the Successor Agency or City have been, remain or are owners of any land or interest therein in the Site or in the Improvements. The Successor Agency or City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches and to avail themselves of the rights granted herein to which they or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described herein, including the following:

(a) The releases, indemnities and covenants set forth in Sections 207.6, 208.2, 307.1, and 307.2 shall remain in effect in perpetuity.

(b) The covenants in Section 309 with respect to compliance with laws shall remain in effect for the Operating Period.

(c) The covenants for the benefit of lenders as set forth in Sections 311.2, 311.3, 311.4, 311.5 and 311.6 shall remain in effect as to any lender so long as such lender holds a mortgage or deed of trust creating a lien or encumbrance on the Site or any portion thereof.

(d) The Covenants which are set forth in Section 401 shall remain in effect in accordance with the terms set forth therein.

(e) The covenants against discrimination, as set forth in Section 402, shall remain in effect in perpetuity.

(f) Provisions of documents recorded pursuant to this Agreement shall remain in effect according to their terms.

(g) Provisions of this Agreement which affirmatively set forth times as to which they are to remain effective shall remain effective according to the terms of those provisions.

404. **Jobs Creation.** The Parties acknowledge that (i) the City has entered into that certain Funding Approval/Agreement (B-02-MC-06-0501) with the United States Department of Housing and Urban Development (“HUD”) pursuant to which HUD has provided Ten Million Dollars (\$10,000,000) to the City to pay for certain costs associated with the Project (the “Section 108 Loan for the Project”), (ii) pursuant to that certain Second Amended and Restated Cooperation Agreement (Lincoln/Beach Section 108 Loan) dated as of July 1, 2004 between the City and Successor Agency (the “City/Agency Cooperation Agreement”), the Successor Agency utilized the proceeds of the Section 108 Loan for the Project, and (iii) in consideration for making the Section 108 Loan for the Improvements, HUD requires, among other things, that the City provide that at least fifty-one percent (51%) of the jobs created by the operation of the Project (the “Project Jobs”) be held by, or be made available to, persons of low and moderate income (the “HUD Jobs Creation National Objective”). Accordingly, the Parties intend to satisfy the HUD Jobs Creation National Objective as set forth in this Section 404.

404.1 Project Jobs Description. Prior to commencing construction of the Improvements with respect to each of the Major Retailer(s), Developer shall provide City a description, in a form reasonably acceptable to City, of all of the Project Jobs, indicating which of the Project Jobs are full time equivalent positions (the “Project Jobs Description”); the Project Jobs Description shall denote which of the Project Jobs have job qualifications requiring no more than a high school education and/or one (1) year of training or work experience (“Qualifying Project Jobs”). Developer shall update the Project Jobs Description promptly upon a substantial change in such jobs and/or job qualifications, but in no event less than annually.

404.2 Project Jobs Available to Low and Moderate Income Persons. Developer shall provide that at least fifty-one percent (51%) of the Project Jobs are made available to low and moderate income persons. Accordingly, Developer shall do the following:

(a) Concurrently with Developer’s delivery of the Project Jobs Description, Developer shall submit to City for City review and approval a list of which employers within the Project shall provide “First Consideration” to “Qualifying Job Applicants” in accordance with (b), below. The list shall include employers of not less than 75% of the jobs available within the Improvements. (The employers included on the list are hereinafter referred to as the “Participating Employers.”) City shall approve such list provided that the Project Jobs Description demonstrates that the Participating Employers will provide Qualifying Project Jobs greater than or equal to fifty-one percent (51%) of the aggregate Project Jobs.

(b) Developer shall require that Participating Employers enter into a First Source Agreement with the Workforce Development Department of the City of Anaheim (“WDD”) containing the following terms:

(i) WDD will conduct community outreach designed to assemble a pool of potential low to moderate income job applicants for the Qualifying Project Jobs (“Potential Qualifying Job Applicants”).

(ii) WDD will prescreen and verify which of the Potential Qualifying Job Applicants are persons of low to moderate income (“Qualifying Job Applicants”).

(iii) Participating Employers will notify WDD of openings for Qualifying Project Jobs.

(iv) With respect to initial hires, WDD will direct Qualifying Job Applicants to Participating Employers; with respect to subsequent hires, WDD will create and update quarterly a list of Qualifying Job Applicants who are interested in seeking employment with Participating Employers (“Employment Interest List”).

(v) Prior to opening, Participating Employers will meet with the Manager of the City of Anaheim’s Workforce Development Division (WDD) to establish protocol specific to the tenant that address the following:

- (1) Priority status for qualifying job applicants;
- (2) Status of qualified job applicants considered by the participating employer, and;

- (3) Appropriate documentation of qualified job applicants vitae for audit purposes for Federal Funding Program(s).

The foregoing shall accommodate the Block Grant Guidelines.

(vi) WDD will provide HUD with the documentation required under the HUD Jobs Creation National Objective.

(vii) The requirements of this Section 404.2 shall not apply to construction or remodeling of improvements on property owned or leased by Participating Employers within the Project.

(viii) Nothing in this Section 404.2 shall prohibit a Participating Employer from transferring an existing employee to a job located within the Project without complying with the requirements of Section 404.2(b)(v).

(ix) Nothing in this Section 404.2 shall require a Participating Employer to hire individuals who are not qualified for the intended position, and Participating Employers shall have the right to determine the most appropriate person to be hired.

404.3 Project Leases. Developer will provide City with executed copies of all Leases (with gross building area in excess of 5,000 square feet) with Participating Employers to insure compliance with this Section.

405. Non-Disturbance Agreements. Upon the written request of any tenant of the Applicable Improvements, the City shall execute a non-disturbance agreement pursuant to which City agrees that in the event it acquires the Site pursuant to the terms of this Agreement, City will agree to recognize the validity of any such tenancy pursuant to written leases which are to be attached thereto; provided however, that such tenant shall first deposit funds with the City which are, in the City's reasonable discretion, adequate to cover the cost of review of any such non-disturbance agreement by consultants and/or attorneys.

406. Notice to Certain Tenants. Upon the request of any of the Major Retailer(s), City shall provide notice to such tenant of any default by Developer under this Agreement; provided however that such request shall contain a provision in no such event shall the City be liable to such tenant for damages in connection with the failure of City to give such notice.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. The breach or falsity of any representation or warranty by a party as set forth in this Agreement also constitutes a "Default" under this Agreement following notice and failure to cure as described hereafter. The refusal or failure of Developer to close Escrow following satisfaction of the Conditions Precedent to Closing for benefit of Developer set forth in Section 205.2 constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly

provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default as to non-monetary Defaults other than transfers not permitted under this Agreement (as to which no right to notice or cure shall apply) if such party within thirty (30) days from receipt of such notice promptly, with due diligence, commences to cure, correct or remedy such failure or delay and thereafter completes such cure, correction or remedy with due diligence. As to monetary Defaults, a cure period of ten (10) days upon written notice shall apply.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, and except as to a Default by Developer which occurs prior to the Closing which shall entitle City to the Liquidated Damages provided for in Section 201.2, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purposes of this Agreement. Except as set forth in Section 201.2, specific performance shall be available as a remedy to the greatest extent legally allowable. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the District of the United States District Court in which such county is located. In addition to the legal actions hereinafter described and without limitation as to such remedies that may be available at law or equity, upon a Default by the Developer under this Agreement after the Conveyance, the City may exercise those rights defined and described in Section 504.

503. Termination.

503.1 Termination by Developer Prior to Conveyance. In the event that prior to the Conveyance the Developer is not in Default of this Agreement but (i) the City is in Default in the performance of its obligations or in breach of a representation or warranty hereunder or (ii) one or more of the Developer's Conditions Precedent has not been satisfied or waived by the Outside Date, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City. In the event of such termination pursuant to (i) or (ii) above, the City shall return the unspent portion of the Good Faith Deposit (and any interest accrued thereon), and neither the City nor the Developer shall have any further rights or obligations under this Agreement except under the applicable provisions regarding damages contained in Section 504 and except for those provisions hereof which expressly survive the termination of the Agreement.

503.2 Termination by the City Prior to the Conveyance. In the event that prior to the Conveyance the City is not in Default of this Agreement and:

(a) The Developer (or any successor in interest) assigns this Agreement or any rights thereon or in the Site in violation of this Agreement and such Default is not cured in accordance with Section 501; or

(b) There is a change in the ownership of the Developer contrary to the provisions of Section 603.1 hereof and such Default is not cured in accordance with Section 501; or

(c) The Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor and such Default is not cured in accordance with Section 501; or

(d) One or more of the City's Conditions Precedent is not either satisfied or waived by the Outside Date; or

(e) The Developer is otherwise in Default under this Agreement and such Default is not cured in accordance with Section 501;

Then, subject to Developer's Mortgagee's rights to cure Developer's Default as set forth above, this Agreement and any rights of the Developer or any assignee or transferee in the Agreement, shall, at the option of the City, be terminated by the City by written notice thereof to Developer. In the event of termination under this Section, neither party shall have any other rights against the other under this Agreement except as set forth in Section 201.2, and except for those provisions hereof which expressly survive the termination of the Agreement.

504. **Specific Performance.** The delineation of the parties' rights to terminate this Agreement prior to the Closing is not intended to limit either party from exercising any other remedy for such default provided under law or equity. Without limiting the generality of the foregoing statement, in the event of a Default by either party, the non-Defaulting party may exercise any right or remedy available in law or equity, including, without limitation, the right to initiate an action for specific performance and to recover all damages proximately caused by such Default (except as limited in the event of City termination pursuant to Section 503.2, in which the event the City shall be limited to the liquidated damages set forth in Section 201.2).

505. **Reentry and Revesting of Title in the City After the Closing and Prior to the Completion of Construction.** Subject to Section 602, City has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the City the estate conveyed to the Developer if after the Closing and prior to the issuance of the Release of Construction Covenants as to one hundred percent (100%) of the Improvements, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Improvements as required by this Agreement for a period of sixty (60) days subject to Sections 301.1 and 602, after written notice thereof from the City; provided, however, with respect to the pad and any other buildings not leased by Developer prior to the Closing, such sixty (60) day period shall be extended for such time as reasonably necessary for Developer, exercising due diligence, to execute a lease with a tenant for such pad or building location, and for the Developer or such tenant to commence construction of such pad building; or

(b) abandon or substantially suspend construction of the Improvements required by this Agreement for a period of ninety (90) days, subject to Sections 301.1 and 602, after written notice thereof from the City; or

(c) contrary to the provisions of Section 603 transfer or suffer any involuntary transfer in violation of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Grant Deed and Environmental Restriction shall contain appropriate reference and provision to give effect to the City's right as set forth in this Section, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in the City the estate conveyed to the Developer. Upon the revesting in the City of title to the Site as provided in this Section, the City shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the City shall find feasible and consistent with the objectives of such law, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. The Developer acknowledges that there may be substantial delays experienced by the City if the City must remarket the Site following the revesting of the Site in the City. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(i) First, to reimburse the City, on its own behalf, all reasonable costs and expenses incurred by the City, excluding City staff costs, but specifically including, without limitation, any expenditures by the City, in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the City from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer has not paid, any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in the City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the City, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) all costs and expenses incurred for the acquisition of the Site (including without limitation architectural fees, engineering fees, environmental reports, and studies, loan fees, legal fees, and consultant fees), plus (b) Developer Costs, less (c) any gains or income withdrawn or made by the Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the City as its property. The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the City will have conveyed the Site to the Developer for development purposes, and not for speculation in land.

The rights of the City pursuant to this Section shall be subordinate to the rights of the construction and permanent lender approved by the City.

506. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service

upon the Director or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Manager of Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

507. **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

508. **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

509. **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

600. GENERAL PROVISIONS

601. **Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, postage prepaid, return receipt requested, or by overnight express mail or by commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

- To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: Director
Copy to: City Attorney
- with a copy to: John E. Woodhead IV, Director of Community and
Economic Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
- with a copy to: Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

To Developer: Zelman Anaheim, LLC
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey

With copy to: Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

Any party may change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. The Developer shall forward to the City, without delay, any notices, letters or other communications delivered to the Site or to the Developer which could reasonably affect the ability of the Developer to perform its obligations to the City under this Agreement.

602. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; acts of terrorism; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; adverse weather conditions; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; or acts or failures to act of the City, Responsible Agency or any other public or governmental agency or entity (except that the acts or failures to act or delay of the Successor Agency or City shall not excuse performance by the City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Director and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the City. Furthermore, the parties acknowledge that the City has negotiated the terms of this Agreement in contemplation of the development and operation of the Improvements and the property tax increment and sales and tax revenues to be generated by the Improvements and the operation of the Improvements on the Site. Accordingly, for the period commencing upon the date of this Agreement and until the issuance by City of a Release or Releases of Construction Covenants for 100% of the Improvements, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the whole or any part of the Site or the Improvements thereon, nor shall any uses other than the Improvements be operated thereon, either in addition to or in replacement of the Improvements on the Site, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Improvements being operated upon the Site (collectively

referred to herein as a “Transfer”), without the prior written approval of the City, except as expressly set forth herein. As used herein, the term “Transfer” shall not include the sale or leasing of parcels, buildings or portions thereof to retail and/or commercial tenants or occupants as permitted under this Agreement.

603.2 Permitted Transfers or other Conveyances. Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer or other conveyance shall not be required in connection with any of the following (“Permitted Transfers”):

(a) Any Transfer to an entity or entities in which Developer, Zelman Retail Partners, a California corporation, (i) Ben Reiling and/or (ii) Brett Foy and Paul Casey directly or indirectly retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the Transferee entity or entities, and the Project is operating on a continuous basis on the Site.

(b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Project.

(c) Any requested assignment for financing purposes permitted pursuant to this Agreement for which approval by the City has been obtained, including the grant of a mortgage or deed of trust or sale-leaseback to secure the funds necessary for construction and permanent financing of the Improvements and, excepting therefrom any Transfer to any entity to which any interest is held by the Developer, a Related Entity, or the principals of Developer, the following in connection with such financing as shall have theretofore been approved by the City: (i) any Transfer to any person or entity pursuant to foreclosure or deed-in lieu of foreclosure of any such mortgage or deed of trust; (ii) any Transfer of the reversionary interest and estate of the lessor in any sale-leaseback; and (iii) any lease termination by the lessor under the lease in a sale-leaseback due to default of the lessee thereunder.

(d) Transfers (including leases) necessary to fulfill the covenant set forth in Section 402, where such proposed transferees agree in writing to be bound by the Covenants set forth herein and in the Grant Deed and Environmental Restriction as to the Site so Transferred, for the periods of time set forth for the effectiveness of such covenants.

(e) Transfers of the Site or any part thereof to which the City has issued a Release of Construction Covenants for the Improvements thereon.

(f) The sale or leasing of parcels, buildings or portions thereof to retail and/or commercial tenants or occupants as permitted under this Agreement (“Conveyance”).

In the event of a Transfer by Developer not requiring the City’s prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, Developer agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the Transferee has assumed or upon the effective date of Transfer will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the City all of the obligations of the Developer under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer. Notwithstanding the foregoing or anything contained in this

Agreement to the contrary, the prohibitions in this Section 603.2 shall not be deemed to prevent the leasing or pre-leasing of tenant space for occupancy, provided the uses by such tenants comply with the permitted uses under this Agreement; provided, however, for a ten (10) year period commencing upon the date of this Agreement, (i) the City shall have the right to review and approve, which approval shall not be unreasonably withheld or delayed, the identity of the Major Retailer(s) and one (1) sit-down table service restaurant.

603.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and its successors and assigns, including those acquiring such interest pursuant to a permitted Transfer. Whenever the term “Developer” is used in this Agreement, such term shall include any other permitted successors and assigns, including those acquiring such interest pursuant to a permitted Transfer, as herein provided. The Developer shall be liable for the performance of all of its covenants, obligations and undertakings herein set forth which accrue during the period of its ownership of the Site. In the event that Developer Transfers the Site (other than a Permitted Transfer pursuant to Sections 603.2(a), (b), (c), (d) and (f) of this Agreement), the transferring Developer and Guarantor shall be released from the obligations of this Agreement, Environmental Deed Restrictions and the Guaranty, respectively, arising subsequent to the effective date of such Transfer.

604. Non-Liability of Officials and Employees of the City to the Developer. No member, official, director, officer, agent, or employee of the Successor Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

605. Non-Liability of Members of Employees. No member, officer, partner, director, agent or employee of Developer shall have any personal liability for the performance of Developer’s obligations hereunder.

606. Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operations, maintenance or management of the Project. The Developer agrees to indemnify, hold harmless and defend the City from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Developer with respect to the development, operation, maintenance or management of the Site or the Project, except such claims arising from or caused by a representation by the City that such a relationship exists.

607. City Approvals and Actions. The City shall maintain authority of this Agreement and the authority to implement this Agreement through the Director (or his duly authorized representative). The Director shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted on the Site, or add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance and, to the extent allowable and consistent with the goals and objectives of the City pursuant to this Agreement, to reasonably accommodate requests of lenders. All other material and/or substantive

interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

608. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

609. **Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 14, each of which are incorporated herein.

610. **Real Estate Brokerage Commission.** The City and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Site from the City. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such party.

611. **Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, or rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees and expert fees and court costs.

612. **Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

613. **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

614. **No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

615. **Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

616. **Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

617. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

618. **Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

619. **Time of Essence.** Time is expressly made of the essence with respect to the performance by the City, the Developer of each and every obligation and condition of this Agreement.

