

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**by and between**

**THE CITY OF ANAHEIM**

**and**

**SLF – WEST LINCOLN, LLC**

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ATTACHMENT NO. 3	Form of Grant Deeds
ATTACHMENT NO. 4	Release of Construction Covenants
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ATTACHMENT NO. 7	Construction Schedule
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## DISPOSITION AND DEVELOPMENT AGREEMENT

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”) is dated for identification purposes as of \_\_\_\_\_, 2020 (“Date of Agreement”), by and between the **CITY OF ANAHEIM**, a California municipal corporation and Charter City (“City”), and **SLF – WEST LINCOLN, LLC**, a Delaware limited liability company (“Developer”).

### RECITALS

The following recitals are a substantive part of this Agreement:

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

B. City is the owner of that certain 0.7-acre parcel referred to herein as the “**City ROW Parcel**”. The Successor Agency to the Anaheim Redevelopment Agency is the owner of a 0.6-acre parcel referred to herein as the “**Former Agency Parcel**.” The City ROW Parcel and the Former Agency Parcel are referred to herein as the “**City Property**.” The City Property is described in the Legal Description, attached hereto as Attachment No. 1 and incorporated herein by reference and shown on the Site Map attached hereto as Attachment No. 2 and incorporated herein by reference.

C. Developer has entered into an agreement to purchase two parcels of land containing approximately 5.8 acres shown on the Site Map as (together, the “**Developer Parcels**”). The City Property and the Developer Parcels are hereinafter collectively referred to as the “**Site**.”

D. Developer intends to construct and market for sale a residential condominium project consisting of 115 units on the Site in accordance with the Entitlements, as hereinafter defined (the “**Project**”).

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

F. This Agreement is in the vital and best interest of 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.

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

### 100. DEFINITIONS

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

“**Adverse Market Conditions**” means the existence of market and/or economic conditions which make the construction of the Project and sale of condominium units economically disadvantageous to Developer in the good faith judgment of Developer (e.g., market and/or economic conditions that Developer expects will result in the sale of condominium units at a slower frequency

of unit sales and/or at sales price points lower than originally projected by Developer at the time of Closing).

“**Affiliate**” means an entity solely controlling or solely controlled by or under common control with Developer. The phrase “solely controlling,” “solely controlled by,” or “under common control” as used in the immediately preceding sentence means, with respect to a corporation, the right to exercise 100% of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the possession of 100% of the power to direct or cause the direction of the management or policies of the controlled entity.

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

“**CC&R’s**” means a declaration of covenants, conditions and restrictions to be recorded by Developer with respect to the Project which specifically provides City with enforcement authority with respect to maintenance obligations.

“**City**” means 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 City, as set forth in Section 205.1 hereof.

“**City Property**” is comprised of the City ROW Parcel and the Former Agency Parcel, described in the Legal Description, and shown on the Site Map.

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

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

“**Common Area Lots**” means the legal lots shown on a final tract map, condominium map or condominium plan for the Project which are to be conveyed by Developer to the HOA pursuant to the CC&R’s.

“**Completion of Construction**” means: (1) with respect to each condominium unit or Common Area Lot (each, a “**Subdivision**”), the issuance of a certificate of occupancy for such Subdivision or the conveyance of such Subdivision to the HOA, a public utility or any governmental agency having jurisdiction over the Project, and (2) with respect to the entire Project, issuance of a certificate of occupancy for the last residential unit approved by the Entitlements for the Project.

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

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

“**Construction Financing**” means the debt and equity necessary to construct the Project, including the documents evidencing the same.

“**Convey**” or “**Conveyance**” means the conveyance of the City Property by City to Developer.

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

**“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.

**“Developer”** means SLF – West Lincoln, a Delaware limited liability company. Prior to the Conveyance, Developer intends to assign its rights under this Agreement to a homebuilder who will assume the obligations of Developer under this Agreement first arising after the Conveyance, such assignment and assumption being subject to Section 603 of this Agreement.

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

**“Developer Parcels”** is defined in Recital “C” hereof.

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

**“Effective Date”** means the date on which both City and Developer have executed 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.

**“Entitlements”** means General Plan Amendment No. 2019-00527, Zoning Reclassification 2019-00320, TTM 19017, and Conditional Use Permit 2019-06009.

**“Environmental Condition”** is defined in Section 207.3 hereof.

**“Escrow”** is defined in Section 202 hereof.

**“Escrow Agent”** is defined in Section 202 hereof.

**“Exceptions”** is defined in Section 203 hereof.

**“Former Agency Parcel”** is defined in Recital “B” hereof.

**“Grant Deeds”** means the grant deeds to be used for the Conveyance, in the form of Attachment No. 3 attached hereto and incorporated herein by reference. The City ROW Parcel and the Former Agency Parcel will each be conveyed concurrently by a separate Grant Deed.

**“Government Requirements”** is defined in Section 401(a) hereof.

**“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).

“**HOA**” means a homeowner’s association to be formed by Developer pursuant to the Davis-Sterling Common Interest Act (California Civil Code §4000 *et seq.*), and which will own, operate and maintain certain Common Area Lots and improvements thereon once conveyed to the HOA.

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

“**Indemnitees**” means the City, as well as its elected officials, officers, employees, authorized agents and authorized representatives.

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

“**Legal Description**” means the legal description of the City ROW Parcel and the Former Agency Parcel separately shown on Attachment No. 1.

“**List of Environmental Condition Documents**” means the List of Environmental Condition Documents attached hereto as Attachment No. 6 and incorporated herein by reference.

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

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

“**Outside Date**” means December 31, 2020.

“**Preliminary Evidence of Financing**” means either (a) a preliminary commitment letter from a financial institution which has adequate financial resources, in the reasonable determination of City, and is in the business of providing construction financing for developments such as the Project, and which includes a term sheet or preliminary letter of interest or other preliminary commitment to provide Developer with acquisition or construction financing for the Project, or (b) a form 10-K in the form filed by Developer or its parent or affiliate evidencing reasonably adequate financial resources to pay



for the costs of constructing the Project together with a binding written unconditional commitment from the applicable entity to fund the costs of construction.

“**Project**” means the development of the Site in accordance with the Entitlements. Where the context dictates, “Project” shall also include the marketing for sale of the residential units.

“**Project Construction Schedule**” is attached hereto as Attachment No. 7 and incorporated herein by reference.

“**Purchase Price**” is defined in Section 201.2 hereof.

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

“**Release of Construction Covenants**” means the document which evidences Developer’s Completion of Construction with respect to each Subdivision and/or of the entire Project, as applicable, as set forth in Section 310 hereof, in the form of Attachment No. 4 attached hereto and incorporated herein by reference;

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

“**Relocation Law**” means the California Relocation Assistance Act of 1970, as amended, and any other applicable federal, state or local regulations or laws pertaining thereto.

“**Right of Entry Agreement**” means that certain right of entry agreement attached hereto as Attachment No. 5 and incorporated herein by reference which describes the terms under which Developer may enter the City Property for purposes of Investigation if Developer wishes to do so prior to the Closing as described in Section 207 hereof.

