AMENDED AND RESTATED

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF SAN JOSE,

City,

and

MUSEUM PLACE OWNER LLC.,

Developer

ATTACHMENTS

1	Site Map
2	Legal Description
3	Scope of Development
4	Schedule of Performance
5	Form of Grant Deed (Tech Expansion Space)
6	Form of Declaration
7	Form of Parking Agreement
8	Form of Completion Guarantee
9	Form of DDA Memorandum
10	Form of Grant Deed (Site)
11A and B	Pro Forma Title Policies for Site and Tech Expansion Space Parcel
12	Insurance Requirements
13	Form of Certificate of Compliance (Phase)
14	Form of Certificate of Compliance (Final)
15	Project Budget
16	Schedule of City Fees

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into this _____ day of _____, 2019 ("Effective Date"), by and between THE CITY OF SAN JOSE, a municipal corporation ("City") and MUSEUM PLACE OWNER LLC, a California limited liability company ("Developer"). Throughout this Agreement, the City and Developer are oftentimes referred to collectively as the "Parties" and individually as a "Party."

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

I. [§ 100] SUBJECT OF AGREEMENT.

A. [§ 101] Purpose of the Agreement.

On August 22, 2017, the City and INSIGHT KING WAH, LLC ("Insight") entered into that certain Disposition and Development Agreement ("Original DDA") for the disposition and development of certain real property hereinafter referred to as the "Site" and further defined in Section 102 below. Thereafter, Developer acquired all membership interests in Insight. Contemporaneously with that acquisition, Insight and Developer sought the City's consent to assignment of Insight's interest in the Original DDA to Developer. The City granted its consent to such assignment on June 26, 2018. Such assignment has been completed and Developer has assumed all obligations and liabilities of Insight under the Original DDA upon and pursuant to the terms and conditions set forth in the Assignment and Assumption Agreement entered into as of April 27, 2018.

The Parties now desire to amend and restate the Original DDA in its entirety. From and after mutual execution of this Agreement, this Agreement shall supersede the Original DDA in its entirety and the Original DDA shall be of no further force and effect. The purpose of this Agreement is to provide for the disposition and development of the Site in the manner set forth in this Agreement, and to provide for the fulfillment generally of this Agreement, both of which are in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws, regulations, rules and other requirements of any governmental authority (hereinafter, referred to as "applicable law"). This Agreement is designed to achieve the development of the Site by the City and the Developer in a coordinated and comprehensive manner. The Developer will undertake the development of the Site; subject to the terms and conditions as more fully set forth in this Agreement.

The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things: (1) the Developer's undertaking to provide the capital funds necessary to develop the Site and to accomplish the specific development obligations set forth in this Agreement (including all of its Attachments) within the times and in the manner and for the uses set forth in this Agreement; and (2) the City's undertaking to dispose of the Site to Developer and to meet its other specific obligations as set forth in the Agreement.

B. [§ 102] The Site.

The "Site" is that certain real property which is shown on the "Site Map" which is Attachment No. 1 to this Agreement and is legally described in Attachment No. 2 to this Agreement. The Site is located on the block bounded by Park Avenue, South Market Street, West San Carlos Street and South Almaden Boulevard in San Jose. A portion of the Site is also currently the home of Parkside Hall, an approximately 42,550 square foot building located directly adjacent to the Tech Museum of Innovation facility ("The Tech"). The Tech is owned by the City and operated by The Tech Interactive, a California nonprofit public benefit corporation ("TMI") pursuant to a lease with the City ("Tech Lease"). TMI also has a leasehold interest in Parkside Hall. The City is presently the owner in fee of the entire Site.

C. [§ 103] The Project.

Subject to the provisions of this Agreement, Developer shall design, develop and construct on the Site a mixed-use development comprised of a high rise structure containing: (a) approximately 928,116 square feet of office space ("Office Space"); (b) approximately 8,409 square feet of retail space ("Retail Space"); (c) approximately 60,475 square feet of exhibition, office and retail space in a warm shell condition ("Tech Expansion Space") (provided that such square footage may be adjusted based upon final design considerations for such space, but if such adjustment would constitute a Material Amendment (as defined in Section 802), such adjustment shall require the prior written consent of TMI, not to be unreasonably withheld, conditioned or delayed); (d) a parking garage that will provide a minimum of 400 vehicle parking spaces ("Project Garage"), together with additional on-site and/or off-site parking as necessary to fulfill all applicable City requirements; and (e) all other necessary on-site and off-site improvements. The foregoing mixed-use development is hereinafter collectively referred to as the "Project" and is more fully described in the "Scope of Development" attached hereto as Attachment No. 3. Development of the Project shall occur in accordance with this Agreement, including the "Schedule of Performance," attached hereto as Attachment No. 4.

The parties acknowledge that the exact scope, size and other aspects of the Project, including the allocation of square footage for the various uses proposed by the Project, are subject to Developer's receipt of any and all required City entitlements and permits. The parties agree that, notwithstanding the preceding provisions of this Section 103 to the contrary, Developer shall have the right, at any time and without the necessity for further review or approval by the City pursuant to this Agreement, to reallocate, as between any of the Retail Space, Office Space and/or the Project Garage, up to fifteen percent (15%) of the square footage then allocated to such use(s), provided such reallocation does not include any modification to building floor plates within the Project and provided further that any such reallocation does not adversely affect City rights under this DDA with respect to the Tech Expansion Space or the Parking Garage or require any further review by the City acting in its regulatory capacity under any Permits (as defined below) for the Project or under the City's Municipal Code (the "City Municipal Code").

The parties further acknowledge that, within the time period set forth in the Schedule of Performance, Developer shall convey to the City by grant deed in the form attached hereto as Attachment No. 5, Grant Deed (Tech Expansion Space), fee simple title to the Tech

Expansion Space by means of an airspace parcel encompassing the Tech Expansion Space, unless otherwise approved by the City Manager ("Tech Expansion Space Parcel"). It is understood the Tech Expansion Space Parcel shall not include any right, title or interest in or to the ground beneath the Tech Expansion Space Parcel or the air above the Tech Expansion Space Parcel, but shall include easements appurtenant to the Tech Expansion Space Parcel created by the Declaration (as defined in Section 205), which Tech Expansion Space Parcel shall otherwise be in form and content reasonably acceptable to the City. The Grant Deed (Tech Expansion Space) shall contain a right of first refusal for the owner of the Project Office Space to acquire the Tech Expansion Space Parcel from the City if the City elects to sell the Tech Expansion Space Parcel in a transaction in which, simultaneously and in the same transaction, all of its right, title and interest in and to the real property which is subject to the Tech Lease is not simultaneously transferred to the same party; provided, however, that such acquisition shall be subject to the Tech Lease if the Tech Lease is in effect on the date of such acquisition. The City and the Developer acknowledge that the Developer intends to develop and operate the Project as a class A mixed-use office project with ancillary commercial uses, and the City and the Developer each intend that uses of the Tech Expansion Space and other areas of the Project should be consistent with the operation of the Project as a class A mixed-use office project with ancillary commercial uses. Concurrently with recordation of the Grant Deed (Tech Expansion Space), the parties shall also record the Declaration, as defined and provided below, which shall provide all necessary easements and rights for (i) the use and occupancy of the Tech Expansion Space within the Project by the City and TMI and (ii) the use and occupancy of the remainder of the Project by the Developer (collectively, "Tech Expansion Easements"), and shall include provisions governing permitted uses within the Project.

D. [§ 104] Parties to the Agreement.

1. [§ 105] The City.

The City is a municipal corporation of the State of California. The principal office of the City is located at 200 East Santa Clara Street, San José, California 95113-1905.

2. [§ 106] The Developer.

The Developer is Museum Place Owner LLC, a Delaware limited liability company. As of the date of this Agreement, the principal office of the Developer is 260 Homer Avenue, Ste. 201 Palo Alto, CA 94303. The Developer may, from time to time upon written notice by the Developer to the City, change its principal office for purposes of this Agreement.

3. [§ 107] Prohibition on Change in Control of Developer.

The Developer agrees and acknowledges that:

(a) the Project is important to the general welfare of the community; and

(b) the qualifications and identity of Developer and its controlling parties are of particular concern to the community and the City.

The Developer further recognizes that it is because of those qualifications and identity that the City is entering into this Agreement with the Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Except as provided in Section 313, the Developer represents and agrees that, prior to the issuance of a Final Certificate of Compliance (defined in Section 314 below), the Developer shall not assign (or permit assignment of) all or any part of this Agreement (whether directly or indirectly) without the prior written approval of the City, which approval shall be provided or withheld at the City's sole and absolute discretion.

E. [§ 108] Material Obligations.

1. For purposes of this Agreement, "Developer's Material Obligations" shall mean the Developer's obligation to perform, within the time specified in the Schedule of Performance and upon satisfaction of any conditions precedent to any such acts, the following acts:

(a) to prepare and submit to the City for its review and approval the VTMap and Final Map (as defined in Section 109 below), to cooperate in processing the VTMap and Final Map as set forth in Section 109 below, and to perform all Map Obligations (as defined in Section 109 below);

(b) to accept conveyance of the Site in the condition described herein;

(c) to diligently pursue all Permits (defined in Section 307 below) required for development and construction of the Project;

(d) to submit the Phase I Completion Guaranty (as defined in Section 114 below), the Phase II Completion Guaranty (as defined in Section 114 below), the Financing Commitment (as defined in Section 402 below) and the Construction Contract (as defined in Section 402 below);

(e) to commence and complete construction of the Project;

(f) to execute and record the Declaration (as defined in Section 205 below), which shall include the Tech Expansion Easements, so that the Project will be operated and maintained in a manner that is satisfactory to the City;

(g) to perform all of Developer's indemnity obligations under this Agreement;

(h) to create the Tech Expansion Space Parcel encompassing the Tech Expansion Space (as described in Section 103);

(i) to execute and deliver for recordation the Grant Deed (Tech Expansion Space), for recordation by Title Company (as described below);

(j) to execute and record the Parking Agreement (in substantially the same form as shown in Attachment 7); and

(k) to timely perform or cause to be performed all of Developer's other material obligations under this Agreement.

2. For purposes of this Agreement, "City's Material Obligations" shall mean the City's obligation to perform, within the time specified in the Schedule of Performance and upon satisfaction of any conditions precedent to any such acts, the following acts:

(a) to cooperate and process the VTMap and Final Map, and record the Final Map as set forth in Section 109 below;

(b) to comply and cooperate with Developer pursuant to Sections 117, 118 and 308(3);

(c) to convey the Site to the Developer;

(d) to diligently and timely review and approve or reasonably disapprove pursuant to the terms of this Agreement matters or items submitted by Developer for approval under this Agreement;

(e) to execute and record those documents to be executed by City under this Agreement;

(f) to issue Certificates of Compliance when required under Section 314; and

(g) to timely perform or cause to be performed all of City's other material obligations under this Agreement.

3. It is expressly understood and acknowledged by the Parties hereto that any obligation of the Developer or the City referred to in this Agreement shall be subject to the satisfaction of any expressed contractual conditions precedent to such performance and shall be subject to such time requirements as may be associated therewith.

4. It is expressly understood and acknowledged by the Parties hereto that time is of the essence with respect to the performance of the Developer's and City's obligations under this Agreement and the Developer and the City shall comply with the time requirements set forth in the Schedule of Performance. Notwithstanding the foregoing, the time periods set forth in the Schedule of Performance, including the Developer's obligation to acquire the Site, may be extended for (i) any period of enforced delay as described in Section 705 below, or (ii) upon the written consent of the Developer and the City Manager, which consent shall be within the discretion of the City Manager for two (2) periods not to exceed one (1) year each.

F. [§ 109] VTMap.

Developer acknowledges that the Site will be created from various parcels and interests. Developer and the City acknowledge that Developer is presently processing Vesting Tentative Map Application/File No. T19-010 (hereinafter "VTMap") to effectuate the Project described in Section 103 of this Agreement. Within the time periods set forth in the Schedule of Performance, the City shall, provided that Developer has complied with all requirements for issuance VTMap, approve the VTMap. Within the time periods set forth in the Schedule of Performance, Developer shall process applications for one or more final maps (collectively, the "Final Map"), the purpose of which shall be to effectuate the Project described in Section 103 of this Agreement. Presently, it is contemplated that there will be two (2) such Final Maps required, the first serving to create a separate legal parcel of the Site so that it may be conveyed by City to Developer as provided in this Agreement, and the second serving to create a separate legal parcel of the Tech Expansion Space Parcel so that it may be conveyed by Developer to City as provided in this Agreement. City shall, provided that Developer has complied with all requirements for issuance of the Final Map, approve the Final Map, and the Final Map shall be recorded by the City (or the Developer, as may be the case) in the Office of the Santa Clara County Recorder.

The City shall be obligated to cooperate in connection with the processing and approval of the VTMap and Final Map, and the recording of the Final Map; provided, however, that if the VTMap would otherwise expire prior to the Close of Escrow, the City shall either record VTMap or grant an extension of the life of the VTMap in order to avoid such expiration. However, the processing of the VTMap and the preparation and recording of the Final Map shall be at the Developer's sole cost and expense, and all subdivision agreements, bonds and other obligations associated with the recordation of the Final Map (collectively, "Map Obligations") shall be the sole responsibility of Developer.

Notwithstanding anything to the contrary in this Section, and without limiting the generality of Section 803, below, the City does not hereby obligate itself to undertake any action (or to take any particular action) which is otherwise within its discretion as a regulatory body with respect to the processing or approval of the VTMap or Final Map, and all approval of elements of the VTMap or Final Maps which affect property rights of the City are reserved to the City in its sole discretion.

G. [§ 110] Parking Agreement, Easements and Operating Covenants.

Concurrent with the transfer of the Tech Expansion Space, and as a condition to issuance of the Final Certificate of Compliance, City and Developer shall execute, and Developer shall record a Parking Agreement in substantially the form attached hereto as Attachment No. 7 ("Parking Agreement"), which Parking Agreement shall have priority over any and all previously and subsequently recorded mortgages, liens and encumbrances. This Parking Agreement shall provide for the use of certain vehicle parking spaces by members of the general public, the City and/or the City's designee during certain time periods as more particularly described in Attachment No. 7.

H. [§ 111] Intentionally Omitted.

I. [§ 112] Intentionally Omitted.

J. [§ 113] Public Art

Developer shall allocate and spend Two Hundred Fifty Thousand Dollars ($250,000) or, at the Developer's option in its sole and absolute discretion, more than Two Hundred Fifty Thousand Dollars ($250,000), for public art within the Project ("Public Art"). Public Art may be incorporated into the overall design of the Project but shall be visible to the general public from the exterior of the Project or may be within the interior of the Project provided that it is accessible to the general public. The Public Art shall consist of high quality materials and be aesthetically pleasing consistent with similar first class projects in major cities throughout the United States. The Public Art shall be acceptable to the City's Office of Cultural Affairs ("OCA") and shall include the consideration of artwork and design elements incorporated into the Project. Not later than the application for a building permit for the Phase II Work for the Project, the Developer shall provide plans or a design for the Public Art for the Project ("Public Art Submittal") to OCA for its review and approval. OCA shall, within thirty (30) days after receipt of Developer's Public Art Submittal, respond to the Developer's Public Art Submittal. If OCA disapproves the Developer's Public Art Submittal or parts thereof, OCA shall provide specific reasons for such disapproval, together with suggestions for changes which OCA would approve.