620. **Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

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

622. **Time for Acceptance of Agreement by City.** This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the City on or before thirty (30) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

623. **Guaranty.** Either (i) Ben Reiling or (ii) Brett Foy and Paul Casey shall guaranty the performance of certain obligations of Developer hereunder in accordance with the Guaranty attached hereto as Attachment No. 10.

624. **Estoppel Certificate.** City agrees that it will issue within thirty (30) days after receipt of request to Developer, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the City’s knowledge as of such date:

(a) Whether it knows of any default under this Agreement by the Developer, and if there are known defaults, specifying the nature thereof in reasonable detail;

(b) Whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail;

(c) Whether this Agreement is in full force and effect; and

(d) Such other information is reasonably requested by Developer or its prospective mortgagee or successor.

Developer shall reimburse City for all actual and direct third party costs incurred by City in connection with the above.

[Signature block begins on page S-1]

DRAFT

IN WITNESS WHEREOF, the parties hereto have signed this Disposition and Development Agreement as of the respective date set forth below.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: _____, 20__

By: _____

John E. Woodhead, IV, Director of
Community and Economic Development

LINDA N. ANDAL, CITY CLERK

City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Theodore J. Reynolds
Assistant City Attorney

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
Successor Agency Special Counsel

DEVELOPER:

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: Zelman Retail Partners, Inc.,
a California corporation
Its: Managing Member

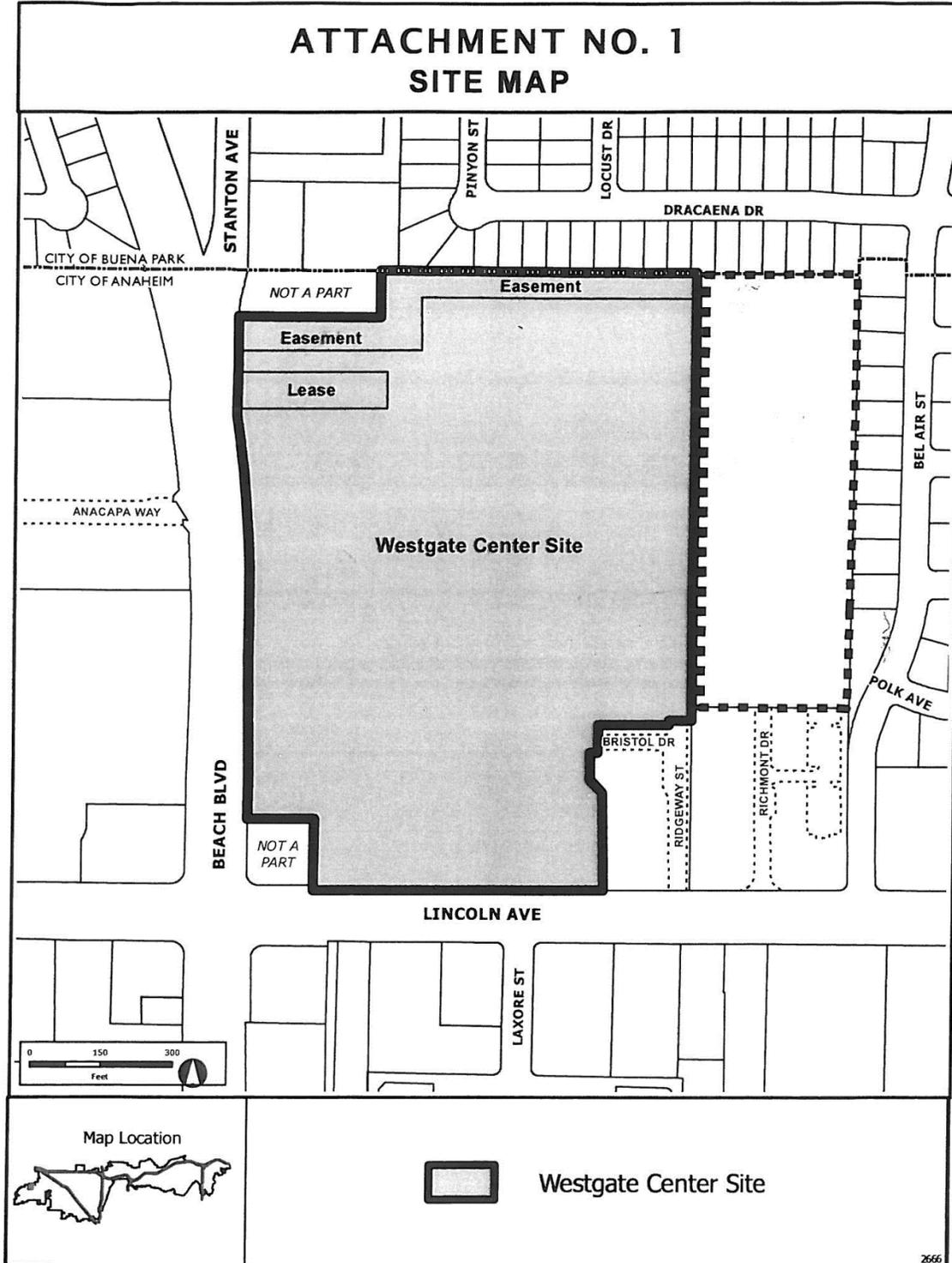
Dated: _____

By: _____
Brett Foy, Co-President

DRAFT

ATTACHMENT NO. 1

Site Maps



ATTACHMENT NO. 2

Legal Description of the Site

EXHIBIT "A"

WESTGATE PHASE 1

IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT NO. 499 RECORDED AUGUST 15, 2002 AS INSTRUMENT NO. 20020683037 OF OFFICIAL RECORDS, A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 11, SAN BERNARDINO MERIDIAN, A PORTION OF PARCEL C OF THE PARCEL MAP FILED IN BOOK 13, PAGE 37 OF PARCEL MAPS, A PORTION OF PARCEL D OF THE PARCEL MAP FILED IN BOOK 34, PAGES 36 OF PARCEL MAPS AND A PORTION OF PARCEL A AND B OF THE PARCEL MAP FILED IN BOOK 42, PAGE 29 OF PARCEL MAPS, ALL ON FILE IN THE OFFICE OF THE COUNTY RECORDER AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 1 OF SAID LOT LINE ADJUSTMENT; THENCE, ALONG THE EAST LINE OF SAID PARCEL 1, SOUTH 00°30'40" WEST, 589.70 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID EAST LINE THE FOLLOWING SEVEN (7) COURSES:

1. NORTH 89°29'20" WEST, 769.88 FEET;
2. NORTH 00°30'40" EAST, 296.46 FEET;
3. SOUTH 88°56'02" EAST, 107.96 FEET;
4. NORTH 00°29'45" EAST, 89.64 FEET;
5. NORTH 88°51'56" WEST, 107.94 FEET;
6. NORTH 00°30'40" EAST, 76.23 FEET;
7. NORTH 89°39'38" WEST, 194.08 FEET TO THE WESTERLY LINE OF SAID PARCEL A;

THENCE, ALONG SAID WESTERLY LINE OF SAID PARCEL A AND THE WESTERLY LINE OF SAID PARCEL B AND D, SOUTH 00°29'25" WEST, 198.13 FEET TO THE NORTHERLY CORNER OF PARCEL 100028-1 OF THE DOCUMENT ENTITLED "FINAL ORDER OF CONDEMNATION - WILSHIRE SHELBY" RECORDED MAY 1, 2000 AS INSTRUMENT NO. 20000224855 OF OFFICIAL RECORDS, SAID NORTHERLY CORNER BEING THE BEGINNING OF A OF A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 2,589.00 FEET, A RADIAL LINE THROUGH SAID BEGINNING OF CURVE BEARS NORTH 81°28'21" EAST; THENCE SOUTHERLY ALONG SAID CURVE AND THE WESTERLY LINES OF SAID PARCEL 100028-1, PARCEL 100027-1 AND PARCEL 100026-1 OF SAID DOCUMENT AND PARCEL 100025-1 OF THE DOCUMENT ENTITLED "FINAL ORDER OF CONDEMNATION" RECORDED JANUARY 11, 1999 AS INSTRUMENT NO 19990018032 OF OFFICIAL RECORDS, THROUGH A CENTRAL ANGLE OF 09°01'04" AN ARC LENGTH OF 407.48 FEET TO THE WESTERLY LINE OF PARCEL 100004-1 OF THE DOCUMENT ENTITLED "FINAL ORDER OF CONDEMNATION - METROPOLITAN LIFE INSURANCE"; THENCE, ALONG SAID WESTERLY LINE THE FOLLOWING THREE (3) COURSES:

1. SOUTH 00°29'25" WEST, 100.07 FEET;
2. SOUTH 00°25'35" EAST, 250.03 FEET;
3. SOUTH 00°29'25" WEST, 59.02 FEET TO THE NORTHERLY LINE OF THE SOUTHERLY 190.00 FEET OF SAID SECTION 12;

THENCE, ALONG SAID NORTHERLY LINE, SOUTH 89°37'59" EAST, 139.00 FEET TO THE EASTERLY LINE OF THE WEST 205.00 FEET OF SAID SECTION 12; THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°29'25" WEST, 150.00 FEET TO THE NORTHERLY LINE OF THE

SOUTHERLY 40 FEET OF SAID SECTION 12; THENCE, ALONG SAID NORTHERLY LINE OF SAID SECTION AND THE SOUTHERLY LINE OF SAID PARCEL 1, SOUTH 89°37'59" EAST, 605.70 FEET TO THE EASTERLY BOUNDARY OF SAID PARCEL 1; THENCE, ALONG SAID EASTERLY BOUNDARY OF SAID PARCEL 1 THE FOLLOWING NINE (9) COURSES:

1. NORTH 00°22'01" EAST, 205.76 FEET;
2. NORTH 44°39'16" WEST, 34.14 FEET;
3. NORTH 00°22'01" EAST, 64.20 FEET;
4. SOUTH 89°37'59" EAST, 16.73 FEET;
5. NORTH 00°22'01" EAST, 48.50 FEET;
6. SOUTH 89°37'59" EAST, 151.00 FEET;
7. NORTH 00°22'01" EAST, 8.00 FEET;
8. SOUTH 89°37'59" EAST, 40.14 FEET;
9. NORTH 00°30'40" EAST, 348.20 FEET TO THE **TRUE POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS 15.15 ACRES, MORE OR LESS.

WESTGATE PHASE 2

IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 OF LOT LINE ADJUSTMENT NO. 499 RECORDED AUGUST 15, 2002 AS INSTRUMENT NO. 20020683037 OF OFFICIAL RECORDS, A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 11, SAN BERNARDINO MERIDIAN, A PORTION OF PARCEL C OF THE PARCEL MAP FILED IN BOOK 13, PAGE 37 OF PARCEL MAPS, A PORTION OF PARCEL D OF THE PARCEL MAP FILED IN BOOK 34, PAGES 36 OF PARCEL MAPS AND A PORTION OF PARCEL A OF THE PARCEL MAP FILED IN BOOK 42, PAGE 29 OF PARCEL MAPS, ALL ON FILE IN THE OFFICE OF THE COUNTY RECORDER AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 1 OF SAID LOT LINE ADJUSTMENT; THENCE, ALONG THE EAST LINE OF SAID PARCEL 1, SOUTH 00°30'40" WEST, 589.70 FEET; THENCE LEAVING SAID EAST LINE THE FOLLOWING SEVEN (7) COURSES:

1. NORTH 89°29'20" WEST, 769.88 FEET;
2. NORTH 00°30'40" EAST, 296.46 FEET;
3. SOUTH 88°56'02" EAST, 107.96 FEET;
4. NORTH 00°29'45" EAST, 89.64 FEET;
5. NORTH 88°51'56" WEST, 107.94 FEET;
6. NORTH 00°30'40" EAST, 76.23 FEET;
7. NORTH 89°39'38" WEST, 194.08 FEET TO THE WESTERLY LINE OF SAID PARCEL A;

THENCE, ALONG SAID WESTERLY LINE, NORTH 00°29'25" EAST, 28.00 FEET TO THE NORTHERLY LINE OF SAID PARCEL A; THENCE, ALONG SAID NORTHERLY LINE, SOUTH 89°39'38" EAST, 301.99 FEET TO THE WESTERLY LINE OF SAID PARCEL 1; THENCE, ALONG THE WESTERLY LINE OF SAID PARCEL 1, NORTH 00°29'46" EAST, 97.26 FEET TO THE NORTHERLY LINE OF SAID PARCEL 1; THENCE, ALONG SAID NORTHERLY LINE, SOUTH 89°37'55" EAST, 662.00 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PARCEL CONTAINS 10.07 ACRES, MORE OR LESS.

EXHIBIT "B", ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO ALL COVENANTS, CONDITIONS, RIGHTS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD IF ANY.

THIS DESCRIPTION WAS PREPARED BY ME, OR UNDER MY SUPERVISION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.



GREGORY T. SCHLARBAUM P.L.S. 6704
REGISTRATION EXPIRES 6/30/12

11-10-10
DATE



EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR EXHIBIT "A"

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°30'40"E	296.46'
L2	S88°56'02"E	107.96'
L3	N00°29'45"E	89.64'
L4	N88°51'56"W	107.94'
L5	N00°30'40"E	76.23'
L6	N89°39'38"W	194.08'
L7	N00°29'25"E	28.00'
L8	S89°39'38"E	301.99'
L9	N00°29'46"E	97.26'
L10	S00°29'25"W	198.13'
L11	S00°29'25"W	226.13'
L12	S00°29'25"W	100.07'
L13	S00°25'35"E	250.03'
L14	S00°29'25"W	59.02'
L15	S89°37'59"E	139.00'
L16	S00°29'25"W	150.00'
L17	N44°39'16"W	34.14'
L18	N00°22'01"E	64.20'
L19	S89°37'59"E	16.73'
L20	N00°22'01"E	48.50'
L21	S89°37'59"E	151.00'
L22	N00°22'01"E	8.00'
L23	S89°37'59"E	40.14'

SHEET 2 OF 2

EXHIBIT "B"
CITY OF ANAHEIM, CALIFORNIA

 **DRC Engineering, Inc.**
Civil Engineering/Land Surveying/Land Planning

160 S. Old Springs Road, Ste. 210
Anaheim Hills, California 92808
(714) 685-6860

M:\2004\04-720_Zellman_Anheim\Exhibits\Phase 1 and 2 Exhibit (MAPPING).dwg

ATTACHMENT NO. 3

Grant Deed and Environmental Restriction

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:

_____, California _____
ATTN: _____

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

GRANT DEED AND ENVIRONMENTAL RESTRICTION

For valuable consideration, receipt of which is hereby acknowledged,

A. The CITY OF ANAHEIM, a California municipal corporation and Charter City (the "Grantor"), acting to carry out the West Anaheim Commercial Corridors Redevelopment Plan ("Redevelopment Plan") for the Anaheim Redevelopment Project ("Project"), under the Community Redevelopment Law of California, hereby grants to ZELMAN ANAHEIM, LLC, a Delaware limited liability company ("Grantee"), the real property hereinafter referred to as the "Site", described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

[RESERVE ACCESS EASEMENT]

B. The Site is conveyed in accordance with and subject to the Redevelopment Plan which was approved and adopted by the City Council of the City of Anaheim by Ordinance No. 2190 of the City Council of the City on July 19, 1973, as amended from time to time, and as amended by Ordinance Nos. 5913, 5914, 5915, 5916, 5917 and 5918 of the City Council of the City adopted on May 25, 2004, which merged the Anaheim Redevelopment Project and other redevelopment project areas in the City into the Merged Redevelopment Project which is incorporated herein by reference (the "Redevelopment Plan"), and that certain Disposition and Development Agreement entered into between Grantor and Grantee dated _____, 2010 (the "DDA"), a copy of which is on file with the Grantor at its offices as a public record and which is incorporated herein by reference. All capitalized terms used herein which are not otherwise defined in this Grant Deed and Environmental Restriction shall have the meanings ascribed to them in the DDA.

C. The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Site or any part thereof, that upon the Closing and until expiration of the Redevelopment Plan, the Site shall be devoted to the uses specified in the Redevelopment Plan. All

uses conducted on the Site shall conform to the Redevelopment Plan and all applicable provisions of the City Municipal Code.

D. Commencing on the Opening of the Project and terminating 20 years thereafter, Developer hereby covenants and agrees to construct and maintain for operation a retail/commercial center on the Site; provided, however, nothing contained herein shall require any occupant of the Project to operate its business on the Site.

E. Commencing on the Close of Escrow and terminating 30 years thereafter, the Developer shall maintain the Site and all improvements thereon, including the Festival Green and all landscaping, in full compliance with the terms of all applicable provisions of the City Municipal Code, and in compliance with industry standards for a first class retail shopping center. Without limiting the forgoing, the Developer shall specifically maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the "Maintenance Standards" hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site. To accomplish the maintenance, Developer shall either staff or contract with and hire qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. In addition, Developer shall comply with the Operations, Maintenance and Monitoring Plan that will be recorded as a covenant against the Site.

The following maintenance standards (the "Maintenance Standards") shall be complied with by Developer and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the Responsible Agencies:

1. All improvements to the Site shall be maintained in conformance and in compliance with the reasonable commercial development maintenance standards for similar first quality retail commercial shopping centers in California, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curblin.

2. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

3. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

4. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the

problem is urgent relating to the public health and safety of the City or the **Successor Agency**, then Developer shall have forty-eight (48) hours to rectify the problem.

F. Restrictive Covenants.

1. Commencing on the Close of Escrow and terminating 18 years thereafter, Developer shall not permit any business to relocate within the Site exceeding 20,000 square feet in size (except the Major Tenants which are hereby pre-approved as initial tenants) from any other location within the City and within 5 miles of the Site without the prior approval of the City.

