**DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between the

**CITY OF MORGAN HILL,**

a California municipal corporation

and

**MONTEREY & THIRD ASSOCIATES, LLC,**

a California limited liability company

regarding the

**Monterey Road and Third Street Project**

Dated: _____, 2015

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**LIST OF EXHIBITS**

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| Exhibit A-1 | Site Map – Property and Downtown Parking Garage |
| Exhibit A-2 | Legal Description – Property |
| Exhibit B | Form of Grant Deeds (With Covenants) |
| Exhibit C | Schedule of Performance |
| Exhibit D-1 | Form of Final Certificate of Completion |
| Exhibit D-2 | Form of Partial Certificate of Completion |
| Exhibit E | Form of Easement Agreement |

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**Monterey Road and Third Street Project**

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") dated as of this ___ day of _____, 2015 ("**Date of Agreement**"), is entered into by and between the CITY OF MORGAN HILL, a California municipal corporation ("**City**"), and MONTEREY & THIRD ASSOCIATES, LLC, a California limited liability company ("**Developer**").

*R E C I T A L S*

The following Recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement:

A. City owns that certain approximately 0.42 acre real property located at the southeast corner of Monterey Road and Third Street, as depicted on Exhibit A-1, and more fully described on Exhibit A-2, attached hereto and incorporated herein by reference ("**Property**").

B. To implement the purposes of this Agreement, City desires to sell the Property to Developer and Developer desires to acquire the Property from City, for fair market value, on an "As Is with All Faults" basis.

C. Following its construction completion, City also will own a 3-story, approximately 273-space parking structure to the northeast of the Property, with vehicular access via Fourth Street, which is also depicted on Exhibit A-1 (**"Garage"**).

D. City and Developer have agreed that the Property will be developed as a high-quality restaurant/retail project development concept, in two phases (or at Developer's election in a single phase).

E. City and Developer's predecessors, Imwalle Properties, Inc., a California corporation, and Kenneth Rodrigues and Partners, Inc., a California corporation, are parties to that certain Agreement to Negotiate Exclusively, dated June 3, 2015 (the "**ANE**"), pursuant to which the parties agreed, in part, to negotiate the terms of an agreement for disposition and development of the Property.

F. City and Developer now desire to enter into this Agreement to provide for (1) City's disposition of the Property to Developer; and (2) Developer's development on the Property. Developer shall purchase and develop the Property in a two-phased project (**"Project"**), or, at Developer's election, as a single phase project, on two separate portions of the Property as follows: The first phase (**"Phase 1"**), to take place on the **"Phase 1 Property"** (as defined below), shall consist of (i) a one-story, statement restaurant building (with a two story "height"), totaling approximately 5,200 square feet, consistent with the Downtown Specific Plan, suitable for occupancy by casual fine dining or better restaurant tenants, (ii) an outdoor plaza designed to create an exceptional experience, including tables, chairs, heaters, overhead string lights, planters and umbrellas with a corner feature designed to announce the importance of Third Street, and (iii) a grand pedestrian walkway connection from Monterey Road to the Garage (**"Phase 1"**). The second phase (**"Phase 2"**), to take place on the remainder of the Property (**"Phase 2 Property,"** as further defined below), shall consist of a minimum of a one-story building (with at least two-story "height"), totaling approximately 6,200 square feet, with retail/mixed use, or other mixed use that is consistent with the DSP (as defined below), and designed to be complementary to Phase 1. The uses on both the Phase 1 Property and the Phase 2 Property may be, but shall not be obligated to be, 100% restaurant use.

G. The Project relies on the following analysis under the California Environmental Quality Act ("**CEQA**") (set forth in Public Resources Code, section 21000 *et seq*.): Draft Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan, as modified by the Final Master Environmental Impact Report for the Morgan Hill Downtown Specific Plan (**"DSP**") (SCH #2008012025), (together, "**FEIR**")

certified by the City Council on November 18, 2009 by Ordinance No. 1956. Collectively, the FEIR and DSP are the "**Project Approvals**."

H. On March 10, 2015, the Planning Commission conducted a review pursuant to Government Code Section 65402 and determined that the City's disposition of the Property to Developer pursuant to the terms hereof is consistent with, and will facilitate implementation of the City's General Plan.

I. The Project will further the DSP's vision to transform the City's downtown into a pedestrian-oriented urban district of high intensity development, with a mix of office, retail, restaurant, entertainment and service commercial businesses.

J. The execution and performance of this Agreement is in the vital and best interests of City and the health, safety and welfare of its residents, and is in accord with the provisions of applicable federal, state and local law.

*A G R E E M E N T*

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

**1. DEFINITIONS; REPRESENTATIONS AND WARRANTIES; CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL**.

1.1 Definitions.

"**Affiliate of Developer**" means an entity or person that is directly or indirectly controlling, controlled by, or under common control with Developer. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"**Agreement**" means this Disposition and Development Agreement between City and Developer.

"**ANE**" is defined in Recital E.

"**Applicable Laws**" means, collectively: (i) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time; (ii) all City policies, standards and specifications set forth in this Agreement and the Project Approvals, including the specific conditions of approval adopted with respect to the Project Approvals; (iii) with respect to matters not addressed by this Agreement or the Project Approvals but governing permitted uses of the Property, building locations, sizes, densities, intensities, design and heights, site design, setbacks, lot coverage and open space, and parking, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect on the Date of Agreement; and (iv) with respect to all other matters, including building, plumbing, mechanical and electrical codes, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect as may be enacted, adopted and amended from time to time, including ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Date of Agreement, except those in conflict with this Agreement.

"**As-Is Condition**" is defined in Section 2.13.

"**CEQA**" California Environmental Quality Act is defined in Recital G.

"**City**" means the City of Morgan Hill, a California municipal corporation.

"**City Conditions Precedent**" is defined in Section 2.3.

"**City Council**" means the City Council of the City of Morgan Hill.

"**City Party**" is defined in Section 2.13.

**"City Utility Easement"** is defined in Section 2.8.4.

"**City's Actual Knowledge**" or words to such effect, shall mean the present, actual knowledge of Leslie Little, the City's Assistant City Manager for Community Development, excluding constructive knowledge or duty of inquiry, existing as of the Date of Agreement.

"**Claims**" means liabilities, obligations, orders, claims, damages, governmental fines or penalties, and expenses of defense with respect thereto, including reasonable attorneys' fees and costs.

"**Close of Escrow**" is defined in Section 2.6.

"**Closing**" is defined in Section 2.6.

"**Closing Default**" is defined in Section 5.2.2.

"**Commenced Construction of the Phase 1 Component**" and "**Commenced Construction of the Phase 2 Component**" shall be deemed to have occurred when the Developer has commenced grading on the Phase 1 Property (for Phase 1) and has commenced grading on the Phase 2 Property (for Phase 2), and each date shall be memorialized in writing by the parties.

"**Control**" is defined in Section 1.3.

"**Date of Agreement**" means the date first set forth above.

"**Day-to-Day Management**" means active, day-to day-management responsibilities for the activities of Developer.

"**Default**" means the failure of a party to perform any action or covenant required by this Agreement and such failure continues beyond the applicable cure period following such defaulting party's receipt of Notice of such failure.

"**Developer**" means Monterey & Third Associates, LLC, a California limited liability company, in which Developers Members are the sole initial members, and its permitted assignees and successors-in-interest.

"**Developer Deposit**" means the initial $50,000 good faith deposit provided by Developer's predecessors under the ANE, and any subsequent deposit amounts provided by Developer, to be credited against the Phase 1 Purchase Price at the Phase 1 Closing and as otherwise provided in this Agreement (see Section 2.2 below).

"**Developer Conditions Precedent**" is defined in Section 2.4.

"**Developer Party**" is defined in Section 2.11.

**"Developer's Principals"** or "Principals" are Kenneth Rodrigues, Sr. and Donald Imwalle, Jr..

"**Developer's Initial Members**" means Kenneth Rodrigues, Sr., Trustee of the 1989 Rodrigues Family Trust, Kenneth Rodrigues & Partners, Inc. Profit Sharing Plan and Imwalle Properties, Inc., a

California corporation.

"**Disapproved Exceptions**" is defined in Section 2.8.

"**Documents**" is defined in Section 2.12.

"**Downtown Specific Plan**" or "**DSP**" is defined in Recital F.

"**Easement Agreement**" is defined in Section 2.8.3.

"**Environmental Laws**" means, collectively: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.,* (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.,* (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.,* (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.,* (v) the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.,* (vi) the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, *et seq.,* (vii) the Clean Water Act, as amended, 33 U.S. Code § 1251, *et seq.,* (viii) the Oil Pollution Act, as amended, 33 U.S.C. § 2701, *et seq.,* (ix) California Health & Safety Code § 25100, *et seq.* (Hazardous Waste Control), (x) the Hazardous Substance Account Act, as amended, Health & Safety Code § 25300, *et seq.,* (xi) the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, as amended, Health & Safety Code § 25404, *et seq.,* (xii) Health & Safety Code § 25531, *et seq.* (Hazardous Materials Management), (xiii) the California Safe Drinking Water and Toxic Enforcement Act, as amended, Health & Safety Code § 25249.5, *et seq.,* (xiv) Health & Safety Code § 25280, *et seq.* (Underground Storage of Hazardous Substances), (xv) the California Hazardous Waste Management Act, as amended, Health & Safety Code § 25170.1, *et seq.,* (xvi) Health & Safety Code § 25501, *et seq.,* (Hazardous Materials Response Plans and Inventory), (xvii) Health & Safety Code § 18901, *et seq.* (California Building Standards), (xviii) the Porter-Cologne Water Quality Control Act, as amended, California Water Code § 13000, *et seq.,* (xix) California Fish and Game Code §§ 5650-5656 and (xx) any other federal, state or local laws, ordinances, rules, regulations, court orders or common law related in any way to the protection of the environment, health or safety.

"**Escrow Agent**" means First American Title Insurance Company, 1737 North First Street, Suite 500, San Jose, California 95112 (Teri Morales, Escrow Officer).

"**Final Certificate of Completion**" is defined in Section 3.9.

**"Finally Complete**" or **"Final Completion**" shall be deemed to have occurred when (i) a certificate of occupancy has been issued for the Phase I portion or Phase 2 portion, as the case may be, of the Project and (ii) at least 50% of the gross rentable space for the Phase 1 portion or Phase 2 portion, as applicable, is occupied by a commercial tenant under a customary commercial lease.

"**Force Majeure Delay**" is defined in Section 6.2.

"**FEIR**" is defined in Recital F.

"**Grant Deeds**" means the grant deeds for the conveyance of the Property from City to Developer to be executed and recorded at each Closing substantially in the form attached hereto as Exhibit B and incorporated herein by this reference.

"**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Laws, including any material or substance which is defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste" or "hazardous substance" under any Environmental Laws.

"**Initial Litigation Challenge**" is defined in Section 6.21.

"**Initial Site Preparation for the Project**" shall mean the completion of all of the following initial site preparation activities for the Phase 1 Property or Phase 2 Property, as applicable: demolition of existing improvements, if any, on the portion of the Property, installation of perimeter construction fencing on the portion of the Property, and rough grading of the portion of the Property.

"**Materials**" is defined in Section 5.2.2.

**"Multiple Parcel Documents"** is defined in Section 1.5.

"**Municipal Code**" means the Morgan Hill Municipal Code.

"**Notice**" means a written notice in the form prescribed by Section 6.1.

"**Organizational Documents**" means the Certificate of Formation and Operating Agreement of the Developer, as the same may be amended from time to time.

"**Partial Certificate of Completion**" is defined in Section 3.9.

**"Permitted Transfer**" is defined in Section 1.3.6.

"**Phase 1"** and **"Phase 2"** are defined in Recital F.

"**Phase 1 Property**" and "**Phase 2 Property**" are defined in Section 1.5.

**"Phase 1 Outside Date**" is March 1, 2016.

**"Phase 2 Outside Date**" is the date that is 12 months following Close of Escrow of Phase 1.

"**Planning Commission**" means the Planning Commission of the City of Morgan Hill.

"**Pre-Approved Exceptions**" is defined in Section 2.8.

"**Project**" is defined in Recital F.

"**Project Agreements**" means this Agreement and the Grant Deeds (once recorded).

"**Project Approvals**" is defined in Recital G.

"**Property**" is defined in Recital A.