Additionally, Developer is solely responsible for fulfilling obligations relating to the existing artwork entitled, and referred to hereinafter, "Civic Stage Set" as set forth in the Artist Agreement. The Civic Stage Set is currently located at the Site, situated at the north end of the property along the south side of Park Avenue. Developer shall bear any and all costs associated with the obligations of the Civic Stage Set which includes, but is not limited to: (i) paying the artist to purchase their rights under the Visual Artist's Rights Act (VARA) and the California Art Preservation Act (CAPA) as per the City's fifth amendment to the artist agreement; (ii) engineer and build a new foundation for the artwork at the Children's Discovery Museum; and (iii) de-install the Civic Stage Set from its current location at the Site, transport and re-install the art on the new foundation located at the Children's Discovery Museum; (iv) restore surface paint of artwork per the direction of the City.

K. [§ 114] Project Guarantees and Capacity to Complete

(a) Upon, and as a condition to, the Close of Escrow, Developer shall provide (i) a completion guarantee for the Phase I Off-Site Utility Work (as defined in the Scope of Development) ("Phase I Completion Guarantee") in substantially the form acceptable to Developer's construction lender for the Phase I Off-Site Utility Work, with only changes necessary such that the Phase I Completion Guarantee is in favor of City and otherwise conforms to the terms of this Agreement, provided however, in all events there shall be one or more Phase I Completion Guaranties by one or more completion guarantors in favor of the City from the same guarantors that are providing completion guarantees for the Phase I Off-Site Utility Work in favor of Developer's construction lender, which guarantors shall, collectively, satisfy or exceed the minimum net worth, liquidity, and other criteria required by Developer's construction

lender, and (ii) an Additional Security Letter of Credit (as hereinafter defined) as additional security for the payment and or performance by the guarantor of its obligations under the Phase I Completion Guarantee in the amount of $5,000,000. The Additional Security Letter of Credit shall remain as security for the Phase I Completion Guarantee until issuance of a Certificate of Compliance for the Phase I Off-Site Utility Work. The Phase I Completion Guarantee will only be in effect until the Phase I Off-Site Utility Work is completed in accordance with this Agreement. Developer, in lieu of providing the Phase I Completion Guarantee, may elect in its discretion to post a completion bond by a bonding company reasonably satisfactory to the City, rated not less than AA+:XV in the latest Best's Insurance Guide and in form reasonably satisfactory to the City.

(b) As a condition to the demolition of the existing improvements on the Site, Developer shall provide (i) a completion guarantee for the Phase II Work (as defined in the Scope of Development) ("Phase II Completion Guarantee") in substantially the form acceptable to Developer's construction lender for the Phase II Work, with only changes necessary such that the Phase II Completion Guarantee is in favor of City and otherwise conforms to the terms of this Agreement, provided however, in all events there shall be one or more Phase II Completion Guaranties by one or more completion guarantors in favor of the City from the same guarantors that are providing completion guarantees for the Phase II Work in favor of Developer's construction lender (collectively, the "Phase II Guarantor"), which guarantors shall, collectively, satisfy or exceed the minimum net worth, liquidity, and other criteria required by Developer's construction lender, and (ii) an Additional Security Letter of Credit (as hereinafter defined) as additional security for the payment and or performance by the guarantor of its obligations under the Phase II Completion Guarantee in the amount of $20,000,000, of which $5,000,000 may be a rollover of the collateral for the Phase I Completion Guarantee described in Section 114(a). The Additional Security Letter of Credit shall remain as security for the Phase II Completion Guarantee until issuance of a Certificate of Compliance for the Project. The Phase II Completion Guarantee will only be in effect if and when a construction loan for the Phase II Work is in place. Developer, in lieu of providing the Phase II Completion Guarantee, may elect in its discretion to post a completion bond by a bonding company reasonably satisfactory to the City, rated not less than AA+:XV in the latest Best's Insurance Guide and in form reasonably satisfactory to the City.

(c) On or prior to [June 30, 2020], Developer shall provide the following to the City to evidence its capacity to complete the Project: (i) organizational chart showing the entity that Developer anticipates serving as the Phase II Guarantor and all persons or entities that either (x) control the management and policies of Developer or (y) own 25% or more of the direct or indirect ownership interests in Developer; (ii) anticipated sources of capital (including debt and equity) for Developer to complete the Project; (iii) a description of the development experience of the anticipated Phase II Guarantor and/or any development affiliate thereof; and (iv) a certificate executed by an officer of the anticipated Phase II Guarantor setting forth the anticipated liquid assets of the anticipated Phase II Guarantor as of the date that the Phase II Completion Guarantee shall be delivered.

(d) As used herein, the following term shall have the meaning set forth below:

The term "Additional Security Letter of Credit" shall mean an irrevocable standby letter with drawdown based solely on City's written demand and otherwise in a form acceptable to the City in its sole and absolute discretion, from a financial institution acceptable to Developer and City for the benefit of City to secure the Phase I Guarantee or the Phase II Guarantee, as the case may be.

L. [§ 115] Memorandum of DDA.

Within ten (10) days of the Effective Date, the Parties shall execute and record a Memorandum of DDA ("DDA Memorandum") in the form attached hereto as Attachment No. 9, which shall provide notice of the conditions, covenants and restrictions of this Agreement which shall run with the Site and shall be binding on Developer, its successors and assigns as set forth in Section 502. The DDA Memorandum will automatically terminate on the later to occur of (i) the Section 306(a) Termination Date, and (ii) the 306(b) Termination Date; whereupon the City will, on Developer's request, confirm such termination and execute and deliver a release of the DDA Memorandum in recordable form.

M. [§ 116] Labor Peace.

As a condition to approval of this Agreement by the City, Developer has provided assurances to the City that Developer will take reasonable to steps to minimize or avoid any labor disputes or unrest which might occur during the construction of the Project, specifically in the form of the Amended and Restated Project Labor Agreement for the Museum Place Project entered into between Developer and the Santa Clara & San Benito Counties Building and Construction Trades Council acting on its own behalf and on behalf of its respective affiliates and member organizations whose names are subscribed to such Agreement ("Labor Peace Assurances"). Developer shall comply with any obligations entered into by the Developer to obtain the Labor Peace Assurances to City and shall use good faith efforts to maintain the Labor Peace Assurances.

N. [§ 117] Convention Center Facilities District.

The Site (exclusive of the Tech Expansion Space Parcel) shall be annexed into the Convention Center Facilities District No. 2008-1, which was established to finance capital improvements to the San Jose Convention Center. Concurrently with application for a building permit for the Phase II Work for the Project, Developer shall commence the annexation process, which shall be completed prior to the issuance of a Final Certificate of Compliance. The City shall cooperate with Developer to effectuate the annexation in a timely manner, and, Developer shall not be in default hereunder for any inability to effectuate the annexation due to any action or inaction by the City. After annexation into the Facilities District, the Site (exclusive of the Tech Expansion Space Parcel) shall, among other things, be subject to the special taxes imposed by the Facilities District.

O. [§ 118] Tech Lease Amendment.

Developer acknowledges that TMI currently has certain rights affecting the Site pursuant to the Tech Lease. On or before the Effective Date, the City and TMI shall have entered into an amendment and restatement of the Tech Lease, which supersedes the Tech Lease and relinquishes TMI's rights so as to allow for the Project and provide for TMI's use thereunder of the Tech Expansion Space in a manner that does not conflict with the use of the balance of the Project, together with the right to use certain parking spaces made available to it by Developer ("Tech Lease Amendment"). The Developer has received a copy of the Tech Lease Amendment and is satisfied with the terms thereof; provided, however, that the Developer shall not have any rights or obligations under or with respect to the Tech Lease, the Tech Lease Amendment or any further amendment thereof and neither will the Tech Lease, the Tech Lease Amendment nor any further amendment thereof be deemed to modify the obligations of the City or the Developer (including any successor thereto) to each other pursuant to this Agreement. The City shall not make any amendment to the Tech Lease Amendment which would adversely affect the Project or Developer's rights or obligations under this Agreement, the Parking Agreement, or the Declaration without the prior written consent of Developer, not to be unreasonably withheld, conditioned or delayed. Any amendment to the Tech Lease Amendment which is entered into in violation of the preceding sentence without the prior written consent of the Developer (not to be unreasonably withheld, conditioned or delayed) shall not be binding upon Developer and shall not effect Developer's obligations under this Agreement, the Parking Agreement, or the Declaration. In furtherance of this Section 118, the Developer, the City and TMI agree to negotiate in good faith and execute and deliver further documents and instruments reasonably requested by each other to evidence TMI's relinquishment of rights as aforesaid and otherwise to more clearly evidence and carry out the express provisions and intent of this section. Each party will bear their own expense in connection with their respective compliance with this section.

P. [§ 119] Use Tax Requirements.

In any construction contract entered into by Developer for the construction of the improvements in the Project, Developer shall include a provision substantially as follows:

> "Prior to making any purchase of materials, machinery, tools, fixtures, or equipment in excess of Five Million Dollars ($5,000,000), the general contractor (or subcontractor, as applicable) shall obtain a sub-permit of its seller's permit designating the Site (insert address) as the jobsite using the State of California Board of Equalization form BOE-530 (Schedule C – Detailed Allocation by Sub outlet of Combined State and Uniform Local Sales and Use Tax)."

Q. [§ 120] Employment Program.

Developer agrees to make a good faith effort and encourage parties with whom Developer contracts with in connection with the Retail Space and the Office Space, to participate in work2future, a federally-funded workforce program administered by the City. The mission of work2future is to connect employers with qualified job seekers. In no event shall Developer or any party with whom it contracts be obligated to hire employees from the work2future program or use it as an exclusive source of employee prospects.

R. [§ 121] Deposit.

As of the date of this Agreement, Developer has delivered to the Escrow Agent (defined in Section 202A) a deposit in the amount of One Million Dollars ($1,000,000) (the "Deposit"). Escrow Agent shall hold the Deposit in an interest-bearing account and such interest shall become part of the Deposit.

Upon the Close of Escrow as defined below, the Deposit (together with interest accrued thereon) shall be released to Developer. If, prior to the Close of Escrow, this Agreement is terminated by the City pursuant to Section 606B below as a result of a breach or default by Developer, the Deposit (together with interest accrued thereon) shall be delivered to the City as liquidated damages. If, prior to the Close of Escrow, this Agreement is terminated by Developer pursuant to Section 606A below, the Deposit (together with interest accrued thereon) shall be returned to Developer.

S. [§ 122] Formation of Community Facilities District.

City acknowledges that Developer may, at its election, petition the City to form a Community Facilities District ("CFD") under the City of San Jose Community Facilities District Financing Procedure as set forth in Sections 53311 et seq. of the California Government Code (the "CFD Act") and Chapter 14.27 of the City Municipal Code (collectively, the "CFD-Related Law") to finance the City's acquisition of certain public facilities, including the Tech Expansion Space, but which CFD shall exclude the Tech Expansion Space Parcel. The Developer has not heretofore so petitioned the City. However, Developer and City entered into an Agreement dated May 1, 2017 ("Reimbursement Agreement") to investigate the feasibility of forming a CFD for the purpose of issuing special tax bonds ("Bonds") under the CFD-Related Law to reimburse Developer for the costs of construction of the Tech Expansion Space and other eligible improvements, including off-site improvements and other eligible costs paid by Developer, estimated as of the Effective Date to total in excess of $34,000,000. As of the date of this Agreement, Developer has delivered to the City the Initial Deposit of Sixty Thousand Dollars ($60,000) as required under the Reimbursement Agreement. If, following the completion of the feasibility studies and analysis conducted pursuant to the Reimbursement Agreement, and any legal review and analysis deemed necessary or advisable by City (including consideration of a rate and method of apportionment of special tax providing for annual increases in the special tax rates in an amount not to exceed two percent (2%) per year), the City Manager determines that forming a CFD and issuing Bonds to fund the costs described above is feasible and legally permissible, and the Developer elects to petition the City to form a CFD, the City Manager will bring forward for consideration by the City Council the required actions in accordance with the CFD-Related Law, provided that the precise timing for bringing the required actions before the City Council for its consideration shall be at the discretion of City Manager. Developer acknowledges and agrees that the decisions to form a CFD and to issue Bonds are each within the sole and absolute discretion of the City Council and subject to applicable law, including without limitation, the CFD-Related Law.

T. [§ 123] Loading Dock Easement.

Pursuant to the VTMap and Final Map, an easement will be established by reservation in the deed conveying Parcel 1 (as shown on the VTMap) to Developer for the benefit of Parcels 2 and 3 as shown on and defined in the VTMap and described as "Proposed Ingress/Egress, Access and Truck Loading Area for the Benefit of Parcels 2 & 3." Developer and the City agree to negotiate in good faith restrictions and rules with the goal of assuring fair and equitable use of the area encumbered by such easement by the Developer, the City and the City's permittees with respect to Parcel 3, taking into account their respective needs and land uses. In furtherance thereof, such rules and regulations will establish procedures for prior notification, communication and coordination of their respective uses so as to permit the City, its permittees with respect to Parcel 3 and the Developer reasonable use of their respective loading docks.

II. [§ 200] CONVEYANCE OF THE SITE AND TECH EXPANSION SPACE.

A. [§ 201] Transfer of Site to Developer.

In consideration of, and subject to, Developer's obligations under this Agreement, including Developer's Material Obligations set forth in Section 108 above and subject to the terms and conditions set forth in this Agreement, the City agrees to transfer the Site to Developer at no purchase price to Developer and Developer agrees to accept the Site from the City within the time period set forth in the Schedule of Performance.

B. [§ 202] Escrow.

1. [§ 202A] Opening of Escrow.

The City and Developer agree to open an escrow ("Escrow") at First American Title Insurance Company (the "Escrow Agent") located in San Jose, California. This Agreement constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. The City and the Developer shall provide such additional escrow instructions as each such party shall deem necessary, which additional instructions shall be consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section in writing, delivered to the City and the Developer within five (5) days after the opening of the Escrow, shall carry out its duties as Escrow Agent hereunder.

Any amendment of these escrow instructions, including any extensions of the time, shall be in writing and signed by both the City and the Developer. Any and all amendments so executed shall be promptly delivered to the Escrow Agent, and Escrow Agent shall act in accordance with such amendment.

All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 701 of this Agreement for notices, demands and communications between the City and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Article II of this Agreement. The foregoing shall not in any way limit the liability of Escrow Agent in its capacity as title insurance company and as issuer of any title insurance policy.

Neither the City nor the Developer shall be liable for any real estate commissions or brokerage fees which may arise from the transfer of the Site under this Agreement. The City and the Developer each represent and warrant that neither has engaged any broker, agent or finder in connection with this transaction. Furthermore, the City and the Developer each shall indemnify, defend and hold the other party harmless from any loss, liability, damage, or expense (including without limitation reasonable attorneys' fees) arising from any claim for a commission or leasing fee arising out of this transaction made by any unidentified broker or other person with whom such party has dealt.

2. [§ 202B] <u>Conditions to Close Escrow</u>.