2. Developer shall carry out the design, construction and operation of the Project in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer, or the Site, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City Zoning and Development Standards (as they apply to the Site and the Project), building, plumbing, mechanical and electrical codes, as they apply to the Site and the Project, and all other provisions of the City of Anaheim and its Municipal Code, (as they apply to the Site and the Project), and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. (“Governmental Requirements”).

3. Prior to the issuance of the Release of Construction Covenants for the Improvements on the Site as described and defined in the DDA, the Grantee shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease, other than as permitted under the DDA, of the whole or any part of the Site or the Improvements thereon, nor shall any uses other than the Project be operated thereon, either in addition to or in replacement of the Improvements on the Site, nor shall the Grantee make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Improvements being operated upon the Site (collectively referred to herein as a “Transfer”), without the prior written approval of the **Successor Agency** except as expressly set forth in the DDA.

In the event of a “Permitted Transfer” (as defined in the DDA) by Developer not requiring the **Successor Agency**’s prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to **Successor Agency** of such Transfer. In the case of a Permitted Transfer, Developer agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed or upon the effective date of Transfer will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the **Successor Agency** all of the obligations of the Developer under the DDA which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

The Developer shall be liable for the performance of all of its covenants, obligations and undertakings herein set forth which accrue during the period of its ownership of the Site. In the event that Developer Transfers the Site (other than a Permitted Transfer pursuant to Sections 603.2(a), (b), (c), (d) and (f) of the DDA), the transferring Developer shall be released from the obligations of this Deed arising subsequent to the effective date of such Transfer.

G. Environmental Covenants. Commencing on the completion of Developer Improvements or earlier as directed by any of the Responsible Agencies, the Developer will cause the implementation of the Operations, Maintenance and Monitoring Plan; provided however the **Successor Agency** shall reimburse Developer for the cost of such implementation during the period terminating on the "Acceptance Date" (as defined in Reimbursement Agreement re **Successor Agency** Component attached as Attachment No. 13 of the DDA).

H. Jobs Creation. The Parties acknowledge that (i) the City has entered into that certain Funding Approval/Agreement (B-02-MC-06-0501) with the United States Department of Housing and Urban Development ("HUD") pursuant to which HUD has provided Ten Million Dollars (\$10,000,000) to the City to pay for certain costs associated with the Project (the "Section 108 Loan for the Project"), (ii) pursuant to that certain Second Amended and Restated Cooperation Agreement (Lincoln/Beach Section 108 Loan) dated as of July 1, 2004 between the City and **Successor Agency** (the "City/Agency Cooperation Agreement"), the City has agreed to transfer the proceeds of the Section 108 Loan for the Project to the **Successor Agency** promptly upon the City's receipt of such proceeds, and (iii) in consideration for making the Section 108 Loan for the Project, HUD requires, among other things, that the **Successor Agency** (on behalf of the City) provide that at least fifty-one percent (51%) of the jobs created by the operation of the Project (the "Project Jobs") be held by, or be made available to, persons of low and moderate income (the "HUD Jobs Creation National Objective"). Accordingly, the Parties intend to satisfy the HUD Jobs Creation National Objective as set forth in this Section.

1. Project Jobs Description. Prior to commencing construction of the improvements with respect to each of the Major Tenants, Developer shall provide **Successor Agency** a description, in a form reasonably acceptable to **Successor Agency**, of all of the Project Jobs, indicating which of the Project Jobs are full time equivalent positions (the "Project Jobs Description"); the Project Jobs Description shall denote which of the Project Jobs have job qualifications requiring no more than a high school education and/or one (1) year of training or work experience ("Qualifying Project Jobs"). Developer shall update the Project Jobs Description promptly upon a substantial change in such jobs and/or job qualifications, but in no event less than annually.

2. Project Jobs Available to Low and Moderate Income Persons. Developer shall provide that at least fifty-one percent (51%) of the Project Jobs are made available to low and moderate income persons. Accordingly, Developer shall do the following:

(a) Concurrently with Developer's delivery of the Project Jobs Description, Developer shall submit to **Successor Agency** for **Successor Agency** review and approval a list of which employers within the Project shall provide "First Consideration" to "Qualifying Job Applicants" in accordance with (b), below. The list shall include employers of not less than 75% of the jobs available within the Project. (The employers included on the list are hereinafter referred to as the Participating Employers.) **Successor Agency** shall approve such list provided that the Project Jobs Description demonstrates that the Participating Employers will provide Qualifying Project Jobs greater than or equal to fifty-one percent (51%) of the aggregate Project Jobs.

(b) Developer shall require that Participating Employers enter into a First Source Agreement with the Workforce Development Department of the City of Anaheim ("WDD") containing the following terms:

(i) WDD will conduct community outreach designed to assemble a pool of potential low to moderate income job applicants for the Qualifying Project Jobs (“Potential Qualifying Job Applicants”).

(ii) WDD will prescreen and verify which of the Potential Qualifying Job Applicants are persons of low to moderate income (“Qualifying Job Applicants”).

(iii) Participating Employers will notify WDD of openings for Qualifying Project Jobs.

(iv) With respect to initial hires, WDD will direct Qualifying Job Applicants to Participating Employers; with respect to subsequent hires, WDD will create and update quarterly a list of Qualifying Job Applicants who are interested in seeking employment with Participating Employers (“Employment Interest List”).

(v) Participating Employers will review the job applications submitted by Qualifying Job Applicants (i) for a period of thirty (30) days prior to making such jobs available to the general public, with respect to the initial hires, and (ii) for a period of three (3) days prior to making such jobs available to the general public, with respect to all subsequent hires, provided such period shall earlier terminate in the event that job applications from all persons on the Employment Interest List have been reviewed.

(vi) Participating Employers will notify WDD which of the Qualifying Job Applicants were interviewed and the results of such interviews as to whether or not the Qualifying Job Applicants were hired.

(vii) Participating Employers will provide WDD with the names for all persons holding Project Jobs on an annual basis.

(viii) WDD will provide HUD with the documentation required under the HUD Jobs Creation National Objective.

(ix) The requirements of this Section shall not apply to construction or remodeling of improvements on property owned or leased by Participating Employers within the Project.

(x) Nothing in this Section shall prohibit a Participating Employer from transferring an existing employee to a job located within the Project without complying with the requirements of (b)(v) above.

(xi) Nothing in this Section shall require a Participating Employer to hire individuals who are not qualified for the intended position, and Participating Employers shall have the right to determine the most appropriate person to be hired.

3. Project Leases. Developer will provide **Successor Agency** with executed copies of all Leases (with gross building area in excess of 5,000 square feet) with Participating Employers to insure compliance with this Section.

I. Right of Reentry and Revesting.

1. The Grantor shall have the right at its election to reenter and take possession of the Site hereby conveyed with all Improvements thereon and to terminate and revest in the Grantor the Site hereby conveyed to the Grantee if prior to the issuance of a Release of Construction Covenants as to all of the Site, the Grantee (or its successors in interest) shall:

(a) Fail to commence the construction of the Improvements on the Site as required by the DDA for a period of sixty (60) days subject to Sections 301.1 and 602 of the DDA after written notice thereof from the Grantor; provided, however, with respect to the pad buildings, such sixty (60) day period shall be extended for such time as reasonably necessary for Grantee, exercising due diligence, not to exceed eighteen (18) months, to execute a lease with a tenant for such pad, and for the Grantee or such tenant to commence construction of such pad building; or

(b) Abandon or substantially suspend construction of the Applicable Improvements for a period of ninety (90) days, subject to Sections 301.1 and 602 of the DDA after written notice thereof from the Grantor; or

(c) Contrary to the provisions of Section 603 of the DDA, Transfer, or suffer an involuntary Transfer of, the Site, or any part thereof in violation of this Grant Deed and Environmental Restriction.

2. The right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render, invalid, or limit:

(a) Any mortgage or deed of trust permitted by this Grant Deed and Environmental Restriction or the DDA; or

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

3. Upon issuance of a Release of Construction Covenants for the Improvements to be constructed upon the Site, the **Successor Agency**'s right to reenter, terminate and revest shall terminate.

4. In the event title to the Site or any part thereof is revested in the Grantor as provided in this paragraph 4, Grantor shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Grantor shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the **Successor Agency**) who will assume the obligation of making or completing the Improvements thereon, or such improvements in their stead as shall be satisfactory to the Grantor and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. The Grantee acknowledges that there may be substantial delays experienced by the Grantor if the Grantor must remarket the Site following the revesting of the Site in the Grantor. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(a) First, to reimburse the Grantor, on its own behalf or on behalf of the City, all reasonable costs and expenses incurred by the Grantor, excluding staff costs, but specifically, including, without limitation, any expenditures by the Grantor or the City, in connection with the

recapture, management and resale of the Site or part thereof (but less any income derived by the Grantor from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Grantee has not paid, any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or reversion of title thereto in the Grantor, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the Grantor, and in the event additional proceeds are thereafter available, then

(b) Second, to reimburse the Grantee, its successor or transferee, up to the amount equal to the sum of (a) all costs and expenses incurred for the acquisition of the Site (including without limitation architectural fees, engineering fees, environmental reports and studies, loan fees, legal fees, and consultant fees), plus (b) Developer's Costs, less (c) any gains or income withdrawn or made by the Grantee from the Site or the improvements thereon.

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

5. To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted against the Grantor, the party for whose benefit it is created. This right is to be interpreted in light of the fact that the Grantor hereby conveys the Site to the Grantee for development and operation of a commercial retail shopping complex, and not for speculation in land.

J. The Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed.

The Grantee shall refrain from restricting the rental, sale or lease of the applicable portion of the Site or the Improvements on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

3. In contracts: “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

The foregoing covenants regarding discrimination shall run with the land and shall remain in effect in perpetuity.

K. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed and Environmental Restriction shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by this Grant Deed and Environmental Restriction or the DDA; provided, however, that any subsequent owner of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise.

L. All of the terms, covenants and conditions of this Grant Deed and Environmental Restriction shall be binding upon the Grantee and its successors and assigns. Whenever the term “Grantee” is used in this Grant Deed and Environmental Restriction, such term shall include any other successors and assigns as herein provided.

M. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, the City of Anaheim, and their respective successors and assigns. Such covenants shall be covenants running with the land in favor of the Grantor, the City of Anaheim, and their respective successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this _____ day of _____, 20____.

CITY OF ANAHEIM, a California municipal corporation and charter city

By: _____

Its: _____

“GRANTOR”

ATTEST:

LINDA N. ANDAL, CITY CLERK

City Clerk

The undersigned Grantee accepts title subject to the covenants hereinabove set forth.

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: **ZELMAN RETAIL PARTNERS**,
a California corporation

By: _____

Brett Foy, Co-President

“GRANTEE”

ATTACHMENT NO. 4

Schedule of Performance

The Parties agree that the Developer Improvements shall be constructed on a phased basis Developer Improvements for the project must be completed within thirty (30) months from the approval of the agreement by the City Council.

1.	Submittal & approval of conceptual site plan & basic concept drawings	Concurrently with approval of the agreement by City Council.
2.	Land use approvals	Developer shall submit plans & application for review by the Planning Department, no later than three (3) months from the approval of the Agreement by City Council.
3.	Submittal – design development drawings.	Concurrently with submittal of Land use approvals.
4.	Approval of design development drawings.	No later than sixty (60) days after the submittal of a complete package by the Developer, including fully detailed site plan, elevations for each building on site, landscape plan, lighting plan, and signage plan, color and materials scheme.
5.	Submittal – construction drawings & grading plan.	No later than four (4) months from the approval of the design development drawings by the City.
6.	Approval of construction drawings & grading plan.	No later than ninety (90) days after the submittal of a complete
7.	Building permits	Developer shall obtain Building Permits no less than thirty (30) days prior to anticipated commencement of construction and Close of Escrow.
8.	Commencement of construction	On or before eighteen (18) months following the approval of the agreement by City Council and concurrent with Close of Escrow.
9.	Complete construction	Within twelve (12) months of commencement of construction.
10.	Release of construction covenants	After completion of the project and within thirty (30) days after request from developer.

ATTACHMENT NO. 5

Scope of Development

I. INTRODUCTION

This Scope of Development sets forth the general criteria for the design and development of the proposed commercial retail shopping center. The Scope of Development applies to the Successor Agency's construction of certain Remedial Improvements (the "Successor Agency Remedial Improvements") and the Developer's construction of the Project as set forth in Section 300 and other applicable provisions of the Disposition and Development Agreement ("DDA"). Time frames for carrying out the Scope of Development are set forth in the Schedule of Performance.

As provided for in the DDA, the Project is subject to the environmental condition of the Site, design and land use approvals, and approval of plans and permits by the Successor Agency and the City. The Project shall conform to the Scope of Development, previously certified Final Environmental Impact Report for the West Anaheim Commercial Corridors Redevelopment Project and Addendum and Mitigation Monitoring Plan No. 119, and approval of Remedial Action Plan including the Title 27 post-closure maintenance requirements by the RWQCB.

II. DEVELOPER IMPROVEMENTS

Developer is to develop a high quality commercial retail center totaling approximately 200,000-300,000 square feet of retail and commercial space and which is anticipated to consist of nationally or regionally recognized retail tenants restaurants/eateries and other retail shops consistent with CUP 2002-04603 (the "CUP"). These improvements shall initially include a Major Retailer and/or Mid-Sized Retailers.

In addition, there will also be a paseo comprised of a private street, parallel to Beach Boulevard, lined with restaurants/eateries, walkways, shared outdoor dining/seating, decorative lighting, plazas, parking, water features/public art ("Paseo"). The Paseo shall include outdoor seating, public art, robust landscaping, decorative paving, water features, and will exhibit a high degree of design details and decorative elements. Water feature elements for the Paseo will exceed a value of One Hundred Thousand Dollars (\$100,000). In addition, there will be an open space in the Project available for customer use ("Festival Green").

Developer shall ensure that the Paseo and Festival Green are designed by a licensed Architecture and Landscape Architecture Firms. The design, project scope, including finishes shall be approved by the Director. The Director shall conduct a peer review of the Developer's proposed Scope of Development by a consulting Architecture and Landscape Architecture Firms under contract by the City.

Developer will submit a precise landscaping plan, signage and branding program, lighting plan for the proposed commercial retail shopping center for approval by the Director.

The Developer shall construct or cause to be constructed a Focal Public Art Piece. The City shall, at its cost, provide the Art Piece. The Developer shall assemble and install the Focal Art Piece in the Paseo or Festival Green. The project's Landscape Architect shall recommend the appropriate

locations for installation given the characteristics and features of the material comprising the Focal Public Art Piece. A plaque providing information about the Focal Public Art Piece shall be installed at the foot of the art piece or landscaped setback.

Developer shall construct or cause to be constructed the Developer Component. Developer shall ensure that the construction of the Developer Component shall be in accordance with the City and Responsible Agencies requirements, Approved RAP, and the Environmental Deed Restrictions.

Upon obtaining building permits for the Project and following the Close of Escrow, Developer shall reimburse Brookfield Beach Boulevard LLC for the costs of installing the Eastern Beach Boulevard Street Improvements, and the incremental costs of installing the Median Modifications attributable to the Project pursuant to Section 301.3. Developer shall be responsible for the installation of the traffic signal on Lincoln Avenue at the entrance to the Project (Laxore Street) at its cost. Developer will also pay his fair share of sewer expansion fees necessary to increase the capacity of area sewer connections serving the Project.

Notwithstanding anything to the contrary in this Agreement, Developer shall not be responsible for constructing any improvements on the Project which are the responsibility of the ground or pad tenants under the Approved Leases (“Tenant Improvements”).

The site design, architecture, design details, pedestrian amenities and landscape treatment of the entire Westgate Center will be comparable to other first rate, commercial retail centers in Southern California including:

- Plaza 183, Cerritos CA
- Long Beach Towne Center, Long Beach, CA
- Empire Center, Burbank, CA
- Cerritos Town Center, Cerritos, CA

Modifications to the Scope of Development and improvements are subject to the written approval of the Director of the **Successor Agency**.

III. SUCCESSOR AGENCY COMPONENT

The Successor Agency shall be responsible for the Successor Agency Component. Successor Agency and Developer shall enter into a contract, to be approved in accordance with the Redevelopment Dissolution Law, pursuant to which the Developer will perform the obligations under the Successor Agency Component subject to reimbursement of Developer by Successor Agency.

ATTACHMENT NO. 6

Release of Construction Covenants

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ZELMAN ANAHEIM, LLC

_____, California _____
ATTN: _____

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the CITY OF ANAHEIM, a California municipal corporation and Charter City (the "City"), in favor of ZELMAN ANAHEIM, LLC, a Delaware limited liability company (the "Developer"), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Amended and Restated Disposition and Development Agreement (the "DDA") dated _____, 201_ concerning the redevelopment of certain real property situated in the City of Anaheim, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

B. As referenced in Section 310 of the DDA, the City is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in Section 100 of the DDA) upon completion of construction of the Improvements (as defined in Section 100 of the DDA) or a portion thereof, which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Orange County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA of the Applicable Improvements or such portion thereof.

C. The City has conclusively determined that such construction and development has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Applicable Improvements or portion thereof to be constructed by the Developer has been fully and satisfactorily completed in conformance with the DDA. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the DDA and other documents

executed and recorded pursuant to the DDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA.