"**Property Claims**" is defined in Section 2.16.

"**Purchase Price**" is defined in Section 2.2.

"**Reports**" is defined in Section 2.12.

"**Schedule of Performance**" means the Schedule of Performance attached hereto as Exhibit C and incorporated herein by this reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished.

"**Substantially Complete**" or "**Substantial Completion**" shall be deemed to have occurred when (i) Developer has provided adequate evidence to the City Manager that eighty five percent (85%) of the contract price for the construction of the applicable building shell and appurtenant site improvements for the Phase I portion or Phase 2 portion, as the case may be, of the Project (including all change orders) has

been expended and (ii) the City Manager determines, in his or her reasonable discretion that the life safety systems within the applicable portion have been installed and are fully functional.

"**Title Company**" means First American Title Insurance Company.

"**Transfer**" means any assignment or transfer of this Agreement or the Property or any portion thereof or any interest therein, and as further defined in Section 1.3.

"**Title Policy**" is defined in Section 2.9.

"**Unrecorded Agreements**" is defined in Section 2.12.

1.2 Representations and Warranties.

1.2.1 City Representations. City represents and warrants to Developer as follows:

(a) Authority. City is a California municipal corporation with full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City Council.

(b) 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 City is bound.

(c) No Litigation or Other Proceeding. To City's Actual Knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement, or that would adversely affect the Property or the ability of Developer to develop the same as contemplated by this Agreement.

(d) No City Bankruptcy. City is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of City's assets has been made.

(e) Right to Possession. No person or entity other than City has the right to use, occupy, or possess the Property, or any portion thereof. City shall not enter into any lease or other agreement respecting use, occupancy, or possession of the Property or any portion thereof without the written consent of Developer.

(f) Condition of Property. City has no notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of any Environmental Laws. Except as otherwise disclosed by City, to City's Actual Knowledge, the Property is in compliance with all Environmental Laws.

Until the expiration or earlier termination of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2.1 not to be true, immediately give written Notice of such fact or condition to Developer. The foregoing representations and warranties shall survive each Closing for a period of 12 months.

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

(a) Authority. Developer is a limited liability company duly organized in the State of California and qualified to do business and in good standing under the laws of the State of California. The Organizational Documents provided (or to be provided) by Developer to City are true and

complete copies of the originals, as may be amended from time to time. Developer has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite company actions on the part of Developer.

(b) 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 or any Principal is a party or by which Developer or any Principal is bound.

(c) No Litigation or Other Proceeding. To Developer's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(d) No Developer Bankruptcy. Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

Until the issuance of a Final Certificate of Completion or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 1.2.2 not to be true, immediately give written Notice of such fact or condition to City. The foregoing representations and warranties shall survive each Closing and continue until issuance of a Final Certificate of Completion.

1.3 Change in Ownership, Management and Control of Developer. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer.

1.3.1 Intentionally Omitted.

1.3.2 Until Phase 1 Completion. Until Final Completion of Phase 1 and either the Phase 2 Closing or termination of this Agreement, Developer shall not Transfer the Phase 1 Property or any portion of this Agreement pertaining to Phase 1; provided, however, the foregoing shall not preclude Developer from making any Permitted Transfer. After Final Completion of Phase 1 and either the Phase 2 Closing or termination of this Agreement, Developer may Transfer the Phase 1 Property, or applicable portion thereof, without the consent or approval of the City (and Developer may make any Permitted Transfer(s)).

1.3.3 Until Phase 2 Completion. Until Final Completion of Phase 2 and either Final Completion of Phase 1 or termination of this Agreement, Developer shall not Transfer the Phase 2 Property or any portion of this Agreement pertaining to Phase 2. After Final Completion of Phase 2 and either Final Completion of Phase 1 or termination of this Agreement, Developer may Transfer the Phase 2 Property, or applicable portion thereof, without the consent or approval of the City.

1.3.4 Intentionally Omitted.

1.3.5 Additional Matters. Except for Permitted Transfers as provided in Section 1.3.6, the term "Transfer" for the purposes of this Section 1.3 shall include any significant change in the Control of Developer by any method or means. The term "**Control**" as used in the immediately preceding sentence, shall mean the power to direct the Day-to-Day Management of Developer, and it shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession,

indirectly or directly, of the power to direct or cause the direction of the Day-to-Day Management of the controlled entity.

1.3.6 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, each of following Transfers are permitted and shall not require City consent under this Section 1.3 (each, a "**Permitted Transfer**"):

(a) Any lien or encumbrance on either the Phase 1 Property or Phase 2 Property to secure the funds necessary for acquisition, construction and/or permanent financing of either the Phase 1 Property or the Phase 1 portion of the Project, or the Phase 2 Property or the Phase 2 portion of the Project, or if Developer has acquired title to the Phase 1 Property and Phase 2 Property, then any lien or encumbrance referred to in this Section 1.3.6(a) above or any lien or encumbrance on both the Phase 1 Property and Phase 2 Property to secure the funds necessary for acquisition, construction and/or permanent financing of the Phase 1 Property or the Phase 1 portion of the Project and the Phase 2 Property or the Phase 2 portion of the Project ;

(b) An assignment of this Agreement to an Affiliate of Developer, provided that one or more of the Developer's Principals has at least a 50% interest, directly or indirectly, in such Affiliate;

(c) Permanent financing of a portion of the Project following its Substantial Completion as provided in Section 3.12.1;

(d) Dedications and grants of easements and rights of way required in accordance with the Project Approvals; or

(e) The leasing of portions of Phase 1 or Phase 2 to third-party retail or other tenants, for uses permitted by this Agreement, the DSP, and Applicable Laws.

1.3.7 Subsequent Equity Transfers. Any admission of new equity partner(s) for one or more Project components shall be subject to prior review and approval by the City Manager (which approval shall not be unreasonably withheld, conditioned or delayed, provided it does not result in a Change in Control which is not a Permitted Transfer).

1.4 Deposit-Related Matters. Following the mutual execution of this Agreement, the City may apply $30,740 of the Deposit for a change order to expand the trash area of the Garage requested by Developer. Developer acknowledges and agrees that such amount is nonrefundable by the City even if the transactions contemplated by this Agreement do not occur. If the Phase 1 Closing occurs, the remaining portion of the Deposit ($19,260) will be applied against the Phase 1 Purchase Price. If the Phase 2 Closing does not occur concurrently with the Phase 1 Closing, Developer shall, within three (3) business days of the Phase 1 Closing, provide an additional $25,000 deposit, which shall then be the **"Deposit"** for all purposes of this Agreement and applied against the Phase 2 Purchase Price at the Phase 2 Closing.

1.5 Establishment of Multiple Parcels. As of the date hereof, the Property consists of three (3) parcels. No later than the date set forth in the Schedule of Performance, as such date shall be extended by Force Majeure Delays, Developer shall have prepared all documents required to divide the Property into the Phase 1 Property and Phase 2 Property i.e., documents for lot-line adjustment or parcel map, etc.], reasonably acceptable to City (**"Multiple Parcel Documents"**). City covenants and agrees to reasonably cooperate with Developer in Developer's efforts to divide the Property into the Phase 1 Property and Phase 2 Property.

## 2. PURCHASE AND SALE.

2.1 Purchase and Sale. Subject to the terms, covenants and conditions of this Agreement, Developer shall purchase from City and City shall sell to Developer the Property.

2.2 Purchase Price. The total purchase price for the Property is Five Hundred Twenty-five Thousand and 00/100 Dollars ($525,000.00) ("**Purchase Price**"). The Purchase Price shall be pro-rated between each of Phase 1 (the **"Phase 1 Purchase Price"**) and Phase 2 (the **"Phase 2 Purchase Price"**) on the basis of the number of square feet of the Property allocated to each, and shall be delivered into Escrow by Developer prior to the Phase 1 Closing and Phase 2 Closing, respectively. (Notwithstanding the foregoing, Developer shall receive a credit equal to the then-remaining portion of the Developer Deposit at the Phase 1 Closing and, if applicable, the then Developer Deposit at the Phase 2 Closing. See Section 1.4.)

2.3. City Conditions Precedent. City's obligation to proceed with the disposition of each Phase of the Property to Developer pursuant to the terms of this Agreement is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below for the applicable Phase ("**City Conditions Precedent**"). The City Conditions Precedent are solely for the benefit of City and shall be fulfilled or waived within the time periods provided for herein, and in any event, no later than the Phase 1 Outside Date or Phase 2 Outside Date, as the case may be. Except as otherwise indicated, all City Conditions Precedent shall apply to both the Phase 1 Closing and Phase 2 Closing.

2.3.1 No Default. Developer shall not be in Default under this Agreement or the other Project Agreements, and no event shall have occurred which with the passage of time or giving of Notice or both would constitute a Default by Developer hereunder or under any of the other Project Agreements.

2.3.2 Execution and Delivery of Documents. City and Developer shall have executed and acknowledged the Grant Deed for the applicable Phase, and Developer shall have executed (and, where appropriate, acknowledged), and delivered into escrow all other documents that Developer is required to deliver into escrow pursuant to Section 2.7.1.

2.3.3 Delivery of Funds. In connection with the closing of each applicable Phase, Developer shall have delivered through escrow the portion of the Purchase Price allocable to the applicable Phase and such other funds, including escrow costs, recording fees and other closing costs as are necessary to comply with Developer's obligations under this Agreement with respect to such applicable Phase.

2.3.4 Sources and Uses. City shall have approved the Developer's Sources and Uses pursuant to Section 3.5.

2.3.5 Evidence of Available Funds.

(a) Closing of Any Phase. City shall have provided written confirmation that it has received from Developer reasonable evidence that Developer has, or subject to Closing, will have, 100% of land and Project costs applicable to the Phase or Phases being closed, as identified in the Sources and Uses, in ready and available funds (which may be Developer's own funds and/or third party equity or debt financing proceeds).

(b) Developer expressly acknowledges that no Phase will close unless and until the applicable condition above has been satisfied.

2.3.6 Insurance. Developer shall have provided proof of insurance as required by Section 3.6 below.

2.3.7 Equity Funding/Construction Loan. Developer shall have delivered to the City evidence that the equity commitments or acquisition and/or construction loan, if any, for Closing, described in the Sources and Uses, shall have closed or (if not from the Developer's Initial Members or an Affiliate of Developer) shall be ready to close concurrently with the Closing.

2.3.8 Demolition and Grading Permits. Developer shall have submitted complete applications for all demolition and grading permits necessary for the Developer to perform the work for the Initial Site Preparation for the applicable Project Phase, and such permits shall be ready to be issued by the City subject only to payment of applicable fees.

2.3.9 Other Project Construction Permits. Developer shall have submitted complete applications for all construction permits necessary for Developer to construct the applicable Phase, and a grading permit for such Phase shall be ready to be issued by the City subject only to payment of applicable fees.

2.3.10 Intentionally Omitted.

2.3.11 Organizational Documents. Developer shall have submitted the Organizational Documents for Developer confirming that the Developer's Initial Members are members of Developer and Developer's Principals are managers of Developer.

2.3.12 Multiple Parcel Documents. The City Council shall have approved (if required by law) and Developer shall have recorded or be prepared to record (to the extent required by law) the recordable Multiple Parcel Documents (Phase 1 only).

2.3.13 Anticipation of Outdoor Dining on Property. The City acknowledges that the Developer anticipates using a portion of the Property (approximately as indicated in Exhibit A-1) for outdoor dining. Other than applying for customary restaurant permits within the downtown area and complying with all permit requirements, the City is not aware of any reason why Developer (or its tenants) should not be able to use the Property for such purpose. Provided that Developer (or its tenants) applies for and satisfies all applicable requirements, the City will work with Developer in good faith to permit such use of the Property.

2.3.14 Allocation of Sewage Treatment Payment Credits to Developer. Provided that if construction permits for are pulled by December 31 2016, sewer impact fee credits will be available for this Project.

Anything herein to the contrary notwithstanding, so long as the applicable City Conditions Precedent above are satisfied or waived by the City, Developer shall have the right to acquire the Phase 2 Property and commence construction of improvements thereon in accordance with this DDA after Developer's acquisition of the Phase 1 Property but prior to Developer having Substantially Completed the Phase 1 portion of the Project. The City acknowledges that after acquiring both the Phase 1 Property and Phase 2 Property Developer may desire to commence construction of improvements on the Phase 1 Property and Phase 2 Property concurrently.