“**Site**” means that certain real property comprised of the City Property and the Developer Parcels, and shown on the Site Map as the “Site”.

“**Site Map**” means the map attached hereto as Attachment No. 2.

“**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 use its best efforts to either perform such obligation or cause the Successor Agency to perform such obligation.

“**Title Company**” is defined in Section 203 hereof.

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

“**Transfer**” is defined in Section 603.1 hereof.

## **200. CONVEYANCE OF THE SITE**

### **201. Assembly and Acquisition.**

**201.1 Disposition of the City Property.** City agrees to convey the City Property to Developer and Developer agrees to acquire the City Property from 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 City Property from City to Developer shall be accomplished through the execution, delivery and recordation in the official records of Orange County of the Grant Deeds.

**201.2 Purchase Price for the City Property.** The Purchase Price for the City Property shall be Two Million Nine Hundred Thousand Dollars (\$2,900,000), allocated One Million Two Hundred Thousand Dollars (\$1,200,000) to the City ROW Parcel and One Million Seven Hundred Thousand Dollars (\$1,700,000) to the Former Agency Parcel. The Purchase Price will be paid all cash at Closing.

**202. Escrow.** City shall open escrow (“Escrow”) with Fidelity National Title Insurance Company (Bobby Purdy) 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, 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 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 within the time period set forth in Section 202.4 below after the Conditions Precedent as set forth in Section 205 have been satisfied or waived in writing.

**202.3 Authority of Escrow Agent.** When the Conditions Precedent have been fulfilled or waived in writing 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) Record in the following order of priority: the Grant Deeds; and all deeds of trust and other security documents required by the lender providing the debt portion of the Construction Financing (if any) with instructions for the Recorder of Orange County, California to deliver conforming copies to the parties.

(d) Upon written confirmation that *all* deeds conveying all of the City Parcels *and* all of the Developer Parcels to Developer have recorded in the Official Records of Orange County, California Recorder's Office, disburse funds as required under this Agreement.

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

(f) 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.

(g) 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 City and Developer in writing; provided however in no event shall the Closing occur later than the Outside Date. The Closing or Close of Escrow shall mean the time and day that both Grant Deeds 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 cause the Close of Escrow for the City Property as follows:

(a) Record in order the two (2) Grant Deeds; all deeds of trust and other security documents required by Developer's lender providing the debt portion of the Construction Financing (if any) 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 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(e), if any, to Developer;

(e) Upon written confirmation that *all* deeds conveying all of the City Property *and* all of the Developer Parcels to Developer have recorded in the Official Records of Orange County, California Recorder's Office, 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, Fidelity National Title Insurance Company (the “**Title Company**”) has delivered to Developer a standard preliminary title report (Order No. 989-30033317-C-SG4 dated September 4, 2019, and amended December 31, 2019) (the “**Report**”) with respect to title to the City Property (and identified in the Report as Parcels 1 and 4 (Parcels 2 and 3 therein identifying the Developer Parcels), together with legible copies of the documents underlying the exceptions (“**Exceptions**”) set forth in the Report. Developer shall have the right to approve or disapprove the Exceptions for the City Property in its sole discretion; provided, however, that Developer hereby approves the following Exceptions:

(a) The Redevelopment Plan (if the Title Company requires this to be shown as an Exception).

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

(c) The provisions of the Grant Deeds.

Developer shall have sixty (60) days from the Effective Date 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 City Property 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, City shall have thirty (30) days from the receipt of written notice of disapproval by Developer to determine whether or not it will undertake the removal of any disapproved Exceptions. If 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 City written notice that Developer elects to proceed with the purchase of the City Property subject to the disapproved Exceptions or to give City written notice that 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 City Property (which are not created by Developer). City shall not voluntarily create any new exceptions to title following the Date of Agreement. Notwithstanding anything to the contrary contained in this Agreement and regardless of whether Developer provides a notice of approval or disapproval of title matters, the Condition of Title shall specifically exclude, and City shall remove of record prior to the Closing, all deeds of trust, mortgages, judgment liens, mechanic's liens and materialmen's liens, any other monetary liens or encumbrances on the City Property (“**City Removal Items**”).

**204. Title Insurance.** Concurrently with recordation of the Grant Deeds, there shall be issued by Title Company to Developer, an ALTA standard coverage title insurance policy for the City Property, or, at Developer’s request, an ALTA extended coverage owner’s policy of title insurance (6-17-06) (the “**Title Policy**”) in the amount of Two Million Nine Hundred Thousand Dollars (\$2,900,000), together with such endorsements as are requested by Developer, insuring that as of the date and time of recordation of the Grant Deeds, all title to and all rights of possession for the City

Property, is vested in Developer in the condition required by Section 203 of this Agreement. City agrees to remove on or before the Closing all City Removal Items. City shall pay that portion of the premium for the Title Policy equal to the cost of an ALTA standard coverage title policy in the amount of the Purchase Price. Any additional costs, including the cost of endorsements requested by Developer which are not necessary to obtain the ALTA standard coverage title policy, or additional premiums to obtain an ALTA extended coverage policy, shall be borne by Developer. Developer may request that the Title Policy be issued to also insure the Developer Parcels in the same Title Policy, but City's premium cost responsibility shall be strictly limited to the premium and endorsement costs attributable to the City Property.

**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 in writing 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 (m), 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, by 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. Developer has deposited all of Developer's required costs of Closing into Escrow in accordance with Section 202.1 hereof.
- (d) Commercial General Liability Insurance. Developer shall have provided proof of commercial general liability insurance as required by Section 306 hereof.
- (e) Developer Parcels. Developer shall have acquired the Developer Parcels, or Developer and the owner of the Development Parcels shall have deposited into an escrow ("**Developer Parcel Escrow**") all documents and funds necessary to close such Developer Parcel Escrow and instructed such Developer Parcel Escrow to close and convey the Developer Parcels to Developer concurrently with Developer's Closing on the City Property.
- (f) Construction Financing. City shall have approved, which approval shall not be unreasonably withheld, conditioned or delayed, (i) the Preliminary Evidence of Financing for the Project, and (ii) if Developer will be obtaining financing from a third-party source not affiliated with Developer (as opposed to internal financing which requires an unconditional written commitment to provide such funding), the documents evidencing such Construction Financing (if any) to confirm that such Construction Financing (if any) contains substantially similar terms as the Preliminary Evidence of Financing. Such Construction Financing (if any) for the Project shall be on substantially

similar terms as the approved Preliminary Evidence of Financing unless otherwise approved by City, which approval shall not be unreasonably withheld, conditioned or delayed, and any third-party debt portion of such Construction Financing (if any) shall record and begin funding concurrently with the Closing.

(g) 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 Project; provided, however, this condition to closing shall be satisfied and no such contract shall be required where Developer or its Affiliate is a California-licensed contractor that will act as the general contractor for Developer's development of the Project and the Developer or Affiliate provides written evidence of the commitment to construct consistent with this Agreement.