IN WITNESS WHEREOF, the City has executed this Release this day of _____, 201_.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

By: _____
John E. Woodhead, IV, Director of
Community and Economic Development

LINDA N. ANDAL, CITY CLERK

City Clerk

APPROVED BY DEVELOPER:

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: Zelman Retail Partners,
a California corporation

By: _____
Brett Foy, Co-President

ATTACHMENT NO. 7

Intentionally Omitted.

DRAFT

ATTACHMENT NO. 8

Design Review

Design review for the Project will be performed by the City, assisted by professional consultants. Review of individual projects occurs at several stages in the design process, with City decisions resulting from the interaction of project development entities, design professionals, and City staff. Design review submissions are to be made to the City first and then to the City upon approval by the City.

Design review focuses attention upon architectural, planning, public art and urban design issues. In order to facilitate an efficient process which can ensure excellent design quality, both of individual projects and of the total urban environment, this Design Review Process has been established to continuously assess design issues from project inception to completion.

The review process consists of five stages of review with a milestone approval at the end of each stage. The stages correspond to phases of architectural and artistic design practice, from first concepts to final construction. Comparing the stages to architectural design practice, the first milestone is at the end of Basic Concept Design, which can be considered midway through the Schematic Design phase. The second milestone is at the completion of the Design Development Drawings phase, the point at which all major design and cost decisions should have been made for the Project. The milestone for the third stage is the end of Final Design, followed by the fourth stage of Construction Documents, prior to the City's issuance of a Building Permit. The fifth milestone is at the end of construction, prior to the City's issuance of the Final Certificate of Completion or Certificate of Occupancy.

The scale of drawings for design review submissions are listed for each stage. The drawings may be either 100% or 50% of the listed scale, with the limitation that 9" x 12" be the smallest building image presented in a perspective drawing. Photographic reproductions of drawings may be submitted in addition to the required drawings.

STAGE I: BASIC CONCEPT DRAWINGS REVIEW

The review of the first design submission to the City is the Basic Concept Drawings Review. For architectural design the Basic Concept Drawings Review should correspond approximately to 50% completion of the Project's Schematic Design phase. The City Executive Director may waive certain submission requirements upon request by the Developer. The submission requirements, with scales specified for architectural drawings, include the following:

1. Site plan at not smaller than 1:1200 scale (1"=100').
2. At least two preliminary elevations at not smaller than 1:600 scale (1"=50').
3. Elevations of major exterior public spaces.
4. Dimensions of site, parking areas, building and setbacks.
5. Proposed type and location of public art.

The Basic Concept Drawings Review shall be subject to the Resubmission Process as described in the Schedule of Performance.

STAGE II: DESIGN DEVELOPMENT DRAWINGS REVIEW

The Design Development Drawings Review submission for architectural design is a set of completed Schematic Design materials, including the required items listed below. The Director may waive certain submission requirements upon request by the Developer. The submission requirements, with scales specified for architectural materials, include:

1. Site plan at not smaller than 1:600 (1"=50').
2. At least two exterior elevations at not smaller than 1:200 scale.
3. Elevations of major exterior public spaces and tabulation of parking by size and type of space.
4. Dimensions of site, parking areas, buildings, setbacks, and exterior spaces.
5. Material and color selections for exterior walls.
6. Schematic designs of public art in drawings and/or model form.
7. A narrative description of the project which includes proposed uses, design concepts, public spaces, urban design materials and landscaping.

The Design Development Drawings Review shall be subject to the Resubmission Process as described in the Schedule of Performance.

STAGE III: FINAL REVIEW

Final Review occurs at the end of the Design Development Drawings phase of architectural design, at which time all the major design and cost decisions for a project should have been made. The Director may waive certain submission requirements upon request by the Developer. The design submission for Final Review includes a completed set of the architect's Design Development materials and the artist's final designs, which update and supplement the Design Development Drawings requirements:

1. Update Stage II: Design Development Drawings Review site plan requirements.
2. Update Stage II: Design Development Drawings Review elevation requirement.
3. Update Stage II: Design Development Drawings Review requirements for elevations of major exterior public spaces and tabulation of parking spaces.
4. Update Stage II: Design Development Drawings Review dimensions requirement.
5. Update Stage II: Design Development Drawings Review materials selection requirement.
6. Project Sign Program.
7. Final designs of public art with colors and material samples.

STAGE IV: DESIGN CHECK

The Design Check is to be performed with the City Building Department's Plan Check, and to be used as the basis for issuing a Building Permit. Site Work Plans and Building Construction Drawings (collectively, "Construction Documents") for a Project are completed by the Project's Architect and checked by the City for conformance with the Design Development Drawings Review. The Construction Documents shall include other design elements required as part of the conditions of approval ("Reports & Recommendations Items") for Conditional Use Permit 2002-04603 ("CUP") that were not included in the Basic Concept Drawings and Design Development Drawings. Changes from Design Development Drawings Review made during the Construction Documents phase are reviewed and, after the documents are approved, are given to the Building Department for Plan Check approval and issuance of a Building Permit. For a development with multiple, phased construction contracts, several Building Permits might be issued, necessitating a Design Check for each permit.

Submission requirements for the Design Check are a complete set of Construction Documents for the construction work being considered, in addition to clarification drawings and test for changes in the design since the Design Development Drawings Review.

The complete set of Construction Documents shall be submitted to the California Regional Quality Control Board, Santa Ana Region ("Regional Board") for review and approval for consistency with the Closure Report/Remedial Action Plan.

STAGE V: CONSTRUCTION CHECK

Issuance by the City of the Final Certificate of Completion for the Project is contingent upon a Construction Check and approval by the City. Change orders will be reviewed and site visits made by the design reviewers to facilitate the Construction Check approval of the Project.

Submission requirements for the Construction Check include construction Change Orders which affect the appearance or use of the exterior and interior portions of the Project, in addition to as-built documents. Clarification drawings and text will also be supplied to the City, if requested, to help explain design changes made since the Design Development Drawings Review.

ATTACHMENT NO. 9

Right Of Entry Agreement

This RIGHT OF ENTRY AGREEMENT (“Right of Entry”) is entered into _____, 20__, by and between ZELMAN ANAHEIM, LLC, a Delaware limited liability company (“GRANTEE”), and the CITY OF ANAHEIM, a California municipal corporation and Charter City (“GRANTOR”).

RECITALS

A. GRANTOR, as “Successor Agency,” and GRANTEE, as “Developer,” entered into that certain Disposition and Development Agreement dated _____, 2016 (the “Agreement”), pursuant to which the GRANTOR agreed, subject to the fulfillment of the conditions precedent to convey the Site to the GRANTEE and GRANTEE agreed, subject to conditions precedent to accept conveyance of the Site and construct the Project thereon. All capitalized terms not defined herein shall have the meaning set forth in the Agreement, unless the context dictates otherwise.

RIGHT OF ENTRY AGREEMENT

1. Grant of Right of Entry. The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, subcontractors, agents and designees, permission to enter upon the Site for the purpose of performing or causing to be performed environmental, soils, and/or topographical tests and surveys (“Investigation”); it being acknowledged and agreed that GRANTEE’s entry upon the Site pursuant to Section 301.2 of the Agreement shall not be subject to the terms and conditions of this Right of Entry.

2. Assumption of Risk. GRANTEE enters the Site and performs or causes to be performed the Investigation, at its own risk and subject to whatever hazards or conditions may exist on the Site.

3. Termination. This Right of Entry shall commence on the date hereof and shall expire on _____, unless sooner terminated as hereinafter provided. GRANTEE and GRANTOR each shall have the right to terminate this Agreement for either’s sole convenience at any time during the term hereof by giving seven (7) days’ written notice to the other.

4. Duty to Repair, Restore, or Replace. Prior to termination of this Agreement and unless GRANTOR has conveyed the Site to GRANTEE, GRANTEE shall restore the Site to its original condition. Restoration shall include the repair or replacement of any landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by Grantee’s employees, contractors, subcontractors, agents and designees.

5. Indemnification and hold harmless. GRANTEE shall, indemnify, defend and hold harmless the GRANTOR, its officers, directors, employees, contractors, subcontractors, agents, and affiliates and volunteers from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the GRANTEE or any person directly or indirectly employed by or acting as agent for GRANTEE in the performance of this Agreement, except

that such indemnity shall not apply to the extent such matters are caused by the gross negligence or willful misconduct of the GRANTOR, its officers, agents, employees or volunteers.

It is understood that the duty of GRANTEE to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve GRANTEE from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

6. Insurance. During the term of this Agreement, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability GRANTEE and its agents may have for worker's compensation.

GRANTEE and its subcontractors and agents shall each obtain at its sole cost and keep in full force and effect during the term of this Agreement general commercial liability insurance issued by an "A:VI" or better rated insurance carrier as rated by A.M. Best Company as of the date that GRANTEE obtains or renews its insurance policies, on an occurrence basis, in which the GRANTOR and ITS officers, employees, agents and representatives are named as additional insureds with the GRANTEE. GRANTEE shall furnish a certificate of insurance to the GRANTOR prior to the execution of the Right of Entry hereunder, and shall furnish complete copies of such policy or policies upon request by the GRANTOR. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection offered by the policy shall:

- (a) Include an endorsement naming the GRANTOR and the City, their officers, employees, agents, representatives and attorneys as additional insureds;
- (b) Provide a combined single limit policy for both personal injury and property damage in the amount of \$2,000,000, which will be considered equivalent to the required minimum limits;
- (c) Bear an endorsement or shall have attached a rider providing that the GRANTOR shall be notified not less than thirty (30) days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium.

The GRANTEE shall also file with the GRANTOR the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The GRANTEE shall comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the execution of the Right of Entry, and continuing for the duration of this Right of Entry, complete Workers' Compensation Insurance, and shall furnish

a Certificate of Insurance to the GRANTOR before the commencement of construction. The GRANTOR, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of GRANTEE to comply with this section. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, the GRANTOR shall be notified, giving the GRANTEE a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium.

7. Recording Neither GRANTOR nor GRANTEE shall record this Agreement.

8. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Right of Entry is brought by either party to this Right of Entry, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

9. Notices. All notices required or permitted under the terms of this Agreement shall be in writing and sent to:

GRANTOR Zelman Anaheim, LLC
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey

With copy to: Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

GRANTEE City of Anaheim
291 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
Attention: Director
Copy to: City Attorney

With copy to: John E. Woodhead IV, Director of Community and Economic
Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, CA 92805

With copy to: Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

10. Time is of the Essence; Entire Agreement. Time is of the essence of the terms and provisions of this Right of Entry. This Right of Entry constitutes the entire agreement between GRANTEE and GRANTOR with respect to the matters contained herein, and no alteration,

amendment or any part thereof shall be affective unless in writing signed by parties sought to be charged or bound thereby.

APPROVED BY:

“GRANTEE”

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: Zelman Retail Partners, Inc.,
a California corporation

Dated: _____, 2016

By: _____
Brett Foy, Co-President

“GRANTOR”

CITY OF ANAHEIM,
a California municipal corporation and Charter City

Dated: _____, 2016

By: _____
Its: _____

DRAFT

ATTACHMENT NO. 10

Guaranty

This GUARANTY (the “Guaranty”) is made as of _____, 2016, by _____ (the “Guarantor”), for the benefit of the CITY OF ANAHEIM, a California municipal corporation and Charter City (“City”).

RECITALS

A. The City and Zelman Anaheim, LLC, a Delaware limited liability company (the “Developer”), have entered into an Amended and Restated Disposition and Development Agreement dated as of _____, 2010 (the “Agreement”). Pursuant to the Agreement, the City has agreed to convey to the Developer certain real property located at the intersection of Lincoln Avenue and Beach Boulevard in the City of Anaheim, California (the “Site”), and the Developer has agreed to construct the Developer Improvements on such real property (the “Project”) all more particularly defined and described in the Agreement.

B. Section 623 of the Agreement requires the Developer to provide to the City a Guaranty in the form herein contained. The execution and delivery of this Guaranty is a material condition precedent to the City’s performance under the Agreement.

NOW, THEREFORE, in consideration of City’s execution of the Agreement and the benefits to be derived by the Guarantor therefrom, it is agreed as follows:

1. Unless the context otherwise requires all capitalized terms herein shall have the meaning set forth in the Agreement.

2. Guarantor hereby guarantees the performance by Developer of all of the terms and provisions of the Agreement pertaining to Developer’s construction of the Developer Improvements (other than the Tenant Improvements) in accordance with the Agreement. Without limiting the generality of the foregoing, Guarantor guarantees that: (a) construction of the Developer Improvements (other than the Tenant Improvements) shall commence and be completed within the time limits set forth in the Agreement and the Schedule of Performance attached to the Agreement; (b) the Developer Improvements shall be constructed and completed in accordance with the Agreement, the Scope of Development, and the Construction Drawings for the construction of the Developer Improvements, without substantial deviation therefrom unless approved by the City and City in writing; (c) the Developer Improvements (other than the Tenant Improvements) shall be constructed and completed free and clear of any mechanic’s liens, materialmen’s liens and equitable liens; and (d) all costs of constructing the Developer Improvements (other than the Tenant Improvements) shall be paid when due. In no event shall Guarantor be deemed to have guaranteed Developer’s obligations under Section 208.2 of the Agreement or Developer’s performance of any of the City Component.

3. Completion of the Developer Improvements free and clear of liens shall be deemed to have occurred upon either: (a) (i) the City’s receipt of an AIA Form G704 Certificate of Substantial Completion (the “Architect’s Certificate”) executed by the architect designated or shown on the plans (“Developer’s Architect”) certifying that, to the best of the Developer’s Architect’s knowledge, information and belief, the Developer Improvements have been substantially completed and inspection by the City confirming same by the issuance of a Release of Construction Covenants; (ii) the receipt

of all required temporary or permanent occupancy permit(s) or equivalent for all of the Developer Improvements (subject to completion of the Tenant Improvements) issued by the City; and (iii) either (a) the expiration of the statutory period(s) within which valid mechanic's liens, materialmen's liens and/or stop notices may be recorded and/or served by reason of the construction of the Developer Improvements, or, alternatively, the City's receipt of valid, unconditional releases thereof from all persons entitled to record said liens or serve said stop notices; or (b) the City's receipt of such other evidence of lien free completion as it deems satisfactory in its reasonable discretion.

4. Subject to Sections 301.1 and 602 of the Agreement, if the Developer Improvements (other than the Tenant Improvements) are not commenced and completed in the manner and within the time required by the Agreement, or if, prior to the expiration of the time limits for said completion set forth in the Agreement, construction of the Developer Improvements (other than the Tenant Improvements) should cease or be halted prior to completion and such cessation or halt constitutes a default (as defined in the Agreement), the Guarantor shall, promptly upon demand of the City: (a) diligently proceed to complete construction of the Developer Improvements (other than the Tenant Improvements) at Guarantor's sole cost and expense; (b) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Developer Improvements (other than the Tenant Improvements); and (c) release and discharge all claims of stop notices, mechanic's liens, materialmen's liens and equitable liens that may arise in connection with the construction of the Developer Improvements (other than the Tenant Improvements); provided, however, nothing in this Guaranty shall be deemed to prohibit Developer or Guarantor from contesting in good faith the validity or amount of any mechanics' or materialman's lien nor limit the remedies available to Developer or Guarantor with respect thereto so long as such delay in performance shall not subject the Developer Improvements to foreclosure, forfeiture or sale. In the event that any such lien is contested, Developer or Guarantor, as the case may be, shall be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Executive Director.

5. If Guarantor fails to promptly perform its obligations under this Guaranty, the City shall have the following remedies;

(a) At the City's option, and without any obligation to do so, to proceed to perform on behalf of Guarantor any or all of Guarantor's obligations hereunder and Guarantor shall, upon demand and whether or not construction is actually completed by Developer, pay to the City all sums reasonably expended by City in performing Guarantor's obligations hereunder; and

(b) From time to time and without first requiring performance by Developer, to bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense reasonably sustained or incurred by the City as a direct or indirect consequence of the failure of Guarantor to perform its obligations.

6. In the event that, following the approval of a construction loan for the Developer Improvements (the "Construction Loan"), the amount of the Construction Loan for completion of the Developer Improvements is insufficient to complete the Developer Improvements (other than the Tenant Improvements), then the Guarantor shall be liable to City for such amount which is necessary to complete the Developer Improvements (other than the Tenant Improvements) , by immediate payment in good funds upon written demand from City, from time to time.

7. The obligations of the Guarantor hereunder are primary, absolute, unconditional, continuing guaranties of payment by the Guarantor, and not of collection. Guarantor's liability and obligations under this Guaranty shall terminate upon the earlier to occur of (i) City's written notice to the Guarantor that this Guaranty is void and of no further force and effect, (ii) the date that City issues or is required to issue the Release of Construction Covenants pursuant to Section 310 of the DDA, or (iii) receipt by City of all sums due and owing under this Guaranty. In the event that Developer Transfers the Site (other than a Permitted Transfer pursuant to Sections 603.2(a), (b), (c), (d) and (f) of the DDA), Guarantor shall be released from the obligations of this Guaranty arising subsequent to the effective date of such Transfer.

8. The Guarantor agrees that the Guarantor's liability hereunder will not be released, reduced, impaired or affected by any one or more of the following events: the assumption of liability by any other person (whether as guarantor or otherwise) for payment or performance under the Agreement and the documents attached as or described in exhibits to the Agreement; the failure, delay, waiver or refusal by City to exercise any right or remedy held by City under the Agreement; the loss or impairment of any right of subrogation by the Guarantor; the full or partial release of the Developer or any other person now or hereafter obligated under the Agreement; the insolvency, bankruptcy or reorganization of the Developer; the amendment, modification, renewal, extension or supplementation of the Agreement (unless specified therein) or any change in the obligations of the Developer; the sale, encumbrance, transfer or other modification of the ownership of the Guarantor or a change in the financial condition or management of the Guarantor; the invalidity, unenforceability or insufficiency of the Agreement or the failure of the Guarantor to receive notice of any one or more of the foregoing actions or events.