(a) For City's benefit, prior to Close of Escrow, the following conditions shall be satisfied, or shall have been waived by the City Manager or his designee:

(1) Within the time set forth in the Schedule of Performance, the Developer shall certify in writing to the City that the Developer is ready, willing and able, in accordance with the terms and conditions of this Agreement, to commence the Phase I Off-Site Utility Work and that all conditions precedent to such commencement of which the Developer is aware have been fulfilled. The Developer shall further certify that to the best of the Developer's knowledge, (a) the Developer is not in violation of any order or decree of any court of competent jurisdiction or, any governmental agency having jurisdiction, and (b) there are no pending or threatened judicial or administrative proceedings, which, if determined adversely to the interests of the Developer or its respective members, could materially affect the Developer's ability to construct, develop, operate and maintain the Project as set forth in this Agreement. The Developer's certification shall include evidence reasonably satisfactory to the City that all contracts, commitments and bonds required by this Agreement to be in effect at such time are in full force and effect as of the time of such certification. Further the Developer shall provide evidence reasonably satisfactory to the City that it has satisfied the financing requirements for the Phase I Off-Site Utility Work, as set forth in Section 114, above.

(2) The Final Map creating the Site as a legal parcel shall be recorded in the Office of the Santa Clara County Recorder;

(3) Developer shall have executed the Construction Contract necessary to begin the Phase I Off-Site Utility Work by the date set forth in the Schedule of Performance and shall provide evidence of the same to the City;

(4) Developer shall have satisfied the terms set forth in Section 114, as required as a condition to the Close of Escrow;

(5) Developer shall have obtained all discretionary Permits (as defined in Section 307 below) needed to begin construction of the Phase I Off-Site Utility Work,

and shall have complied with the requirements of the California Environmental Quality Act ("CEQA"), as required, to begin construction of the Phase I Off-Site Utility Work;

(6) Developer shall have satisfied those financial requirements that are conditions precedent to the City's transfer of the Site to Developer as described in Section 402 and shall deposit with Escrow Agent any funds necessary to pay the closing costs described below;

(7) Developer shall have executed and delivered to the Escrow Agent for recording the DDA Memorandum (if not previously recorded pursuant to Section 115); and

(8) Developer shall not be in default of any of Developer's Material Obligations hereunder.

(b) For Developer's benefit, prior to Close of Escrow, the following conditions shall be satisfied, or shall have been waived by the Developer:

(1) City shall have executed and delivered to the Escrow Agent for recording the following Project documents

A. The Grant Deed as described in Section 204; and

B. The DDA Memorandum (if not previously recorded pursuant to Section 115);

(2) Developer shall have obtained all necessary discretionary Permits as defined below as required for the commencement of construction of the Phase I Off-Site Utility Work, and the applicable time periods within which to challenge, either administratively or judicially, such Permits (including related environmental certifications under CEQA or otherwise) shall have expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge (whereupon such discretionary Permits shall be deemed to be "final" hereunder), and the issuance of all permits required for commencement of the Phase I Off-Site Utility Work is subject only to payment of required fees.

(3) The Final Map creating the Site as a legal parcel shall be recorded in the Office of the Santa Clara County Recorder.

(4) City is not in default of any of City's Material Obligations hereunder.

(5) The Title Company (as described below) shall be irrevocably committed to issue to Developer the Title Policy as described in Section 208 upon the Close of Escrow.

(c) Developer shall pay in Escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of

such fees, charges, and costs, but not earlier than ten (10) days prior to the scheduled date for the Close of Escrow:

(1) The Escrow fee;

(2) The premium for the Title Policy to be obtained by Developer as set forth in Section 208 of this Agreement; and

(3) Any state, county or city documentary transfer tax, which shall be based upon a valuation of the Site in the amount of Nineteen Million Three Hundred Thirty Thousand Dollars ($19,330,000).

(d) The City shall not be required to pay for any fees, charges or costs arising out of the Escrow.

(e) All funds received in this Escrow shall be deposited by the Escrow Agent with other Escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the state of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursement shall be made by wire transfer or check of the Escrow Agent. All adjustments shall be made on the basis of a thirty (30) -day month.

3. [§ 202C] Close of Escrow.

Upon satisfaction or waiver of all of the conditions set forth in Section 202B, and no later than the date set forth on the Schedule of Performance for the Close of Escrow as such time may be extended by mutual agreement of the City and Developer (such date, as so extended, herein called the "Closing Date"), the Escrow Agent is authorized to close the Escrow as follows:

(a) Pay and charge the Developer for any fees, charges and costs payable under this Article II. Before such payments are made, the Escrow Agent shall notify the City and the Developer of the fee, charges and costs necessary to close the Escrow;

(b) Record the Grant Deed, the DDA Memorandum and any instruments delivered through this Escrow (collectively, "Recorded Project Documents"), if necessary or proper, in the order and in accordance with the terms and provisions of this Agreement;

(c) Deliver copies of the Recorded Project Documents and other documents to the parties entitled thereto when the conditions of this Escrow have been fulfilled by the City and the Developer; and

(d) Release and pay to the Developer the full amount of the Deposit, together with all interest accrued thereon.

"Close of Escrow" shall mean the date of which the Escrow Agent records the Recorded Project Documents as described herein.

4. [§ 202D] Failure to Close Escrow.

If the Close of Escrow has not occurred by the Closing Date, either party may terminate this Agreement in accordance with Section 606.

C. [§ 203] Conveyance of Title.

Conveyance by the City to Developer of title to the Site shall be completed by the Closing Date. Subject to the provisions of this Agreement, the City and Developer agree to perform all commercially reasonable acts necessary for conveyance of the title for the Site in sufficient time for Escrow to be closed in accordance with the foregoing provisions.

D. [§ 204] Form of Grant Deed.

Within the time period set forth in the Schedule of Performance, the City shall convey to Developer the fee interest in the Site, in the condition of title provided in Section 207, by grant deed in the form attached hereto as Attachment No. 10 ("Grant Deed").

E. [§ 205] Form of Declaration of Covenants and Reciprocal Easement Agreement and Restrictions Affecting Real Property.

Concurrent with the transfer of the Tech Expansion Space and as a condition to the issuance of the Final Certificate of Compliance for the Project, City and Developer shall execute, and Developer shall record, a Declaration of Covenants and Reciprocal Easement Agreement and Restrictions Affecting Real Property in substantially the form attached hereto as Attachment No. 6 (the "Declaration"). For the avoidance of doubt, the Declaration shall be separate and distinct from any "Master" CC&R's that may be prepared and recorded by Developer for the balance of the Project following the Close of Escrow. The Tech Expansion Space shall not be subject to the "Master" CC&R's and the "Master" CC&R's shall not include any obligation upon the Tech Expansion Space.

F. [§ 206] [Intentionally Deleted]

G. [§ 207] Condition of Title to the Site; Obligations regarding Solar.

(1) Condition of Title: Developer agrees that the fee simple title shall be subject to the matters set forth in the pro forma title policy ("Site Pro Forma Title Policy") attached hereto as Attachment 11A. The City has made no representations or warranties, express or implied, with respect to title of the Site except as expressly set forth herein or as set forth in the Grant Deed; provided that City shall be responsible, prior to Close of Escrow, to remove from title to the Site any monetary liens other than those specified in this Section 207 above (excepting any such liens or encumbrances arising from any actions by Developer or agreed to in writing by Developer prior to Close of Escrow).

(2) Obligations re Solar: Developer shall coordinate and have responsibility to cause (1) the termination of (a) that certain Power Purchase Agreement dated March 7, 2008 between Solar Star and TMI and amended October 10, 2008 (collectively the "PPA"), (b) that certain Lease Agreement dated June 17, 2008 between the City and TMI, TMI's estate

thereunder being further subleased by TMI to Solar Star (such Lease and sublease being collectively referred to herein as the "Lease"), and (c) PG&E and Sun Power Interconnect Agreement ("Interconnect Agreement") executed September 30, 2008 (the PPA, the Lease and the Interconnect Agreement are hereinafter collectively referred to as the "Solar Star Agreements"); and (2) the complete removal of the System (as defined in the Lease). Developer shall provide at least fourteen (14) days written notice to the City and TMI of intent to commence removal of the System ("Removal Notice"). Developer may provide the Removal Notice at any time after the issuance by the City of a demolition permit with respect to the improvements on the Site (i.e., Parkside Hall) and satisfaction of any requirements of Solar Star to terminate the PPA, including payment of the Termination Value (as defined in the PPA). Developer shall comply with the PPA related to System removal, shall coordinate the timing of and work to remove the System with TMI, and shall use commercially reasonable efforts to perform the System removal work so as to minimize the disruption to the operation of the Tech. With the consent of TMI and the City (not to be unreasonably withheld, conditioned or delayed), the Developer may abandon in place portions of the System where (i) removal is cost prohibitive and (ii) abandonment in place does not materially and adversely effect the use or operation of the Tech. All costs and expenses to remove the System shall be borne by the Developer, including, but not limited to, the physical removal of all components of the System, the repair of any damage to the Tech caused by such removal (however, the Developer shall not be required to repair any damage to any portion of Parkside Hall which is ultimately going to be demolished), and any buy-out price for solar panel system components and/or termination fee/liquidated damages payable to Solar Star under the Solar Star Agreements which are required by the terms thereof to terminate the same. Notwithstanding the forgoing, the Developer shall not be responsible for any amounts which are payable Solar Star Agreements prior to the Solar Agreements Termination Date or as a result of the City's or TMI's negligence or willful misconduct. The Developer shall bear the cost of preparing any documents (including amendments to or assignments of the Solar Star Agreements) in connection with the removal of the System, but each of the City and TMI shall bear their own costs in connection with their review of any such documents, including the fees and expenses of their legal counsel.

The City and TMI shall, as reasonably requested by Developer, cooperate to facilitate termination of the Solar Star Agreements and the removal of the System (including signing upon the request of the Developer any amendments or assignments prepared pursuant to the last sentence of the preceding paragraph) and to minimize amounts payable by Developer under the Solar Star Agreements; provided that neither the City nor TMI shall be required to incur any liability in doing so, but shall be required to bear their own legal and administrative costs. Title to any purchased system components or associated rights shall accrue to Developer or its designee from and after the Solar Agreements Termination Date to the extent the same would otherwise accrue to TMI or the City as provided in the Solar Star Agreements. Furthermore, if any physical work is required in the electrical distribution panel servicing the Tech as a result of the solar panel removal as contemplated in this subsection, such work and all costs and expenses therefor, too, shall be borne by Developer.

Any costs and/or expenses actually incurred by TMI for which the Developer is required to pay to or reimburse TMI under this Section 207(2) shall be submitted by TMI to the Developer in writing (each an "Expense Reimbursement Submittal") and accompanied by back-up/documentation sufficient to substantiate such costs and/or expenses.

Developer shall pay or reimburse TMI by delivering payment to TMI within not more than thirty (30) days of TMI's delivery of an Expense Reimbursement Submittal to the Developer at its address set forth in Section 701, below.]

In furtherance of this Section 207, the Developer, the City and TMI agree to negotiate in good faith and execute and deliver further documents and instruments reasonably requested by each other to more clearly evidence and carry out the express provisions and intent of this section. Each party will bear their own expense in connection with their respective compliance with this section.

H. [§ 208] Title Insurance.

Concurrently with the recordation of the Grant Deed, First American Title Company ("Title Company") located in San Jose, California shall provide and deliver to the Developer an A.L.T.A. owner's policy of title insurance issued by the Title Company insuring that title in the Site is vested in Developer in the condition required by Section 207, in such form consistent with the Site Pro Forma Title Policy and with such policy limits (which shall be not less than the fair market value of the Site as reasonably determined by Developer) and endorsements and other provisions reasonably required by Developer ("Title Policy"). Notwithstanding the foregoing, nothing herein shall prevent the Developer, at its sole cost, from requesting the Title Company to issue, and the Title Company agreeing to issue, a Title Policy that modifies, deletes or writes over any of the exceptions or other matters indicated in the Site Pro Forma Title Policy. The Title Company shall provide the City with a copy of the Title Policy. In connection with the issuance of the Title Policy, the City shall not be required to provide any affidavits or other assurances to the Title Company except as may be agreed by the City Attorney.

Developer, if it desires any additional title insurance, shall pay for all additional premiums and for any extended coverage or special endorsements.

I. [§ 209] Taxes and Assessments.

Ad valorem taxes and assessments levied, assessed or imposed on the Site for any period prior to the conveyance of the Site to Developer shall be borne by the City. All ad valorem taxes and assessments levied, assessed or imposed on the Site for any period subsequent to the conveyance of the Site to Developer shall be paid by Developer.

J. [§ 210] Failure to Close Escrow.

If neither the City nor the Developer shall have fully performed the acts to be performed in order to close Escrow at the time established in the Schedule of Performance, as may be extended hereunder, or if a condition precedent to a party's obligations to close Escrow shall fail to occur, either party may request the Escrow Agent to notify the other party at the address provided herein that a demand for termination of the Escrow has been received. If the party receiving notification from the Escrow Agent objects to terminating the Escrow within ten (10) days of receipt of the notice, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by both the City and the Developer

or in the absence of such instruction by the order of a court of competent jurisdiction. If no such demands are made or if the parties otherwise so agree, the Escrow shall be closed on or before the Closing Date.

K. [§ 211] Transfer of Tech Expansion Space Parcel.

As a condition to issuance of the Final Certificate of Compliance, and as partial consideration for this Agreement, the Developer shall transfer the Tech Expansion Space Parcel to the City pursuant to the Grant Deed (Tech Expansion Space), together with or subject to, as the case may be, the Tech Expansion Easements, as provided in Section 103.

Concurrently with the recordation of the Grant Deed (Tech Expansion Space), the Developer shall cause the Title Company to provide and deliver to City an A.L.T.A. owner's policy of title insurance issued by the Title Company insuring that title in the Tech Expansion Space Parcel is vested in City in such form consistent with the pro forma title policy ("TESP Pro Forma Title Policy") attached hereto as Attachment 11B ("Tech Expansion Title Policy"). Developer shall pay for any closing-related fees, charges and costs arising out of the transfer of the Tech Expansion Space to the City, including the cost of the Tech Expansion Title Policy.

III. [§ 300] DEVELOPMENT OF SITE

A. [§ 301] Scope of Development.

The Site shall be developed as the Project in accordance and within the limitations established in this Agreement, the Scope of Development and any other applicable governmental requirements. For purposes of this Agreement, the terms "construct," "develop," "construction" or "development" shall mean and refer to the development of the Project on the Site as provided herein.

B. [§ 302] Condition of the Site.

Developer acknowledges that Developer has had an extended opportunity to familiarize itself with the Site and its condition, including the environmental condition of the Site. The Site is being conveyed in an "as is" condition with no warranty or liability, express or implied on the part of the City as to its condition.

To the fullest extent permitted by law, Developer hereby releases, and agrees to indemnify, defend and hold the City and its officers, employees and agents harmless from and against any and all claims, proceedings, liabilities, losses, damages, fees, costs, and expenses (including court costs) (collectively, "Claims") arising out of the condition of the Site, as it exists as of the conveyance of the Site to Developer ("Present Site Condition"), including without limitation those related to or arising out of Hazardous Materials as defined below located on, under or adjacent to the Site, whether or not any such released matters are known or unknown. Developer acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM WOULD HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." Developer waives

the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect with regard to the limitations on claims and waivers of any such claims. These release and indemnity obligations shall survive the termination of this Agreement.