(h) Grading Plans and Permit. Final grading plans for the Project shall have been approved by City and City shall be ready to issue a grading permit for the Project, subject only to Developer's payment of customary grading permit fees and Developer's posting of a customary bond for the grading work set forth in such approved grading plans; provided, however, the City acknowledges and agrees that the permit fees will be paid, and the bond will be posted, within two (2) business days after the Closing and such payment of fees and posting of the bond are not conditions to Closing.

(i) Developer Representations. All representations and warranties made by Developer in this Agreement shall be true and correct as of the date of this Agreement and the Close of Escrow subject to Developer's right to modify its representations as set forth in Section 206 below and further subject to any modifications necessary to accommodate Developer's assignment of this Agreement as permitted hereunder.

(j) Vacation of City ROW Parcel. City, acting in its sole and absolute discretion, shall have caused the vacation as a public use of the City ROW Parcel.

(k) Acquisition of the Former Agency Parcel. The Successor Agency shall have conveyed the Former Agency Parcel to City.

(l) Developer Contribution. Developer shall have deposited into escrow for disbursement to City at closing the sum of One Hundred Fifteen Thousand Dollars (\$115,000.00) which the City will deposit in a fund to be available for use by City for the City's Senior Safety Net Program or any other project or affordable housing program determined from time to time at City's discretion.

(m) Approval of Transfer. City has approved a Transfer pursuant to Section 603.2(e).

**205.2 Developer's Conditions of Closing.** Developer's obligation to proceed with the Closing is subject to the fulfillment or waiver on writing by Developer of each and all of the conditions precedent (a) through (o), inclusive, described below ("**Developer's Conditions Precedent**"), which are solely for the benefit of Developer, and which shall be fulfilled, or waived in in writing 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) Construction Financing. City shall have approved, which approval shall not be unreasonably withheld, conditioned or delayed, (i) the Preliminary Evidence of Financing for the Project, and (ii) if Developer will be obtaining financing from a third-party source not affiliated with Developer (as opposed to internal financing which requires an unconditional written commitment to provide such funding), the documents evidencing such Construction Financing (if any) to confirm that such Construction Financing (if any) contains substantially similar terms as the Preliminary Evidence of Financing. Such Construction Financing (if any) for the Project shall be on substantially similar terms as the approved Preliminary Evidence of Financing unless otherwise approved by City, which approval shall not be unreasonably withheld, conditioned or delayed, and any third-party debt portion of such Construction Financing (if any) shall record and begin funding concurrently with the Closing and the Developer or Affiliate provides written evidence of the commitment to construct consistent with this Agreement.
- (e) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have irrevocably and unconditionally agreed to issue to Developer the Title Policy for the City Property upon the Close of Escrow consistent with the Condition of Title, in accordance with Section 204 hereof.
- (f) Grading Plans and Permit. Final grading plans for the Project shall have been approved by Developer and City, and City shall be ready to issue a grading permit for the Project, subject only to Developer's payment of customary grading permit fees and Developer's posting of a customary bond for the grading work set forth in such approved grading plans; provided, however, the permit fees will be paid, and the bond will be posted, within two (2) business days after the Closing and such payment of fees and posting of the bond are not conditions to Closing.
- (g) 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 Project or expose Developer to additional liability.
- (h) City Representations. All representations and warranties made by City in this Agreement shall be true and correct as of the date of the Agreement and Close of Escrow, subject to City's right to modify its representations as set forth in Section 206 below.
- (i) Vacation of City ROW Parcel. City, acting in its sole and absolute discretion, shall have caused the vacation as a public use of the City ROW Parcel.
- (j) Acquisition of the Former Agency Parcel. The Successor Agency shall have conveyed the Former Agency Parcel to City and City shall convey both parcels of the City Property to the Developer concurrently.

(k) Development Entitlements Finalized. The Entitlements shall have been finally approved by the City and five (5) business days have elapsed after all time periods for appeals, challenges, initiatives and referenda within which the Entitlements may be legally challenged after the proper posting of the second Notice of Determination with respect to the Entitlements have expired without any appeal, challenge, initiative or referenda having been brought (or if any appeal, challenge, initiative or referenda is timely brought, such appeal, challenge, initiative or referenda shall have been fully resolved in a manner substantially consistent with the Entitlements originally approved by the City as determined in Developer's reasonable discretion).

(l) Developer Parcels. Developer shall have acquired the Developer Parcels, or Developer and the owner of the Development Parcels shall have deposited into the Developer Parcel Escrow all documents and funds necessary to close such Developer Parcel Escrow and instructed such Developer Parcel Escrow to close and convey the Developer Parcels to Developer concurrently with Developer's Closing on the City Property.

(m) Approval of Transfer. City has approved a Transfer pursuant to Section 603.2(e).

(n) Developer Representations. All representations and warranties made by Developer in this Agreement shall be true and correct as of the date of this Agreement and the Close of Escrow subject to Developer's right to modify its representations as set forth in Section 206 below and further subject to any modifications necessary to accommodate Developer's assignment of this Agreement as permitted hereunder.

(o) No Material Adverse Change. There shall be no material adverse change in the physical condition of the Site from the condition in which it existed as of the date of this Agreement.

## **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 Project or the Entitlements or against the City Property or the remainder of the Site. 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 Entitlements, the Project or 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 Entitlements, the Project or the Site prior to the Closing, City promptly shall notify Developer thereof.

(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 City after the date of this Agreement within ten (10) business days of City's receipt thereof ("**New Reports**").

(g) Successor Agency. The City controls the Successor Agency.

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 Project by Developer or Developer's exposure to risk or liability with respect to the Project. 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, Escrow Agent shall return all funds and documents to the party that delivered the same, 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 Delaware limited liability company established within and in good standing under the laws of the State of California, and is authorized to do business in the State of California. The copies of the documents evidencing the organization of Developer which have been delivered to 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 Developer.

(b) Experience. Developer will only assign its obligations under this Agreement to an experienced developer of residential development similar in size, scope, and quality to the Project who is approved by City or permitted under Section 603 of this Agreement.

(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 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 third party reports, investigations, studies, results and documents pertaining to the existing or past Environmental Condition of the Site prepared at the request of Developer, if provided to Developer, and not otherwise provided by City to 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 Project. City acknowledges that any modifications to these warranties and representations necessary to accommodate Developer's assignment its obligations under this Agreement to an experienced developer of residential development similar in size, scope, and quality to the Project are reasonable. 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, Escrow Agent shall return all funds and documents to the party that delivered the same, 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 assignee, tenants and/or lender, or its prospective assignee, tenants and/or lender shall have the right of access to all portions of the City Property for the purpose of obtaining data and making surveys and tests relating to the condition of the City Property, including the environmental condition thereof ("**Investigation**"). Any preliminary work undertaken on the City Property by Developer on its own behalf and/or on behalf of its prospective lender prior to the Closing shall be done at the sole expense of Developer and/or its prospective lender and only after securing any necessary permits from the appropriate governmental agencies, and Developer's execution of the Right of Entry Agreement.