2.4 Developer Conditions Precedent. Developer's obligation to proceed with the acquisition of each Phase of the Property from City pursuant to the terms of this Agreement is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below for the applicable Phase ("**Developer Conditions Precedent**"). The Developer Conditions Precedent are solely for the benefit of Developer and shall be fulfilled or waived, if applicable, within the time periods provided for herein, and in any event, no later than the Phase 1 Outside Date or Phase 2 Outside Date, as applicable. Except as otherwise indicated, all Developer Conditions Precedent shall apply to both the Phase 1 Closing and Phase 2 Closing:

2.4.1 No Default by City. City shall not be in Default under this Agreement or the other Project Agreements, and no event shall have occurred which with the passage of time or giving of Notice or both would constitute a default by City hereunder or under the other Project Agreements.

2.4.2 Execution and Delivery of Documents by City. City and Developer shall have executed and acknowledged the Grant Deed for the applicable Phase, and City shall have executed (and,

where appropriate, acknowledged) and delivered into escrow all other documents that City is required to deliver into escrow pursuant to Section 2.7.2.

2.4.3 Project Approvals. The Project Approvals shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Developer in its sole and absolute discretion and such that no further appeals, legal challenges, requests for rehearing, or referenda are possible.

2.4.4 Permits. Subject to payment of the applicable fees, City shall be ready to issue the demolition and grading permit(s) necessary for the Developer to perform the work for the Initial Site Preparation for the applicable portion of the Project.

2.4.5 Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be irrevocably committed to issue the Title Policy upon recordation of the Grant Deed subject only to the Pre-Approved Exceptions or the Condition of Title.

2.4.6 Absence of Proceedings. There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property, or applicable part thereof, which would materially and adversely affect Developer's intended uses of the Property or the development or value of the Property, or applicable part thereof.

2.4.7 No Material Adverse Change. There shall not have occurred between the Date of Agreement and the Closing a material adverse change to the physical, environmental or title condition of the Property, or applicable part thereof.

2.4.8 No Leases or Parties in Possession. City shall have demonstrated to Developer the ability to deliver fee title to the applicable Phase of the Property to Developer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession, and executed the Title Company's standard form Commercial Owner's Affidavit as required by Section 2.7.2(d) below.

2.5 Escrow. The parties have already opened an escrow for the conveyance of the Phase 1 Property to Developer. Within five days following Developer's delivery of a notice indicating it intends to close on Phase 2, the Parties shall open an escrow for the conveyance of the Phase 2 Property to Developer.

2.5.1 Costs of Escrow. All customary fees, charges, and costs chargeable by Escrow Agent for the escrows including recording fees, document fees, title insurance premiums and documentary transfer taxes, if any, due with respect to the conveyance of the Property to Developer shall be paid by Developer or the City, as the case may be, in accordance with the custom in Santa Clara County; provided, however, the City shall take all actions and pay all charges and costs (if any) required by Section 2.8.

2.5.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and City with respect to the conveyances of the Property to Developer, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. Insurance policies for fire or casualty are not to be transferred. All funds received in the escrow shall be deposited in interest-bearing accounts for the benefit of the depositing party 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 accounts. If, in the opinion of either party, it is necessary or convenient in order to accomplish the Closing, such party may provide supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Closing shall take place as set forth in Section 2.6 below. Escrow Agent is instructed to release City's and Developer's escrow closing statements to the respective parties.

2.5.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Charge City for that portion of the premium of the Title Policy allocable to a CLTA standard owner's policy of title insurance and charge Developer for the any excess premium of the Title Policy allocable to extended coverage, including any endorsements requested by Developer.

(b) Charge City for escrow fees associated with the closing of the purchase and sale of the Phase 1 Property or Phase 2 Property, as applicable.

(c) Charge City or Developer, as the case may be, all other charges and costs referred to in Section 2.5.1 in accordance with the provisions of Section 2.5.1.

(d) Disburse funds to City and record the Grant Deed for Phase 1 for Phase 1 and Phase 2, as applicable, when both the Developer Conditions Precedent and City Conditions Precedent for the Phase have been fulfilled or waived in writing by Developer and City, as applicable. Immediately following recordation of a Grant Deed, Escrow Agent shall record any other recordable documents delivered into escrow for the Closing.

(e) Do such other actions as necessary, including obtaining and issuing the Title Policy, to fulfill its obligations under this Agreement.

(f) Direct City and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act, reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

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

2.6 Closing. The escrow for conveyance of the Phase 1 Property and Phase 2 Property shall close (each, a "**Close of Escrow**") within 30 days after the satisfaction, or waiver by the appropriate party, of all of the City Conditions Precedent and all of the Developer Conditions Precedent, which shall occur in no event later than the Phase 1 Outside Date or Phase 2 Outside Date, respectively. If Phase 1 Closing does not occur on or before the Phase 1 Outside Date or Phase 2 does Closing does not occur before the Phase 2 Outside Date, then this Agreement shall automatically terminate; provided, however, that the Phase 1 Outside Date or Phase 2 Outside Date may be extended by mutual agreement of the parties, each in its sole discretion, and shall be extended in the case of Force Majeure Delay. For purposes of this Agreement, a "**Closing**" shall mean the time and day the Phase 1 Grant Deed or Phase 2 Grant Deed, as applicable, is recorded with the Santa Clara County Recorder.

2.7 Delivery of Documents and Closing Funds.

2.7.1 At or before each respective Closing, Developer shall deposit into escrow the following items with respect to the Property:

(a) Funds in an amount necessary to consummate the Closing, including the applicable portion of the Purchase Price allocable to the applicable Phase and escrow costs set forth in Sections 2.2 and 2.5.1, respectively;

(b) one original executed and acknowledged Grant Deed; and

(c) one original executed Preliminary Change of Ownership Report for the Property.

2.7.2 At or before each Closing, City shall deposit into escrow the following items with respect to the Property:

(a) one original executed and acknowledged Grant Deed; and

(b) one duly executed non-foreign certification for the Property in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended;

(c) one duly executed California Form 593-W Certificate for the Property or comparable non-foreign person affidavit; and

(d) one Commercial Owner's Affidavit in the standard form of the Title Company.

2.7.3 At each Closing, City and Developer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the conveyance of the Property in accordance with the terms hereof.

2.8 Condition of Title. Developer hereby approves the following exceptions which shall be referred to herein as the "**Pre-Approved Exceptions**": (a) the lien of any non-delinquent real property taxes and assessments (which, if any exist, shall be prorated by the Title Company at Closing); (b) the covenants, conditions and restrictions set forth in the applicable Grant Deed; (c) the Easement Agreement and City Utility Easement; and (d) the exceptions shown in the table below under the column "Developer Approved Exceptions." Developer hereby objects to the exceptions shown in the table below under the headings "Developer Objects to the Following Exceptions" (the "**Disapproved Exceptions**").

| | **Developer Approved Exceptions** | **Developer Objects to the Following Exceptions** |
|---|---|---|
| Preliminary Report issued by Title Company, dated as of August 5, 2015, Order No. NCS-746714-SC, as subsequently amended and supplemented. | 1 (to be prorated as of the applicable Closing), 2, 3 (as to supplemental taxes arising from the sale of the Phase 1 Property or Phase 2 Property to Developer or change in ownership or new construction arising following such sale), and 8 | 4-7 and 9 |

2.8.1 As of the applicable Closing, City, at no cost to Developer, shall cause to be removed all exceptions shown in the table above under the heading "Developer Objects to the Following Exceptions" (**"Developer Objected Exception"**). In addition, as of the applicable Closing, City shall deliver title to the Phase I Property or Phase 2 Property, as the case may be, with all debris, pop up park improvements and other personal property removed from the Phase I Property or Phase 2 Property.

2.8.2 The Pre-Approved Exceptions and any other exceptions otherwise accepted in writing by Developer as provided herein are hereinafter referred to as the "**Condition of Title**." Subject to the City's covenant in Section 3.13 to neither cause nor permit, any new lien, encumbrance or any other matter that changes the condition of title to the Property, if any exceptions other than the Pre-Approved Exceptions are reported by the Title Company, then any such new exception shall be Disapproved Exceptions unless the new exceptions (i) arise from the acts or omissions of Developer, or (ii) are consented to or waived in writing by Developer. Notwithstanding the foregoing, the City agrees to deliver fee title to the applicable Phase of the Property at the applicable Closing free and clear of all tenants, licensees and third party occupants and all leases, rental agreements, license agreements and third party occupancy agreements.

2.8.3 Concurrently with the Phase I Closing, Developer and City shall enter into a Grant of Easements and Restrictive Covenants substantially in the form of Exhibit E attached hereto (**"Easement Agreement"**).

2.8.4 Concurrently with the Closing of each portion of the Property that includes some or all of the 10-foot strip on the easterly boundary of the Property immediately adjacent to the Garage property (**"City Utility Easement Area"**), Developer and City shall enter into an easement on terms mutually agreed by the parties to permit the City to construct and install dry underground utilities within the City Utility Easement Area, including reasonable and appropriate above-ground connections (**"City Utility Easement"**). The parties will use good faith efforts to agree on the terms of the City Utility Easement before the City begins any utilities work in the City Utility Easement Area, and any such work will be consistent with the agreed City Utility Easement.

2.9 Title Insurance. Concurrently with recordation of each Grant Deed, the Title Company shall issue to Developer such policy of title insurance for the Property, or applicable Phase thereof, which at Developer's option may be an ALTA extended coverage owner's policy (or if requested by Developer a CLTA standard owner's policy of title insurance with survey exceptions) (each, a "**Title Policy**") as may be required by Developer, and/or Developer's lenders or other institutions that may be providing financing for the Project, together with such endorsements as are reasonably requested by Developer and/or Developer's lenders or other institutions, insuring that Developer has a valid fee ownership interest in the Property, subject only to Pre-Approved Exceptions and the Condition of Title. The Title Policy for each Phase of the Property shall be in the amount of the applicable portion of the Purchase Price. The premium for each Title Policy, plus any additional costs related thereto (except for such costs to remove any title exceptions agreed to be removed by the City, which shall be at the City's sole cost), including the cost of surveys, and any endorsements requested by Developer shall be paid by Developer.

2.10 Property Taxes and Assessments. Ad valorem taxes and assessments levied, assessed or imposed on the applicable Phase of the Property for any period prior to the applicable Closing, if any, shall be paid by City. Ad valorem taxes and assessments levied, assessed or imposed on the Phase of the Property acquired by Developer or any other improvements thereon, for the period after the applicable Closing on such Phase shall be paid by Developer.

2.11 Access to Property. Prior to the Closing, City shall cooperate to enable representatives of Developer to obtain the right of access to all portions of the Property for the purposes of implementing this Agreement. Developer agrees to provide written Notice to City at least twenty four (24) hours prior to undertaking any studies or work upon the Property. Developer shall indemnify, defend, protect and hold City and City Parties harmless from any Claims arising out of the acts, omissions, negligence or willful misconduct of Developer or its employees, agents, contractors, subcontractors or representatives (each a "**Developer Party**" and, collectively, the "**Developer Parties**") in connection with such studies and investigations, except for Claims arising from or related to any pre-existing condition on or of the Property or Claims to the extent caused by the active negligence or willful misconduct of City or its employees, agents, contractors or representatives. In addition, in the event Developer or any Developer Party causes any damage to any portion of the Property, Developer shall promptly restore the Property as nearly as possible to the physical condition existing immediately prior to Developer's entry onto the Property.

2.12 Documents. City represents and warrants that, to the best of its current actual knowledge, as of the Date of Agreement, City has furnished Developer with copies or provided Developer with access to any and all material existing surveys, inspection reports, environmental and/or hazardous material reports, and any other data, reports, studies, agreements, correspondence and other writings (collectively, "**Reports**") pertaining to the physical, environmental and/or title condition of the Property, or applicable portion thereof, and the use and development of the Property, or applicable portion thereof, which are in City's possession or control. City also represents and warrants that, its Actual Knowledge, City has furnished Developer with copies of any and all unrecorded leases, service contracts, easements, licenses and/or other unrecorded agreements (collectively, "**Unrecorded Agreements**," and with the Reports, "**Documents**") affecting the Property, or portion thereof. City shall notify Developer in writing of any material changes to any Documents of which City becomes aware before Closing. City shall terminate any and all Unrecorded Agreements prior to Closing.