9. City may, at City's option, upon the occurrence of a Default under the Agreement that pertains to the completion of construction of the Developer Improvements (other than the Tenant Improvements), proceed to enforce this Guaranty directly against the Guarantor without first proceeding against the Developer or any other person liable for payment or performance under the Agreement.

10. The Guarantor waives: (a) any defense based upon any legal disability or other defense of Developer, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Developer from any cause; (b) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Developer or any principal of Developer or any defect in the formation of Developer or any principal of Developer; (c) any and all rights and defenses arising out of an election of remedies by City, even though that election of remedies has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (d) any defense based upon the City's failure to disclose to the Guarantor any information concerning Developer's financial condition or any other circumstances bearing on Developer's ability to construct and complete the Developer Improvements; (e) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (f) any defense based upon the City's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (g) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (h) any right of subrogation, any right to enforce any remedy which the City may have against Developer and any right to participate in, or benefit from, any security for the Agreement now or hereafter held by the City; (i) presentment, demand, protest and notice of any kind; and (j) the benefit of any statute of limitations affecting the

liability of the Guarantor hereunder or the enforcement hereof. Without limiting the generality of the foregoing or any other provision hereof, Guarantor expressly waives to the extent permitted by law any and all rights and defenses, including, without limitation, any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, and under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections or other comparable provisions of the laws of California or any other jurisdiction. Finally, the Guarantor agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Agreement shall similarly operate to toll the statute of limitations applicable to the Guarantor's liability hereunder.

11. The Guarantor warrants and acknowledges that: (a) the City would not approve the Agreement but for this Guaranty; (b) the Guarantor has reviewed all of the terms and provisions of the Agreement; (c) there are no other conditions precedent to the effectiveness of this Guaranty; (d) the Guarantor has established adequate means of obtaining from sources other than the City, on a continuing basis, financial and other information pertaining to Developer's financial condition, the Site, the progress of construction of the Developer Improvements, and the status of Developer's performance of its obligations under the Agreement, and the City has made no representation to Guarantor as to any such matters; and (e) Guarantor will not, without prior written consent of the City, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of the Guarantor's assets, or any interest therein.

12. The Guarantor hereby irrevocably waives any claim or other rights which it may now or hereafter acquire against any person that arise from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, any right to participate in any claim or remedy of City against any person which City now has or hereafter acquires, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including without limitation, the right to take or receive from any person, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to the Guarantor in violation of the preceding sentence and this Guaranty shall not have been discharged prior to such time, such amount shall be deemed to have been paid to the Guarantor for the benefit of, and held in trust for the benefit of, City.

13. In any action brought to enforce this Guaranty, the prevailing party shall be entitled to payment of its reasonable attorney's fees, court costs and other expenses by the nonprevailing party. The Guarantor warrants and represents that it will not voluntarily or involuntarily transfer title to any of its assets, change the ownership of guarantor or take any action, incur any debt or suffer the same to be done which would have materially adverse effect on the Guarantor's ability to fulfill its obligations to City hereunder. The obligations of the Guarantor under this Guaranty shall at all times rank at least pari passu in right of payment with all other unsecured indebtedness (actual or contingent) of the Guarantor, except as may be required by applicable law.

14. Nothing herein contained will limit City in exercising any rights held under the Agreement. In the event of any Default by the Developer under the Agreement or any default under this Guaranty, City will be entitled to selectively and successively enforce any one or more of the rights held by City and such action will not be deemed a waiver of any other right held by City. This Guaranty is not a limitation on the Developer's obligations under the Agreement. All of the remedies of City under this Guaranty and the Agreement are cumulative and not alternative.

15. To the extent that the Guarantor owes any amount to City under this Guaranty from time to time, City shall have the right, but not the obligation, to set off such amount from any amount City owes the Developer under the Agreement, and such set off shall be credited under this Guaranty as if the amount so set off had been paid to City.

16. This Guaranty has been negotiated and delivered in the State of California, and is intended to be construed in accordance with the internal laws of the State of California. In any action brought under or arising out of this Guaranty, the Guarantor hereby submits to the jurisdiction of any competent federal or state court within the State of California.

17. If any provision of this Guaranty is held to be invalid, illegal or unenforceable in any respect or application for any reason, such invalidity, illegality or unenforceability will not affect any other provisions herein contained and such other provisions will remain in full force and effect.

18. This Guaranty will be binding on the Guarantor and its successors and assigns and will inure to the benefit of City and its successors and assigns. Guarantor consents to the assignment of all or any portion of the rights of City hereunder in connection with any assignment of the rights of City under the Agreement without notice to the Guarantor. The Guarantor shall not have the right to assign its obligations under this Guaranty without City's written consent, which shall be granted or denied in its sole discretion.

19. This Guaranty cannot be amended except by an agreement in writing signed by the Guarantor and City.

20. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepared, registered or certified with return receipt requested, or by delivering the same in person to the intended addressee, or by facsimile. Notice so delivered shall be effective upon receipt or two (2) business days following its deposit (whichever is shorter). For purposes of notice, the addresses of City and the Guarantor shall be as follows; provided, however, that both City and the Guarantor shall have the right to change their address for notice hereunder to any other location by the giving of notice in the manner set forth above.

To Guarantor: [Name of Guarantor(s)]
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071

To Developer: Zelman Anaheim, LLC
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey

with copy to: Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

To City: City of Anaheim
201 South Anaheim Boulevard, 10th Floor

Anaheim, California 92805
Attention: Director
Copy to: City Attorney

with a copy to: John E. Woodhead IV, Director of Community and Economic
Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805

with a copy to: Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.

21. Unless otherwise defined herein, each term capitalized in this Guaranty shall have the meaning ascribed to it in the Agreement.

22. _____ the spouse of Guarantor has consented to the within Guaranty by execution of the Consent of Spouse attached hereto as Exhibit "A" and incorporated herein by reference.

IN WITNESS WHEREOF, the Guarantor has duly executed this instrument the date first above written.

[Name of Guarantor(s)]

EXHIBIT A

CONSENT OF SPOUSE

The undersigned acknowledges that the undersigned has read the Disposition and Development Agreement by and between the CITY OF ANAHEIM, a California municipal corporation and Charter City (the "City") and Zelman Anaheim, LLC, a Delaware limited liability company (the "Developer") dated June 5, 2007 (the "Agreement"), and the Guaranty entered into concurrently therewith by and between _____, as Guarantor, and the City guarantying the performance of the Developer under the Agreement. Capitalized terms used and not otherwise defined in this Consent of Spouse have the respective meanings given to them in the Guaranty and the Agreement.

The undersigned, intending to be legally bound:

1. represents and warrants that the undersigned is the spouse of Ben Reiling;
2. consents to and approves the execution, delivery and performance by the undersigned's spouse of, and agrees to be bound by the Guaranty with respect to the obligations of the Developer under the Agreement;
3. consents to and approves the consummation of the transactions contemplated by the Agreement;
4. agrees to execute and deliver any document, and to take any other action, that the Agreement, the Guaranty, the Developer and/or the Guarantor may reasonably request for the purpose of facilitating, consummating or evidencing any of the transactions contemplated by the Guaranty and/or the Agreement;
5. irrevocably appoints _____ (with full power of substitution) as the undersigned's agent and attorney-in-fact for the purpose of executing and delivering (on behalf of the undersigned) any contract, consent or other document, and for the purpose of taking any other action, relating directly or indirectly to the Agreement and/or the Guaranty; and
6. represents and warrants that the undersigned has had the opportunity to obtain legal advice, from counsel of the undersigned's own choosing and independent of the undersigned's spouse as to the undersigned's legal rights and as to the legal effect of this Consent of Spouse.

(Signature(s) on following page)

The representations, warranties, covenants, obligations and other provisions set forth in this Consent of Spouse shall survive the Closing, notwithstanding any investigation conducted with respect thereto or any knowledge of any other person.

Dated: _____, 2016

Signature

Printed Name

DRAFT

ATTACHMENT NO. 11

List of Environmental Condition Documents

Purchase Agreements

- Purchase and Sale Agreement (Kings Motel)
- Ground Lease by and between Loan Pham and **Anaheim Development Agency**
- Agreement for Purchase and Sale and Escrow Instructions (Wilshire-Selby East Ltd.)
- Agreement for Purchase and Sale and Escrow Instructions (Boas Family Partnership)
- Purchase and Sale Agreement (Metropolitan Life Insurance Company)
- Purchase and Sale Agreement and Escrow Instructions, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment (Lincoln-Beach Associates, Eicholtz Property)

Environmental Due Diligence Documents

- Phase I Environmental Site Assessment (ESA) by Gilray Enterprises, Inc., 220 and 220-1/2 North Beach Boulevard (Boas), July 10, 2001
- Phase I Environmental Site Assessment (ESA) by Gilray Enterprises, Inc., 222-306 North Beach Boulevard (Wilshire-Selby Properties), July 10, 2001
- Subsurface Investigation Report by Pacific Edge Engineering, Inc. 222-306 North Beach Boulevard (Wilshire-Selby Properties), November 18, 2003
- Subsurface Investigation Report by Pacific Edge Engineering, Inc. 320 North Beach Boulevard (Kings Motel), April 21, 2004
- Phase I and II Environmental Assessment by Advanced Geo-Environmental, Inc., 200 North Beach Boulevard (Met Life 'Circuit City' Property), January 9, 2004
- Phase I Environmental Assessment by Allwest Remediation, Inc., 314 North Beach Boulevard (Loan Pham), January 24, 2003
- Phase I Environmental Site Assessment, Anderson Pit Sparks-Rains Landfill by IT Corporation, June 2000
- Remedial Action Plan for the Sparks, Rains, Anderson Pit Landfills by Shaw Environmental, Inc., December 30, 2004
- Letter from California Regional Water Quality Control Board dated April 27, 2007 "Conditional Approval of Remedial Action Plan for Sparks, Rains, and Anderson Pit Landfills, Anaheim, California"

- Environmental Due Diligence Documents:
- Pacific Edge Engineering, Inc. Hoist Removal, 222 North Beach Blvd. Anaheim CA dated October 5, 2007.
- Pacific Edge Engineering, Inc. Subsurface Investigation Report (Davis Mud Pit) 222 – 320 North Beach Blvd. Anaheim, CA dated October 2007.
- ARA Letter dated November 2, 2007 “Request for Oversight of a Brownfield Site” (Davis Mud Pit)
- RWQCB Letter dated November 28, 2007 “Approval of Earthen Surcharge Work Plan Update, Anaheim Westgate Retail Center, Orange County, CA”
- RWQCB Letter dated October 9, 2007 “Alternative Closure for the Sparks and Rains Landfills, Anaheim, CA”
- RWQCB Letter dated January 18, 2008 “Follow Up to January 9, 2008 Meeting Regarding Davis Mud Pit”

Polanco Action Authorization & Responsible Party Notifications

- Staff Report to the Anaheim Redevelopment Agency, “Resolution Authorizing Use of the Polanco Redevelopment Act in the West Anaheim Commercial Corridors Redevelopment Project Area in Connection with the Lincoln Landfill”, December 17, 2003
- Resolution No. ARA2002-10, “A Resolution of the Anaheim Redevelopment Agency to Authorize Use of the Polanco Redevelopment Act, California Health and Safety Code Section 33459 et seq., in the West Anaheim Commercial Corridors Redevelopment Project Area”.
- Responsible Party Notification Letter to Richard Bracamonte, Dated January 24, 2003.¹
- Responsible Party Notification Letter to Orange County Integrated Waste Management Department, Dated January 24, 2003
- Responsible Party Notification Letter to Lincoln Beach Associates, Dated January 24, 2003
- Cleanup Guidelines Request Letter to Gerard J. Thibeault, Executive Officer, California Regional Water Quality Control Board, January 24, 2003

Communication with Connor, Blake & Griffin LLP, Bracamonte’s Representative

- Correspondence from Connor to Agency dated February 7, 2003
- Correspondence from Connor to Agency dated February 17, 2003
- Correspondence from Agency to Connor dated February 18, 2003
- Correspondence from Connor to Agency dated February 23, 2003
- Communication from Agency to Lofy Engineering dated February 27, 2003

¹ Richard Bracamonte is the former owner of the WIG Property.

- Correspondence from Connor to Agency dated March 24, 2003 including Remedial Action Plan prepared by Lofy Engineering and dated March 24, 2003
- Correspondence from Agency to Bracamonte dated May 27, 2003
- Correspondence from Agency to Connor dated July 10, 2003
- Correspondence from Connor to Agency dated July 18, 2003

Communication with Nossaman, Guthner, Knox & Elliott, LLP, Eicholtz's Representative

- Correspondence from Nossaman to Agency dated February 19, 2003
- Correspondence from Nossaman to Agency dated March 17, 2003

Communication with the County of Orange

- Response to Responsible Party Notification dated March 25, 2003, Including a Remedial Action Plan prepared by GeoSyntec Consultants dated March 25, 2003
- Correspondence from the Agency to Mr. James Dragna at Bingham McCutchen LLP for the County, dated May 14, 2003
- The Agency is withholding certain communication with the County and its legal representative, which were provided in strict confidence for settlement discussion only between the Agency and the County.

Miscellaneous Categories of Documents

- Correspondence from Agency to Integrated Waste Management District dated September 13, 2003
- Correspondence from California Regional Water Quality Control Board dated October 3, 2003, "Requirement for Groundwater Monitoring and Reporting at Sparks-Rains Landfill, West Gate Plaza, Anaheim, California"
- Correspondence from California Regional Water Quality Control Board dated August 13, 2002, "Outline of Regulatory Requirements for the Development of the West Gate Plaza, Sparks-Rains Landfill, Anaheim, California"
- Correspondence from Agency to Orange County Health Care Agency dated September 13, 2002 "Environmental Documentation"
- Correspondence from Orange County Health Care Agency to Agency dated October 8, 2002 "Environmental Documentation for Anaheim Westgate Center at Sparks-Rains Landfill (SWIS No. 30-AB-0166), Anaheim, California"
- Correspondence from Orange County Health Care Agency to Agency dated July 23, 2002 "Recommended Conditions of Approval for the Development of the West Gate Plaza, Sparks-Rains Landfill (SWIS No. 30-AB-0166), Anaheim, California"
- Memorandum from Lawson & Associates to Agency dated September 17, 2003 "Update on the Progress of Earthen Surcharge Test, Proposed Westgate Retail Center, City of Anaheim, California"

- Correspondence from Lawson & Associates to Agency dated August 29, 2003 “Work Plan for Subsurface Geotechnical Investigation, Proposed Westgate Retail Center, City of Anaheim, California”
- Gas Sample Results by Shaw Environmental, Inc. dated September 10, 2003
- Binder containing materials related to Planning Commission’s entitlement actions
- Package from Emcon/OWT Solid Waste Services to Agency re: the Davis Pit
- Landfill Assessment Workplan for Anderson Pit, Sparks-Rains Landfill, and the Lincoln Frontage, prepared by Emcon/OWT Solid Waste Services, June 2000
- Engineering Assessment, Anderson Pit, Sparks-Rains Landfill, and the Lincoln Frontage Property, Emcon/OWT Solid Waste Services, December 2000
- Closed Disposal Site Inspection Report dated February 5, 2007 from the State of California Integrated Waste Management Board.
- Addendum to Inspection Report dated February 5, 2007 from the State of California Integrated Waste Management Board
- Letter from California Regional Water Quality Control Board dated February 15, 2005 “Notice of Violation: Failure to Comply with the General Permit for Storm Water Discharges Associated With Construction Activities Order No. 99-08-DWQ, NPDES No. Ca000002 (General Permit) (WDID #80S321062).”
- Letter from California Regional Water Quality Control Board dated February 25, 2005 “Notice of Violation – Sparks and Anderson Pit Landfills, Anaheim, Orange County
- Letter from County of Orange Health Care Agency dated March 29, 2005 “Comments on the December 30, 2004 Remedial Action Plan for the Sparks, Rains, and Anderson Pit Landfill, Anaheim. Facility No. 30-AB-0166”
- Letter from California Integrated Waste Management Board April 18, 2005 “Sparks, Rains, and Anderson Pit Landfill – SWIS#30-AB-0166”
 - First Quarter 2010 Groundwater Monitoring and Davis Mud Pit Well Installation Report May 6, 2010
 - Second Quarter 2010 Groundwater Monitoring and Davis Mud Pit Well Installation Report July 29, 2010
 - Closed Disposal Site Inspection Report, County of Orange Health Care Agency dated July 1, 2010
 - Correspondence from the County of Orange Health Care Agency dated August 26, 2010 “Notice and Order Sparks/Rains Pit (aka Sparks/Rains & OC Disposal Station No. 18)”
 - Correspondence from the County of Orange Health Care Agency dated September 2, 2010 “Design Reports for Landfill Gas Mitigation and Monitoring Systems, Former Sparks-Rains and Anderson Pit Disposal Sites, Anaheim”

- Correspondence from County of Orange Health Care Agency dated November 3, 2010 “Conceptual Approval of Two Landfill Gas Systems”
- Anaheim Redevelopment Agency, Appeal of Notice and Order in the matter of Spark/Rains Pits (Disposal Station No. 18) Anaheim, CA Facility No 30-AB-0166. September 8, 2010
- Human Health Risk Assessment Report Davis Mud Pit 222-320 North Beach Boulevard Anaheim, California, October 8, 2010
- RWQCB Correspondence, “Final Cover Evaluation and Conceptual Design for the Former Sparks, Anderson, and Rains Pits, Orange County (PCA No. 2080046)” approval letter, dated February 10, 2010
- CRWCQB Correspondence, “Approval of Soil Characterization Report, St. Jude Soils” dated September 4, 2008.
- Leighton and Associates, Report of Environmental Testing of Imported Soils for the Proposed Westgate Retail Center (former Sparks/Rains Landfill) 200 n. Beach Blvd., Anaheim CA. (soils from St. Jude Site Located at 2151 N. harbor Blvd., Fullerton, CA). Dated September 3, 2008.
- Anaheim Fire Department, UST Removal/Closure Located at 2951 West Lincoln Ave., Anaheim CA. Letter dated August 27, 2008.
- Underground Storage Tank Removal, Pacific Edge Engineering Inc. Letter Report dated July 30, 2008
- Correspondence from the California Regional Water Quality Control Board dated July 28, 2008 , “Approval of soil import from Jacaranda Site”
- Jacaranda Site Soil Import Test Results, Test America, dated July 24, 2008
- Jacaranda Site Soil Import Test Results, Test America, dated July 14, 2008
- Closed Disposal Site Inspection Report, State of California Integrated Waste Management Board dated June 11, 2008
- Pacific Edge Engineering, Inc. Fourth Quarter 2007 Groundwater Monitoring, Former Sparks and Anderson Pits, Northeast Corner of Beach Blvd. and Lincoln Ave., Anaheim CA. January 31, 2008
- Closed Disposal Site Inspection Report, State of California Integrated Waste Management Board dated December 17, 2007.