The term "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state, or environmental clean-up statutes.

C. [§ 303] <u>Preliminary Work by the Developer</u>.

Developer and representatives of the Developer have had access to the Site pursuant to a Right of Entry Agreement entered into by and between the Developer and the City and dated October 27, 2015 ("Right of Entry") for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Any preliminary work undertaken on the Site by the Developer prior to conveyance of the Site to Developer shall also be undertaken only pursuant to the terms of the Right of Entry.

Copies of data, surveys and tests obtained or made by the Developer on the Site shall be given to the City. By providing copies of such information, City acknowledges and agrees that Developer makes no representation or warranty with regard to the completeness or accuracy thereof, and that Developer bears no responsibility therefor. Any preliminary work by the Developer shall be undertaken only after securing any necessary Permits from the appropriate governmental agencies.

D. [§ 304] Cost of Construction.

The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer. The City and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

E. [§ 305] Construction Schedule/Progress Meetings.

(1) The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance, subject to extension for any periods of enforced delay as described in Section 705 or as may be mutually agreed upon by the parties.

(2) At least once a month during construction of the Project, Developer shall organize and schedule an on-site construction progress meeting to discuss and evaluate the progress and status of the construction of the Project, including as applicable the Tech Expansion Space, and to resolve any issue related to the construction of the Tech Expansion Space. The meeting shall include representatives from the Developer, the general contractor for the Project, the City and, to the extent pertaining to The Tech or the Tech Expansion Space Parcel, TMI, and shall be scheduled at such times as are mutually satisfactory for all parties. Every two (2) weeks, and in any event (but without duplication) at least five (5) business days prior to each meeting, the Developer shall submit to the City and, to the extent pertaining to The Tech or the Tech Expansion Space Parcel, TMI, a written progress report of the construction. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer. Among other things, the report shall include the anticipated dates (or range of dates if an anticipated date certain is not known) of any disruption of utility services to the Tech or construction activities which may require closing of all or any material portion of the Tech to the public and/or Tech staff and employees (each of the foregoing, a "Material Disruption"). In addition, from time to time TMI shall disclose to the Developer in writing the dates and times of any events scheduled by TMI which might be adversely impacted by any such Material Disruption, which events will be reflected in the report when disclosed. The Developer will not schedule a Material Disruption which conflicts with a previously disclosed TMI event and TMI will not schedule a TMI event which conflicts with a previously disclosed Material Disruption, in either case without the consent of the other party. Notwithstanding the foregoing, the Developer and TMI will identify any conflicts disclosed and, in good faith and in a commercially reasonable manner, attempt to reconcile and mitigate any conflicts in a reasonable and mutually agreeable fashion in order to achieve their shared goals of facilitating the timely and efficient construction of the Project while at the same time minimizing any unreasonable interference with the public use and operations of the Tech. In the event that, despite their good faith and commercially reasonable efforts, they are unable to do so, the City will mediate and, if necessary, resolve such conflict in its sole discretion by determining either that the Developer shall be permitted to schedule a Material Disruption that conflicts with a disclosed TMI event, or that the Developer shall not be permitted to do so, or that TMI may or may not schedule a TMI event which conflicts with a previously disclosed Material Disruption.

There shall not be any Material Disruptions without prior written notice to TMI, which notice shall be given as soon as reasonably practicable. All notices regarding Material Disruptions shall be in writing and sent by recognized overnight courier service, such as Federal Express, in accordance with Section 701. The report will also specify specific items related to fit out of the Tech Expansion Space as to which specific input from TMI is requested and the time period within which TMI's input is required (which time period, absent circumstances beyond the reasonable control of Developer, shall not be less than seven (7) business days, which time period may be extended for good cause at the request of TMI if and as a condition to any such extension Developer has determined, in its sole discretion exercised in good faith, that granting such extension would not delay construction in any material respect). In addition, the Developer will seek input from the City and TMI at the schematic drawing and construction drawing design stages as the same relates to the Tech Expansion Space, and the time within which such input is to be provided shall be as set forth in the Schedule of Performance; provided that any such input and changes proposed pursuant thereto shall be consistent with and shall not require the Developer to construct improvements which exceed in any respect the TMI Warm Shell Work (as defined in Section 314) without the Developer's written consent, which may be granted or withheld in its sole and absolute discretion. Each of the Developer, the City and TMI will make reasonable efforts to make themselves available for each meeting contemplated by this Section 305(2). In the event TMI or the City fail to make themselves available to meet or fail to respond within the time period required as to any such item as detailed in this paragraph, any delay occasioned by such failure shall constitute an enforced delay pursuant to Section 705 and Developer shall be entitled, in its sole discretion, to proceed in good faith without TMI's or the City's input. Each of TMI and Developer acknowledges that the Site is located directly adjacent to the Tech and the Civic Auditorium and that construction of the Project may adversely impact the Tech and the Civic Auditorium, due to traffic, noise, vibration, dust, debris and other nuisances and inconveniences normally incident to large scale construction projects similar to the Project. During construction of the Project and subject to the preceding sentence, Developer and TMI shall coordinate with each other to the extent reasonably necessary for construction of the Tech Expansion Space Parcel and as required in Section 308, below, and Developer shall use its commercially reasonable efforts to not unreasonably interfere with the public use and operations of the Tech or Civic Auditorium. Notwithstanding the generality of the foregoing, without the prior written consent of the City and TMI, no Material Disruption which extends beyond forty-eight (48) consecutive hours, or forty-eight (48) total hours in any seven (7) day period (excluding for such purposes any hours in such seven (7) day period during which no material operations of the Tech would otherwise be conducted based on the Tech's ordinary schedule of operation), shall be permitted. For the sake of clarity, both the City and TMI acknowledge and agree that adverse impacts to the Tech due to traffic, noise, vibration, dust and other nuisances and inconveniences normally incident to large scale construction projects similar to the Project will not constitute a Material Disruption to the Tech and the Civic Auditorium and will not result in an obligation on the part of the Developer to indemnify pursuant to Section 306.

F. [§ 306] <u>Bodily Injury, Property Damage and Workers' Compensation Insurance</u>.

(a) Without limiting the force and effect of any other indemnity provisions in this Agreement, to the fullest extent permitted by law, Developer agrees to, and shall, indemnify, defend and hold (i) the City and TMI and each of their respective officers, directors, employees

and agents harmless from and against any and all Claims arising after the conveyance of the Site to Developer from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site, including to the Tech, and which arise out of the construction or development of the Project, regardless of whether any such Claim is brought before or after the construction of the Project is completed, and (ii) the City and each of its respective officers, directors, employees and agents harmless from and against any and all Claims at any time arising as a result of the breach or alleged breach by Developer or its predecessor, DTSJ Fund I, LLC, a California limited liability company, of any of their respective obligations under that certain Recapitalization and Acquisition Agreement (Insight King Wah, LLC) dated as of February 22, 2018, among DTSJ Fund I, LLC, as buyer, and Insight Opportunity Fund I, LLC, James Li and John Luck, as sellers, and Insight Realty Investments, Inc., a California corporation, as Manager. Notwithstanding the foregoing, Developer's obligations to indemnify and hold harmless under this Section 306 shall exclude any obligation to indemnify and hold harmless from or against any Claim to the extent:

(i) such Claim is due (a) to any pre-existing conditions on the property owned by the City which is not part of the Site and which is unknown to the party seeking indemnification except to the extent that such Claim arises from Developer's acts or omissions after discovery of such pre-existing condition by Developer or (b) to any pre-existing conditions regardless of where located which is known to the party seeking indemnification and not known by or otherwise disclosed to Developer prior to the transfer of the Site to the Developer;

(ii) such Claim is due to any indemnified party's negligence or willful misconduct or breach of this Agreement or any agreement entered into pursuant hereto or in furtherance hereof;

(iii) such Claim arises from natural disaster, casualty not arising out of the construction or development of the Project or conduct of third parties unrelated to the construction or development of the Project;

(iv) such Claim is for indirect or consequential damages, such as lost profits (but excluding therefrom any amounts paid out-of-pocket by the indemnified party as a direct result of the accident, injury, loss or damage) or punitive damages;

(v) such Claim relates to the maintenance or operation of the Project (this exclusion does not apply to the indemnification and hold harmless obligations contained in the Declaration); or

(vi) the accident, injury, loss or damage giving rise to such Claim first occurs following completion of the construction of the Project except to the extent that such Claim occurring following completion of the construction of the Project arises out of construction performed by Developer or an affiliate of Developer (and not, for the avoidance of doubt, by a contractor, subcontractor or materialman who is not the Developer or an affiliate of Developer but who performs construction on behalf of Developer) ("Developer Performed Work") and is brought prior to the date (which date shall be hereinafter referred to as the "Developer Performed Work Outside Liability

Date") which is either (i) if and only if such Claim results from Developer's breach in the performance of its obligations hereunder relating to such work or as a result of negligence in the performance of such Developer Performed Work, the expiration of the statute of limitations under applicable law with respect to such Claim, and (ii) the date which is 12 months after the date on which a Certificate of Compliance is issued pursuant to Section 314 with respect to the Phase II Work: Tech Expansion Space (i.e., work described in paragraph D under the rubric "Phase II Work" on Attachment 3 to this Agreement).

The Developer shall (i) obtain from those contractors and materialmen with whom it contracts and who supply labor, materials, fixtures and equipment to the Tech Expansion Space market-standard warranties of their respective labor, materials, fixtures and equipment where the provision of such warranties is itself market standard for such contractors or materialmen, and (ii) use its commercially reasonable efforts to negotiate provisions in its contracts governing the provision of labor, materials and equipment for the design or construction of the Tech Expansion Space permitting the assignment by the Developer of any warranties and rights and remedies in the event of any breach by the design consultant, contractor, supplier or materialman of such contract or any warranty thereunder and/or negligence in the performance of its duties thereunder (collectively "Defective Design/Construction") by the design consultant, contractor, supplier or materialman to the City and TMI. In furtherance of its obligations pursuant to the preceding sentence, with respect to any general contractor or construction manager engaged by the Developer with respect to the Tech Expansion Space (a "GC Agreement"), the Developer will provide to the City and TMI any such GC Agreement which the Developer proposes to enter into with a general contractor or construction manager supplying labor, materials, fixtures or equipment to the Tech Expansion Space to the City prior to the execution thereof, and the City will have a period of ten (10) days to approve such GC Agreement in writing; provided, however, that such approval right shall only extend to the City verifying that (i) the form of any warranty provided in such GC Agreement is substantially consistent with market-standard (or, if no warranty is provided, that the omission of such warranty is substantially consistent with market-standard), and (ii) the assignment provisions contained in such GC Agreement are commercially reasonable or, if no assignment provisions are provided, that the omission of such assignment provisions is commercially reasonable. The City shall act reasonably in connection with its consideration of any such request for approval. Any disapproval of such matters by the City shall be in writing and shall be accompanied by a detailed explanation of why such approval is being withheld (consistent with the parameters of such approval right, as set forth above). Any failure by the City to respond within such ten (10) day period shall be deemed to be its approval of such GC Agreement in question. Upon request by the City, the Developer will deliver copies of any design or construction agreements entered into by the Developer that relate to the Tech Expansion Space. These obligations shall survive the termination or expiration of this Agreement.

(b) In the event of Defective Design/Construction which impacts the Tech Expansion Space, Developer shall, upon the City's reasonable written request, (a) undertake commercially reasonable efforts at Developer's sole cost and expense to enforce any and all of Developer's rights or remedies against architects, contractors, suppliers or materialmen which arise with respect to such Defective Design/Construction (including any such warranty) in a commercially reasonable manner and (without duplication of any amounts paid by Developer

pursuant to Section 306(a)) apply any recovery to the remediation of the Defective Design/Construction (after repayment of Developer's reasonable costs of collecting same) or (b) in the case of Defective Design/Construction which solely impacts the Tech Expansion Space (e.g., a defective elevator serving only the Tech Expansion Space), at the option of City assign any of Developer's rights or remedies which arise with respect to such Defective Design/Construction (including any such warranty) to the City (who may in turn elect to assign such rights or remedies (including any such warranty) to TMI), to the extent the same are assignable, and permit the City (or, at the option of the City, TMI) to exercise such rights and remedies at no cost or expense to the Developer and at the sole cost and expense of the City.

(c) Developer shall have and maintain the insurance policies set forth in the Insurance Requirements, Attachment No. 12 to this Agreement. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City. All insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

(d) The provisions of Section 306(a) shall be binding upon the Developer, its successors and assigns and shall run with the land until the last to occur (the "Section 306(a) Termination Date") of (i) the date on which a Final Certificate of Compliance is issued with respect to the Project pursuant to Section 314, and (ii) in the event of Defective Design/Construction of Developer Performed Work which impacts the Tech Expansion Space, if any, the Developer Performed Work Outside Liability Date, whereupon the provisions of Section 306(a) shall terminate except only as to claims properly brought under Section 306(a) prior to the Section 306(a) Termination Date. The provisions of Section 306(b) shall be binding upon the Developer, its successors and assigns and shall run with the land until the last to occur (the "Section 306(b) Termination Date") of (i) the date on which the statute of limitations for claims for negligent design and/or defective construction to be brought against the relevant third-party designer/contractor expires, (ii) approval by the City, which approval may not be unreasonably withheld, conditioned or delayed, of a creditworthy entity and a proposed form of guaranty to guaranty the payment and performance of the Developer's obligations under Section 306(b) of this Agreement (and no other obligations under Section 306), and (iii) release of Developer by the City of Developer's obligations under Section 306(b), whereupon the provisions of Section 306(b) shall terminate except only as to claims properly brought under Section 306(b) prior to the Section 306(b) Termination Date. Notwithstanding the foregoing, the provisions of Sections 306(a) and (b) shall not apply to any Permitted Mortgagee (whether or not it is in possession of the Site)--instead Permitted Mortgagees (including Permitted Mortgagees who are in possession of the Site) shall be governed by the provisions of Section 403 of this Agreement.

G. [§ 307] <u>City and Other Governmental Agency Permits</u>.

Before commencement of the work or other construction or improvement activities upon the Site, the Developer, at its own expense and in compliance with the requirements of CEQA, shall secure or cause to be secured (to the extent not already secured as of the Effective Date) any and all City and other governmental maps, plans, permits, zoning approvals, or other forms of approval, entitlement, permission, or concurrence, whether discretionary, ministerial or otherwise, incident to, or necessary for, the development of the Project on the Site that are required by applicable law to be secured from the City or any other

governmental agency affected by such construction or work (collectively referred to as the "Permits"). Provided such cooperation can be provided without additional cost or expense to the City, City shall reasonably cooperate with the Developer in securing the Permits.

Developer shall be responsible, at its sole cost and expense, for complying with all applicable Permit requirements, including without limitation applicable CEQA mitigation measures. Developer understands that the various requirements set forth in detail in this Agreement (by way of example, those set forth in Sections 111 through 113) do not constitute an exhaustive list of such requirements, and that Developer is responsible for complying with all such requirements, in whatever form they may exist from time to time, regardless of whether or not such requirements are set forth in this Agreement.

City shall provide Developer with a reasonable degree of certainty regarding all City fees by providing Developer with a schedule of current City fees, a copy of which is attached hereto as Attachment No. 16, and notifying the Developer prior to any increase in City fees, and providing Developer with a copy of any newly proposed fee schedule and staff report for same; provided that the failure to notify the Developer of any such fee increase shall not relieve Developer of the obligation to pay any increased fee.