2.13 AS-IS CONVEYANCE. SUBJECT TO SATISFACTION OF THE DEVELOPER CONDITIONS PRECEDENT, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND DEVELOPER IS PURCHASING AS OF THE APPLICABLE CLOSING THE PHASE 1 PROPERTY OR PHASE 2 PROPERTY, AS APPLICABLE, ON AN "AS IS WITH ALL FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE CLOSING ("**AS-IS CONDITION**") AND THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REPORTS OR THE DOCUMENTS, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM CITY OR ANY OF CITY'S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES OR ATTORNEYS (EACH, A "**CITY PARTY**" AND COLLECTIVELY, "**CITY PARTIES**") AS TO ANY MATTERS CONCERNING THE PROPERTY.

2.14 Independent Investigation. Developer acknowledges, agrees, represents, and warrants that, prior to Closing, Developer will have been given a full opportunity to obtain, review, inspect and investigate each and every aspect of the Property, either independently or through agents of the Developer's choosing, including the following:

(a) The size and dimensions of the Property.

(b) The availability and adequacy of water, sewage, fire protection, and any utilities serving the Property.

(c) All matters relating to title including extent and conditions of title to the Property, taxes, assessments, and liens.

(d) All legal and governmental laws, statutes, rules, regulations, ordinances, limitations on title, restrictions or requirements concerning the Property including zoning, use permit requirements and building codes.

(e) Natural hazards, including flood plain issues, currently or potentially concerning or affecting the Property.

(f) The physical, legal, economic and environmental condition and aspects of the Property, and all other matters concerning the conditions, use or sale of the Property, including any permits, licenses, agreements, and liens, zoning reports, engineers' reports and studies and similar information relating to the Property. Such examination of the condition of the Property has included examinations for the presence or absence of Hazardous Materials as Developer deemed necessary or desirable.

(g) Any easements and/or access rights affecting the Property.

(h) Any contracts and other documents or agreements affecting the Property.

(i) All other matters of material significance affecting the Property.

2.15 Disclaimers. Developer acknowledges and agrees that except as expressly set forth in this Agreement: (i) neither City, nor any City Party, has made any representations, warranties, or promises to Developer, or to anyone acting for or on behalf of Developer, concerning the condition of the Property or any other aspect of the Property; (ii) the condition of the Property has been independently evaluated by Developer prior to the Closing; and (iii) any information including any engineering reports, architectural reports, feasibility reports, marketing reports, title reports, soils reports, environmental reports, analyses or data or other similar reports, analyses, data or information of whatever type or kind, if any, which Developer has received or may hereafter receive from City or any City Party were and are furnished without warranty of any kind and on the express condition that Developer has made its own independent verification of the accuracy, reliability and completeness of such information and that Developer may rely on the foregoing at its own risk.

2.16 Waivers and Releases. Developer hereby waives and releases City and City Parties, as of the applicable Closing with respect to the applicable Phase for which such Closing occurs, from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with: (i) all warranties of whatever type or kind (excepting therefrom warranties set forth in Section 1.2.1 above) with respect to the physical or environmental condition of the Property, whether express (except as set forth in Section 1.2.1), implied or otherwise, including those of fitness for a particular purpose, tenantability, habitability or use; (ii) use, management, ownership or operation of the Property, whether before or after Closing; (iii) the physical, environmental or other condition of the Property; (iv) the application of, compliance with or failure to comply with any and all Applicable Laws with respect to the Property; (v) Hazardous Materials in, on, or under the Property; and (vi) the As-Is Condition of the Property; the foregoing are collectively referred to as "**Property Claims**".

Notwithstanding the foregoing to the contrary, the release and waiver of Property Claims set forth in this Section 2.16 shall not apply to (i) any Property Claims to the extent arising from the active negligence or willful misconduct of City or any City Party, (ii) any breaches or Defaults by City of any covenants, agreements, representations or warranties set forth in this Agreement, (iii) any breaches or Defaults by City of any other Projects Agreements to which City is a party, or (iv) any fraud committed by City or any City Party.

## 3. DEVELOPMENT OF THE PROJECT.

3.1 Development of Project Improvements. After each respective Closing, the Developer shall construct and develop the applicable portion of the Project in accordance with the Project Approvals, and Project Agreements. All such work related to the Project shall be performed by licensed contractors.

3.2 Schedule of Performance. Subject to Developer obtaining all required permits, entitlements and governmental approvals as set forth in Section 3.4 below, Developer shall commence and complete construction of the Project, or applicable Phase of the Project, as applicable, and satisfy all of Developer's other obligations under this Agreement with respect to such applicable Phase within the times established therefor in the Schedule of Performance, as the same shall be extended by Force Majeure Delays (to the extent provided in Section 6.2). The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the City Manager or his or her designee. The parties hereto acknowledge and agree that at the time Developer constructs improvements on the Phase 1 Property, Developer shall be permitted also to construct, or cause to be constructed, the pedestrian walkway connection from Monterey Road to the Garage (comprising part of Phase 1) prior to acquiring title to the Phase 2 Property.

3.3 Cost of Development. All the costs of site preparation (including demolition and removal of all temporary structures or improvements on the Property), planning, designing, constructing and developing the Project, or applicable Phase thereof, incurred by Developer shall be borne solely by Developer.

3.4 Permits. Developer, at its expense, shall exercise commercially reasonable efforts to secure or cause to be secured any and all permits and approvals which may be required by City and any other governmental agency having jurisdiction over the applicable portion of the Project, including permits for the demolition and removal of any temporary structures or improvements, if any, on the Property, or applicable Phase of the Property. City staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all necessary permits and approvals. However, the execution of this Agreement does not constitute the granting of, or a commitment to grant or obtain, any land use permits or approvals required by City or any other government agency. Developer makes no representation or warranty to City that Developer will be able to obtain all permits and approvals which may be required by City and any other governmental agency having jurisdiction over the applicable portion of the Project.

3.5 Sources and Uses. Within the times set forth in the Schedule of Performance, Developer shall submit to City for review and approval a pro-forma (a) budget identifying reasonably anticipated and estimated costs of purchasing, developing and constructing the applicable Phase of the Project, and (b) identification of the anticipated sources of such funds ("**Sources and Uses**"). The Sources and Uses to be provided before the Phase 1 closing shall also include all estimated "hard" and "soft" costs and contingencies, shall reflect, to the extent possible, firm bids or accepted contracts, shall identify the anticipated sources of funds (e.g., Initial Members' capital contributions, third-party loans, and third-party equity investments) and shall be accompanied by evidence reasonably satisfactory to City that upon implementation of the Sources and Uses, Developer shall have sufficient funds to meet all budget requirements. All equity partners (other than the Initial Members or an Affiliate of Developer) shall be subject to Section 1.3.7.

3.6 Insurance Requirements. Prior to Commencement of Construction until the completion of construction of the Project, as evidenced by issuance of a Final Certificate of Completion, Developer shall take out and maintain or shall cause its contractor to take out and maintain, a commercial general liability policy with a minimum limit of Two Million Dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage, or such other higher policy limits as may be required by Developer's lenders or other institutions providing financing to Developer for the Project. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001). If commercial general liability insurance or other form with a general aggregate is used, the general aggregate limit shall at least Five Million Dollars ($5,000,000). Developer and each of its contractors shall also take out and maintain a comprehensive automobile liability policy in an amount not less than One Million Dollars ($1,000,000).

Until such time as Developer has completed the applicable Phase of the Project, Developer shall also obtain and maintain builder's all-risk insurance in an amount not less than the full insurable cost of the building shell improvements applicable to that particular Phase to be constructed, or caused to be constructed, on a replacement cost basis, or such other greater policy limits as may be required by Developer's lenders or other institutions providing financing for the Project, and shall furnish or cause to be furnished to City evidence reasonably satisfactory to City that Developer and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or otherwise reasonably acceptable to City. The commercial general liability and comprehensive automobile policies hereunder shall name City and City Parties as additional insureds with respect to liability arising out

of work or operations performed by or on behalf of the Developer on or about the Property, including materials, parts or equipment furnished in connection with such work or operations.

Developer shall furnish City with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. To the extent provided by the insurance carrier, the insurance policies shall be endorsed to notify City of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall so provide. Any insurance, self-insurance or joint self-insurance maintained by City shall be excess of and shall not contribute with the insurance required to be maintained by Developer. The insurance policies shall contain a waiver of subrogation for the benefit of City. The required certificate and endorsement for the Project shall be furnished by the Developer to City prior to the commencement of construction of the Project.

Any deductibles or self-insured retentions must be declared to and approved by City (which shall not be unreasonably withheld, conditioned or delayed), which may require Developer to provide proof of its ability to pay losses and costs of related investigation, claim administration, and defense expenses within the retention.

3.7 Rights of Access. Prior to issuance of a Partial Certificate of Completion for Phase 1 or Final Certificate of Completion for the Project (as to Phase 2), City representatives and elected officials shall have the right of access to the Phase 1 Property and Phase 1, and the Phase 2 Property and Phase 2, respectively, without charges or fees, at reasonable times and after prior arrangement with Developer, so long as such representatives and elected officials comply with all safety rules of Developer and its contractors and insurers and do not unreasonably interfere with the progress of construction of the applicable portion of the Project. Nothing herein shall be deemed to limit the ability of City to conduct code enforcement and other administrative inspections of any portion of the Property or Project at any time in accordance with applicable law. City shall indemnify, defend, protect and hold Developer harmless from any Claims to the extent caused by the active negligence or willful misconduct of City representatives or elective officials or any other City Party in the course of accessing the Property. The provisions of Section 3.7 shall survive the applicable Closing.

3.8 Compliance With Laws. Developer shall carry out, and shall ensure that its contractors and subcontractors carry out, the Project work in conformity with all Applicable Laws, including all applicable state labor laws and standards; the City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Morgan Hill Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.,* Government Code Section 4450, *et seq.,* Government Code Section 11135, *et seq.,* and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer's obligations under this Section 3.8 shall include the obligation to undertake all appropriate inquiries with state and federal governmental enforcement and regulatory agencies as necessary to fully comply with all Applicable Laws. The City hereby acknowledges and agrees that to its knowledge, prevailing wage requirements shall not be applicable the construction of improvements on the Phase 1 Property or Phase 2 Property by or on behalf of Developer.

3.9 Certificate of Completion. Following Final Completion of the entire Project, City shall furnish Developer with a "**Final Certificate of Completion**" substantially in the form of Exhibit D-1 attached hereto and incorporated herein by this reference. City shall not unreasonably withhold, condition or delay such Final Certificate of Completion. Upon request by Developer, following Final Completion of either Phase 1 or Phase 2 in accordance with this Agreement, City shall furnish Developer with a "**Partial Certificate of Completion**" as to such completed Phase substantially in the form of Exhibit D-2 attached hereto and incorporated herein by reference. City shall not unreasonably withhold, condition or delay such Partial Certificate of Completion.

After issuance of such Partial Certification of Completion or Final Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property covered by said Partial Certification of Completion or Final Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to such applicable Phase or Phases of the Project to which such Partial Certification of Completion or Final Certificate of Completion applies. Except for those obligations under this Agreement that expressly survive the expiration or earlier termination of this Agreement, after the issuance of a Partial Certificate of Completion or Final Certificate of Completion for the Property (or such portion thereof), neither City nor any of its successors or assigns shall have any rights, remedies or controls with respect to the Property (or such portion thereof) that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement pertaining to such applicable Phase or Phases of the Project to which such Partial Certification of Completion or Final Certificate of Completion applies, and the respective rights and obligations of the City and its successors or assigns with reference to the Property (or portion thereof) shall be, as applicable, as set forth in the Grant Deeds, and other documents to be recorded against the Property, or applicable portion thereof, pursuant to this Agreement. The preceding to the contrary notwithstanding, the issuance of a Partial Certificate of Completion or Final Certificate of Completion shall not constitute a waiver or release of any Claims based upon a breach of any representation or warranty set forth in Section 1.2.1 or Section 1.2.2 to the extent a Claim for breach of such representation or warranty has been asserted in writing by the claiming party against the breaching party within the 12-month survival period of such representations and warranties.

The Final Certificate of Completion and any Partial Certificates of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project or any part thereof. The Final Certificate of Completion and any Partial Certificates of Completion shall not be deemed a notice of completion as referred to in California Civil Code Section 9208.