**207.2 Soils and Geotechnical Conditions.** As of the Closing, Developer will have had the opportunity to investigate the soils and geotechnical condition of the Site and approved same.

**207.3 No Warranties as to Site; Release of City and/ or Successor Agency.** Except as otherwise expressly provided herein, the physical condition of the City Property 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 ("**Environmental Condition**"), or the condition of the soil, its geology, the presence of known or

unknown seismic faults, or the suitability of the City Property for the development purposes intended hereunder. To the extent authorized by contract or law, by effectuating the Closing City and Successor Agency shall be deemed to have assigned to Developer all warranties, indemnities, guaranties, claims and causes of action with respect to the Environmental Condition of the City Property, if any, that City and/ or Successor Agency has received from or has against prior owners or operators of the City Property. If requested by Developer, City and Successor Agency agree to execute additional documentation to confirm this assignment.

**207.4 Developer Release.** As of the Close of Escrow, Developer agrees, with respect to the City Property, to release the Successor Agency and City from and against any Environmental Liabilities (as defined below) except to the extent such liabilities arise out of the following (collectively, “**Release Exclusions**”): (i) the negligence or willful misconduct of City occurring after the Close of Escrow, (ii) the representations, warranties, covenants or other obligations of City set forth in this Agreement, and/or (iii) personal injury and property damage occurring on or in connection with the City Property prior to the Close of Escrow. At the request of Developer, City shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that City shall not be obligated to incur any material expense in connection with such cooperation or assistance. This release shall survive the Closing.

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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

As such relates to this Section 207.7, effective as of the Closing, Developer waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

**207.5 Relocation with respect to the City Property.** City has heretofore caused all occupants of the City Property (if any) to vacate the City Property, 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 City Property, 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. 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 City Property 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.

**207.6 Relocation with respect to the Developer Property.** The Developer (or its predecessor) has heretofore caused all occupants of the Developer Parcel to vacate the Developer Parcel, and, in so doing, has complied with all applicable federal, state, and local laws and regulations

concerning displacement and/or relocation of all Eligible Persons and/or businesses from the Developer Parcel, if any, including without limitation, the Relocation Law, and all other applicable federal, state, and local laws and regulations relating to Eligible Persons. As of the Date of Agreement, the Developer shall indemnify, defend, and hold City and its members, representatives, elected officials, officers, employees, agents, permitted assigns, and consultants and any of their lenders harmless from any and all claims, losses, liabilities and demands related to or arising from the vacation of all occupants of the Developer Parcels aforementioned. This indemnity shall survive the termination, expiration, and invalidation, or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing.

**208. Post-Closing Obligations.**

**208.1 Intentionally Deleted.**

**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, or expense (including, without limitation, reasonable attorneys’ fees) by third parties for bodily injury or property damage to the extent resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in, or from or the transportation of any such Hazardous Materials 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 on, under, in or from the City Property; and (iii) damage to person or property arising out of or related to the Investigations of the Site pursuant to Section 207.1 above (collectively “**Environmental Liabilities**”) except the Environmental Liabilities arising out of the Release Exclusions. The Developer shall establish with substantial evidence the date that the Environmental Liability occurred. This Indemnity shall include, without limitation, any damage, liability, fine or penalty, 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. 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. The foregoing Indemnities shall survive the Closing.

**300. DEVELOPMENT OF THE SITE**

**301. Development of the Site.**

**301.1 Developer’s Obligation to Construct the Project.** Following the Closing, Developer shall use commercially reasonable efforts to construct the Project in accordance with the time schedule attached hereto as Attachment No. 7, subject to extension under Section 602 below. Developer acknowledges that the requirements for the construction of the Project set forth in this Agreement are material considerations for the participation by City in this Agreement, and that but for such requirements, City would not have entered into this Agreement.

**302. Entitlements.**

**302.1 Entitlements.** Concurrently herewith, City has approved the Entitlements.

**302.2 Defects in Building Improvement Plans.** City shall not be responsible either to Developer or to third parties in any way for any defects in the grading plans nor for any structural or other defects in any work done according to the approved Entitlements. Subject to the other limitations of this Agreement, 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 Developer's building improvement plans, including without limitation the Developer's violation of any laws, or arising out of or in any way relating to any defects in any work done by Developer according to the approved Developer's building improvement plans and/or Entitlements.

**303. Land Use Approvals.** Before commencement of construction of the Project or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals from governmental agencies other than the City to the extent required for the Project by the Entitlements. The Developer shall, without limitation, apply for the Entitlements and secure all permits required under the Entitlements, and pay all costs, charges and fees associated therewith, required by the City, County of Orange, and other governmental agencies with jurisdiction over the Project. The City staff shall use reasonable efforts to assist Developer in obtaining all such permits and approvals; provided that the City staff shall not incur any material expenses or costs in connection therewith except as specifically required in the Entitlements. 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 Developer as provided herein. Nothing herein shall be construed to limit the City's exercise of its police power.

**304. Project Construction Schedule.** Subject to extension under Section 602, Developer shall construct the Project in accordance with the time schedule attached hereto as Attachment No. 7.

**305. Cost of Construction.** Except to the extent otherwise expressly set forth in this Agreement or the Entitlements, all of the cost of planning, designing, developing and constructing all of the Project shall be borne solely by Developer.

**306. Insurance Requirements.** From the date of Closing until Completion of Construction with respect to the entire Project, the Developer shall secure from a company or companies authorized to conduct insurance business in the State of California, pay for, and maintain in full force and effect, 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. 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 \$5,000,000, 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; 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.

Developer shall comply with Section 3800 of the Labor Code by securing, paying for and maintaining (or causing its contractors to secure, pay for and maintain) in full force and effect from and after the Close of Escrow and until Completion of Construction with respect to a Subdivision and/or the entire Project (as applicable), 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.

Notwithstanding anything to the contrary contained in this Agreement, Developer may satisfy all or a portion of its insurance obligations hereunder by means of self-insurance or under policies that include self-insured retentions so long as City, in its reasonable judgment, shall have the same or similar benefits and protections as if Developer carried the insurance with a third party insurance company satisfying the requirements of this Section.

### **307. Developer's Indemnities.**

**307.1 Developer's Indemnity.** As of the Date of Agreement, Developer shall defend, indemnify 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), to the extent caused by any negligent acts or omissions with respect to the development, ownership and/or operation of the City Property by Developer, whether such activities or performance thereof be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such damage shall accrue or be discovered before or after termination or expiration of this Agreement and/or Closing. 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. 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 and License Agreement.** 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 City and City employees engaged in planning and building functions, representatives of City

(collectively, “**City Representatives**”), 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 (a) 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, (b) City and City Representatives release, acquit and discharge Developer, its affiliates and each of their officers, employees, contractors, subcontractors and consultants (collectively, “**Developer Releasees**”) of and from any and all liabilities, claims, causes of action, damages, losses, costs (including costs of suit and attorneys’ fees and expenses), or demands of whatever nature, character, type or description, whether direct or indirect, known or unknown, existing or potential, suspected or unsuspected, or foreseeable or unforeseeable which City or such City Representatives has or asserts, or may hereafter have or assert, against the Developer Releasees, or any of them, which liabilities, claims, causes of action, damages, losses, costs or demands are based upon, arise out of, or relate to the City Representatives’ activities and/or the condition of the Property.