ATTACHMENT NO. 12

Assignment of Leasehold Interest

This ASSIGNMENT OF LEASEHOLD INTEREST (the "Assignment") is hereby made as of _____, 20__, by and between the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic ("Assignor"), ZELMAN ANAHEIM, LLC, a Delaware limited liability company ("Assignee").

RECITALS

A. Assignor and the Assignee have entered an Amended and Restated Disposition and Development Agreement dated _____, 2010 (the "DDA"). Pursuant to the DDA, the Assignor has agreed to convey to Assignee that certain real property referred to in the DDA as the "Site."

B. Assignor and Loan Pham, an individual ("Landlord") have entered into a Ground Lease dated as of February 1, 2003 (the "Lease"), pursuant to which Landlord has leased to Assignor a portion of the Site (the "Premises"). A true copy of the Lease has been provided to Assignee.

C. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of its rights under the Lease.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns to Assignee all of its right, title and interest in and to the Lease, and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the Lease, from and after the date hereof. Assignor is hereby relieved of all further liability with respect to the Lease arising on or after the date hereof.

2. Indemnity. Assignee agrees to indemnify and hold Assignor harmless from and against any and all claims, losses, liability and expenses, including attorneys' fees, arising out of a breach by Assignee of any of its obligations under the Lease on or after the date hereof. Assignor agrees to indemnify and hold Assignee harmless from and against any and all claims, losses, liability and expenses, including attorneys' fees, arising out of a breach by Assignor of any of its obligations under the Lease prior to the date hereof.

3. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

4. Governing Law. This Assignment has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California.

5. Further Assurances. Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

NOW, THEREFORE, the parties hereto have executed this Assignment as of the date set forth above.

ASSIGNOR:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: _____, 20__

By: _____

John E. Woodhead, IV, Director of
Community and Economic Development

LINDA N. ANDAL, CITY CLERK

City Clerk

APPROVED AS TO FORM:

Successor Agency Special Counsel

ASSIGNEE:

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: Zelman Retail Partners, Inc.,
a California corporation

By: _____

Brett Foy, Co-President

ATTACHMENT NO. 13

Reimbursement Agreement

This **FIRST AMENDED AND RESTATED REIMBURSEMENT AGREEMENT** (this “Reimbursement Agreement”), dated for purposes of identification only as of _____, 2009 (the “Date of Agreement”), is entered by and between the **ANAHEIM REDEVELOPMENT AGENCY**, a public body corporate and politic (the “**Agency**”) and **ZELMAN ANAHEIM, LLC**, a Delaware limited liability company (“Developer”).

RECITALS

The following recitals are a substantive part of this Reimbursement Agreement; all capitalized terms set forth in the recitals shall have the meanings ascribed as provided in the Recitals and in Section 1.1 hereof.

A. The **Agency** and Developer entered into that certain Disposition and Development Agreement dated as of March 12, 2008 (the “Original DDA”) for the purpose of providing for the development of the Project on the Westgate Center Site. The Original DDA was amended by that certain First Amendment to Disposition and Development Agreement executed concurrently herewith (the “First Amendment”). The Original DDA, as amended by the First Amendment, is hereinafter referred to as the “DDA.”

B. The DDA contemplates, among other things, the installation and/or construction of the **Agency** Component by Developer on behalf of **Agency** pursuant to the Reimbursement Agreement Re **Agency** Component attached to the DDA as Attachment No. 13.

C. The **Agency** and Westgate Investment Group, LLC (“WIG”) entered into an Owner Participation Agreement dated October 14, 2008 (“OPA”) pursuant to which, among other things, **Agency** is obligated to install and/or construct the **Agency** Improvements on property immediately adjacent to the Westgate Center Site which is referred to herein as the WIG Property.

D. This Reimbursement Agreement is entered into to implement the terms of the DDA and the OPA by providing for the installation and/or construction by Developer of the **Agency** Component and **Agency** Improvements (collectively referred to herein as the “Remediation Improvements”) and the reimbursement of Developer by **Agency** of the costs incurred in connection therewith.

E. The **Agency** and Developer will benefit from a coordinated plan of financing, design, engineering and installation and/or construction of the **Agency** Component and **Agency** Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions

The following terms shall have the meanings ascribed to them in this Section 1.1 for purposes of this Reimbursement Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the DDA.

“Acceptance Date” means the fifth (5th) anniversary of the date which is the later of (i) the Close of Escrow, (ii) the “Completion Date” (as herein defined), or (iii) Developer’s receipt of payment of all of the Actual Cost of the Remediation Improvements.

“Actual Cost” means the cost of the Remediation Improvements incurred by the Developer, which cost may include: (i) the actual hard costs for the construction of such Remediation Improvements, including labor, materials and equipment costs and contractors’ fees; (ii) the costs incurred in preparing the plans for the Remediation Improvements and the related costs of environmental evaluations of the Remediation Improvements; (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for the Remediation Improvements; (iv) professional costs associated with the Remediation Improvements, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; (v) costs directly related to the construction and/or installation of the Remediation Improvements, such as costs of payment, performance and/or maintenance bonds, and insurance costs; (vi) the cost of insurance maintained by Developer pursuant to Section 5.2 below, and (vii) the Management Fee. Actual Cost shall not include any internal or overhead costs of Developer.

“Agency Component” is described in the DDA incorporated herein by reference.

“Agency Improvements” is described in the DDA incorporated herein by reference.

“CIP Account” means the capital improvement account established by the **Agency** for funding the Remediation Improvements.

“Close of Escrow” means the close of escrow for the conveyance of the Westgate Center Site from the **Agency** to the Developer pursuant to the DDA.

“County” means the County of Orange, California.

“DDA” means the Amended and Restated Disposition and Development Agreement dated October 26, 2010.

“Executive Director” means the **Agency**’s Executive Director.

“Management Fee” means four percent (4%) of the actual hard costs with respect to Remediation Improvements, including labor, materials and equipment costs as set forth in the definition of Actual Costs, phrase (i).

“Operations, Maintenance and Monitoring Plan” is defined in the DDA.

“Payment Request” means a document, substantially in the form of Attachment No. 4 hereto, to be used in requesting a payment of a Reimbursement Amount.

“Plans” means the plans, specifications, schedules and related construction contracts for the Remediation Improvements approved pursuant to applicable standards of the Responsible Agencies.

“Project” means a commercial retail shopping center of approximately 275,000 square feet to be comprised of a Home Improvement Center (as defined in the DDA), a Major Retailer (as defined in the DDA), a food court, two (2) full service/sit-down restaurants aggregating approximately 10,000 square feet, as well as general retail, associated tenant improvements, landscaping, pedestrian access, and parking, including a Public Plaza (as defined in the DDA) as described more specifically in the Scope of Development attached to the DDA.

“Property” means, collectively, the WIG Property and the Westgate Center Site as shown on the Site Map.

“Reimbursement Agreement” means this Reimbursement Agreement.

“Remediation” or **“Remediate”** means removal, remediation, response, action, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gases in, on, under (including underground water) or migrating from the Property in accordance with the RAP. **“Remediation”** or **“Remediate”** does not include the operation, maintenance and monitoring to be performed pursuant to the OM&M Plan.

“Remediation Improvements” means the installation and/or construction of the Agency Component and Agency Improvements by the Developer.

“Responsible Agencies” is defined in the DDA.

“Site Map” is attached hereto as Attachment No. 1 and incorporated herein by reference.

“Westgate Center” means the retail center to be constructed on the “Westgate Center Site” pursuant to the DDA.

“Westgate Center Site” means the property which is the subject matter of the DDA upon which the Westgate Center will be constructed by Developer as shown on the Site Map.

“WIG Property” means the property which is the subject matter of the OPA as shown on the Site Map.

ARTICLE II

CONSTRUCTION AND/OR INSTALLATION OF REMEDATION IMPROVEMENTS

Section 2.1 Reimbursement

The **Agency** shall reimburse Developer for the Actual Costs with respect to the Remediation Improvements.

Section 2.2 Plans

Developer shall cause Plans to be prepared for the Remediation Improvements. Developer shall obtain written approval of the Plans in accordance with requirements of the Responsible Agencies.

Section 2.3 Agency Approval

The **Agency** hereby approves Oltmans Construction Co. (“Oltmans”) as Developer’s contractor and Brian A. Stirrat & Associates (“BAS”) as the Developer’s environmental engineer to perform the Remediation Improvements. The Executive Director shall review and approve the following, such approval not to be unreasonably withheld, conditioned or delayed: (i) the Plans; and (ii) Developer’s proposed bidding procedures for selection of subcontractors to perform the grading and surcharge work of the Remediation Improvements which such bidding procedures shall be in conformity with City competitive bid requirements for public works projects including paying prevailing wages. **Agency** acknowledges that Developer will enter into contracts directly with the approved subcontractors to perform the **Agency** Improvements.

Section 2.4 Construction

This Reimbursement Agreement shall not expand, limit or otherwise affect any obligation of Developer under the DDA. The Remediation Improvements shall be installed and/or constructed substantially in accordance with the approved Plans.

Section 2.5 Relationship to Public Works

This Reimbursement Agreement is for the payment of the Remediation Improvements by the **Agency** and is not intended to be a public works contract. The **Agency** and Developer agree that Developer shall award all contracts with respect to the Remediation Improvements, and that this Reimbursement Agreement is necessary to assure the timely and satisfactory completion of the Remediation Improvements.

From time to time at the request of the Executive Director or Developer, Developer and the Executive Director shall meet and confer regarding matters arising hereunder with respect to the Remediation Improvements and the progress in installing and/or constructing same, and as to any other matter related to the Remediation Improvements or this Reimbursement Agreement.

Section 2.6 Contractor

In performing this Reimbursement Agreement, Developer is an independent contractor and not an agent or employee of the **Agency**. The **Agency** shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of Developer.

Section 2.7 Contracts and Change Orders

Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as “Change Orders”) required with respect to the Remediation Improvements, and all such contracts and supplemental agreements shall be submitted to the Executive Director.

ARTICLE III

ACQUISITION AND PAYMENT

Section 3.1 Inspection

No payment hereunder shall be made by the **Agency** to Developer for the Remediation Improvements until such improvements have been inspected by the **Agency** solely to verify that such improvements have been or are being constructed substantially in accordance with the Plans. The **Agency** shall make or cause to be made regular on-going site inspections of the Remediation Improvements and shall perform a site inspection within ten (10) days following Developer’s written request in connection with a Payment Request by Developer pursuant to this Article III.

Section 3.2 Acceptance by Responsible Agencies

Developer acknowledges that the Remediation Improvements have to be accepted as complete by the Responsible Agencies as a condition precedent to final payment (but not any progress payments) hereunder.

Section 3.3 Submittal of Payment Request

Developer shall have the ability to submit Payment Requests based on one of two methods. The first method is to submit Progress Payment Requests on a continuous basis until the Remediation Improvements are completed and based on design of construction work performed as set forth in Section 3.3.1. The second method is to submit a Payment Request upon completion and acceptance of the Remediation Improvements as set forth in Section 3.3.2.

3.3.1 Progress Payment Request. Progress Payment Requests shall be submitted to the Executive Director on a monthly basis from the date of commencement of construction of the Remediation Improvements. Such Progress Payment Requests shall not exceed one hundred percent (100%) of any soft costs and ninety percent (90%) of the hard costs of the actual work completed (or one hundred percent (100%) of the reimbursement pursuant to Section 4.1). An amount equal to ten percent (10%) of the hard costs of the actual work completed shall be retained by the **Agency** except in the case of payments pursuant to Section 4.1 (the “Retention”). Notwithstanding the foregoing, the **Agency** shall reasonably approve payment of the portion of the Retention applicable to each Component of the Remediation Improvements upon completion of such Component or, if such Component requires a functional system, then upon commencement of such operation of such system. For purposes of this Reimbursement Agreement, “Component” is each of the following: soil surcharge phases I, II, and III; installation of the earthen cap on the Westgate Center Site and the WIG Property; installation of groundwater monitoring wells on the Westgate Center Site; installation of the gas collection system on the Westgate Center Site; installation of the gas collection system on the WIG

property; installation of groundwater monitoring wells, if any, on the WIG property; and any other portions of the Remediation Improvements subject to separate bidding procedures and contract awards.

3.3.2 Completed Remediation Improvements Payment Request. Upon completion of the Remediation Improvements and issuance of a certificate of acceptance with respect to the Remediation Improvements (or other similar approval) thereof by the Responsible Agencies (the “Completion Date”), Developer shall deliver to the Executive Director a complete Payment Request relating to the Remediation Improvements along with an assignment of the warranties and guaranties for the Remediation Improvements, to the extent assignable, as described in Section 4.1 hereof.

Section 3.4 Review of Payment Request

Upon receipt of a Payment Request (and all accompanying documentation), the Executive Director shall conduct a review in order to confirm that such request is complete, that the portion of Remediation Improvements is being constructed substantially in accordance with the Plans therefor, and to verify and approve the Actual Cost of the applicable portion of the Remediation Improvements. The Executive Director shall conduct the review in an expeditious manner and Developer agrees to reasonably cooperate with the Executive Director in conducting the review and to provide the Executive Director with such additional information and documentation as is reasonably necessary for the Executive Director to conclude the review. Within ten (10) days of receipt of such Payment Request, the Executive Director shall notify Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Executive Director will provide a written approval or denial of the request within fifteen (15) days of its submittal. If the Executive Director disapproves the Payment Request, the Executive Director shall provide written notice of disapproval to Developer within such fifteen (15) day period stating in reasonable detail the reasons for such disapproval and the changes to such Payment Request necessary to obtain the Executive Director’s approval. If the Executive Director reasonably disputes the Actual Cost of the partial or completed Remediation Improvements or the work completed to date set forth in such Payment Request, the Executive Director shall approve for payment those Actual Costs that the Executive Director determines is reasonable and appropriate and shall deliver written notice of disapproval of the remaining amount and the reasons for such disapproval.

The Executive Director, for the completed Remediation Improvements, shall be entitled to withhold approval for payment of such Payment Request only if: (i) a certificate of acceptance (or other similar approval) has not been issued by the Responsible Agencies; (ii) the Remediation Improvements have not been constructed substantially in accordance with the Plans; (iii) the Executive Director disputes the Actual Cost of any Remediation Improvements stated in such Payment Request; or (iv) final conditional lien releases for labor and materials provided in connection with the Remediation Improvements have not been submitted to the **Agency** (provided that this requirement shall not apply if waived by the **Agency** because Developer has provided to the **Agency** a payment bond or provides a bond protecting the **Agency** from mechanics’ liens made by parties that have not provided such lien releases in a form acceptable to the **Agency**).

Nothing in this Reimbursement Agreement shall be deemed to prohibit Developer from contesting in good faith the validity or amount of any mechanics’ or materialman’s lien nor limit the remedies available to Developer with respect thereto so long as such delay in performance shall not subject the Remediation Improvements to foreclosure, forfeiture or sale. In the event that any such lien is contested, Developer shall be required to post or cause the delivery of a bond in an amount equal

to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Executive Director.

Section 3.5 Payment

Progress payments to Developer shall be equal to ninety percent (90%) of the value of the work completed. Upon approval of a Payment Request by the Executive Director, the Executive Director shall sign such Payment Request and cause the same to be processed for payment no later than thirty (30) days following approval of such Payment Request. The Reimbursement Amount, or portions thereof, paid pursuant to Payment Requests hereunder for the Remediation Improvements shall constitute payment in full for such submitted Payment Request, provided that the Executive Director has not unreasonably disputed the Actual Costs contained in such Payment Request and paid out a lesser amount as a result. Upon the resolution of any disputed Actual Costs and the acceptance of the Remediation Improvements by the Responsible Agencies, **Agency** shall release the Retention to the Developer.