3.10 Liens and Stop Notices. Developer shall not allow to be placed on the Property or any part thereof or any adjacent property (including without limitation any portion of the Property then owned by City) any lien or stop notice arising from any work or materials performed or provided or alleged to have been performed or provided by Developer's contractors, subcontractors, agents or representatives. If a claim of a lien or stop notice is given or recorded affecting the Property or any adjacent property, Developer shall within 30 days of Developer becoming aware of such recording or service: (i) pay and discharge the same; or (ii) effect the release thereof by recording and delivering to City Manager a surety bond in sufficient form and amount.

3.11 Right of City to Satisfy Other Liens After any Closing. After any Closing, and provided the requirements set forth in Section 3.10 have not been met by Developer, City shall have the right, but not the obligation, upon not less than ten (10) days prior written notice to Developer, to satisfy any such liens or stop notices. In such event, Developer shall be liable for and City shall be entitled to reimbursement by Developer for the amount reasonably paid by the City to discharge such lien or satisfy such stop notice. This Section 3.11 shall survive termination or expiration of the Agreement.

3.12 Mortgage, Deed of Trust, Sale and Lease-Back Financing.

3.12.1 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Prior to issuance of a Final or Partial Certificate of Completion, as applicable, mortgages and deeds of trust will be permitted on the Property (or portion thereof) only to the extent otherwise provided in this Agreement, and only for the purpose of financing the acquisition and/or construction and development of the Project improvements (including but not limited to, design, planning, permitting, remediation, site preparation and horizontal and vertical construction) on portions of the Property owned by Developer only. (For clarification, and without limiting the foregoing, under no circumstances will any mortgage or deed of trust be permitted on the Phase 2 Property until purchased by Developer.) Following issuance of a Final or Partial Certificate of Completion on a portion of the Project, mortgages and deeds of trust shall be permitted on that portion for any purpose, and City shall have no approval or disapproval rights with respect thereto.

The preceding to the contrary notwithstanding, following the Substantial Completion of improvements for a particular Phase of the Project, Developer shall be permitted to obtain, without the consent or approval of the City, permanent financing to be secured by that Phase of the Property upon which such improvements were Substantially Completed. The two immediately preceding sentences are not a limitation on Developer's right to encumber the Phase 1 Property or Phase 2 Property, as applicable, to the extent then owned by Developer to secure financing for the construction and development of Project improvements. The words "mortgage" and "deed of trust" as used herein shall include sale and lease-back financing.

3.12.2 Holder Not Obligated to Construct Improvements. Neither the holder of any mortgage or deed of trust on the Property or portion thereof nor any person or entity, including any deed of trust beneficiary or mortgagee, who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, shall be obligated by the provisions of this Agreement to construct or complete the Project improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to or be construed to permit or authorize any such holder, person or entity to devote the Property or portion thereof to any uses or to construct any improvements thereon other than those uses and Project improvements provided for or authorized by this Agreement and the Project Approvals or as otherwise agreed to by the City.

3.12.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer on the Property or portion thereof, whenever City shall deliver any Notice or demand to Developer with respect to any breach or Default by Developer hereunder, City shall at the same time deliver to each holder of record of any mortgage or deed of trust on the Property or portion thereof a copy of such Notice or demand. No Notice of Default shall be effective as to the holder unless such Notice is given. Each such holder shall (insofar as the rights of City are concerned) have the right, at its option, within sixty (60) days following the expiration of the Developer's cure period set forth in Section 5.1 below, to cure or remedy or commence to cure or remedy any such Default and to add the cost thereof to the mortgage debt and the lien of its mortgage. If such breach or Default cannot reasonably be cured within such sixty (60) day period, then such holder shall have a reasonable period of time following the expiration of such sixty (60) day period to cure or remedy such breach or Default so long as such holder commences such cure or remedy within the initial sixty (60) day period and diligently prosecutes such cure or remedy to completion. In the event possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy (the foregoing time periods being subject to extension during the period that such holder is precluded from taking or pursuing any such action as a consequence of any bankruptcy stay or other court order). Nothing in this Agreement shall be preclude or prevent any holder of record of any mortgage or deed of trust on the Property or portion thereof from curing or remedying any breach or Default by Developer hereunder, and City agrees to accept any such cure or remedy undertaken by any such holder of record of any mortgage or deed of trust on the Property or portion thereof. Any such holder properly completing such Project improvements, or applicable Phase thereof, shall be entitled, upon compliance with the requirements of Section 3.9, to a Final or Partial Certificate of Completion, as applicable.

3.12.4 Mortgagee or Deed of Trust Holder's Right to Transfer Property. If any mortgagee or deed of trust holder making a loan to Developer secured by the Property, or any portion thereof, forecloses upon the Property, or any applicable portion thereof, such foreclosure sale shall be a "Permitted Transfer" for purposes of this Agreement and such party acquiring title to the Property, or applicable portion thereof, at such foreclosure sale shall be entitled to transfer title to same to a third party without the consent of City.

3.13 Covenants Regarding Operation, Management and Maintenance Prior to Closing. From the Date of Agreement until the Closing or earlier termination of this Agreement, City shall operate, manage and maintain the portion(s) of the Property that remain owned by the City in a manner generally consistent with the manner in which City has operated, managed and maintained the Property prior to the date hereof.

Notwithstanding the foregoing, from and after the Date of Agreement, City shall not: (a) cause nor permit, any new lien, encumbrance or any other matter to cause the condition of title to be changed, other than liens or other assessments, bonds, or special district liens including without limitation, Community Facility Districts, that arise by reason of any local, City, Municipal or County Project or Special District, without Developer's prior written consent; (b) enter into any agreements with any governmental agency, utility company or any person or entity regarding the Property, which would remain in effect after the Closing (other than to implement any matter described in (a) above), without obtaining Developer's prior written consent; or (c) amend any existing licenses, agreements or leases, or enter into any new licenses, agreements or leases, that would give any person or entity any right of possession to any portion of the Property, or which would remain in effect after the Closing. If Developer's consent is required by the terms of this Section 3.13, such consent shall not be unreasonably withheld, delayed, or conditioned. For avoidance of doubt, the City agrees that it will not cause or permit any new assessments to be levied, assessed or charged against the Property, or any part thereof, following the Date of Agreement without Developer's consent (which consent shall not be unreasonably withheld).

## 4. COVENANTS, RESTRICTIONS AND AGREEMENTS.

4.1 Covenants, Conditions and Restrictions. Upon request by Developer, City agrees to reasonably cooperate with Developer to allow Developer to record a Declaration of Covenants, Conditions & Restrictions against the Phase 2 Property after Developer has acquired the Phase 1 Property but before Developer has acquired the Phase 2 Property. Such Declaration shall be subject to City's approval, which shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, the City need not approve the Declaration if, in the City's reasonable discretion, the Declaration could impair development of the Phase 2 Property as a separately developable parcel.

4.2 Taxes and Assessments. After the Closing, it shall be Developer's responsibility to pay prior to delinquency all ad valorem real estate taxes and assessments on the Property and the Project or any portion thereof, subject to Developer's right to contest in good faith any such taxes.

4.3 Effect and Duration of Covenants. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and inure for the benefit and in favor of City, and its successors and assigns. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of City without regard to whether City has been, remains or is an owner of any land or interest in the Property. Subject to the limitations on remedies set forth in Section 5 hereto, City shall have the right, if this Agreement or the 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 to which it may be entitled under the terms of this Agreement.

4.4 No City Approval of Tenants Required. Developer shall not be required to obtain the City's consent or approval as to the tenants to whom Developer may lease portions of the Project and the City shall not impose any restrictions or limitations on the nature of the tenants to whom Developer may lease portions of the Project; except that the use of the portion of the Project acquired by Developer shall be subject to the use restrictions and limitations created by the Project Approvals and applicable zoning affecting such portion of the Project.

4.5 Easements. If requested by Developer upon or following Developer's acquisition of title to the Phase 1 Property, the City shall grant to Developer (or any permitted successor or assign or successor-in-interest in the Phase 1 Property), a utilities easement, utilities access easement and/or emergency access vehicle easement, as the case may be, on, over, under or across portions of the Phase 2 Property to the extent reasonably necessary to service the Phase 1 Property and which, in the City's reasonable discretion, does not impair development of the Phase 2 Property as a separately developable

parcel. The provisions of this Section 4.5 shall survive the close of escrow of Developer's acquisition of the Phase 1 Property.

4.6 Restaurant Uses. Under current City zoning, and the Downtown Specific Plan, the uses on both the Phase 1 Property and the Phase 2 Property may be, but shall not be obligated to be, 100% restaurant use.

4.7 PBID and MHDA.

4.7.1 Following Developer's acquisition of the Phase 1 Property or Phase 2 Property, as applicable, Developer shall pay, or exercise commercially reasonable efforts to cause its tenants to pay, if applicable, all Morgan Hill Downtown Property Based Improvement District (**"PBID"**) assessments for the applicable Phase of the Property, or applicable premises thereof, which are reflected in the regular property tax bills.

4.7.2 Developer will exercise commercially reasonable efforts to include provisions in its leases requiring all Property tenants to support the Morgan Hill Downtown Association (**"MDHA"**) and related marketing and promotions business district efforts, and make good faith efforts to achieve compliance with these MDHA requirements. Developer shall not be in breach or default of this Agreement solely because any tenant of the Property, or applicable portion thereof, will not agree in its lease to support the MDHA or related marketing and promotions business district efforts.

## 5. DEFAULTS AND REMEDIES.

5.1 Default Remedies – General. Failure by either party to perform any action or covenant required by this Agreement within 30 days following receipt by the failing party of written Notice from the other party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such 30 day period, a party shall be allowed additional time as is reasonably necessary to cure the failure so long as such party commences to cure the failure within the 30 day period and thereafter diligently prosecutes the cure to completion. Subject to the limitations of Section 6.2 below, any default by either party under one or more of the other Project Agreements which is not cured following notice and expiration of any applicable cure periods thereunder shall also constitute a Default under this Agreement, and upon occurrence of such Default and without any right to further notice or additional cure period, the non-defaulting party shall have all remedies available to it under this Agreement, including the right to terminate this Agreement as set forth in Section 5.3 below.

5.2 Legal Actions.

5.2.1 Institution of Legal Actions. Upon the occurrence of a Default by Developer, City shall have the right, in addition to any other rights or remedies (but subject to the limitations set forth in Section 5.2.2 below), to institute any action at law or in equity to cure, correct, prevent or remedy such Default, or to recover actual damages (subject to the limitations set forth below and in Section 5.2.2); provided, however, that in no event shall City's pre-Closing remedies include specific performance of Developer's obligation to close escrow on the Property. If Developer defaults under this Agreement following the close of escrow on a particular Phase of the Project, then, as to that particular Phase acquired by Developer, the City shall not have the right to void or rescind the conveyance of the applicable Phase of the Project to Developer pursuant to the applicable Grant Deed or exercise the repurchase option in such Grant Deed or otherwise as to the applicable Phase of the Property acquired by Developer, as a result of any breach or default of a covenant, agreement or obligation of Developer under any circumstances (but will have the applicable option(s) to repurchase, reenter and repossess contained in, and subject to, Agreement Section 5.4 and the applicable Grant Deed(s) as to portions of the Property not then having been acquired by Developer. Anything herein to the contrary notwithstanding, if City exercises its repurchase option as to any applicable Phase of the Property, then City waives and releases Developer of any obligation to complete any improvements on that Phase and to pay for or contribute to the cost of construction or development of improvements on that Phase. Developer's remedies in the event of a

Default by City under this Agreement shall be limited to obtaining specific performance or injunctive relief, or terminating this Agreement and (if before the Phase 1 Closing) recovering the Developer Deposit. Neither party shall have the right to recover any punitive, consequential, or special damages. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, or in the Federal District Court for the Northern District of the State of California.