### **309. Intentionally Deleted.**

**310. Release of Construction Covenants.** Promptly after Completion of Construction with respect to any Subdivision and/or the entire Project, as applicable, City shall deliver to Developer a “Release of Construction Covenants,” substantially in the form of Attachment No. 4 hereto which is incorporated herein by reference, with respect to the applicable Subdivision or Project, as applicable, executed and acknowledged by City. City shall not unreasonably withhold, condition or delay such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Subdivision and/or the Project, as applicable, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants with respect to any Subdivision and/or the Entire Project, as applicable, any party then or thereafter owning, purchasing, leasing or otherwise acquiring any interest in any such Subdivision or the Project shall not (because of such ownership, purchase or acquisition) incur any obligation or liability under this Agreement or any agreement executed in connection herewith. Furthermore, and notwithstanding anything to the contrary contained in this Agreement or any documents executed in connection herewith (including without limitation the Grant Deeds), (a) the terms, covenants and conditions of this Agreement and any documents executed in connection herewith shall not apply to: (i) any condominium unit, residence and other property conveyed to a home buyer, (ii) any such home buyer, (iii) any subsequent sale of any such condominium unit, residence and other property after such home buyer’s acquisition, and (iv) any Common Area Lots, and (b) except as to the continuing rights of the City to enforce maintenance covenants specifically contained in the CC&Rs, any and all terms, covenants and conditions of this Agreement and any documents executed in connection herewith shall automatically terminate without the need for further documentation on a unit by unit basis upon the conveyance of any condominium unit, residence and other property to a home buyer or the conveyance of a Common Area Lot to a homeowners association, utility or other governing agency.

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 the Preliminary

Evidence of Financing evidencing that Developer has (or will have upon the date of Conveyance) sufficient capital and/or has arranged for debt and/or equity financing necessary to undertake the development and construction of the Project in accordance with this Agreement and will record the debt portion of the Construction Financing, if any, as a condition to, and concurrently with, Closing.

The Director shall reasonably approve or disapprove Preliminary Evidence of Financing within ten (10) 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 adverse changes to the terms of the Construction Financing (if any) from the approved Preliminary Evidence of Financing shall be subject to City written approval, which shall not be unreasonably withheld, conditioned or delayed. If applicable, 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, land banking arrangements and sales and lease-backs shall be permitted before the completion of the Project 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 Project (including architecture, engineering, legal, carrying costs such as property taxes, insurance and interest, and related direct costs as well as indirect costs), and any other purposes necessary and appropriate in connection with development of the Project. No such approval shall be required for mortgages, deeds of trust, land banking arrangements 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, land banking arrangements 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 Project exceed the projected cost of acquiring the Site and developing the Project, 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 Project. The words "mortgage" and "trust deed" as used hereinafter shall include land banking arrangements and sale and lease-backs. Nothing herein shall constitute any restriction or limitation on Developer's right to convey condominium units constructed within the Project to the homebuying public using debt secured by a mortgage, deed of trust or otherwise following the City's issuance of certificates of occupancy with respect to such condominium units. Furthermore, 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 the Project.** 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 Project 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, 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.

**312. Intentionally Deleted.**

**400. COVENANTS, RESTRICTIONS AND OTHER OBLIGATIONS**

**401. Construction and Maintenance Covenants.**

(a) Construction Covenant. Developer shall carry out the Project in accordance with the Project Construction Schedule and 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"). The provisions of this Section shall survive the Close of Escrow and shall not be merged with the Grant Deed(s).

(b) Maintenance Covenants. Commencing on the Close of Escrow and continuing until the earlier of Completion of Construction with respect to any Subdivision or Completion of Construction of the entire Project, Developer shall construct and thereafter maintain the Site then

owned by Developer, including all landscaping, in full compliance with the terms of all applicable provisions of City Municipal Code.

**402. Intentionally Deleted.**

**403. Effect of Violation of the Terms and Provisions of this Agreement.** Subject to the limitations provided elsewhere in this Agreement, City is deemed the beneficiary 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 the public without regard to whether the City has been, remains or is owner of any land or interest therein in the Site or in the Project. The 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 it may be entitled.

**404. Intentionally Deleted.**

**405. Intentionally Deleted.**

**500. DEFAULTS AND REMEDIES**

**501. Default.** 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 when required by, and pursuant to the terms of, this Agreement 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. The claimant shall not institute any proceeding against any other party. A 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, 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. 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.

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Seller

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Buyer

**503. Termination.**

**503.1 Termination by Developer Prior to Conveyance.** In the event that prior to the Conveyance Developer is not in Default of this Agreement but (i) 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 Developer's Conditions Precedent has not been satisfied or waived by the Outside Date, then this Agreement may, at the option of Developer, be terminated by written notice thereof to City. In the event of such termination pursuant to (i) or (ii) above, or the Agreement is terminated for reasons other than a Default by Developer, neither City nor 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 City Prior to the Conveyance.** In the event that prior to the Conveyance City is not in Default of this Agreement and:

(a) Except as permitted in this Agreement, Developer (or any successor in interest) assigns this Agreement or any rights thereon or in the City Property in violation of this Agreement and such Default is not cured in accordance with Section 501; or

(b) Except as permitted in this Agreement, there is a change in the ownership of Developer contrary to the provisions of Section 603.1 hereof and such Default is not cured in accordance with Section 501; or

(c) Developer does not submit certificates of insurance 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 City's Conditions Precedent is not either satisfied or waived by the Outside Date; or

(e) 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 Developer or any assignee or transferee in the Agreement, shall, at the option of City, be terminated by 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 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 except as otherwise limited in this Agreement. 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 specific performance shall not be permitted by City in the event of City termination pursuant to Section 503.2).

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 City Property to the Developer and, for development purposes, and not for speculation in land.

**505. Remedies and Limitations.** 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 except as limited by this Agreement. In addition to the other limitations set forth in this Agreement, and notwithstanding anything to the contrary contained in this Agreement, City and Developer hereby also waive any claim against each other, the Indemnitees and the Developer Releasees for punitive damages, consequential damages, lost profits, and special and speculative damages, whether based on common law, statute, equity or otherwise. The limitations of liability contained in this Section are in addition to, and not in limitation of, any limitation on liability applicable by law or equity. The provisions of this Section shall survive the termination of this Agreement and the Close of Escrow and shall not be merged with the Grant Deed(s).

**506. Intentionally Deleted.**

**507. Acceptance of Service of Process.** In the event that any legal action is commenced by Developer against City, service of process on 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 City against Developer, service of process on Developer shall be made by personal service upon applicable person or entity specified in the documents on file for Developer with the California Secretary of State, or in such other manner as may be provided by law.