H. [§ 308] <u>Rights of Access; Covenant of Cooperation</u>.

(1) For the purposes of assuring compliance with this Agreement, representatives of the City and, to the extent pertaining to The Tech or the Tech Expansion Space, TMI, shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes set forth in this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Project, but in each case only if accompanied by representatives of the Developer and subject to such reasonable conditions as the Developer shall impose on all Site visitors. Such representatives of the City and TMI shall be those who are so identified in writing to Developer by the City Manager or its designee. The City and TMI shall each defend, indemnify and hold harmless Developer and its officers, employees and agents against any Claims arising out of or resulting in any way from the entry onto the Site pursuant to this Section, except to the extent such Claim is (i) caused by the negligence or willful misconduct of Developer, its officers, employees, agents or contractors, Developer's breach of this Agreement or any agreement entered into pursuant hereto or in furtherance hereof, or arises from natural disaster, casualty not arising out of the construction or development of the Project or conduct of third parties unrelated to the construction or development of the Project, or (ii) such Claim is for indirect or consequential damages, such as lost profits (but excluding therefrom any amounts paid out-of-pocket by the indemnified party as a direct result of the accident, injury, loss or damage) or punitive damages. These obligations shall survive termination or expiration of this Agreement.

(2) It is recognized that the Developer (including its agents and representatives) may need access to the Tech including the real property parcel on which the Tech is located (the "Tech Parcel") to do the following for purposes of performing under and satisfying the terms and obligations of this Agreement and completing the Project: evaluate the physical condition of the Tech; plan for and effectuate construction of the Project (including, but not limited to, demolition, construction staging, protective barriers, shoring, crane overswing,

survey and monitoring); inspect the work being performed in constructing the Project; attach to the Tech so as to permit the joinder of the Tech Expansion Space to the Tech; permit the free movement of people and personalty from the Tech to the Tech Expansion Space (collectively "Access"). Accordingly, the Developer (including its agents and representatives) may have Access to the Tech and Tech Parcel without charge or fee during the term of this Agreement subject to the following terms and provisions:

a) Such access shall be subject to the terms and conditions of Section 305;

b) Prior to and throughout the duration of any Access, Developer shall take all reasonable steps, at no cost to TMI or the City, to protect the Tech and Tech Parcel from damage;

c) Developer shall provide TMI with adequate advance written notice of any need to Access the Tech and/or the Tech Parcel (including identifying anticipated duration of Access, and any forecasted utility or other material impacts on the Tech) to permit TMI a reasonable opportunity to plan and coordinate; and

d) Developer, including its agents and representatives, shall be accompanied by representatives of TMI and the City, at their respective option, during any Access to the Tech and/or Tech Parcel on reasonable terms and conditions to be established by TMI.

(3) The City and TMI will cooperate to grant to the Developer all rights (including easements and/or licenses as appropriate) as reasonably necessary to permit the Developer to construct the Project including the Tech Expansion Space and to attach to the Tech so as to permit the joinder of the Tech Expansion Space to the Tech and to further permit the free movement of people and personalty from the Tech to the Tech Expansion Space. Each of the Developer, the City and TMI will take steps reasonably necessary to effectuate the purposes of the agreements contained in this section, including, without limitation, the authorization of all building permits necessary to perform the construction of the Project and the authorization of temporary rights for construction staging, protective barriers, shoring, crane overswing, survey and monitoring and access as necessary and appropriate to construct the Project provided that reasonable steps are taken to protect and minimize interference with the Tech. In furtherance of this Section 308, the Developer, the City and TMI agree to negotiate in good faith and execute and deliver further documents and instruments reasonably requested by each other to more clearly evidence and carry out the express provisions and intent of this section. Each party will bear their own expense in connection with their respective compliance with this section.

I. [§ 309] <u>Local, State and Federal Laws</u>.

The Developer shall carry out the construction of the Project in conformity with all applicable laws, including without limitation all applicable federal and state labor standards.

J. [§ 310] Non-discrimination.

1. [§ 310A] Nondiscrimination Covenant.

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity, in the performance of this Agreement or in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the performance of this Agreement or the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

2. [§ 310B] Form of Nondiscrimination and Nonsegregation Clauses.

Developer, for itself and its successors and assigns agrees to include the following provision in any deed, lease or construction contract which it may enter into relating to the Project:

(a) In deeds: The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

(b) In leases: The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number,

use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased.

(c) In contracts: The contractor herein covenants by and for himself or herself, his or her assigns and all persons claiming under or through him or her, and this contract is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any persons or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity in the contracting, subcontracting, transferring, or assignment of the work hereby contracted for nor shall the contractor himself, or any persons claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, number, employment or work of contractors, subcontractors, transferees or assignees in the work which if the subject of the contract.

K. [§ 311] <u>Prevailing Wages</u>.

Developer shall abide by all of the City's prevailing wage requirements during the construction of Phase I Off-Site Utility Work and the Phase II Work for the Project. Developer shall pay, or cause to be paid, prevailing wages, for all construction work on the Phase I Off-Site Utility Work and the Phase II Work for the Project. For the purposes of this Agreement, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 et seq.), and as established by the Director of the California Department of Industrial Relations ("DIR"), or in the absence of such establishment by the DIR, by the City's Office of Equality Assurance ("OEA"), for the respective craft classification. In any case where the prevailing wage is established by the DIR or by OEA, the general prevailing rate of per diem wages shall be adjusted annually in accordance with the established rate in effect as of such date.

In addition to other requirements regarding prevailing wages, the City recognizes that Developer's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;

2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;

3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and

4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

Developer's compliance with prevailing wage requirements is a material consideration of City in entering into this Agreement. City will monitor Developer's compliance with the Labor Code requirements and additional requirements of this Agreement through the City's Office of Equality Assurance.

Developer shall:

- Require its construction contractor and subcontractors to complete and submit all prevailing wage initial compliance documentation to OEA.

- Following commencement of construction, require its contractor and subcontractors to submit completed certified payroll records with each monthly pay request and Contractor shall refuse to pay all or a portion of a pay request to the extent not supported by certified payroll documentation.

- Require its construction contractor and subcontractors to complete signed timecards weekly, and provide those timecards to OEA upon request.

- Require any subcontractor who did not attend the preconstruction prevailing wage meeting to attend a prevailing wage meeting with OEA prior to commencing work.

- Require its construction contractor and subcontractors to submit copies of fully executed contracts upon request.

- Submit all contractor's and subcontractor's certified payroll reports and Statements of Non Performance to City on or before the fifteenth (15th) day of each month for any and all work performed during the previous month ("Payroll Due Date"). For example: for any work performed (or nonperformance) in the month of April, these submittals are due to OEA no later than May 15.

- Require any contractor constructing any portion of the Phase I Off-Site Utility Work or the Phase II Work for the Project to grant City access to the Project site at reasonable times for the purpose of enforcing the provisions of this Section.

- Provide City with documentation relating to compliance with this Section.

- Indemnify and hold City harmless from any third party costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages.

City and Developer recognize that Developer's breach of these prevailing wage provisions, including those applicable through the California Labor Code and City's additional prevailing wage compliance provisions within this Agreement, will cause the City damage by undermining City's goals in assuring timely payment of prevailing wages, and will cause the City additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by Developer's payment of restitution to the worker paid less than the prevailing wage. City and Developer further recognize the delays, expense and difficulty involved in proving City's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, City and Developer agree that:

(A) for each day beyond the Payroll Due Date that Developer fails to submit contractor's certified payroll to City, Developer shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS ($250.00); and

(B) for each instance where City has determined that prevailing wage requirements were not met, Developer shall pay to City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

CITY	DEVELOPER

L. [§ 312] Construction and Pedestrian Barricade Signs.

The Developer, at its sole cost, shall provide and install construction site and pedestrian barricade signs, if applicable, that identify the Project (and, at Developer's election, Developer's contractors and consultants) and give recognition to the City as prescribed by the City and to TMI as reasonably prescribed by TMI, which signs shall fully comply with all applicable sign ordinances of the City and shall conform to all rules and regulations of the City Departments of Public Works and Transportation. Prior to design and installation, Developer shall submit to the City for its review and approval plans, setting forth the location, size, design, color scheme and written text of the signs. The signs must be installed on the Site prior to commencement of construction on the Site and shall remain installed until issuance of the Final Certificate of Compliance for the Project.

M. [§ 313] Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement; Certain Permitted Transfers.

1. Prior to the recordation of a Final Certificate of Compliance, except as expressly permitted by the terms of this Section 313, the Developer shall not assign (or permit assignment of) this Agreement or any right herein, nor shall the Developer make (or permit) any sale, transfer, conveyance or assignment of the whole or any part of the Site or the improvements thereon (whether directly or indirectly), without prior written approval of the City, which approval shall be provided or withheld at the City's sole discretion, and the Developer shall remain under the control of the Controlling Party (as defined below). This prohibition shall not apply to, and the City's approval shall not be required for, Permitted Transfers (as hereinafter

defined in this Section 313). Further, this prohibition shall not be deemed to prevent the granting of easements, licenses, leases, rights of entry or permits to facilitate the development of the Site.

2. If the Developer does assign this Agreement or any of its rights in the Agreement, or does sell, transfer, convey or assign the Site or the improvements thereon, in violation of the foregoing proscriptions, in addition to any other rights or remedies which the City may have under this Agreement or otherwise, the City shall be entitled to the consideration payable or paid to Developer for such sale, transfer, conveyance or assignment.

3. Any proposed assignee or transferee of an assignment or transfer for which the City's approval is required hereunder (in either event, a "transferee"), shall be subject to prior written approval by the City, which approval may be provided or withheld at the City's sole discretion. Any proposed transferee shall have the qualifications and financial responsibility necessary and adequate, as determined by the City, to fulfill the obligations undertaken in this Agreement by the Developer. Prior to City approval or disapproval of the proposed assignment or transfer (in either event, a "transfer"), the Developer and the proposed transferee shall submit to the City, for its review and approval, all instruments and other legal documents proposed to effect any such transfer, and a written instrument in a form recordable among the land records, binding upon the proposed transferee and its successors and assigns and for the benefit of the City, by which the proposed transferee shall expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions to which the Developer is subject. In the absence of specific written agreement by the City, no assignment or transfer, or approval by the City, shall be deemed to relieve the Developer from any obligations under this Agreement.

4. With respect to an assignment or transfer which occurs (i) after the issuance of the Final Certificate of Compliance (and therefore as to which the City's approval is not required hereunder), but (ii) prior to (a) the Section 306(a) Termination Date, the transferee or assignee shall be obligated to perform all of the obligations of the Developer under that portion of Section 306(a)(vi) of this Agreement which provides for indemnification relating to Developer Performed Work, and (b) the Section 306(b) Termination Date, the transferee or assignee shall be obligated to perform all of the obligations of the Developer under Section 306(b) of this Agreement (and in the case of both clause (a) and clause (b) above, no other obligations under Section 306); provided, however, that the foregoing provisions of this Section 313(4) shall not apply to any Permitted Mortgagee (whether or not it is in possession of the Site)--instead Permitted Mortgagees (including Permitted Mortgagees who are in possession of the Site) shall be governed by the provisions of Section 403 of this Agreement; and, provided further, that the Developer may instead propose to the City and TMI a creditworthy entity and a proposed form of guaranty to guaranty the payment and performance of the Developer's obligations under that portion of Section 306(a)(vi) of this Agreement which provides for indemnification relating to Developer Performed Work and under Section 306(b) of this Agreement (and no other obligations under Section 306) and if such proposed guarantor and the proposed form of guaranty are approved by the City and TMI, which approval will not be unreasonably withheld, conditioned or delayed, then the transferee or assignee shall not be obligated to perform any of the Developer's obligations under Section 306, and instead the Developer shall cause the execution and delivery by such proposed entity of a guaranty in form

approved by the City and TMI and the Developer shall remain obligated to perform its obligations under Section 306 as detailed above notwithstanding the assignment or transfer.

As used in this Section 313, the following terms shall have the following meanings:

The term "Permitted Transfer" shall mean:

(i) Any transfer of an interest in the Developer to an existing beneficial owner of the Developer as of the Effective Date of this Agreement, provided that following such transfer, the Developer is controlled by a person (the "Controlling Party") who controls the Developer as of the Effective Date and is, as of the Effective Date, a chief executive officer or director at one or more companies that, collectively, as of the Effective Date own, lease or operate not less than ten million (10,000,000) square feet of office space in the United States and not less than two hundred thousand (200,000) square feet of office space in the City of San Jose;

(ii) Any transfer of an interest in the Developer to an entity controlled by the Controlling Party, provided that following such transfer, the Developer is controlled by Controlling Party;

(iii) [Intentionally Deleted];

(iv) Any transfer of an interest in Developer to a person or entity not affiliated with or controlled by the Controlling Party, which person or entity is providing capital and/or financing for the Project; provided, however, that following such transfer Controlling, either (A) the Controlling Party shall continue to control the Developer after such transfer; and, provided, further, that the granting to the transferee of such interest in Developer of the right to approve certain "major decisions" of a kind and nature that are customarily granted to investors in commercial real estate transactions in shall not be deemed to constitute control of Developer; or (B) the transferee is controlled by a person or entity that has developed or is currently developing mixed-use projects with high-rise structures that, collectively, contain not less than twelve million (12,000,000) square feet of office, retail or residential space and so long as the managing member of the Developer remains as a member who is involved in the operations of the transferee;

(v) Issuances, transfers and sales on a nationally or internationally recognized stock exchange of shares or units of any entity with a direct or indirect interest in Developer; and

(vi) Any of the following transfers:

(a) any transfer by an individual owner of a direct or indirect interest in the Developer for estate planning purposes to one or more immediate family

members of such person or to trusts or entities created for the benefit of immediate family members of such person; and

(b) any transfer by succession or testamentary disposition of a direct or indirect interest in the Developer upon a natural person's death or incapacitation, including by operation of law or contract (e.g., under a trust agreement).

For purposes of this Section 313, the determination of whether any Person has control over any other Person shall not be affected by third parties having approval over so-called "major decisions" of a kind and nature that are customarily granted to investors in commercial real estate transactions.

N. [§ 314] Certificate of Compliance.

Developer anticipates that the Project will be completed in phases (each a "Phase" of the work) as follows; (i) Phase I Off-Site Utility Work; (ii) Phase II Work: Site Preparation, Private Improvements and Off-site Improvements (i.e., work described in paragraphs A, B and C under the rubric "Phase II Work" on Attachment 3 to this Agreement; and (iii) Phase II Work: Tech Expansion Space (i.e., work described in paragraph D under the rubric "Phase II Work" on Attachment 3 to this Agreement).