5.2.2 Liquidated Damages in the Event of Developer Failure to Close Escrow on the Property. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN THIS AGREEMENT, IF DEVELOPER FAILS TO CLOSE ESCROW FOR EITHER PHASE 1 OR PHASE 2 AS REQUIRED UNDER THIS AGREEMENT (A "**CLOSING DEFAULT**"), THE CITY MAY SUFFER DAMAGES AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, IN THE EVENT OF A CLOSING DEFAULT, DEVELOPER, WITHIN 30 DAYS FOLLOWING CITY'S WRITTEN DEMAND THEREFOR, SHALL, WITHOUT REPRESENTATION OR WARRANTY, TURN OVER ALL REPORTS AND PLANS IN THE DEVELOPER'S POSSESSION OR CONTROL THAT HAVE BEEN PREPARED BY AND FOR DEVELOPER RELATED TO THE PROJECT AND THE PROPERTY (WITH THE EXCEPTION OF DEVELOPER'S INTELLECTUAL PROPERTY, PROFORMAS OR FINANCIAL PROJECTIONS, MARKETING STUDIES, CONFIDENTIAL FINANCIAL INFORMATION, AND ANY INFORMATION SUBJECT TO LEGAL PRIVILEGE) (THE "**MATERIALS**.") THE MATERIALS SHALL SERVE AS LIQUIDATED DAMAGES TO THE CITY FOR A CLOSING DEFAULT. THE VALUE OF THE MATERIALS CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES THAT THE CITY WOULD INCUR IN THE EVENT OF A CLOSING DEFAULT. RETENTION OF THE MATERIALS SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A CLOSING DEFAULT, AND THE CITY WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER ON ACCOUNT OF A CLOSING DEFAULT, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE AND MONETARY DAMAGES. THE LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE CITY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. CITY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. BY PLACING ITS INITIALS BELOW, DEVELOPER AND CITY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: _____ _____

CITY DEVELOPER

5.2.3 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 City Clerk of City 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 in any manner as may be provided by law.

5.3 Termination. In addition to the automatic termination provided for under Section 2.6 above, this Agreement may be terminated: (i) if there is an uncured Default, after Notice from the party not in default and expiration of all cure periods, or (ii) if there is a failure of an express Developer Condition Precedent or City Condition Precedent (which is not waived by the party whom the condition benefits) by timely Notice from the party whom the condition benefits. If requested by City, upon termination of this Agreement, Developer shall promptly execute and deliver to City a Quitclaim Deed, in recordable form, as to all portions of the Property not yet purchased by Developer.

5.4 City Option to Repurchase, Reenter and Repossess.

5.4.1 As to Phase 1 Property. Subject to notice and opportunity to cure under Section 5.1 and applicable Force Majeure Delay under Section 6.2, City shall have the additional right, at its option, to repurchase, reenter and take possession of the Phase 1 Property if after conveyance of title to the Phase 1 Property, Developer shall:

(a) Fail to Commence Construction of Phase 1 within the time set forth on the Schedule of Performance, as extended by Force Majeure Delay(s); or

(b) Abandon or substantially suspend construction of Phase 1 for a period of 90 consecutive days after Commencement of Construction of Phase 1, as extended by Force Majeure Delay(s).

5.4.2 As to Phase 2 Property. Subject to notice and opportunity to cure under Section 5.1 and applicable Force Majeure Delay under Section 6.2, City shall have the additional right, at its option, to repurchase, reenter and take possession of the Phase 2 Property if after conveyance of title to the Phase 2 Property, Developer shall:

(a) Fail to Commence Construction of Phase 2 within the time set forth on the Schedule of Performance, as extended by Force Majeure Delay(s); or

(b) Abandon or substantially suspend construction of Phase 2 for a period of 90 consecutive days after Commencement of Construction of Phase 2, as extended by Force Majeure Delay(s).

5.4.3 Such rights to repurchase, reenter and repossess, to the extent provided in this Agreement and (as applicable) Grant Deeds, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by this Agreement (including, without limitation, any assignment of rents and leases); or

(b) Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

5.4.4 To exercise its right to repurchase, reenter and take possession with respect to the Property (or applicable portion thereof), City shall pay to Developer in cash an amount equal to:

(a) The Purchase Price paid by Developer for the Property (or applicable portion thereof, calculated on a pro rata basis per square foot); plus

(b) The actual out-of-pocket hard costs incurred by Developer and paid to unaffiliated third parties for labor and materials for the construction of the improvements existing on the Property (or applicable portion thereof) at the time of the repurchase, reentry and repossession; plus

(c) The actual out-of-pocket soft costs incurred by Developer and paid to unaffiliated third parties in connection with the design and permitting of the improvements existing on the Property (or applicable portion thereof) at the time of the repurchase, reentry and repossession and/or contemplated to be developed on the Property (or applicable portion thereof); plus

(d) All other costs and expenses incurred by Developer and paid to unaffiliated third parties in connection with this Agreement and/or the design, permitting, construction, leasing and/or financing of the improvements existing on the Property (or applicable portion thereof) at the

time of the repurchase, reentry and repossession and/or contemplated to be developed on the Property (or applicable portion thereof) less

(e) Any actual income withdrawn or made by Developer from the Property (or applicable portion thereof) or the improvements thereon; less

(f) The total outstanding amount of any mortgages, deeds of trust or other liens encumbering the Property (or applicable portion thereof) that are superior to City's repurchase option at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City shall, subject to the instruments and provisions described in Section 5.4.3 above, give Developer Notice of such exercise and Developer shall, within 60 days after Developer's receipt of such Notice, provide City with a detailed accounting of all of Developer's costs incurred as provided above. City, within 30 days thereafter, shall pay to Developer in cash all sums owing pursuant to this Section 5.4.4, if any, and Developer shall thereupon execute and deliver to City a grant deed transferring to City all of Developer's interest in the Property (or applicable portion thereof) for which City's repurchase option applies. If Developer reconveys any portion of the Property to City pursuant to the terms of this Section 5.4.4, then City shall be charged with all knowledge it had regarding the Property before execution of this Agreement.

City acknowledges that it shall use its independent judgment and make its own determination as to the scope and breadth of the due diligence investigation which it shall make relative to the Property, or applicable portion thereof, to be reacquired by the City pursuant to City's exercise of its repurchase option.

IF CITY ACQUIRES ANY PHASE(S) OF THE PROPERTY PURSUANT TO THIS SECTION 5.4, THEN CITY SHALL ACQUIRE THE SAME, AS OF THE CLOSING ON CITY'S ACQUISTION OF THE PARTICULAR PHASE(S), ON AN "AS IS WITH ALL FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF SUCH CLOSING.

If City acquires any Phase(s) of the Property pursuant to this Section 5.4, then City hereby waives and releases Developer and Developer's Initial Members and Principals, as of the closing on such acquisition, from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with: (i) all warranties of whatever type or kind with respect to the physical or environmental condition of the Property, whether express, implied or otherwise, including those of fitness for a particular purpose, tenantability, habitability or use; (ii) use, management, ownership or operation of the applicable Phase, whether before or after such acquisition; (iii) the physical, environmental or other condition of the applicable Phase; (iv) the application of, compliance with or failure to comply with any and all Applicable Laws with respect to the applicable Phase; (v) Hazardous Materials in, on, or under the Property (except for any Hazardous Materials that Developer releases, discharges or spills on, in or under the applicable Phase); and (vi) the As-Is Condition of the applicable Phase; the foregoing are collectively referred to as "Repurchase Property Claims".

Notwithstanding the foregoing to the contrary, the release and waiver of Repurchase Property Claims set forth above in this Section 5.4 shall not apply to (i) any Repurchase Property Claims to the extent arising from the active negligence or willful misconduct of Developer, any Initial Developer Members or Developer Principals, or (ii) any fraud committed by Developer, any Initial Developer Members or Developer Principals.

City's rights under this Section 5.4 shall terminate upon the issuance of a Partial Certificate of Completion as to those portions of the Property covered by such Partial Certificate of Completion. If a Final

Certificate of Completion is issued by City, then City's rights under this Section 5.4 shall terminate as to the entire Property.

5.5 Rights and Remedies Are Cumulative. Except as specified otherwise 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, except as otherwise expressly provided herein.

5.6 Inaction Not a Waiver of Default. Except as specified otherwise in the Agreement, 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.

## 6. GENERAL PROVISIONS.

6.1 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 shall be given by certified mail, return receipt requested and postage prepaid, personal delivery, or reputable overnight courier (but not by facsimile or email), 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.

To City: City of Morgan Hill
Office of the City Manager
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: City Manager

With a copy to: City of Morgan Hill
City Attorney's Office
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: City Attorney

and: Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612
Attention: Gerald J. Ramiza, Esq.

To Developer: Monterey & Third Associates, LLC
c/o Imwalle Properties Inc.
115 S. Market Street, Suite 190
San Jose, CA 95113
Attention: Donald Imwalle, Jr.

With a copy to: Kenneth Rodrigues and Partners, Inc.
445 North Whisman Road, Suite 200
Mountain View, CA 94043
Attention: Ken Rodrigues, Sr.

With a copy to: Berliner Cohen LLP
10 Almaden Blvd., 11th Floor
San Jose, CA 95113

Attention: Sam Farb

Any Notice shall be deemed received on the date of delivery if delivered by personal service, on the date of delivery or refused delivery as shown by the return receipt if sent by certified mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

6.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, 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 are due to: (i) war and insurrection; (ii) strikes, lockouts and labor disputes; (iii) riots, floods, earthquakes, fires, casualties, acts of God and acts of the public enemy; (iv) epidemics, quarantine restrictions, freight embargoes, and governmental restrictions or priority; (v) delays in issuance of any Project Approvals (including, without limitation, the Multiple Parcel Documents (Phase 1 only), if applicable), entitlements or permits necessary to develop any improvements contemplated to be developed on the Property, or applicable portion thereof; (vi) litigation and arbitration, including court delays; legal challenges to this Agreement, the Project Agreements, the Project Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; (vii) environmental conditions, pre-existing or discovered, delaying the construction or development of the Property or any portion thereof; (viii) unusually severe weather or unseasonable inclement weather; (ix) acts or omissions of the other party or any of its members, managers, officers, agents, employees, affiliates or other representatives; or acts or failures to act or delay in acting of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City); or (x) moratorium (each a "**Force Majeure Delay**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within 60 days of the commencement of the cause. If Notice is sent after such 60 day period, then the extension shall commence to run no sooner than 60 days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Developer's inability or failure to obtain financing or otherwise timely satisfy the Conditions Precedent to Closing (other than due to clause (v) above or due to the acts, failure to act or fault of the City, and other than the Conditions to Closing set forth in Section 2.4.1, 2.4.6, 2.4.7 and 2.4.8) on or before any Outside Date shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay.

6.3 Successors and Assigns. Subject to the restrictions on Developer transfers set forth in Section 1.3 above, all of the terms, covenants and conditions of this Agreement shall be binding upon Developer and City and their respective successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any permitted successors and assigns as herein provided.

6.4 Intentionally Omitted.

6.5 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 exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

6.6 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

6.7 Counterparts. This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original.

6.8 Integration. This Agreement, including the exhibits hereto, and the other Project Agreements contain the entire understanding between the parties relating to the transactions contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, other than the other Project Agreements, 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.

6.9 Brokerage Commissions. City and Developer each represents to the other that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the conveyance of the Property as described in this Agreement, or the negotiation and execution of this Agreement. Each party shall indemnify, defend, protect and hold the other party harmless from any and all Claims based upon any assertion that such commissions or fees are allegedly due from the party making such representations.

6.10 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise. References to specific section numbers shall include all subsections which follow the referenced section.

6.11 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 words "include" and "including" shall be construed as if followed by the words "without limitation." The parties acknowledge that each party and his, her or its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with this Agreement.

6.12 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.

6.13 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.

6.14 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day, 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 Sections 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.

6.15 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.

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

6.17 Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

6.18 Conflicts of Interest. No City Council 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.

6.19 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 forty five (45) 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.

6.20 Developer's Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect and hold City and its officers, employees, agents and representatives, harmless from, all Claims to the extent arising out of the development of the Project or by anyone directly or indirectly employed or contracted with by Developer that arise out of the construction by or on behalf of Developer of improvements comprising the Project and whether such Claims shall accrue or be discovered before or after termination of this Agreement. Developer's indemnity obligations under this Section 6.20 shall not extend to Claims to the extent caused by the active negligence or willful misconduct of City or its officers, employees, agents or representatives. Insurance limits shall not operate to limit Developer's indemnity obligations under this Section 6.20. Notwithstanding anything to the contrary in this Section 6.20, any claims related to Initial Litigation Challenges shall be controlled exclusively by Section 6.21.