**508. 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.

**509. 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.

**510. 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: City Clerk  
Copy to: City Attorney

With a copy to: John E. Woodhead IV, Director of Community and  
Economic Development  
201 South Anaheim Boulevard, 10<sup>th</sup> 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: SLF – West Lincoln, LLC  
c/o Shopoff Realty Investments, L.P.  
2 Park Plaza, Suite 700  
Irvine, California 92614  
Attn: William A. Shopoff

With copies to: Gromet & Associates  
114 Pacifica, Suite 250  
Irvine, California 92618  
Attn: Stevan J. Gromet

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. Developer shall forward to City, without delay, any notices, letters or other communications delivered to Developer which could reasonably affect the ability of Developer to perform its obligations to 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; pandemics; 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 or other unforeseen construction delays; acts or omissions of the other party; acts or failures to act of City, 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 City); or an Adverse Market Condition. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the 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 Project shall not constitute grounds of enforced delay pursuant to this Section 602.

### **603. Transfers of Interest in the Site or Agreement.**

**603.1 Prohibition.** The qualifications and identity of Developer are of particular concern to City. Furthermore, the parties acknowledge that City has negotiated the terms of this Agreement in contemplation of the development and marketing of the Project. Accordingly, for the period commencing upon the date of this Agreement and until the Completion of Construction for a Subdivision or the Project, no voluntary or involuntary successor in interest of Developer (other than the assignee of a Permitted Transfer, as defined in Section 603.2) shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the whole or any part of the Project thereon (other than the assignee of a Permitted Transfer, as defined in Section 603.2), nor shall any uses other than the Project be developed thereon, either in addition to or in replacement of the Project on the Site (collectively referred to herein as a “**Transfer**”), without the prior written approval of City, except as expressly set forth herein. As used herein, the term “**Transfer**” shall not include the sale or leasing of condominium units to members of the homebuying or leasing public, the conveyance of any Subdivision to the HOA, a public utility or any governmental agency having jurisdiction over the Project, or as otherwise 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, directly or indirectly, retains ownership or beneficial interest and retains management and control of the Transferee entity or entities.

(b) The conveyance or dedication of any portion of the Site to 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 City has been obtained, including the grant of a mortgage or deed of trust, a sale-leaseback or a landbanking arrangement (including transfers from Developer to the “landbank” and transfers from the “landbank” to Developer or Developer’s affiliate) to secure funds necessary for the construction and/or acquisition of the Project and the following in connection with such financing as shall have theretofore been approved by 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; (iii) any lease termination by the lessor under the lease in a sale-leaseback due to default of the lessee

thereunder; and (iv) a Transfer to a “Replacement Builder” as defined and permitted under the landbank documents.

(d) Transfer of any Subdivision or the Site after Completion of Construction with respect to such Subdivision or the entire Project, as applicable.

(e) A Transfer of this Agreement and the City Property to Lennar Homes of California, Inc., including an interim assignment to its “landbank” for financing purposes only, or another developer experienced in residential development similar in size, scope, and quality to the Project approved by the City in its reasonable discretion. Any such Transfer shall be pursuant to an Assignment and Assumption Agreement substantially in the form attached hereto as Attachment No. 8 and incorporated herein by reference.

In the event of a Transfer by Developer not requiring 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 City all of the obligations of 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.

**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 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. Developer shall be liable for the performance of all of its covenants, obligations and undertakings herein set forth which first accrue during the period of its ownership of the Site. In the event that Developer Transfers all or a portion of the Site in accordance with this Agreement, the transferring Developer shall be released from the obligations of this Agreement first arising subsequent to the effective date of such Transfer with respect to the portion of the Site transferred.

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

**605. Non-Liability of Members of Employees.** No member, shareholder, affiliate, 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 City and Developer is not that of a partnership or joint venture and that City and 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, 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.** 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, extend time limits (but in no event shall the Outside Date be extended beyond December 31, 2022), approve Transfers, waive provisions, and/or enter into other amendments of this Agreement on behalf of 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 City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Project Construction Schedule and, to the extent allowable and consistent with the goals and objectives of City pursuant to this Agreement, to reasonably accommodate requests of lenders. Any document evidencing the Director's exercise of the Authority set forth in this Section 607 shall be subject to approval as to form by the City Attorney. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of 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 8, each of which are incorporated herein.

**610. Real Estate Brokerage Commission.** City 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 Developer's acquisition of the City Property from 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 (subject to the limitations set forth in this Agreement), 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; provided, however, if the provisions in this Agreement providing for (a) the concurrent Close of Escrow under this Agreement with the Close of Escrow for the Developer Parcels, and/or (b) the Developer’s Conditions Precedent, are severed from this Agreement pursuant to the provisions of this Section 616 or otherwise, then this Agreement shall terminate and neither party shall thereafter have any further obligations or liabilities to the other, except for such duties or obligations that expressly survive the termination of this Agreement.

**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 City, 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 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 Developer and delivered to City, must be authorized, executed and delivered by City on or before thirty (30) days after signing and delivery of this Agreement by Developer or this 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 Agreement.

**623. 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 City's knowledge as of such date:

- (a) Whether it knows of any default under this Agreement by 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]*

**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: \_\_\_\_\_, 2020

By: \_\_\_\_\_

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

**THERESA BASS, CMC, CITY CLERK**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

**OFFICE OF CITY ATTORNEY**

\_\_\_\_\_  
Leonie Mulvihill  
Assistant City Attorney

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stradling Yocca Carlson & Rauth  
Special Counsel

**DEVELOPER:**

**SHOPOFF REALTY INVESTMENTS,**

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTACHMENT NO. 1**

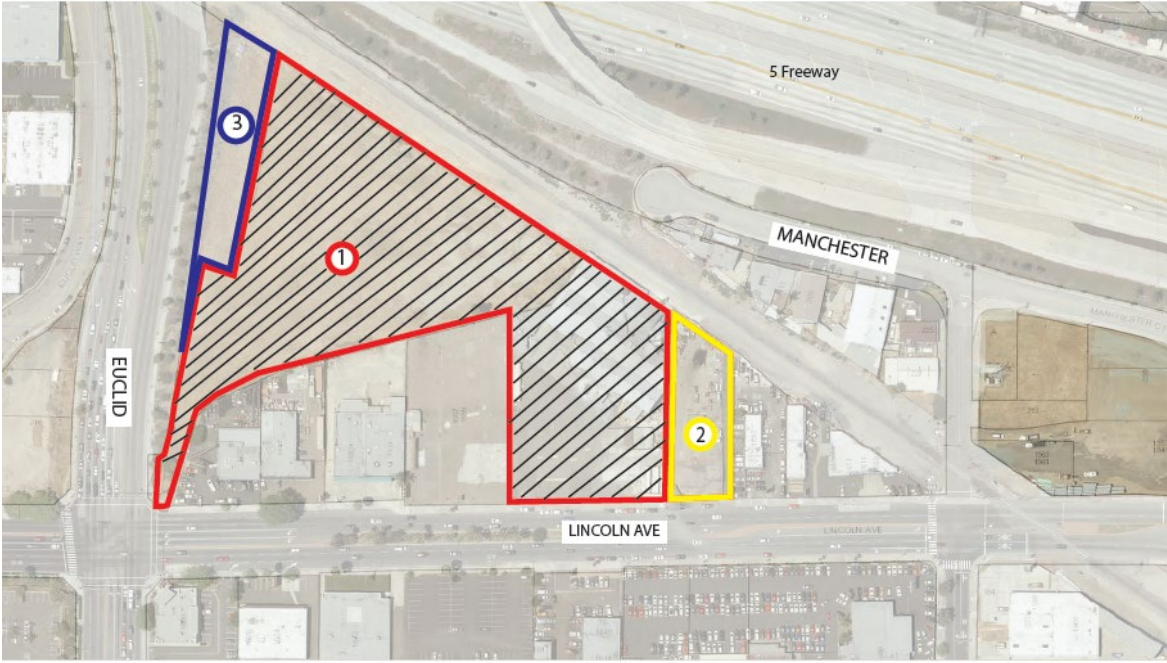
**Legal Description of the City Property**