Upon (i) completion of each Phase of the work; (ii) issuance of a temporary certificate of occupancy or its equivalent (e.g., close out by the City of the building permit for such Phase); (iii) confirmation that the Claim Achievement (as hereinafter defined) shall have occurred as to (a) any and all outstanding Claims theretofore made in writing for property damage or personal injury with respect to which the Developer's indemnity obligations under Section 306, above, apply, and (b) any and all mechanics liens then outstanding with respect to the Project (Claims under clause (a) or (b) of this clause (iii) being collectively referred to as "Phase-Related Claims and Liens"); (iv) Developer certifying its compliance with the terms of this Agreement as to the completion of such Phase; and (v) Developer providing certifications from all of its contractors and subcontractors that each of them complied with the prevailing wage requirements relating to such Phase, the City shall furnish Developer with a Certificate of Compliance, in the form as attached to this Agreement as Attachment No. 13 (each, a "Certificate of Compliance") within ten (10) business days after the written request therefor by Developer. Upon satisfaction of the foregoing terms concerning construction of the final Phase of the Project, City shall also furnish Developer with a "Final Certificate of Compliance", in the form attached hereto as Attachment No. 14, within ten (10) business days after the written request therefor by Developer.

As a condition to the City's issuance of any Certificate of Compliance related to the Phase II Work: Tech Expansion Space (i.e., work described in paragraph D under the rubric "Phase II Work" on Attachment 3 to this Agreement), the Developer shall notify (the "Completion Notice") TMI that the Phase II Work: Tech Expansion Space (the "TMI Warm Shell Work") is complete and it intends to seek a Certificate of Compliance related to such TMI Warm Shell Work. In connection therewith, Developer shall provide the City and TMI with reasonable documents and information regarding the satisfaction of the requirements of the TMI

Warm Shell Work. Promptly thereafter, the Developer, the City and TMI shall set a mutually convenient time for the Developer, the City and TMI to inspect the TMI Warm Shell Work (which shall be not later than ten (10) business days after the Developer delivers such Completion Notice to the City and TMI), during which inspection they shall confirm the completion of the TMI Warm Shell Work and develop a list of incomplete items, if any, to be completed by the Developer in order to satisfy its obligations to complete the TMI Warm Shell Work (the "Punch List Items"). The Developer shall cause the Developer's general contractor to complete all Punch List Items within sixty (60) days following receipt of the Punch List Items, provided that such sixty (60) day period may be extended for (i) any period of enforced delay as described in Section 705 below arising during such period, or (ii) upon demonstration by the Developer of good cause, with the written consent of the City Manager, which consent shall be within the discretion of the City Manager. Upon the Developer's request, the City shall provide written confirmation of completion of the TMI Warm Shell Work, including any Punch List Items, within ten (10) business days after notification by the Developer that the TMI Warm Shell Work, including any Punch List Items, is complete and such confirmation shall be binding upon both the City and TMI.

As used herein, the "Claim Achievement" shall mean that Developer shall have, (A) with respect to each of the Phase-Related Claims and Liens then outstanding that are mechanics liens or stop payment notices, provided a statutory release bond sufficient under California law to cause such mechanics lien or stop payment notice to be released, and (B) with respect to any other Phase-Related Claims and Liens then outstanding, at Developer's option in its sole discretion either (i) cause the Guarantor to have guaranteed that Developer will pay (or perform, as the case may be) such Phase-Related Claims and Liens pursuant to the terms of the Phase I Completion Guarantee and/or the Phase II Completion Guarantee, by causing the Guarantor thereunder to confirm the same in writing delivered to the City (a "Guaranty Expansion"), or (ii) provide the City with an Additional Security Letter of Credit, except (in either case) that the letter of credit, rather than securing the Phase I Guarantee or the Phase II Guarantee, shall instead be for the purpose of assuring the City that such Phase-Related Claims and Liens will be paid (or performed, as the case may be), or (iii) post cash collateral in escrow on terms and in an amount sufficient to assure the City that such Phase-Related Claims and Liens will be paid (or performed, as the case may be), or (iv) demonstrate, to the reasonable satisfaction of the City, that such Phase-Related Claims and Liens has been resolved.

The City shall not unreasonably withhold a Certificate of Compliance. A Certificate of Compliance shall be in such form as to permit it to be recorded in the Recorder's Office of the County. Issuance by the City of a Certificate of Compliance as to any Phase shall constitute confirmation that Developer has completed the development of such Phase and has complied with all of Developer's obligations, and other covenants under this Agreement, which relate to the design, development and construction of such Phase; provided, however, that any obligations (a) under Section 306(a)(vi) relating to Developer Performed Work or (b) under Section 306(b) with respect to defective design or Defective Construction which impacts the Tech Expansion Space shall survive the issuance of a Certificate of Compliance with respect to the Phase II Work: Tech Expansion Space (i.e., work described in paragraph D under the rubric "Phase II Work" on Attachment 3 to this Agreement) until (a) in the case of Section 306(a)(vi), the Section 306(a) Termination Date and (b) in the case of Section 306(b), the Section 306(b) Termination Date. Issuance of a Certificate of Compliance shall not constitute evidence that

Developer has satisfied any of its other covenants under this Agreement. After issuance of a Certificate of Compliance for a Phase, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in such Phase shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the Grant Deed and any other document recorded against the property owned by such party; provided, however, that (a) any obligations of the Developer under that portion of Section 306(a)(vi) of this Agreement which provides for indemnification relating to Developer Performed Work shall survive the issuance of a Certificate of Compliance with respect to the TMI Warm Shell Work until the Section 306(a) Termination Date, and (ii) any obligations of the Developer under Section 306(b) of this Agreement (and no other obligations under Section 306) which impacts the Tech Expansion Space shall survive the issuance of a Certificate of Compliance with respect to the TMI Warm Shell Work until the Section 306(b) Termination Date, and in both cases shall be subject to the provisions of Section 313(4).

If the City refuses or fails to furnish a Certificate of Compliance after written request from Developer, the City shall, within ten (10) days following receipt of the initial written request for the Certificate of Compliance, provide Developer with a written statement of the reasons the City refused or failed to furnish the Certificate of Compliance which reasons must be consistent with the terms of this Agreement, as well as the City's opinion of the action that Developer must undertake or perform to obtain the Certificate of Compliance.

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

IV. [§ 400] FINANCING OF THE PROJECT.

A. [§ 401] Project Budget.

As of the Effective Date, the Project is anticipated to cost as provided in the preliminary Project Budget, which is set forth in Attachment No. 15 to this Agreement and which shall be updated by Developer and provided to the City by the applicable dates set forth in the Schedule of Performance (the Project Budget as set forth in Attachment No. 15 and as so updated by Developer, or as adjusted pursuant to the following sentence, is herein referred to as the "Project Budget"). Notwithstanding the preceding sentence, subsequent to the Effective Date, the Developer may make reasonable budget adjustments or line item allocations within the Project Budget as required to complete the Project in accordance with the Scope of Development and the approved Final Project Drawings as described therein.

B. [§ 402] Developer's Capital and Project Commitments.

Not later than the times specified in the Schedule of Performance, as such times may be extended, the Developer shall submit to the City for review and approval the following:

1. An updated Project Budget;

2. Evidence of committed debt and/or equity financing reasonably acceptable to the City ("Financing Commitment"). The City agrees that the Financing Commitment may

consist of any combination of the following in an aggregate amount equal to (i) in the case of the Phase I Off-Site Utility Work, the total cost of the Phase I Off-Site Utility Work, or (ii) in the case of the Phase II Work, the total cost of the Phase II Work, as proposed by the Developer and reasonably acceptable to the City:

(a) a financing commitment of a reputable lender, subject only to such conditions as the City may reasonably approve, and/or

(b) Developer equity comprised of one or more of the following proposed by the Developer:

(i) cash to be placed in a blocked escrow account with a financial institution acceptable to the City and pledged to the City to secure the Developer's obligation to complete the Phase I Off-Site Utility Work or the Phase II Work, as applicable, which funds which may be utilized by the Developer from time to time to pay Project related costs, including both hard and soft costs, expended by Developer in the construction of the Phase I Offsite Work or the Phase II Work, as applicable; or

(ii) a guaranty of the Developer's obligation to timely contribute the required Developer equity by an entity determined to be a creditworthy entity in accordance with Section 114(c); or

(iii) an irrevocable standby letter or functionally equivalent financial instrument in a form acceptable to the City in its sole and absolute discretion, from a financial institution acceptable to Developer and City for the benefit of City to secure the Developer's obligation to complete the Phase I Off-Site Utility Work or the Phase II Work, as applicable, to only be drawn by the City in the event of the failure of the Developer to timely contribute the required Developer equity; or

(iv) a completion bond in a form acceptable to the City and for the benefit of the City to guarantee completion of the Phase I Off-Site Utility Work or the Phase II Work, as applicable. The bonding company shall be a California admitted surety subject to the approval of the City.

The Financing Commitment shall be consistent with the Project Budget and sufficient to assure the City that adequate funds are available for completion of the applicable Phase of the Project;

3. Confirmation from Developer of the execution of contracts between the Developer and the general contractor for construction (i) with respect to the Phase I Off-Site Utility Work, of the Phase I Off-Site Utility Work, and (ii) with respect to the Phase II Work, of the Phase II Work ("Construction Contract"). Such contract shall provide for the commencement of construction by dates certain, which dates shall be in conformance with this Agreement; and

4. Evidence that Developer has obtained all Permits required to commence construction (i) with respect to the Phase I Off-Site Utility Work, of the Phase I Off-Site Utility Work, and (ii) with respect to the Phase II Work, of the Phase II Work.

It is the purpose of this procedure to ensure to the satisfaction of the City that (i) the Site shall not be conveyed unless and until there are sufficient financing and development commitments to commence and complete the construction of all of the Phase I Off-Site Utility Work and (ii) demolition of existing improvements on the Site will not begin unless and until there are sufficient financing and development commitments to commence and complete the construction of all of the Phase II Work. Prior to Close of Escrow and demolition of existing improvements, the Developer shall provide or cause to be provided to the City any additional evidence reasonably required by the City to establish that all evidence, contracts and commitments required under this Agreement prior to conveyance of the Site and demolition of existing improvements are current and in full force and effect. The City shall approve or disapprove all evidence, contracts and commitments required under this Section within the time established therefor in the Schedule of Performance. Disapproval shall be reasonable and given in writing with the specific reasons therefor. If the City shall disapprove any evidence, contracts or commitments required under this Section, the Developer may revise and resubmit the same within thirty (30) days of receipt of the City's written disapproval.

C. [§ 403] Security Financing; Rights of Holders.

1. [§ 403A] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development.

Notwithstanding Section 313, mortgages, deeds of trust, sales and leases-back, pledges or any other form of conveyance required for any reasonable method of financing (herein "Permitted Encumbrance") are permitted hereunder without the approval of the City, but only for the purpose of securing funds to be used for financing the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site or the Project under this Agreement, including, without limitation, the Phase I Off-Site Utilities Work and the Phase II Work, so long as the Developer has provided the City with prior written notice of the parties and terms and conditions related to such Permitted Encumbrance; provided, however, that notwithstanding the foregoing, the lien of any Permitted Encumbrance for the purpose of securing funds to finance the construction of the Phase I Off-Site Utility Work (which shall be the only such encumbrance permitted prior to the issuance of a Certificate of Compliance for the Phase I Off-Site Utility Work) shall be subject and subordinate, pursuant to a subordination agreement reasonably acceptable to the City and to be recorded concurrently with the recordation of such Permitted Encumbrance, to the City's right of reverter pursuant to Section 607 to the effect that upon exercise of such right City shall take title free and clear of such lien without payment of any consideration; and, provided, further, the Developer will keep the Site free of any mechanics or materialman's liens (other than inchoate mechanics liens that exist under applicable law, but only for so long as no enforcement, execution, levy or foreclosure proceedings with respect to such liens have commenced) as shall be evidenced by documentation reasonably acceptable to the City which shall be delivered to the City on a monthly basis. The holder of a Permitted Encumbrance shall sometimes be referred to herein as a "Permitted Mortgagee". Each Permitted Encumbrance shall provide (in form and content reasonably

acceptable to the City) for (i) the release, without the payment of any consideration and without any other condition other than the satisfaction of any conditions to the Developer's obligation to convey the Tech Expansion Space Parcel to the City under and pursuant to the terms of this Agreement and such other conditions as are reasonable and customary conditions precedent to the release of loan security and which are satisfactory to the City in its reasonable discretion, and (ii) the subordination of the lien of the Permitted Encumbrance to the Recorded Project Documents, the Parking Agreement, and the Declaration. Following completion of the Project and the recordation of a Final Certificate of Compliance, the foregoing limitations on Permitted Encumbrances shall no longer apply.

All Permitted Encumbrances shall provide that any insurance proceeds from fire and all-risk or other insurance shall be used for the full reconstruction and restoration of the Site before repaying any part of the outstanding indebtedness secured thereby; provided, however, that if after using reasonable commercial efforts, the Developer is unable to obtain financing with the foregoing provision, then in that event, the City hereby approves an alternative provision which would allow that insurance proceeds from fire and all-risk or other insurance shall first be used to make the Site safe by razing any remaining improvements, clearing the Site or otherwise making it safe as required by law before any insurance proceeds repay any part of the outstanding indebtedness secured by such Permitted Encumbrance.

2. [§ 403B] Permitted Mortgagee Not Obligated to Construct Improvements.

No Permitted Mortgagee shall be obligated by the provisions of this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; or otherwise to pay or perform any obligation under Article III of this Agreement; nor shall this Agreement be deemed to construe, permit or authorize any such Permitted Mortgagee to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

3. [§ 403C] Notice of Default to Permitted Mortgagees; Right to Cure.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, the City shall at the same time deliver a copy of such notice or demand to each Permitted Mortgagee who has previously made a written request to the City therefore. Each such Permitted Mortgagee shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee upon obtaining possession of the Site or any portion thereof and such Permitted Mortgagee promptly commences and diligently prosecutes efforts to obtain possession through a receiver or otherwise, such Permitted Mortgagee shall have until ninety (90) days after obtaining possession to cure or remedy or commence to cure or remedy any such default. Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured within ninety (90) days, such Permitted Mortgagee shall notify the City in writing of its intentions to cure the default with an anticipated timeline for completion and thereafter shall

have such additional time as is reasonably necessary to remedy or cure such default with diligence, but in no event longer than two (2) years after receipt of notice hereunder.

Nothing contained in this Agreement shall be deemed to permit or authorize such Permitted Mortgagee to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City and to TMI by written agreement reasonably satisfactory to the City. The Permitted Mortgagee in that event shall only be liable or bound by Developer's obligations hereunder during the period that the Permitted Mortgagee is in possession of the Site and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in the Site and the improvements owned by it thereon. In addition, the Permitted Mortgagee in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such Permitted Mortgagee relates. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Compliance from the City with respect to such improvements.

All rights and obligations of a Permitted Mortgagee pursuant to this Agreement shall, subject to the terms and conditions of this paragraph, also accrue to any purchaser, assignee or successor of a Permitted Mortgagee upon acquisition of title to any portion of the Site by such purchaser, assignee or successor pursuant to a judicial or nonjudicial foreclosure or a deed in lieu of foreclosure, or pursuant to a conveyance from a Permitted Mortgagee by deed, subsequent to such Permitted Mortgagee's obtaining title. Notwithstanding any provision to the contrary in this Agreement, any such conveyance to a purchaser, assignee or successor shall be subject to the condition precedent that such purchaser, assignee or successor shall expressly assume Developer's obligations to the City under this Agreement by written agreement reasonably satisfactory to the City. In consideration thereof, the City agrees that it shall not unreasonably withhold, condition or delay its approval of further extensions of time for performance of the Developer's obligations under this Agreement as appropriate to permit such purchaser, assignee or successor to obtain possession of the Site and enter into contracts for the construction of improvements to complete the development of the Project, but in no event longer than two (2) years after receipt of notice hereunder.