Agency, in accordance with this Section 3.5, shall make a Reimbursement Payment within 30 days from receipt of Developer's request. If **Agency** fails to make the Reimbursement Payment within such 30-day time frame Developer shall, submit written notice to City notifying **Agency** that the Reimbursement Payment shall be made within 10 days from receipt of the written notice (the "Late Payment Grace Period"). Failure to make such Reimbursement Payment within the Late Payment Grace Period shall require **Agency** to pay interest on the late payment (the "Late Payment Interest"). The Late Payment Interest shall accrue each day that the Reimbursement Payment remains unpaid after the Late Payment Grace Period at a rate equal to six percent (6%) per annum.

Section 3.6 Restrictions on Payments

Payment for the Remediation Improvements will be made only up to the amount of the Reimbursement Amount. Except for the Late Payment Interest, nothing herein shall require the **Agency** in any event to pay more than the Actual Cost of the Remediation Improvements.

Section 3.7 Defective or Nonconforming Work

If any of the work done or materials furnished for the completed Remediation Improvements are found by the Executive Director to be defective or not in substantial accordance with the applicable Plans: (i) if such finding is made prior to payment of the Reimbursement Amount of such completed portion of the Remediation Improvements, the Executive Director may withhold payment therefor until such defect or nonconformance is corrected, or (ii) if such finding is made after payment of the Remediation Improvements, Developer shall correct such defect or nonconformance.

ARTICLE IV

MAINTENANCE OF REMEDIATION IMPROVEMENTS

Section 4.1 Maintenance Pursuant to the Operations, Maintenance and Monitoring Plan

Developer shall maintain the **Agency** Component constructed by Developer in good and safe condition in accordance with the Operations, Maintenance and Monitoring Plan (as defined

in the DDA), as required in the Grant Deed and Environmental Restriction. Until the Acceptance Date, the **Agency** shall reimburse the Developer for all costs of implementing the Operations, Maintenance and Monitoring Plan within thirty (30) days after receipt of Progress Payment Request. Thereafter, the Developer shall be responsible, at its cost and expense, for the implementation of the Operations, Maintenance and Monitoring Plan with respect to the **Agency** Component.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Covenants and Warranties of Developer

Developer represents and warrants for the benefit of the **Agency** as follows:

A. Organization. Developer is a Delaware limited liability company and is in compliance with the laws of the State of Delaware, and has the power and authority to own its property and assets and to carry on its business as now being conducted and as now contemplated.

B. Authority. Developer has the power and authority to enter into this Reimbursement Agreement, and has taken all action necessary to cause this Reimbursement Agreement to be executed and delivered, and this Reimbursement Agreement has been duly and validly executed and delivered by Developer.

C. Binding Obligation. This Reimbursement Agreement is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

D. Financial Records. Until one year after the Acceptance Date, Developer covenants to maintain proper books of record and account for the installation and/or construction of the Remediation Improvements and maintenance of the **Agency** Component and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the **Agency** or its agent at any reasonable time during regular business hours on reasonable notice.

E. Plans. Developer represents that it will use reasonable efforts to obtain approval of the Plans for the Remediation Improvements installed and/or constructed by Developer from all appropriate departments of the Responsible Agencies and from any other public entity or public utility agencies from which such approval must be obtained. Developer further agrees that the Remediation Improvements constructed and maintained by Developer will be constructed and maintained in compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner. The **Agency** shall obtain WIG's approval of the Plans for the **Agency** Improvements pursuant to the OPA.

Section 5.2 Insurance

Without limiting **Agency**'s right to indemnification, Developer shall secure prior to commencing any activities under this Reimbursement Agreement, and maintain, insurance coverage as set forth in this Section 5.2.

A. Developer shall secure and maintain the following insurance coverage:

- (i) Workers' Compensation Insurance as required by California statutes;
- (ii) Comprehensive General Liability Insurance, or Commercial General Liability Insurance, including coverage for Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage and Independent Contractor's Liability, in an amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit, written on an occurrence form;
- (iii) Comprehensive Automobile Liability coverage, including - as applicable - owned, non-owned and hired autos, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form; and
- (iv) Builder's Risk – Fire and “all risk” insurance, if available, covering one hundred percent (100%) of the replacement cost of the **Agency** Component, both work in process and complete projects, in the event of fire, lightning, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by “all risk” coverage policies in the area where the **Agency** Component is located (including loss by flood if the Site is in an area designated as subject to danger of flood).

B. To the extent that Developer contracts with a general contractor for the performance of work on the Remediation Improvements, Developer shall also furnish (or cause to be furnished) to the **Agency** evidence satisfactory to the Executive Director that such contractor meets the insurance requirements as set forth herein and that any subcontractor with whom the general contractor or Developer contracts for the performance of work on the Remediation Improvements carry worker's compensation insurance as required by law.

C. The Executive Director, with the consent of the City's Risk Manager, is hereby authorized to reduce Developer's insurance requirements set forth above in the event they determine that such reduction is consistent with reasonable commercial practices

D. Each insurance policy required by this Reimbursement Agreement shall contain the following clauses or provisions:

“This insurance shall not be canceled, limited in scope or coverage, or nonrenewed until after thirty (30) days prior written notice has been given to the **Agency** Secretary, 200 S. Anaheim Boulevard, Anaheim, CA 92805.”

“It is agreed that any insurance maintained by the Anaheim Redevelopment **Agency** shall apply in excess of and not contribute with insurance provided by this policy.”

E. Prior to commencing work on the Remediation Improvements, Developer shall deliver to **Agency** (i) insurance certificates confirming the existence of the insurance required by this Reimbursement Agreement, and including the applicable clauses referenced above and (ii) endorsements to the above-required policies, which add to these policies the applicable clauses and provisions referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by **Agency**, it shall be Developer's responsibility to see that **Agency** receives documentation, acceptable to **Agency**, which sustains that the individual signing such endorsements is

indeed authorized to do so by the insurance company. Also, **Agency** has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Reimbursement Agreement.

F. In addition to any other remedies **Agency** may have if Developer fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, **Agency** may, at its sole option may exercise any of the below listed options. However, Developer shall be given 15 day notice to remedy, cure and find insurance coverage in compliance with the terms of this Reimbursement Agreement.

(i) Obtain such insurance and deduct and retain the amount of the premium for such insurance from any sums due under this Reimbursement Agreement;

(ii) Withhold any payment(s) which become due to Developer hereunder until Developer demonstrates compliance with the requirements hereof;

(iii) Terminate this Reimbursement Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies **Agency** may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements.

G. Nothing herein contained shall be construed as limiting in any way the extent to which Developer may be held responsible for payment of damages to persons or property resulting from Developer's or its subcontractor's performance under this Reimbursement Agreement.

Section 5.3 Agency Indemnity

Subject to Developer's assignment of its rights to **Agency** against contractors performing the **Agency** Improvements with respect to the **Agency** Improvements only (such that Developer retains its rights against contractors performing the Developer Improvements), **Agency** agrees to indemnify, defend and hold Developer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees) resulting from, arising out of, or based upon the Developer's performance of the **Agency** Improvements (including, without limitation, the Developer's construction and/or installation of the **Agency** Improvements). The foregoing indemnity shall survive the termination, expiration, invalidation, or performance in full or in part of this Reimbursement Agreement.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1 Default Remedies

Failure by either Party to perform any action or covenant required by this Reimbursement Agreement within the time periods provided herein following Notice and failure to cure as described hereafter, constitutes a "Default" under this Reimbursement Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Reimbursement Agreement, the claimant shall not

institute any proceeding against any other Party, and the other Party shall not be in Default if such party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

Section 6.2 Institution of Legal Actions

The Parties shall be entitled to seek any remedy available at law and in equity for the other Party's Default. All legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in Orange County, or in the United States District Court for District of California in which Orange County is located.

Section 6.3 Acceptance of Service of Process

In the event that any legal action is commenced by Developer against **Agency**, service of process on **Agency** shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by **Agency** against Developer, service of process on Developer shall be made in such manner as may be provided by law.

Section 6.4 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Reimbursement Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

Section 6.5 Inaction Not a Waiver of Default

Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 6.6 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Reimbursement Agreement.

Section 6.7 Attorneys' Fees

In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Reimbursement Agreement, the prevailing party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

ARTICLE VII

GENERAL

Section 7.1 Termination

This Reimbursement Agreement may be terminated by the mutual written consent of the Agency and Developer or upon the termination of the DDA.

Section 7.2 Audit

The Agency shall have the right, during normal business hours and upon the giving of ten (10) business days, prior written notice to Developer, to review all books and records of Developer pertaining to costs and expenses incurred by Developer in relation to any of the Remediation Improvements, and any bids taken or received for the construction thereof or materials therefor.

Section 7.3 Notices, Demands and Communications Between the Parties

Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Reimbursement Agreement from one Party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile (FAX) transmission, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or FAX transmission or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

- To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: City Manager
Copy to: City Attorney
- with a copy to: John E. Woodhead IV, Director of Community and Economic
Development
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
- with a copy to: Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.
- To Developer: Zelman Anaheim, LLC
515 South Figueroa Street, Suite 1230
Los Angeles, California 90071
Attention: Brett Foy and Paul Casey
- With copy to: Cox, Castle & Nicholson LLP
3121 Michelson Drive, Suite 200
Irvine, California 92612
Attention: Robert J. Sykes

Section 7.4 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Reimbursement Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Reimbursement Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine; restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other Party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of **Agency** which shall not excuse performance by **Agency**); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Reimbursement Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Reimbursement Agreement may also be extended in writing by the mutual agreement of **Agency** and Developer. Notwithstanding any provision of this Reimbursement Agreement to the contrary, the lack of funding to complete the Remediation Improvements shall not constitute grounds of enforced delay pursuant to this Section.

Section 7.5 Relationship Between Agency and Developer

It is hereby acknowledged by Developer that the relationship between **Agency** and Developer is not that of a partnership or joint venture and that **Agency** and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, **Agency** shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Westgate Center and Westgate Center Site. Developer agrees to indemnify, hold harmless and defend **Agency** from any claim made against **Agency** arising from a claimed relationship of partnership or joint venture between **Agency** and Developer with respect to the development, operation, maintenance or management of the Site or the Project.

Section 7.6 No Third Party Rights

The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Reimbursement Agreement or of any covenant, duty, obligation or undertaking established herein.

Section 7.7 Agency Approvals and Actions

Whenever a reference is made herein to an action or approval to be undertaken by **Agency**, the Executive Director is authorized to act on behalf of **Agency** unless specifically provided otherwise or the context should require otherwise.

Section 7.8 Counterparts

This Reimbursement Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement. This Reimbursement Agreement is executed in five (5) originals, each of which is deemed to be an original.

Section 7.9 Real Estate Brokerage Commission

Agency and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

Section 7.10 Titles and Captions

Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Reimbursement Agreement or of any of its terms. Reference to section numbers are to sections in this Reimbursement Agreement, unless expressly stated otherwise.

Section 7.11 Interpretation

As used in this Reimbursement Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Reimbursement Agreement shall be interpreted as though prepared jointly by both Parties.

Section 7.12 Waiver

A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Reimbursement Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Reimbursement Agreement.

Section 7.13 Modifications

Any alteration, change or modification of or to this Reimbursement Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

Section 7.14 Severability

If any term, provision, condition or covenant of this Reimbursement Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Reimbursement Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

Section 7.15 Computation of Time

The time in which any act is to be done under this Reimbursement Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

Section 7.16 Legal Advice

Each Party represents and warrants to the other the following: they have carefully read this Reimbursement Agreement, and in signing this Reimbursement Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matter set forth in this Reimbursement Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Reimbursement Agreement; and, they have freely signed this Reimbursement Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Reimbursement Agreement, and without duress or coercion, whether economic or otherwise.

Section 7.17 Time of Essence

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

Section 7.18 Cooperation

Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Reimbursement Agreement including, but not limited to, releases or additional agreements.

Section 7.19 Conflicts of Interest

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

Section 7.20 Non-Liability of Officials and Employees of Agency

No member, official or employee of **Agency** or Developer shall be personally liable to the other Party, or any successor in interest, in the event of any Default or breach by **Agency** or Developer

or for any amount which may become due to **Agency** or Developer or their successors, or on any obligations under the terms of this Reimbursement Agreement. **Agency** and Developer hereby waive and release any claim they may have against the members, officials or employees of **Agency** or Developer with respect to any Default or breach by **Agency** or Developer or for any amount which may become due to **Agency** or Developer or their successors, or on any obligations under the terms of this Reimbursement Agreement. **Agency** and Developer make such release with full knowledge of Civil Code Section 1542 and hereby waive any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

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

Section 7.21 Time for Acceptance of Agreement by Agency

This Agreement, when executed by Developer and delivered to **Agency**, must be authorized, executed and delivered by **Agency** on or before forty-five (45) days after signing and delivery of this Reimbursement Agreement by Developer or this Reimbursement Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Reimbursement Agreement.

DRAFT

IN WITNESS WHEREOF, AGENCY AND DEVELOPER HAVE EXECUTED THIS AGREEMENT AS OF THE RESPECTIVE DATES SET FORTH BELOW.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

Dated: _____, 20__

By: _____

John E. Woodhead, IV, Director of
Community and Economic Development

LINDA N. ANDAL, CITY CLERK

City Clerk

“DEVELOPER”

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: Zelman Retail Partners, Inc.,
a California corporation

By: _____

Brett Foy, Co-President

EXHIBIT A

PAYMENT REQUEST

The undersigned, ZELMAN ANAHEIM, LLC, a Delaware limited liability company (“Developer”), hereby requests payment in the amount of \$_____ for all or a portion of the **Agency** Component, all as more fully described in the Attachment No. 1 hereto. (All terms as used herein are defined in that certain Reimbursement Agreement by and between the **Agency** and Developer and/or the DDA.) In connection with this Payment Request, the undersigned hereby represents and warrants to the **Agency** as follows:

1. The undersigned is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed **Agency** Component, Developer has submitted or submits herewith, as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such **Agency** Component, and such drawings or plans and specifications, as applicable, are true, correct and complete.

3. All costs of the **Agency** Component for which payment is requested hereby are Actual Costs (as defined in the Reimbursement Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the **Agency**.

4. Supporting documentation (such as third party invoices for progress payments requests; or third party invoices, lien releases and cancelled checks for payment request for completed **Agency** Component) is attached with respect to each cost for which payment is requested.

5. The **Agency** Component for which payment is requested hereby was constructed in accordance with the requirements of the Plans.

6. Developer is in compliance with the terms and provisions of the Reimbursement Agreement and no portion of the amount being requested to be paid was previously paid.

7. With respect to progress payments, the Reimbursement Amount for the **Agency** Component has been calculated in conformance with the terms of the Reimbursement Agreement, that is, ninety percent (90%) of the costs described in paragraph (i) of the definition of Actual Costs plus 100% of the costs described in paragraphs (ii) through (vii) of the definition of Actual Costs, and the Management Fee.

8. Progress payments as provided in the **Agency** Reimbursement Agreement shall not constitute acceptance of the **Agency** Component. Payment of the Retention shall be made upon the City’s acceptance of the **Agency** Component described herein and Developer has attached all warranties, guarantees or other evidences of contingent obligations of third parties with respect to the **Agency** Component.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

DEVELOPER:

ZELMAN ANAHEIM, LLC,
a Delaware limited liability company

By: Zelman Retail Partners, Inc.,
a California corporation

By: _____
Brett Foy, Co-President

Date:

CITY:

Payment Request Approved for Submission

CITY OF ANAHEIM, a California
municipal corporation and charter city

By: _____
John E. Woodhead, IV, Director of
Community and Economic
Development

Date:

DRAFT

ATTACHMENT NO. 1

**SUMMARY OF AGENCY COMPONENT
TO BE REIMBURSED AS PART OF PAYMENT REQUEST**

<u>Item No.</u>	<u>Discrete Component</u>	<u>Actual Cost</u>	<u>Disbursement Requested</u>
-----------------	-------------------------------	--------------------	-----------------------------------

[List here all components for which payment is requested,
and attach supporting documentation]

DRAFT

ATTACHMENT NO. 1 TO EXHIBIT A TO
ATTACHMENT NO. 13

ATTACHMENT NO. 14

Form of Recognition Agreement

This **RECOGNITION AGREEMENT**, made as of the ____ day of _____, 201_, by and between **LOAN PHAM**, an individual, having an address at 4043 Humboldt Dr., Huntington Beach, California 92649 ("**Landlord**"); **ZELMAN ANAHEIM, LLC**, Delaware limited liability company, 515 South Figueroa Street, Suite 1230, Los Angeles, California 90071, Attention: and Brett Foy and Paul Casey ("**Tenant**"); and _____, a [_____] [**corporation**] [**limited**] [**general**] [**partnership**], having an address at _____ ("**Subtenant**").

R E C I T A L S:

A. Landlord and **Anaheim Redevelopment Agency**, a public body, corporate and politic (the "**Original Tenant**") have entered into a certain Lease Agreement (the "**Original Lease**") dated as of February 1, 2003, a short form of which has been recorded in _____, which demises certain premises (the "**Premises**") located in the City of Anaheim, County of Orange, State of California, California, more particularly described on Exhibit A annexed hereto and made a part hereof. The Original Lease was amended by that certain First Amendment to Lease dated _____, 2010 (the "**First Amendment**") by and between Landlord and Original Tenant. The Original Lease, as amended by the First Amendment, is hereinafter referred to as the "**Lease**."

B. Original Tenant and Tenant have entered into that certain Amended and Restated Disposition and Development Agreement dated _____, 2010 (as amended, the "**DDA**"). Pursuant to the DDA, Original Tenant has agreed to assign its leasehold interest in the Premises to Tenant.