6.21 Cooperation in the Event of Legal Challenge to Project Approvals. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the City's initial approval of this Agreement or any of the Project Approvals ("**Initial Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

6.21.1 Meet and Confer. If an Initial Litigation Challenge is filed, upon receipt of the petition, the Parties will have 20 days to meet and confer regarding the merits of such Initial Litigation Challenge and to determine whether to defend against the Initial Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. The City and Developer mutually commit to meet all required litigation timelines and deadlines. The Parties shall expeditiously enter a joint defense agreement, which will include among other things, provisions regarding confidentiality. The City Manager is authorized to negotiate and enter such joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of an Initial Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Developer, and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect thereto.

6.21.2 Defense Election. If, after meeting and conferring, the Parties mutually agree (each in its sole discretion) to defend against the Initial Litigation Challenge, then the following shall apply:

(a) Developer shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice;

(b) City may, in its sole discretion, elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer;

(c) Developer shall reimburse City, within ten business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all necessary and reasonable costs incurred by City in connection with the Initial Litigation Challenge, including City's administrative, outside legal fees and costs, and court costs.

(d) The Parties intend that the City's role under subsection 6.21.2(b) ) shall be primarily oversight although the City reserves its right to protect the City's interests, and the City shall make good faith efforts to maximize coordination and minimize its outside legal costs (for example, minimizing filing separate briefs, and duplication of effort to the extent feasible).

(e) For any Initial Litigation Challenge which the Developer has elected to defend under this Section 6.21.2, Developer shall indemnify, and hold harmless the City and City Parties from any liability, damages, claim, action, cause of action, judgment (including City costs to effectuate such judgment, including any attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation), loss (direct or indirect), or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, staff time, expenses or costs) related to such Initial Litigation Challenge; provided, however, such indemnification, defense and hold harmless obligation shall not apply to Claims to the extent caused by the active negligence or willful misconduct of City or any of its agents, employees, officers, contractors or representatives. Notwithstanding the foregoing, the Developer shall not be responsible for any reimbursement to the City for the time of the City Attorney related to the Initial Litigation Challenge if the City is represented by outside legal counsel.

6.21.3 Developer Election Not To Defend. If Developer elects, in its sole and absolute discretion, not to defend against the Initial Litigation Challenge, it shall deliver written notice to the City regarding such decision. If Developer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Initial Litigation Challenge and shall take the lead role defending such Initial Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, at its sole cost and expense. If Developer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement and consider the Developer's pending application for any related Project Approvals withdrawn. In the event the City does not terminate this Agreement, then if the terms of a proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Developer (which approval shall not be unreasonably withheld), and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect thereto. In the event the Developer unreasonably withholds its approval of such amendment or modification, the City retains the right, but not the obligation, to terminate this Agreement and consider the Developer's application for any related Project Approvals withdrawn.

6.22 Non-liability of Officials and Employees of City. No member, official or employee of 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. Developer hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any Default or breach by City or for any amount which may become due to Developer or its successors under the terms of this Agreement.

6.23 Applicable Law; Venue. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara or the US District Court, Northern California District.

6.24 Survival. The parties' indemnification obligations under Sections 2.11, 3.7, 6.9, 6.20 and 6.21 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**CITY:**

CITY OF MORGAN HILL, a California municipal corporation

By: _____

Steve Rymer, City Manager

APPROVED AS TO FORM:

By: _____

Renee Gurza, City Attorney

ATTEST:

By: _____

Irma Torrez, City Clerk

**DEVELOPER:**

MONTEREY & THIRD ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: Kenneth Rodrigues, Sr.
Its: Manager

By: _____
Name: Don Imwalle, Jr.
Its: Manager

EXHIBIT A-1

SITE MAP – PROPERTY AND DOWNTOWN PARKING GARAGE

***[to come—to include Property, Garage, outdoor dining area, etc.]***

EXHIBIT A-2

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

All of Lot 25, in Block 19, as shown on that certain Map entitled, “Morgan Hill Ranch Map No. 2”, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on September 10, 1892 in Book G of Maps, at Page 19.

PARCEL TWO:

Lot 24, in Block 19, as delineated and so designated upon Map entitled, “Morgan Hill Ranch Map No. 2”, and which said Map was filed for record in the office of the County Recorder of the County of Santa Clara, State of California on September 10, 1892, in Book “G” of Maps, Page 19.

PARCEL THREE:

Beginning at the point of intersection of the Southeasterly line of Nob Hill Avenue with the Northeasterly line of Monterey Road; thence running Northeasterly and along said Southeasterly line of Nob Hill Avenue 90 feet; thence running Southeasterly and parallel with the Northeasterly line of the Monterey Road 80 feet; thence running Southwesterly and parallel with the Southeasterly line of Nob Hill Avenue 90 feet to a point on the Northeasterly line of Monterey Road; thence running Northwesterly and along said Northeasterly line of the Monterey Road 80 feet to the point of beginning, being the Southwesterly 90 feet of Lots 22 and 23 in Block 19 as laid down, designated and delineated upon that certain Map entitled, “Morgan Hill Ranch Map No. 2”, and which said Map was filed in the office of the County Recorder of the County of Santa Clara, State of California, on September 10,1892, in Book “G” of Maps at Page 19.

APN(s): 726-13-038, 726-13-039 and 726-13-040

**RECORDING REQUESTED BY AND AFTER RECORDATION MAIL TO:**

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: _____

*This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103, 27383*

*(Space Above This Line for Recorder's Use Only)*

**GRANT DEED**
**(With Covenants)**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Morgan Hill, a California municipal corporation ("**Grantor**"), hereby grants to Monterey & Third Associates, LLC, a California limited liability company ("**Grantee**"), the real property (the "**Property**") located in the City of Morgan Hill, County of Santa Clara, California, known as Santa Clara County Assessor's Parcel Nos. _____ and more particularly described in Attachment No. 1 attached hereto and incorporated in this grant deed ("**Grant Deed**") by reference.

1. Covenants. Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Property and any improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, Grantee and all such successors and assigns and all persons claiming under or through it, shall use, devote, operate and maintain the Property and the improvements thereon, and every part thereof, to the uses specified and in accordance with that certain Disposition and Development Agreement between Grantor and Grantee dated as of _____ __, 2015 ("**DDA**") for the period of time specified therein, only in strict accordance with the agreements and covenants set forth in this Grant Deed. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the DDA.

2. City Option to Repurchase, Reenter and Repossess. Until such time as a Partial or Final Certificate of Completion is issued with respect to the Property, Grantor shall have the right, in the event of certain specified uncured defaults under the DDA, to repurchase, reenter and take possession of, the Property referred to above, as further provided in, and subject to the limitations and conditions in, Section 5.4 of the DDA. Such right to repurchase, reenter and repossess shall be subject and subordinate to and be limited by and shall not defeat, render invalid or limit: (a) any mortgage, deed of trust or other security instrument permitted by the DDA; or (b) any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments. Such right to repurchase, reenter and repossess also shall be subject and subordinate to all leases and licenses that may be entered into by Grantee or it successors or assigns, as lessor or licensor, as the case may be, affecting the Property, or applicable portion thereof. In the event Grantor exercises its right to repurchase, reenter or repossess the Property, or applicable portion thereof, Grantor shall accept title to the Property, or applicable portion thereof, so repurchased or repossessed subject to such mortgages, deeds of trust, other security

instruments, leases and/or license agreements previously entered into by Grantee or its successors or assigns to the extent permitted by the DDA.

3. Effect, Duration and Enforcement of Covenants.

(a) It is intended and agreed that the covenants and agreements set forth in this Grant Deed shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (i) binding for the benefit and in favor of Grantor, as beneficiary; and (ii) binding against Grantee, its successors and assigns to or of the Property and any improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Property or the improvements thereon or any part thereof. The agreements and covenants herein shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Property or part thereof. Anything herein to the contrary notwithstanding, the Grantor's rights and interests under Section 2 in this Grant Deed and under Section 5.4 of the DDA, including, without limitation, its right to repurchase, reenter and take possession of the Property, or applicable portion thereof as described in Section 2 above, and the Grantee's obligations under Section 2 of this Grant Deed and under Section 5.4 of the DDA, and all other obligations of Grantee under the DDA, except for the obligations therein that expressly survive the termination of the DDA, shall terminate as to the Property upon the issuance and recordation of a Partial Certificate of Completion or Final Certificate of Completion with respect to the Property. Upon the issuance and recordation of a Partial Certificate of Completion or Final Certificate of Completion with respect to the Property, the Grantor hereby quitclaims all rights and interests in the Property and the Grantor has no further right to enforce any of Grantor's rights under the DDA (including, without limitation, under Section 5.4 of the DDA) with respect to the Property; provided, however, such obligations under the DDA that expressly survive the termination of the DDA shall survive the recordation of a Partial Certificate of Completion or Final Certificate of Completion with respect to the Property. If reasonably requested by Developer or its successors or assigns, City shall execute, acknowledge and cause to be recorded an instrument evidencing the foregoing termination and quitclaim.

(b) Grantor shall have the right, in the event of any and all of such covenants of which it is stated to be the beneficiary, to institute an action for injunction and/or specific enforcement to cure an alleged breach or violation of such covenants, subject to Section 4(c) below. Grantee shall not be liable to Grantor or any beneficiaries for any damages caused by any breach or violation of a covenant by Grantee under any circumstances, including but not limited to expenditure of money to cure a breach or violation by Grantee, nor shall Grantor have the right to void or rescind the conveyance of the Property to Grantee pursuant to this Grant Deed as a result of any breach or violation of a covenant by Grantee under any circumstances.

(c) Grantee shall be entitled to written notice from Grantor and have the right to cure any alleged breach or violation of all or any of the covenants set forth in this Grant Deed; provided that Grantee shall cure such breach or violation within 30 days following the date of written notice from Grantor, or in the case of a breach or violation not reasonably susceptible of cure within 30 days, Grantee shall commence to cure such breach or violation within such 30 day period and thereafter diligently to prosecute such cure to completion within a reasonable time.

4. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument encumbering the Property; provided, however, that any successor of Grantee to the Property (other than the Grantor in the event Grantor acquires title to the Property, or any part thereof, pursuant to a foreclosure, deed in lieu of foreclosure, or trustee's sale under the deed of trust recorded for the benefit of Grantor) shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. Amendments. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and the Project.

6. Grantee's Acknowledgment. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

7. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

**GRANTOR:**

City of Morgan Hill, a California municipal corporation

Date: _____, 201__

By: *[form document – do not execute]*

_____

_____, City Manager

***[SIGNATURE MUST BE NOTARIZED]***

ATTEST:

_____

_____, City Clerk

APPROVED AS TO FORM:

_____

_____, City Attorney

**GRANTEE:**

MONTEREY & THIRD ASSOCIATES, LLC, a California limited liability company

Date: _____, 201__

By: *[form document – do not execute]*

Name: Kenneth Rodrigues, Sr.

***[SIGNATURE MUST BE NOTARIZED]***

Title: Manager

Date: _____, 201__

By: *[form document – do not execute]*

Name: Don Imwalle, Jr.