Breach of any of the covenants, conditions, restrictions or reservations contained in this Agreement shall not defeat or render invalid the lien of any Permitted Encumbrance, whether or not said mortgage or deed of trust is subordinated to this Agreement, but unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Permitted Mortgagees and any owner of the Site or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

No modification or amendment of this Agreement affecting the rights of a Permitted Mortgagee, and entered into from and after the date of recordation of such Permitted Encumbrance, shall be binding upon any Permitted Mortgagee holding a Permitted Encumbrance unless and until the written consent of such Permitted Mortgagee is obtained.

4. [§ 403D] Failure of Permitted Mortgagee to Complete Improvements.

In any case where, ninety (90) days after default by the Developer in completing the construction of improvements under this Agreement, the Permitted Mortgagee has not exercised the option afforded in Section 403C of this Agreement to construct, or if it has exercised the option but has not proceeded diligently with construction, the City may, but shall have no obligation to, purchase the security financing interest by payment to the Permitted Mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of such portion has vested in the Permitted Mortgagee, the City, if it so desires, shall be entitled to a conveyance from the Permitted Mortgagee to the City upon payment to the holder of an amount equal to the sum of the following:

(a) The unpaid security financing interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(b) All expenses with respect to foreclosure;

(c) The net expenses, if any, incurred by the holder as a direct result of the subsequent management of that portion of the Site;

(d) The direct and indirect costs of any improvements made by the Permitted Mortgagee; and

(e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts in subsections a., b., c. and d., above, become part of the security financing interest debt and such debt had continued in existence to the date of payment by the City.

5. [§ 403E] Right of the City to Cure Security Financing Interest Default.

Each Permitted Encumbrance shall provide that the Permitted Mortgagee shall give notice to the City of the occurrence of any default by Developer under the Permitted Encumbrance, that the City shall also be given notice at the time any Permitted Mortgagee initiates any foreclosure action, and that in the event of any such default, the City shall have the right to cure such default, provided that Developer is given ten (10) days prior notice of the City's intention to cure such default and does not thereafter immediately commence and continue with due diligence to complete to cure such default, and provided that City's right to cure shall be coterminous with the Developer's cure rights under the Permitted Encumbrance (subject to reasonable extensions of time to cure if Developer has elected to cure but not completed such cure). If the City shall elect to cure such default, Developer shall pay the reasonable out of pocket costs and expenses of the City in curing the default to the City upon demand, together with the interest thereon at an annual rate which is the lesser of: i) eight percent (8%), or ii) the maximum interest rate permitted by law, and the City shall be entitled to a lien upon the Developer's fee interest to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to any prior Permitted Encumbrance.

6. [§ 403F] Affirmation of Agreement in Bankruptcy.

If Developer files a bankruptcy petition and rejects this Agreement, City shall, upon the request of a Permitted Mortgagee, affirm this Agreement, and the City will enter into a new Agreement on the same terms and conditions with the Permitted Mortgagee immediately upon Developer's rejection of this Agreement.

V. [§500] USE OF THE SITE

A. [§501] Uses.

The Developer covenants and agrees for itself, its successors, and assigns and every successor in interest, that at all times prior to the recordation of a Final Certificate of Compliance, the Developer, and its successors and assigns shall develop, use and maintain the Site in accordance with this Agreement, including the Scope of Development, and all plans and documents approved by the City pursuant hereto, and any other agreements entered into between Developer and the City, or any departments or divisions thereof.

B. [§ 502] Effect and Duration of Covenants.

Except as otherwise provided herein, this Agreement, and the covenants and conditions set forth herein, shall remain in effect until a Final Certificate of Compliance has been recorded for the Project, whereupon such obligations shall terminate without the need for further action by any party to this Agreement. Each of the Declaration (as applicable), the Parking Agreement, and any other agreement contemplated by this Agreement shall remain in effect for the term of such agreement as set forth therein. The provisions of Section 306(a) and Section 306(b) shall remain in effect for the periods set forth in Section 306(d). The covenants against discrimination contained in the Grant Deed shall remain in effect in perpetuity. The covenants established in this Agreement and the project documents contemplated by this Agreement and referenced herein (collectively, "Project Documents") shall, without regard to technical classification and designation, be binding upon and inure to the benefit and of the City and Developer, and their respective successors and assigns except as otherwise provided in Section 403.

The 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 rights 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 the City without regard to whether the City has been, remains or is an owner of any interest in the Site. The City shall have the right, if this Agreement or any other Project Documents 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 or any other beneficiaries of this Agreement or any other Project Documents may be entitled.

VI. [§ 600] DEFAULTS; REMEDIES; TERMINATION

A. [§ 601] Defaults – General.

Subject to the extensions of time in accordance with Section 705, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default unless the party in default fails to perform the required obligation within thirty (30) days after receiving written notice of the failure from the other party. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive 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.

B. [§ 602] Legal Actions.

1. [§ 602A] Institution of Legal Actions.

Any legal action must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court in that County, or in the Federal District Court for the Northern District of California.

2. [§ 602B] Applicable Law.

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

3. [§ 602C] Acceptance of Service of Process.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer, or in such manner as may be provided by law, and shall be valid whether made within or without the State of California.

C. [§ 603] Rights and Remedies are Cumulative.

Except with respect to rights and remedies which are expressly declared to be exclusive in this Agreement, the rights and remedies of any non-defaulting party are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise by the

non-defaulting party, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting party.

D. [§ 604] Damages.

If the Developer or the City defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party in accordance with Section 601 above. If the default is not cured by the defaulting party within the applicable cure period, the defaulting party shall be liable to the other party for any damages caused by such default.

E. [§ 605] Specific Performance.

Subject to Section 606, if the Developer or the City defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party in accordance with Section 601 above. If the default is not cured by the defaulting party within the applicable cure period, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

F. [§ 606] Remedies and Rights of Termination Prior to Conveyance of the Site.

1. [§ 606A] Termination by the Developer.

Subject to the cure period described in Section 601, in the event that any of the following occur:

(a) The City does not tender conveyance of the Site in accordance with this Agreement; or

(b) Any of the other conditions to the Close of Escrow in favor of Developer are not satisfied or waived by Developer, or

(c) City is in breach or default of any other of City's Material Obligations,

then this Agreement may, at the option of the Developer, be terminated by written notice to the City. Upon such termination, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement, except with respect to any existing defaults which allowed Developer to terminate this Agreement pursuant to this Section, and those rights or liabilities which are expressly provided to survive termination. Following conveyance of the Site, the Developer shall have no right to terminate this Agreement.

2. [§ 606B] Termination by the City.

Subject to the cure period described in Section 601, in the event that any of the following occur:

(a) The Developer transfers or assigns (or permits the transfer or assignment of) this Agreement or any rights herein or in the Site or the improvements thereon (whether directly or indirectly) in violation of this Agreement; or

(b) The Developer does not accept and take title to the Site in accordance with this Agreement; or

(c) Any of the other conditions to the Close of Escrow in favor of the City are not satisfied or waived by City; or

(d) The Developer is in breach or default of any other of Developer's Material Obligations;

then this Agreement, and any rights of the Developer, may, at the option of the City, be terminated by the City with respect to those portions of the Project not yet completed by Developer upon written notice to the Developer. Upon such termination, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement, except with respect to any existing defaults which allowed the City to terminate this Agreement pursuant to this Section, and those rights or liabilities which are expressly provided to survive termination.

PRIOR TO THE CLOSE OF ESCROW, IN THE EVENT OF AN UNCURED DEFAULT BY DEVELOPER AS DESCRIBED IN SECTION 606B (a), (b) or (d) ABOVE, AND NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE CITY'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AND TO RETAIN THE DEPOSIT (TOGETHER WITH INTEREST ACCRUED THEREON) AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS MAKING IT NECESSARY FOR THE CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM; AND THE FAILURE OF THE CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD EXCEED THE AMOUNT OF THE DEPOSIT HELD BY THE CITY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE CITY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES TO THE CITY PURSUANT TO CALIFORNIA CIVIL

CODE SECTIONS 1671, 1676 AND 1677 FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

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

_____ _____

CITY DEVELOPER

G. [§ 607] Right of Reverter.

In addition to any rights or remedies the City may have at law or in equity, in the event the Developer is in breach or default of any of the Developer's Material Obligations, which rights include without limitation the right to terminate this Agreement pursuant to Section 606B, the City shall have the additional right, at its option, to reenter and take possession of the Site with all improvements and revest in the City the estate conveyed to the Developer, if after conveyance of title to the Site and prior to issuance of a Final Certificate of Compliance, the Developer shall:

(a) Fail to proceed with the construction of the improvements as required by this Agreement for a period of six (6) months after written notice thereof from the City;

(b) Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the City;

(c) Failure to convey the Tech Expansion Space Parcel to the City as required by Section 211 of this Agreement, or execute and record the Parking Agreement or Declaration, as required by Sections 110 and 205 of this Agreement; or

(d) Transfer or suffer any involuntary transfer or assignment in violation of Section 313 of this Agreement.

The Grant Deed shall contain appropriate reference and provision to give effect to the City's right, as set forth in this Section, to reenter and take possession of the Site with all improvements and to terminate and revest in the City the estate conveyed to the Developer.

Notwithstanding the generality of the foregoing, City's rights under this Section to reenter and take possession of the Site shall, except as otherwise set forth herein always be subordinate and subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any Permitted Encumbrance or any rights or remedies thereunder, or (ii) any rights, remedies or interests provided in this Agreement for the protection of any Permitted Mortgagees, subject to Section 403A. Conversely, any encumbrances or liens, other than

Permitted Encumbrances or other encumbrances or liens expressly permitted pursuant to this Agreement, shall be subordinate and subject to City's rights under this Section to reenter and take possession of the Site; accordingly, upon exercise of such rights City shall take title free and clear of all such non-permitted encumbrances and liens which City has not expressly agreed in writing to accept.

The rights established in this Section are to be interpreted in light of the fact that the City will convey the Site to the Developer for development and not for speculation in undeveloped land.

VII. [§ 700] GENERAL PROVISIONS.

A. [§ 701] Notices, Demands, and Communications Between the Parties.

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if in writing and sent, with all postage and delivery charges prepaid, by overnight courier, messenger service or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below, or such other addresses as either party may from time to time designate by mail as provided in this Section. Such written notices will be deemed given on the earlier of actual delivery or failure of a party to accept delivery thereof.

If to City at:

City of San José
Office of City Manager
200 East Santa Clara Street, 17th Floor
San José, CA 95113-1905
Attn: Office of Economic Development

with a copy to:

City of San José
Office of City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113-1905
Attn: Real Estate Attorney

and only with respect to notices pertaining to The Tech or the Tech Expansion Space, with a copy to:

Tech Museum of Innovation
201 South Market Street
San José, CA 95113
Attn: President, Chief Financial Officer, and Construction Manager

and only with respect to notices pertaining to The Tech or the Tech Expansion Space, with a copy to:

Hopkins & Carley
70 South First Street
San José, CA 95113
Attn: Jay Ross

If to Developer at:

Museum Place Owner, LLC
260 Homer Avenue, Ste. 201
Palo Alto, CA 94303
Attn: Gary Dillabough

with a copy to:

Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, California 94111
Attn: Clayton B. Gantz

B. [§ 702] Conflict of Interests.

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested. Developer shall at all times comply with all applicable state, federal or local laws, rules and regulations regarding conflicts of interest and prohibition of gifts in the performance of this Agreement.

C. [§ 703] Warranty Against Payment of Consideration for Agreement.

The Developer warrants that it will not pay or give, any third party any money or other consideration for obtaining this Agreement.

D. [§ 704] Nonliability of City Officials and Employees.

No member, official, or employee of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

E. [§ 705] Enforced Delay; Extension of Time of Performance.

Notwithstanding specific provisions of this Agreement, performance by either party of its respective obligations hereunder shall not be deemed to be in default where delays or defaults are due to (a) war; insurrection; civil disturbances; strikes; lock-outs; riots; floods; unusually severe rain beyond the anticipated average annual number of rain days over a historic ten (10) year period based on National Weather Service data; earthquakes; fires; casualties; acts

of God; unforeseen site conditions, including conflicting coordination with adjacent development projects; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; acts or omissions of the other party (including, with respect to the Developer, any unreasonable delays by the City or TMI in the review or granting of any necessary approvals of any submittals hereunder by the Developer); acts or failure to act of any governmental agency or TMI (except that acts or failure to act by the City shall not excuse performance by the City); governmental or judicial restrictions enjoining of the performance of the terms of this Agreement; and similar causes beyond the reasonable control of the party obligated to perform or (b) negative growth for two consecutive quarters in the Economic Conditions Index for the San Jose—Sunnyvale—Santa Clara metropolitan statistical area, as published by the Federal Reserve Bank of St. Louis or any successor thereto. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding the foregoing, (i) the total time period excused under this Section for all causes listed under clause (a) of the first sentence of this Section shall not exceed two (2) years, and (ii) the total time period excused under this Section for the cause listed under clause (b) of the first sentence of this Section shall not exceed eighteen (18) months.

F. [§ 706] Inspection of Books and Records.

The City has the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site and/or the Project as pertinent to the purposes of this Agreement.

G. [§ 707] Severability.

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

H. [§ 708] Representations of Authority.

1. [§ 708A] City's Representations.

The City represents and warrants to Developer that (i) it is a municipal corporation, existing pursuant to the law of the State of California, (ii) it has full right, power and authority to enter into this Agreement and to carry out all actions contemplated by this Agreement, (iii) that this Agreement has been duly authorized, executed and delivered by the City, constitutes the valid, binding and enforceable obligation of the City and no consent of any other party is or shall be required to consummate the transactions contemplated hereby; (iv) to the best of the City's knowledge, the City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound, and (v) as of the date of this

Agreement, to the best of the City's knowledge, there is and shall be no pending or threatened judicial or administrative proceedings, which, if determined adversely to the interests of the City, that could materially affect the City's ability to perform its obligations pursuant to this Agreement.

City shall provide Developer with copies of all necessary resolutions approving this Agreement.

2. [§ 708B] Developer's Representations.

The Developer represents and warrants to City (i) that Developer is a duly authorized and existing Delaware limited liability company which is and shall remain during the term of this Agreement qualified to do business in the State of California, (ii) that Developer has full right, power and authority to enter into this Agreement and to carry out all actions contemplated by this Agreement, (iii) that the execution and delivery of this Agreement were duly authorized by proper action of Developer and no consent, authorization or approval of any person is or shall be necessary in connection with such execution and delivery or to carry out all actions contemplated by this Agreement except as have been obtained and are in full force and effect, and that this Agreement constitutes the valid, binding and enforceable obligation of Developer, (iv) to the best of Developer's knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound, and (v) as of the date of this Agreement and as of the Close of Escrow, to the best of the Developer's knowledge, there is and shall be no pending or threatened judicial or administrative proceedings, which, if determined adversely to the interests of the Developer or its respective members, that could materially affect the Developer's ability to perform its obligations pursuant to this Agreement, nor is Developer in violation of any order or decree of any court of competent jurisdiction or, any governmental agency having jurisdiction.