**[to come]**

ATTACHMENT NO. 2

Site Map

Site Map



	<u>Ownership</u>	<u>Acreage</u>	<u>Address</u>
①	Developer Parcel	5.8 acres	1631 W. Lincoln
②	Former Agency Parcel	0.6 acres	1621 W. Lincoln
③	City ROW Parcel	0.7 acres	N/A

**ATTACHMENT NO. 3**

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**

For valuable consideration, receipt of which is hereby acknowledged,

A. CITY OF ANAHEIM, a California municipal corporation and Charter City (the “City” or “Grantor”), hereby grants to \_\_\_\_\_, a \_\_\_\_\_ (“Grantee”), the real property hereinafter referred to as the “Property”, described in Exhibit A attached hereto and incorporated herein, subject to the easements, restrictions and covenants of record as of the date this Grant Deed is recorded.

B. The Property is conveyed in accordance with and subject to that certain Disposition and Development Agreement entered into between Grantor and Grantee (as successor to SLF – West Lincoln, LLC, a Delaware limited liability company) dated \_\_\_\_\_, 2020 (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 shall have the meanings ascribed to them in the DDA.

C. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed or the DDA 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 or the DDA; provided, however, that any subsequent owner of the Property 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.

D. Except as otherwise set forth in this Grant Deed or the DDA, (i) all of the terms, covenants and conditions of this Grant Deed shall be binding upon the Grantee and its successors and assigns, and (ii) whenever the term “Grantee” is used in this Grant Deed, such term shall include any other successors and assigns as herein provided.

E. All Grantee covenants under this Grant Deed and the DDA without regard to technical classification or designation shall be for the benefit of the Grantor. Such Grantee covenants shall be covenants running with the land in favor of the Grantor until the earlier of the Completion of

Construction (as defined in the DDA) with respect to all or any portion of the Property, or such earlier time period pursuant to the DDA, 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 provided for in the DDA to enforce the curing of such breach.

F. Notwithstanding anything to the contrary contained in this Grant Deed, the DDA or any documents (except the "CC&Rs" as defined in the DDA) executed in connection therewith, the terms, covenants and conditions of this Grant Deed, the DDA and any documents executed in connection therewith shall not apply to: (a) any member of the home-buying public ("Home Buyer"), (b) any condominium unit, residence and other property conveyed to a Home Buyer, (c) any subsequent sale of any such condominium unit, residence and other property after such Home Buyer's acquisition, and (d) any "Common Area Lots" (as defined in the DDA). Any and all terms, covenants and conditions of this Grant Deed, the DDA and any documents executed in connection therewith shall automatically terminate without the need for further documentation on a unit by unit basis upon the conveyance of any condominium unit, residence and other property to a Home Buyer or the conveyance of a Common Area Lot to a homeowners association, utility or other governing agency.



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 \_\_\_\_\_, 2020.

**CITY OF ANAHEIM**, a California municipal corporation and charter city

By: \_\_\_\_\_

Its: \_\_\_\_\_

“GRANTOR”

**ATTEST:**

\_\_\_\_\_  
**THERESA BASS, CMC, CITY CLERK**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

**OFFICE OF CITY ATTORNEY**

\_\_\_\_\_  
City Attorney

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stradling Yocca Carlson & Rauth  
Special Counsel

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

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“GRANTEE”

**ATTACHMENT NO. 4**

**Release of Construction Covenants**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, 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 CITY OF ANAHEIM, a California municipal corporation and Charter City (the "City"), in favor of \_\_\_\_\_, a \_\_\_\_\_ (the "Developer"), as of the date set forth below.

*RECITALS*

A. City and Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated \_\_\_\_\_, 2020 concerning the development of certain real property situated in City of Anaheim, California as more fully described in the DDA.

B. As referenced in Section 310 of the DDA, City is required to furnish Developer or its successors with a Release of Construction Covenants (as defined in Section 100 of the DDA) upon Completion of Construction of any Subdivision and upon Completion of Construction of the Project (all as defined in Section 100 of the DDA), 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, development and other obligations required by the DDA of the Project or the Subdivision thereof as identified in Exhibit "A" attached hereto.

C. City has conclusively determined that such construction, development and other obligations have been satisfactorily completed.

NOW, THEREFORE, City hereby certifies as follows:

1. The Project, or the portion of the Project identified in Exhibit "A" attached hereto, to be constructed by Developer has been fully and satisfactorily completed in conformance with the DDA. The Project or the Subdivision thereof as identified in Exhibit "A" attached hereto are hereby released from any and all requirements and obligations contained in the DDA and other documents executed and recorded pursuant to the DDA.

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

IN WITNESS WHEREOF, City has executed this Release this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY:

CITY OF ANAHEIM, a California municipal corporation and charter city

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

**THERESA BASS, CMC, CITY CLERK**

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

OFFICE OF CITY ATTORNEY

\_\_\_\_\_  
City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Stradling Yocca Carlson & Rauth  
Special Counsel

DEVELOPER:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## ATTACHMENT NO. 5

### Right of Entry Agreement

This RIGHT OF ENTRY AGREEMENT (“Right of Entry”) is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between SLF – WEST LINCOLN, LLC, a Delaware limited liability company (“GRANTEE”), and CITY OF ANAHEIM, a California municipal corporation and Charter City (“GRANTOR”).

### RECITALS

A. GRANTOR, as “City,” and GRANTEE, as “Developer,” entered into that certain Disposition and Development Agreement dated \_\_\_\_\_, 2020 (the “Agreement”), pursuant to which the GRANTOR agreed, subject to the fulfillment of the conditions precedent, to convey the City Property to the GRANTEE and GRANTEE agreed, subject to the fulfillment of the conditions precedent, to accept conveyance of the City Property and construct the Project thereon subject to the terms and conditions set forth in the Agreement. 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 City Property for the purpose of performing or causing to be performed environmental, soils, topographical and/or other tests and surveys (“Investigation”).

2. Assumption of Risk. GRANTEE enters the City Property 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 City Property to GRANTEE, GRANTEE shall repair or replace any landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by Developer’s employees, contractors, subcontractors, agents and designees in connection with the Investigations.