***[SIGNATURE MUST BE NOTARIZED]***

Title: Manager

## ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF _____ )

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF _____ )

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF _____ )

On _____, 201__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

ATTACHMENT NO. 1

**LEGAL DESCRIPTION**

That certain real property located in the City of Morgan Hill, County of Santa Clara described as follows:

APN's 726-13-038 ,039, and 040

EXHIBIT C

**SCHEDULE OF PERFORMANCE *[conform to final DDA]***

NOTE: Capitalized terms used below shall have the meaning ascribed to such terms in the Disposition and Development Agreement ("**Agreement**") to which this Exhibit C is attached. All of the dates and deadlines described below shall be subject to extension by the City Manager pursuant to Section 3.2 of the Agreement or due to "Force Majeure Delays" in accordance with Section 6.2 of the Agreement. The provisions of the Schedule of Performance are intended as a convenient guideline for the Parties and are not intended to supersede or amend the referenced operative sections listed below. In the event of any conflict between this Schedule of Performance and the Agreement, the Agreement shall control.

| # | MILESTONE | TIMING REQUIREMENT |
|---|---|---|
| 1 | City shall consider approval of the Agreement, and if approved, shall deliver one executed original to Developer. | Upon Developer's delivery to the City of three executed originals and City Council action approving this Agreement. |
| 2 | Intentionally Omitted | Intentionally Omitted |
| 3 | Developer to provide acceptable documents to create Multiple Parcels, i.e. Phase 1 Property and Phase 2 Property [Section 1.5] | Within **30** days following Date of Agreement. |
| 4 | Parties to open escrow for the conveyance of Phase 1 of the Property. [Section 2.5] | Within **30** days following Date of Agreement. (done) |
| 5 | Developer submits Sources and Uses to City or City's Representative. [Section 3.5] | **30** days before each of Phase 1 and Phase 2 Closing, respectively. |
| 6 | Developer submits Organizational Documents to City and to Escrow. [Section 2.3.11] | Within **10** days following Date of Agreement |
| 7 | Developer shall have submitted complete applications for all demolition and grading permit necessary for the Developer to perform the work for the Initial Site Preparation for each Phase of the Project and such permits shall be ready to be issued by the City subject only to payment of applicable fees. [Section 2.3.8] | **Five** days prior to Close of Escrow for each of Phase 1 and Phase 2. |
| 8 | Developer shall have submitted complete applications for all construction permits necessary for Developer to construct the applicable Phase, and a foundation permit for such Phase shall be ready to be issued by the City subject only to payment of applicable fees. [Section 2.3.9] | **Five** days prior to Close of Escrow for each of Phase 1 and Phase 2. |

| # | MILESTONE | TIMING REQUIREMENT |
|---|---|---|
| 9 | Recording of any document required for creation of Multiple Parcels. ***[if applicable]*** [Section 1.5] | **Five** days prior to Phase 1 Close of Escrow. |
| 10 | Intentionally Omitted | Intentionally Omitted |
| 11 | Developer secures all required permits and approvals for development of applicable Phase of Project. [Section 3.4] | Prior to the commencement of construction for each applicable portion of the Project. |
| 12 | Developer submits evidence of insurance to the City. [Section 3.6] | Prior to Commencement of Construction of each Phase of the Project. |
| 13 | Close of Escrow on Phase 1 of the Property. [Section 2.6] | 30 days after satisfaction or waiver of all City Conditions Precedent and all Developer Conditions Precedent, but no later than the Phase 1 Outside Date. |
| 14 | Intentionally Omitted | Intentionally Omitted |
| 15 | Developer Commences Construction of Phase 1. [Section 3.2] | Within **30** days following Phase 1 Closing. |
| 16 | Intentionally Omitted | Intentionally Omitted |
| 17 | Developer Substantially Completes construction of Phase 1. [Sections 3.2, 5.4] | Within **12** months following Phase 1 Closing. |
| 18 | Intentionally Omitted | Intentionally Omitted |
| 19 | Intentionally Omitted | Intentionally Omitted |
| 20 | Parties to open escrow for the conveyance of Phase 2 of the Property. [Section 2.5] | Within five days following Developer's notice of its intention to purchase Phase 2 |
| 21 | Close of Escrow on Phase 2 of the Property. [Section 2.6] | 30 days after satisfaction or waiver of all City Conditions Precedent and all Developer Conditions Precedent, but no later than the Phase 2 Outside Date. |
| 22 | Developer Commences Construction of the Phase 2. [Section 3.2] | Within **30** days following Phase 2 Closing. |
| 23 | Developer Substantially Completes construction of Phase 2. [Sections 3.2, 5.4] | Within **12** months following Phase 2 Closing. |
| 24 | City shall provide the Certificate of Completion to Developer. [Section 3.9] | Within 30 days following completion of the Project (or in the case of a Partial Certificate of Completion, the applicable portion of the Project) and Developer's written request therefor. |

EXHIBIT C-3

EXHIBIT D-1

**FORM OF FINAL CERTIFICATE OF COMPLETION**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
Attention: _____

*Space above this line for recorder's use*

**FINAL CERTIFICATE OF COMPLETION**

THIS FINAL CERTIFICATE OF COMPLETION ("**Final Certificate of Completion**") is made by the CITY OF MORGAN HILL, a municipal corporation ("**City**"), in favor of _____ ("**Developer**"), as of the date set forth below.

*RECITALS*

A. City and Developer are parties to that certain Disposition and Development Agreement dated as of _____ __, 2015 ("**Agreement**") concerning in part an approximately 0 –acre site located in the City of Morgan Hill, County of Santa Clara, California. This Final Certificate of Completion affects all of the approximately 0.42-acre site as more particularly described in Attachment A attached hereto and incorporated herein (the "**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Agreement.

B. Pursuant to Section 5.4 of the Agreement, and Grant Deeds dated _____20__ and _____20__, respectively, and recorded in the Official Records of Santa Clara County on _____20__ and _____20__ at Document Nos. _____ and _____,, respectively (**"Grant Deeds"**), following certain specified Developer defaults and satisfaction of certain other conditions, City had the right to repurchase, reenter and repossess the Property.

C. Pursuant to Section 3.9 of the Agreement, City is required to furnish Developer or its successors, in form suitable for recordation, a Final Certificate of Completion upon (i) issuance of certificates of occupancy for each of the Phase I and Phase 2 portions of the Project and (ii) at least 50% of the gross rentable space for each of the Phase 1 and Phase 2 portions of the Project, being occupied by a commercial tenant under a customary commercial lease, and therefore terminate the City right to repurchase, reenter and repossess the Property.

D. The City has determined that the conditions in Recital C have occurred as required by the Agreement.

NOW, THEREFORE, the City hereby certifies as follows:

1. Certificates of occupancy for the Phase I and Phase 2 portions of the Project have been issued, and (ii) at least 50% of the gross rentable space for each of the Phase 1 and Phase 2 portions of the Project is occupied by a commercial tenant under a customary commercial lease. Therefore, the City's right to repurchase, reenter and repossess the Property pursuant to Section 5.4 of the Agreement and the Grant Deed is terminated.

2. All indemnity covenants contained in the Agreement that are applicable to the Property shall remain in effect and enforceable in accordance with the Agreement.

3. Any party now owning or hereafter purchasing, leasing or otherwise acquiring any interest in the Property, or applicable part thereof, shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the Agreement with respect to the Property. Except for those obligations under the Agreement that expressly survive the expiration or earlier termination of the Agreement, neither the City nor any of its successors or assigns shall have any rights, remedies or controls with respect to the Property (or any portion thereof) that it would otherwise have or be entitled to exercise under the Agreement as a result of a default in or breach of any provision of the Agreement pertaining to the Property, or applicable portion thereof, and the respective rights and obligations of the City and its successors and assigns with reference to the Property, or applicable portion thereof, shall be, as applicable, as set forth in any other documents to be recorded against the Property, or applicable portion thereof, pursuant to the Agreement. The preceding to the contrary notwithstanding, the issuance of this Final Certificate of Completion shall not constitute a waiver or release of any Claims based upon a breach of any representation or warranty set forth in Section 1.2.1 or Section 1.2.2 of the Agreement to the extent a Claim for breach of such representation or warranty has been asserted in writing by the claiming party against the breaching party within the 12-month survival period of such representations and warranties as provided in the Agreement.

4. This Final Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with, or satisfaction of, any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to Developer in connection with the Project or any portion thereof. This Final Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

5. Nothing contained in this instrument shall be deemed or construed to modify any provisions of the Agreement or any other document executed in connection therewith.

6. This Final Certificate of Completion may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument.

IN WITNESS WHEREOF, City has executed and issued this Final Certificate of Completion as of the date set forth below.

**CITY:**

CITY OF MORGAN HILL, a municipal corporation

Dated: _____, 20__

By: FORM – DO NOT SIGN

Name: _____

Title: _____

EXHIBIT D-3

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF _____ )

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT A TO CERTIFICATE OF COMPLETION

**PROPERTY**

*[to be inserted]*

Exhibit D-2

**FORM OF PARTIAL CERTIFICATE OF COMPLETION**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
Attention: _____

*Space above this line for recorder's use*

**PARTIAL CERTIFICATE OF COMPLETION**

THIS PARTIAL CERTIFICATE OF COMPLETION ("**Partial Certificate of Completion**") is made by the CITY OF MORGAN HILL, a municipal corporation ("**City**"), in favor of _____ ("**Developer**"), as of the date set forth below.

*RECITALS*

A. City and Developer are parties to that certain Disposition and Development Agreement dated as of _____ __, 2015 ("**Agreement**") concerning in part an approximately 0.42 –acre site located in the City of Morgan Hill, County of Santa Clara, California. This Partial Certificate of Completion affects a portion of the approximately 0.42-acre site as more particularly described in Attachment A attached hereto and incorporated herein (the "**Property**"). The portion of the Project which was performed on the Property is referred to as [**"Phase 1"]["Phase 2"**]. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Agreement.

B. Pursuant to Section 5.4 of the Agreement, and a Grant Deed, dated _____, 20__ and recorded in the Official Records of Santa Clara County on _____20__ at Document No. _____ (**"Grant Deed"**), following certain specified Developer defaults and satisfaction of certain other conditions, City had the right to repurchase, reenter and repossess the Property.

C. Pursuant to Section 3.9 of the Agreement, City is required to furnish Developer or its successors, in form suitable for recordation, a Partial Certificate of Completion upon (i) issuance of a certificate of occupancy for the Phase I portion or Phase 2 portion, as the case may be, of the Project and (ii) at least 50% of the gross rentable space for the Phase 1 portion or Phase 2 portion, as applicable, being occupied by a commercial tenant under a customary commercial lease for the Phase I portion or Phase 2 portion, as the case may be, of the Project, and therefore terminate the City right to repurchase, reenter and repossess the Property.

D. The City has determined that the conditions in Recital C have occurred as required by the Agreement.

NOW, THEREFORE, the City hereby certifies as follows:

1. [A certificate of occupancy for the [Phase I][Phase 2] portion of the Project has been issued, and (ii) at least 50% of the gross rentable space for the [Phase 1][Phase 2] portion of the Project is occupied by a commercial tenant under a customary commercial lease. Therefore, the City's right to repurchase, reenter and repossess the Property pursuant to Section 5.4 of the Agreement and the Grant Deed is terminated as to the [Phase 1[ [Phase 2] portion of the Property.

2. All indemnity covenants contained in the Agreement that are applicable to the Property shall remain in effect and enforceable in accordance with the Agreement.

3. Any party now owning or hereafter purchasing, leasing or otherwise acquiring any interest in the Property covered by this Partial Certification of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the Agreement with respect to such applicable Phase of the Project to which this Partial Certification of Completion applies. Except for those obligations under the Agreement that expressly survive the expiration or earlier termination of the Agreement, neither the City nor any of its successors or assigns shall have any rights, remedies or controls with respect to the Phase of the Project to which this Partial Certificate of Completion applies that it would otherwise have or be entitled to exercise under the Agreement as a result of a default in or breach of any provision of the Agreement pertaining to such Phase of the Project to which this Partial Certification of Completion applies, and the respective rights and obligations of the City and its successors and assigns with reference to the Phase of the Project to which this Partial Certificate of Completion (or portion thereof) shall be, as applicable, as set forth in the other documents recorded against the Property, or applicable portion thereof, pursuant to the Agreement. The preceding to the contrary notwithstanding, the issuance of this Partial Certificate of Completion shall not constitute a waiver or release of any Claims based upon a breach of any representation or warranty set forth in Section 1.2.1 or Section 1.2.2 to the extent a Claim for breach of such representation or warranty has been asserted in writing by the claiming party against the breaching party within the 12-month survival period of such representations and warranties set forth in the Agreement.

4. This Partial Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with, or satisfaction of, any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to Developer in connection with the Project or any portion thereof. This Partial Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

5. Nothing contained in this instrument shall be deemed or construed to modify any provisions of the Agreement or any other document executed in connection therewith.

6. This Partial Certificate of Completion may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument.

IN WITNESS WHEREOF, City has executed and issued this [Partial] [Final] Certificate of Completion as of the date set forth below.

**CITY:**

CITY OF MORGAN HILL, a municipal corporation

Dated: _____, 20__

By: FORM – DO NOT SIGN

Name: _____

Title: _____

EXHIBIT D-3

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF _____ )

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT A TO PARTIAL CERTIFICATE OF COMPLETION

**PROPERTY *[Phase 1 or Phase 2 as applicable for Partial Certificate of Completion]***

*[to be inserted]*

EXHIBIT E

EASEMENT AGREEMENT