C. Section ___ of the First Amendment provides that in the event Tenant subleases all or a portion of the Premises for a term of at least five (5) years, Landlord shall, upon Tenant's request, execute and deliver a Recognition Agreement among Landlord, Tenant and each such subtenant in the form attached to the Lease, in recordable form.

D. Pursuant to a Sublease dated as of _____ (the "**Sublease**"), Tenant has subleased the Premises to Subtenant (the "**Subleased Premises**").

E. The parties hereto desire to effectuate the provisions of Section ___ of the First Amendment with respect to the Sublease and the Subleased Premises.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Landlord warrants and represents as follows:

(a) that it is the fee owner of the Premises,

(b) that the Lease is unmodified (except as may be otherwise set forth in Exhibit B annexed hereto, if any) and is in full force and effect,

(c) that the term of the Lease expires on _____, but is subject to [____] renewal periods of [____] years each and

(d) that, to Landlord's knowledge, Tenant is not in default under the Lease nor has any event occurred which would after notice to Tenant and the passage of time become a default of Tenant under the Lease.

2. Landlord hereby acknowledges receipt of a copy of, and consents to and approves, the Sublease and all of the terms, covenants and provisions thereof, and agrees that the exercise by Subtenant of any of its rights, remedies and options contained therein shall not constitute a default under the Lease.

3. Landlord shall not, in the exercise of any of the rights arising or which may arise out of the Lease or of any instrument modifying or amending the same or entered into in substitution or replacement thereof (whether as a result of Tenant's default or otherwise), disturb or deprive Subtenant in or of its possession or its rights to possession of the Subleased Premises or of any right or privilege granted to or inuring to the benefit of Subtenant under the Sublease, provided that Subtenant is not in default under the Sublease beyond the expiration of any applicable notice and cure period.

4. In the event of the termination of the Lease by reentry, notice, conditional limitation, surrender, summary proceeding or other action or proceeding, or otherwise, or, if the Lease shall terminate or expire for any reason before any of the dates provided in the Sublease for the termination of the initial or renewal terms of the Sublease (to the extent such dates are not beyond the corresponding dates in the Lease) and if immediately prior to such surrender, termination or expiration the Sublease shall be in full force and effect, Subtenant shall not be made a party in any removal or eviction action or proceeding nor shall Subtenant be evicted or removed of its possession or its right of possession of the Subleased Premises be disturbed or in any way interfered with, and the Sublease shall continue in full force and effect as a direct lease between Landlord and Subtenant.

5. Landlord hereby waives and relinquishes any and all rights or remedies against Subtenant, pursuant to any lien, statutory or otherwise, that it may have against the property, goods or chattels of Subtenant in or on the Subleased Premises.

6. Any notices, consents, approvals, submissions, demands or other communications (hereinafter collectively referred to as "**Notice**") given under this Agreement shall be in writing. Unless otherwise required by law or governmental regulation, Notices shall be deemed given if sent by registered or certified mail, return receipt requested, or by any recognized overnight mail carrier, with proof of delivery slip, postage prepaid (a) to Landlord, at the address of Landlord as hereinabove set forth or such other address or persons as Landlord may designate by Notice to the other parties hereto, (b) to Tenant, at the address of Tenant as hereinabove set forth, or such other address or persons as Tenant may designate by Notice to the other parties hereto, and (c) to Subtenant, at the address of Subtenant as hereinabove set forth or such other address or persons as Subtenant may designate by Notice to the other parties hereto. During the period of any postal strike or other interference with the mails, personal delivery shall be substitute for registered or certified mail. All Notices shall become effective only on the receipt or rejection of same by the proper parties.

7. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any

purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

8. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and sublessees.

DRAFT

IN WITNESS WHEREOF, the parties have caused this Recognition Agreement to be executed under seal the date first above written.

LANDLORD:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

SUBTENANT:

By: _____

Name: _____

Title: _____

DRAFT

ATTACHMENT NO. 15

Block Grant Guidelines

L/M Income Jobs

Criteria

Most (but not all) job creation or retention activities emanate from special economic development activities (§570.203). Section 105(c)(1) of the authorizing statute provides that these “special economic development” activities may meet the L/M Income Benefit national objective *only* in the following three ways:

- (1) Be located in a predominantly L/M income neighborhood and serve the L/M income residents (e.g., a grocery store serving a L/M income neighborhood qualifies as area benefit); **or**
- (2) Involve facilities designed for use predominantly by L/M income persons (e.g., a for-profit hospital that is designed to serve patients on Medicaid or welfare qualifies as limited clientele); **or**
- (3) Involve the employment of persons, the majority of whom are L/M income persons (e.g., a retail clothing store creates or retains jobs principally for L/M income persons).

This section of the Guide provides the criteria for the so-called “L/M Income Jobs” standard, which implements the third way authorized in the above-referenced statutory provision. *Reference: §570.208(a)(4)*

A *L/M income jobs activity* is one which creates or retains permanent jobs, at least 51% of which, on a full time equivalent (FTE) basis, are either *held by* L/M income persons or considered to be *available to* L/M income persons.

General rules

Jobs that are not held (filled) by L/M income persons may be claimed to be “available to” L/M income persons *only* when *both* of the following are met:

- ❖ Neither special skills that can only be acquired with substantial (i.e., one year or more) training or work experience nor education beyond high school is a prerequisite to fill such jobs (or the business nevertheless agrees to hire unqualified persons and train them); and
- ❖ The grantee and/or the assisted business takes actions to ensure that L/M income persons receive “first consideration” for filling such jobs.

Principles involved in providing "first consideration":

- ❖ The business must use a hiring practice that under usual circumstances would result in over 51% of L/M income persons interviewed for applicable jobs being hired,
- ❖ The business must seriously consider a sufficient number of L/M income job applicants to give reasonable opportunity to fill the position with such a person, and
- ❖ The distance from residence and availability of transportation to the job site must be reasonable before a particular L/M income person may be considered a serious applicant for the job.

Special rules for retained jobs

In order to consider jobs *retained* as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, "clear and objective" evidence that jobs will be lost would include:

- ❖ Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- ❖ Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.

To meet the L/M income jobs standard, 51% or more of the retained jobs must be either:

- ❖ Known to be held by L/M income persons at the time CDBG assistance is provided, and/or
- ❖ For jobs not known to be held by L/M income persons, reasonably expected to "turn over" to L/M income persons within two years. (This would involve the grantee or business taking actions to ensure that such a job, upon turnover, will be either taken by or made available to a L/M income person in a manner similar to that pertaining to a newly created job, as discussed above.) Reference: §570.208(a)(4)

Presumed L/M income status

Section 105(c)(4) of the CDBG authorizing legislation provides that, for purposes of determining whether a job is held by or made available to a L/M income person, the person may be presumed to be L/M income if either:

- ❖ The person resides within a census tract (or Block Numbering Area

[BNA]) that either:

- ♦ has at least 70% of its residents who are L/M income persons, or
- ♦ meets the criteria related to “enterprise zones,” or
- ❖ Both the assisted business and the created or retained job are located in a census tract or BNA that meets the criteria related to “enterprise zones.”

In order to qualify for one of the presumptions referred to above concerning “enterprise zone” criteria, the census tract or BNA must either:

- ❖ Be part of a Federally-designated Empowerment Zone or Enterprise Community; or
- ❖ Meet *all* of the following criteria:
 - ♦ have a poverty rate of at least 20% as determined by the most recently available decennial census information;
 - ♦ not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract/BNA has a poverty rate of at least 30% as determined by the most recently available decennial census information; and
 - ♦ evidence pervasive poverty and general distress by meeting at least *one* of the following standards:
 - all block groups in the census tract have poverty rates of at least 20%;
 - the specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or
 - upon the written request of the recipient, HUD determines that the census tract/BNA exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

Reference: §208(a)(4)(iv) and (v)

Policies

In counting the jobs to be used in the calculation for determining the percentage that benefit L/M income persons, the following policies apply:

- ❖ Part-time jobs must be converted to full-time equivalents (FTE) (e.g., a job that will require only working half time would count as only one-half a job);
- ❖ Only permanent jobs count; temporary jobs may not be included;
- ❖ Seasonal jobs are considered to be permanent for this purpose only if the season is long enough for the job to be considered as the employee's principal occupation;
- ❖ All permanent jobs created or retained by the activity must be counted even if the activity has multiple sources of funds; and
- ❖ Jobs indirectly created or retained by an assisted activity (i.e., "spin off" jobs) may not be counted.

Provisions for aggregating jobs

As a general rule, jobs from each business receiving CDBG assistance must be considered separately for purposes of demonstrating compliance with the requirement that at least 51% of the resultant created or retained jobs benefit L/M income persons. However, there are certain circumstances under which the grantee may aggregate the jobs created or retained by two or more assisted businesses for this purpose. The following describes those circumstances:

- ❖ Where CDBG funds are used to acquire, develop, or improve real property (e.g., a business incubator, an industrial park, or shopping mall), jobs may be aggregated for all of the businesses which locate on the property, *provided such businesses are not otherwise assisted with CDBG funds. Reference: §570.208(a)(4)(vi)(A)*
- ❖ Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses and where *no CDBG funds are used to make or guarantee the loans*, jobs created by all of the businesses receiving loans during any one program year may be aggregated. *Reference: §570.208(a)(4)(vi)(B)*
- ❖ Where CDBG funds are used *solely to provide technical assistance* to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving such technical assistance during each program year. *Reference: §570.208(a)(4)(vi)(C)*

- ❖ Where CDBG funds are used for activities meeting important national interests as delineated in the criteria under the public benefit standard at §570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except that the activities cannot be aggregated under more than one category. *Reference: §570.208(a)(4)(vi)(D) (Also see Appendix B for further information on the public benefit standards and the activities mentioned here in particular.)*
- ❖ Where CDBG funds are used by a Community Development Financial Institution (CDFI) to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year. *Reference: §570.208(a)(4)(vi)(E)*
- ❖ Where CDBG funds are used for public facilities or improvements (infrastructure) which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement, using the following ground rules:
 - ♦ where such an improvement is undertaken principally for the benefit of one or more particular businesses, **and** the cost (in CDBG funds) for the facility/improvement amounts to *less than \$10,000 per permanent full-time equivalent (FTE) job* to be created or retained by those businesses, the requirement may be met by aggregating the jobs created or retained by **only** those businesses for which the facility/improvement is principally undertaken, regardless of whether other businesses might also benefit from the improvement.
 - ♦ where the CDBG cost per FTE job expected to be created or retained (as determined under the paragraph above) is *\$10,000 or more*, the requirement may still be met by aggregating the resultant jobs created or retained but *jobs from all businesses in the service area of the infrastructure must be included.*

More specifically, in such a case, the aggregation must also include all businesses which, as a result of the public improvement, locate or expand in the service area of the improvement *between the date the grantee identifies the activity in its Action Plan under 24 CFR Part 91 and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b)(2). Reference: §570.208(a)(4)(vi)(F)*

Example

Activities that could be expected to create or retain jobs include:

- ❖ Construction by the grantee of a business incubator which is designed to offer both space and assistance to new, small businesses to help them survive and perhaps even expand;
- ❖ Loans to help finance the expansion of a plant or factory;
- ❖ Financial assistance to a business which has publicly announced its intention to close; and to help it update its machinery and equipment instead; and
- ❖ Improvement of public infrastructure as needed by a company to comply with environmental laws to avoid closure.

Records to be Maintained

Maintaining records to demonstrate compliance with this subcategory can be quite challenging. Not only do businesses often dislike having to provide special reports or keep special records, but individuals who hold a job to be retained or who are taking or being considered for a newly created or a "turnover" retained job may resist providing information concerning their family income. The addition of the presumptions described earlier in this section were made in an effort to respond to this problem. Certain other requirements have also been modified over the past few years in an attempt to make this task less onerous.

The following outlines the records that must be kept with respect to the various aspects of this subcategory.

General

When assistance is provided to a business for the purpose of creating or retaining jobs, the grantee must have on file a written agreement with the business in which that business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full- or part-time. The agreement must also specify the actions the business and the

grantee will take to ensure that at least 51% of the jobs created or retained will benefit L/M income persons pursuant to the program rules.

The program records also must document which jobs were actually created and retained, whether each such job was held by, taken by, or made available to a L/M income person, and the full-time equivalency status of each job.

Job Creation

Held by:

With respect to jobs which will be held by L/M income persons, the records must show:

- ❖ A listing by job title of the specific jobs to be created,
- ❖ A listing by job title of the jobs filled,
- ❖ The name and income status of the person who filled each position, and
- ❖ The full-time equivalency status of the jobs.

Available to:

Where the job was not taken by a L/M income person, but the grantee nevertheless wants credit based on the job being made available to L/M income persons, the records must show:

- ❖ The title and description of the jobs made available, and the full-time equivalency status of the job at that time;
- ❖ The prerequisites for the job; special skills or education required for the job, if any; and the business commitment to provide needed training for such jobs (and the training that the business provided to the L/M income person hired, if applicable); and
- ❖ How first consideration was given to L/M income persons for the job, such as:
 - ♦ the name(s) of the person(s) interviewed for the job and the date of the interview(s), and
 - ♦ the income status of the person(s) interviewed.

Reference: §570.506(b)(5)

Job Retention

Where L/M income benefit is based on *job retention*, the files must include the following documentation.

Otherwise lost:

- ❖ The specific evidence that the grantee relied on in concluding that, in the absence of CDBG assistance, the jobs would be lost.

Held by:

- ❖ A listing by job title of permanent jobs retained, those jobs known to be held by L/M income persons at the time CDBG assistance was provided, and the full-time equivalency status of each such job; and
- ❖ Information on the family size and annual income of each such L/M income person.

Turnover jobs:

- ❖ Identification of any of the retained jobs (other than those known to be held by L/M income persons) projected to become available to L/M income persons through turnover within two years of the time CDBG assistance was provided;
- ❖ The basis upon which the job was determined to be likely to turn over within two years following the CDBG assistance;
- ❖ The date the job actually turned over;
- ❖ The name and income status of the person who filled the vacancy;
- ❖ If the person who took the job was not L/M income but the claim is that the job was nevertheless made available to L/M income persons, records equivalent to those described above to substantiate the "available to" claim; and
- ❖ Information on the family size and annual income of each such L/M income person hired.

Reference: §570.506(b)(6)

Documenting income status

Documentation that a particular applicant/employee family income was L/M income may include any of the following:

- ❖ Evidence that the employee/applicant was a referral from a state, county, or local employment agency or other entity that has agreed to refer individuals whom they have determined to be L/M income based on HUD's criteria. These entities must maintain records showing the basis upon which they determined that the person was L/M income, which they agree to make available for grantee or Federal inspection; **or**
- ❖ A written certification signed and dated by the employee/applicant indicating his/her family size and total income as necessary to determine whether the person is a member of a L/M income family at the time the certification is made. The certification may either show the actual size and income of the family or contain a statement that the annualized family income is below the Section 8 low-income limit for the applicable family size. The form must include a statement that the person making the certification is aware that the information being provided is subject to verification by the local or Federal government; **or**
- ❖ Evidence that the employee/applicant has qualified for assistance under another program with income qualification criteria at least as restrictive as those used by this program (e.g., referrals from Public Housing or the Welfare Agency). The Joint Training Partnership Act (JTPA) Program has income standards that are acceptable for this purpose, except for referrals under the JTPA Title III program for dislocated workers; **or**
- ❖ Evidence that the person is homeless; **or**
- ❖ Evidence that the person may be *presumed to be L/M income* as discussed earlier in this section.

It is important to note that, in order to demonstrate that for any given assisted activity a sufficient percent of the jobs created or retained actually benefit L/M income persons, the recipient may use any of the above approaches either singly or in combination. For example, if the recipient knows that some of the persons benefiting from the jobs qualify for the presumption based on their residence, it may use that presumption for those persons while using one or more of the other approaches (e.g., certifications or referrals) for other persons who benefit from jobs created or retained by the same assisted activity.

Tips

The test for determining whether an employee or applicant is L/M income for the purposes of this subcategory must be made based on the person's income status *at the time the CDBG assistance is provided*. One of the most important aspects of this is that the income the person would make from the assisted job under consideration is *not included in the calculation*. Additional guidance can be found in section 570.3 of the regulations under the definition of "income."

Note that, since the determination of L/M income status is to be made based on income at the time the CDBG assistance is provided, a person who occupies a high-paying but low-skilled job may not qualify as a L/M income person in a retained job, but the same job might be filled by a L/M income person if it were to be created (instead of retained) or if it were to become available to be filled through turnover by a L/M income person.

Note that certain job creation or retention activities may also be undertaken by a CDFI or as part of a Neighborhood Revitalization Strategy and thereby could meet the L/M Income Benefit national objective based on area benefit in lieu of jobs. In such a case, the grantee will need to decide which subcategory it wants to qualify the activity under and record that decision in the program files. This is important so that both HUD and the grantee will know which criteria are being applied.

For created jobs, the benefit is intended for persons who are L/M income prior to being hired. For retained jobs, the family must be L/M income at the time the job is retained. Thus, a high-paying unskilled job might count as a created job but might not be counted for retention except for turnover purposes.

ATTACHMENT NO. 16

Site Plan

P+R
ARCHITECTS
ZELMAN DEVELOPMENT Co.



STATISTICS:
248,800 S.F. GROSS LEASABLE AREA
1,052 PARKING STALLS
4.2 PARKING RATIO (STALLS PER THOUSAND)

CONCEPTUAL SITE PLAN
2016/05/12