5. Indemnification and hold harmless. GRANTEE shall indemnify, defend and hold harmless the GRANTOR, its officers, directors, employees and affiliates 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 to the extent caused by the willful misconduct, gross negligence, or ultra-hazardous activity 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 and duty to defend and hold harmless shall not apply to the extent such matters are arise from (a) the gross negligence or willful misconduct of the GRANTOR, its officers, agents, employees or volunteers,

(b) any diminution in value in the City Property arising from or relating to matters discovered during performance of this Agreement, (c) any defects or adverse conditions in or with respect to the City Property discovered during performance of this Agreement, regardless of whether such defect or adverse condition, once revealed, negatively impacts the value of the City Property or otherwise causes GRANTOR to incur liabilities, costs or expenses, and (d) the discovery of any Hazardous Materials during the performance of this Agreement.

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. [Under review] 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.

GRANTEE shall 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 and employees are named as additional insureds with the GRANTEE. GRANTEE shall have furnished a certificate of insurance to the GRANTOR prior to the execution of the Right of Entry hereunder. The protection offered by the policy shall:

(a) Include an endorsement naming the GRANTOR and its officers and employees 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; provided, however, if such endorsement or rider is not available from GRANTEE'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.

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; provided, however, if such endorsement or rider is not available from GRANTEE'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.

Notwithstanding anything to the contrary contained in this Right of Entry, GRANTEE may satisfy all or a portion of its insurance obligations hereunder by means of self-insurance or under policies that include self-insured retentions so long as the GRANTOR shall have the same or similar benefits and protections as if GRANTEE carried the insurance with a third party insurance company satisfying the requirements of this Section.

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:

GRANTEE                      SLF – West Lincoln, LLC  
                                         2 Park Plaza, Suite 700  
                                         Irvine, California 92614  
                                         Attn: William A. Shopoff

With copies to:              Gromet & Associates  
                                         114 Pacifica, Suite 250  
                                         Irvine, California 92618  
                                         Attn: Stevan J. Gromet

GRANTOR                      City of Anaheim  
                                         291 South Anaheim Boulevard, 10<sup>th</sup> Floor  
                                         Anaheim, California 92805  
                                         Attention: City Clerk  
                                         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”

SHOPOFF REALTY INVESTMENTS,

a \_\_\_\_\_

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

“GRANTOR”

CITY OF ANAHEIM,  
a California municipal corporation and Charter City

Dated: February \_\_, 2020

By: \_\_\_\_\_

Its: \_\_\_\_\_

**THERESA BASS, CMC, CITY CLERK**

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

OFFICE OF CITY ATTORNEY

\_\_\_\_\_  
City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Stradling Yocca Carlson & Rauth  
Special Counsel

**ATTACHMENT NO. 6**

**List of Environmental Condition Documents**

Environmental Document Inventory

**Former Agency Parcel**

- 1 **Advanced Geo Environmental, Inc., Phase I Environmental Assessment of 1621 West Lincoln Avenue, Anaheim, CA, AGE Project No. OC768F5.1361. Dated March 9, 2005**
- 2 **Advanced Geo Environmental, Inc., Asbestos-Containing Materials Survey of 1619-1621 West Lincoln Avenue, Anaheim, CA, Dated January 14, 2010**
- 3 **Leighton and Associates, Limited Soils Investigation Report, 1621 West Lincoln Avenue, City of Anaheim, County of Orange, California, Project No. 11241.005, Dated August 15, 20018**
- 4 **Advanced Technologies Laboratory, Anaheim Drums – Results of Samples, Project No 11241.007, ELAP No: 1838,CSDLAC No:10196, ORELAP No: CA 30003, Dated February 19, 2020**
- 5 **Advanced Technologies Laboratory, Anaheim Drums – Results of Samples, Project No 11241.007, ELAP No: 1838,CSDLAC No:10196, ORELAP No: CA 30003, Dated February 27, 2020**

**City ROW Parcel**

None

**ATTACHMENT NO. 7**

**Project Construction Schedule**

Commencement of Grading for the Project: Within thirty (30) days following the Closing Date, subject to extension as set forth in Section 602 and elsewhere on the Agreement.

Completion of Project: Within five (5) years after the Closing Date, subject to extension as set forth in Section 602 and elsewhere on the Agreement.

ATTACHMENT NO. 8

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION  
OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT (this “*Assignment*”) is made and entered into as of \_\_\_\_\_, 2020 (the “*Effective Date*”), by and between SLF – WEST LINCOLN, LLC, a Delaware limited liability company (“*Assignor*”), and \_\_\_\_\_, a \_\_\_\_\_ (“*Assignee*”).

RECITALS

A. Assignor is the “Developer” under that certain *Disposition and Development Agreement* between the City of Anaheim (“*City*”) and Assignor, dated \_\_\_\_\_, 2020 (the “*DDA*”), pursuant to which Assignor has the right to purchase from the City certain real property located in Orange County, California, as more particularly described therein (“*City Property*”).

B. The DDA has been approved and adopted by the City in connection with certain development approvals for both the City Property and the “Developer Parcels” (as defined in the DDA). The City Property and the Developer Parcels are collectively referred to in the DDA as the “*Site*”.

C. Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor, an assignment of all of Assignor’s right, title and interest in and to the DDA concurrently with Assignee’s acquisition of the fee interest in the Site on the Effective Date.

D. Prior to the Effective Date, the City has approved the transfer by Assignor of its rights under the DDA to Assignee as a Permitted Transfer pursuant to Section 603.2(e) of the DDA.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Effective concurrently with Assignee’s acquisition of the fee interest in the Site on the Effective Date, Assignor hereby assigns, conveys and transfers to Assignee all of Assignor’s right, title, claim and interest in, to and under the DDA as the “Developer” therein, including all deposits and other payments deposited in connection therewith.

2. Acceptance and Assumption. Effective concurrently with Assignee’s acquisition of the fee interest in the Site on the Effective Date, Assignee hereby accepts such assignment and agrees to assume and perform all of the obligations of the “Developer” as are set forth in and

pursuant to the terms and conditions of the DDA to the extent first arising and first accruing after Assignee's acquisition of a fee interest in the Site on the Effective Date.

3. Miscellaneous. This Assignment can be amended only by an amendment in writing in a form subject to the reasonable approval by the City Attorney (or his designee) and signed by all the parties, and any term herein can be waived only by a written waiver signed by the party against whom such waiver is to be asserted. This is intended to be the final expression of the parties' agreement and supersedes any and all prior restrictions, promises, representations, warranties, agreements, understandings and undertakings between the parties with respect to the within subject matter. There are no restrictions, promises, representations, warranties, agreements, understandings or undertakings with respect to such subject matter other than those set forth or referred to herein. This Assignment may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document. Upon request, each of the parties to this Assignment shall execute and deliver such further documents as may be reasonably necessary to further the intent and purpose hereof.

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the date first above written.

“Assignor”

SLF – WEST LINCOLN, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

“Assignee”

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title