Developer shall provide City such evidence as may be reasonably requested by City to confirm the foregoing representations and warranties, including copies of all necessary corporate resolutions approving this Agreement.

3. [§ 708D] Survival of Representations.

All of Developer's and City's representations and warranties set forth in this Agreement shall survive the Close of Escrow and the recording of the Grant Deed.

4. [§ 708E] Computation of Time.

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays observed by the City of San Jose, which, as of the Effective Date, are as follows: New Year's Day, Martin Luther King Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day (and day after Thanksgiving Day), Christmas Eve Day, Christmas Day, New

Year's Eve Day and New Year's Day. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

VIII. [§ 800] SPECIAL PROVISIONS.

A. [§ 801] Approvals.

Approvals required of the City (except for approvals expressly identified herein as being in the sole discretion of the City) or Developer shall not be unreasonably withheld or conditioned, and approval or disapproval shall be given within the time set forth in the Schedule of Performance and/or this Agreement or, if no time is given, within a reasonable time. The City Manager of the City, or his designee specified in writing, shall have the authority to act on behalf of the City with regard to any and all actions required of the City under this Agreement. The Developer shall have the right to rely upon any written designation by the City Manager until a written designation is provided to the Developer pursuant to this Section 801 and pursuant to Section 701. Such actions include, but are not limited to, the issuance of approvals and disapprovals, extensions of deadlines in the Schedule of Performance and execution of all documents except amendments to this Agreement. Any president, vice president or authorized signatory of Developer, as disclosed by Developer to the City from time to time in a written incumbency certificate (an "Incumbency Certificate") shall have the authority to act on behalf of the Developer with regard to any and all actions required of the Developer under this Agreement. The City shall have the right to rely upon any Incumbency Certificate until a new Incumbency Certificate is provided to the City pursuant to this Section 801 and pursuant to Section 701.

B. [§ 802] Amendments to this Agreement.

(1) The Developer, and the City shall mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Any such amendments reasonably necessary for a Permitted Mortgagee may be approved and executed by the City Manager or the City Manager's designee on behalf of the City.

(2) Notwithstanding the forgoing or any other provision herein to the contrary, there shall be no Material Amendment (as hereinafter defined) of any of the following without the prior written consent of TMI, which consent will not be unreasonably withheld, conditioned or delayed:

a) Section 103 (to the extent it pertains to or relates to the Tech Expansion Space);

b) Section 110 and Attachment No. 7;

c) Section 205 and Attachment No. 6;

d) Section 207(2);

e) Section 305(2);

f) Section 306;

g) Section 308; and

h) Attachment No. 4, Subsection D.

As used in this Section 802, the term "Material Amendment" shall mean an amendment that (i) materially reduces the rights afforded to or materially increases the obligations undertaken by TMI under such Section or any related Attachment referenced above, (ii) when combined with all previous amendments, would materially decrease the size of the Tech Expansion Space (it being agreed that cumulative reductions of 3,000 square feet or less from the proposed square footage of 60,475 set forth in Section 103 shall not be deemed material so long as such reduction does not impact access to the Tech Expansion Space or its utility for use for its intended purpose on the date of this Agreement, as determined by the City in its reasonable discretion), or (iii) modifies in any material respect adverse to TMI the other requirements in Attachment No. 3, Subsection D (i.e., defining the Developer's warm shell delivery obligations with respect to the Tech Expansion Space); provided, however, that (i) no amendment that is imposed by the City pursuant to required City entitlements and permits, and (ii) no extension of any of the time periods set forth in the Schedule of Performance shall be deemed to constitute a "Material Amendment" and, therefore, neither shall require the consent of TMI. Developer and City will provide TMI with a copy of any proposed amendment which would constitute a Material Amendment. Developer, City and TMI agree to meet and confer in good faith to resolve any and all objections which TMI may have to any such proposed amendment which would constitute a Material Amendment within twenty (20) calendar days of Developer's or City's delivery to TMI of such proposed amendment, which objections (if any) and proposed resolution TMI shall detail in writing and deliver the same to Developer and City in writing within ten (10) days after TMI's receipt of such proposed amendment. If TMI fails to deliver such written objections to the Developer and the City within such ten (10) day period, then TMI shall be deemed to have approved such amendment.

C. [§ 803] Distinction from Regulatory Authority of the City.

Developer understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site (or any other matters related thereto) as contemplated by this Agreement.

D. [§804] Governing Law.

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California.

E. [§805] Estoppel Certificates.

Any party may, at any time during the term of this Agreement, and from time to time, deliver written notice to another party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding

obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. The party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof.

F. [§806] Developer Intellectual Property.

All plans, drawings and specifications, together with any financial projections prepared by, on behalf of or at the direction or for the benefit of Developer, regarding the Site, the Project, this Agreement or any transaction contemplated hereunder, or any other matter referred to herein (collectively, "Developer IP"), shall be and remain at all times the sole and exclusive property of Developer, and nothing herein or in any other instrument or action executed by Developer shall at any time create or be deemed to create in the City or any third party any right, title or interest in or to any Developer IP delivered, provided or made available at any time to the City or any third party or otherwise. The provisions of this Section 806 shall survive the Close of Escrow and any termination of this Agreement.

G. [§807] Miscellaneous.

(1) Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the City and Developer joint venturers or partners.

(2) Article and Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. As used herein: (i) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (ii) locative adverbs such as "herein," "hereto," "hereof," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (iii) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" and (iv) "shall" and "must" means mandatory and "may" means permissive.

(3) This Agreement has been reviewed and revised by legal counsel for Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

(4) Time is of the essence for each provision of this Agreement for which time is an element.

(5) This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, the combined pages shall constitute one (1) single instrument.

(6) This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the City, Developer and any Permitted Mortgagee, and where the terms

"Developer," "City" or "Permitted Mortgagee" are used in this Agreement, they mean and include their respective permitted successors and assigns, including, as to any Permitted Mortgagee, any transferee and any successor or assign of such transferee.

(7) The parties agree to execute and acknowledge such other or further documents as may be necessary or reasonably required to express the intent of the parties or otherwise effectuate the terms of this Agreement.

(8) Each Recital and each Attachment to this Agreement is incorporated herein and made a part hereof as if set forth in full herein.

(9) This Agreement is made solely for the benefit of the City, the Developer and any Permitted Mortgagee and, to the extent (and only to the extent as to the enumerated provisions in the sentences immediately preceding TMI's signature on the signature pages to this Agreement, TMI, and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this Agreement.

IX. [§ 900] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.

This Agreement shall be executed in duplicate originals each of which is deemed to be an original. This Agreement includes 55 pages and 16 attachments which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

APPROVED AS TO FORM:

_____
Cameron Day
Deputy City Attorney

CITY OF SAN JOSE

By: _____
Its: _____

"Developer"

Museum Place Owner LLC,
A Delaware limited liability company

By: _____
Gary Dillabough
Its: Authorized Signatory

TMI hereby joins this Agreement for the limited purposes of (i) accepting the benefits of clause (c) of the first grammatical paragraph of Section 103, Section 207(2) (including all grammatical paragraphs set forth therein), Section 305(2), Section 306(a)-(d), Section 308(1)-(2), Section 312, the third grammatical paragraph of Section 314, and Section 802(2) and (ii) signifying its agreement to be bound by Section 118, Section 207(2), Section 305(2), Section 308, the third grammatical paragraph of Section 314, Section 705, and Section 802(2). TMI agrees that time is of essence with respect to the performance of its obligations under this Agreement. In the event that either the Developer or TMI fails to timely pay and/or perform any of its respective obligations under any of the aforementioned enumerated sections, then the non-defaulting party shall have all obligations, rights and remedies available under Section 604 if such failure continues following fourteen (14) days written notice to cure or such longer period (not to exceed an additional thirty (30) days) as is necessary to effectuate cure in the event such failure cannot reasonably be cured within fourteen (14) days, so long as the defaulting party commences cure within such fourteen (14) days and diligently pursues such cure to completion; provided, however, that for the sake of clarity TMI shall have no rights under Section 604 or any other section of the Agreement not specifically enumerated in this paragraph. TMI acknowledges that it has no rights under this Agreement to receive the Tech Expansion Space (or other property rights), or rights as against the Developer or City for the failure of the Project to be completed (other than rights against the City (if any) being set forth in the Tech Lease and subject and subordinate to City's rights under this Agreement), and that its sole right with respect to the Tech Expansion Space under this Agreement is to receive the benefits conferred by the sections cited above and to participate in the processes of: (i) fully and finally defining the same (together with appurtenances thereto, such as easements and parking rights), and (ii) completion and acceptance of the same, all as is more particularly provided herein. TMI acknowledges and agrees that, given its limited and subordinate role under this Agreement, it shall coordinate and cooperate with all reasonable requests of the City in connection with the exercise of its rights or remedies under this Agreement, it being understood and agreed that the final decision with respect thereto is reserved to the City in its sole discretion, after conferring with TMI in good faith. Without limiting the generality of the foregoing, TMI shall have no direct rights against Guarantor under either the Phase I Completion Guaranty or the Phase II Completion Guaranty; provided, however, that the City shall, at TMI's sole cost and expense, cooperate with all reasonable requests of TMI to pursue damages due TMI under either such guaranty so long as City's rights and/or amounts recovered thereunder are not thereby materially reduced, and City shall have the sole right to any security thereunder.

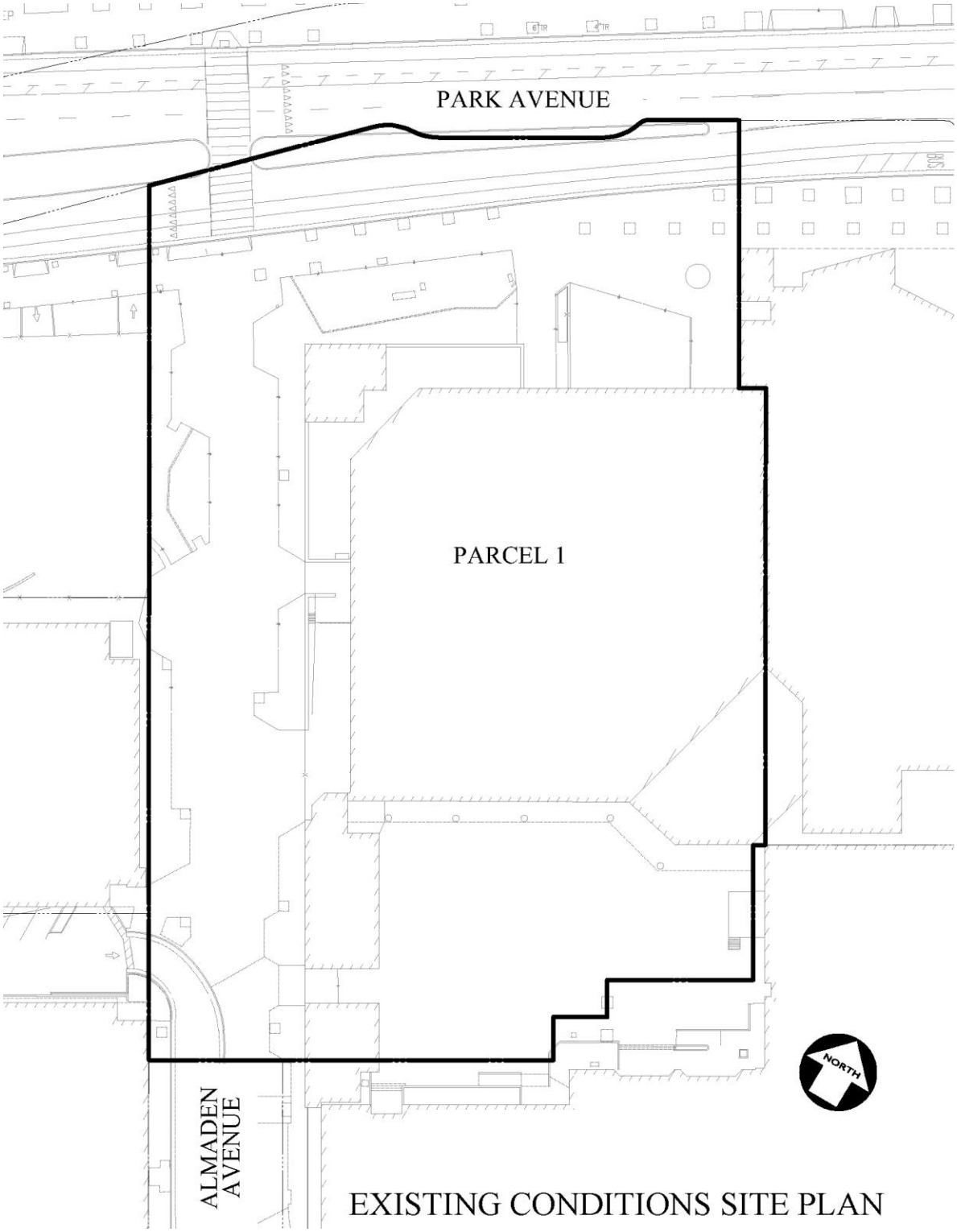
THE TECH INTERACTIVE,
a California nonprofit public benefit corporation

By: _____

Its: _____

ATTACHMENT NO. 1

SITE MAP



ATTACHMENT NO. 2

LEGAL DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP T19-013 180 PARK AVENUE" PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.
APN: 259-42-023 (portion)

NOTE: The final legal description of the Site to be attached to the Grant Deed at Close of Escrow shall be based upon the Recorded Parcel Map and may include reservation of easements that appear on the Recorded Parcel Map.

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

MUSEUM PLACE MIXED USE DEVELOPMENT PROJECT

NOTE: References herein to "Agreement" and "DDA" mean the Amended and Restated Disposition and Development Agreement of which this Attachment No. 3 is a part; references to "Attachments" mean the Attachments to the DDA unless otherwise specified. Other terms have the meanings set forth in the DDA and the Attachments.

I. GENERAL

Developer shall design, develop and construct on the Site the Project, as defined in Section 103 of the DDA, all as more fully described below.

The Site is more particularly described in Section 102 of the DDA and is illustrated on the "Site Map" (Attachment No. 1) and consists generally of a portion of the block bounded by Park Avenue, South Market Street, West San Carlos Street and Almaden Avenue in San Jose.

The Project (as defined in Section 103 of the DDA) shall be designed and developed as an integrated complex in which the building will have strong architectural quality and character, both individually and as in the context of the city block. All public spaces and open spaces shall be designed, landscaped and developed with the same degree of quality. Particular attention shall be paid to pedestrian activities, massing, scale, bulk, color and materials. The Developer will cooperate with City and direct its consultants, architects and/or engineers to cooperate with the City so as to ensure the continuity and coordination necessary for the proper and timely commencement and completion of the development of the Project.

The Project shall conform to the provisions, design criteria and property development standards contained in this Scope of Development and shall be developed in accordance with the Permits described in Section 307 of the DDA. The Project shall also be consistent and conform to the concepts set forth in the preliminary plans submitted to the City, dated February 15, 2019, as further developed and described in the Amended Site Development Plan Set as and when approved by the City ("Approved Site Plan"). Developer further agrees that any proposed changes to the Project from the Approved Site Plan or any changes inconsistent with the provisions, design criteria and property development standards contained in this Scope of Development or this Agreement shall be approved in advance by the City. The City Manager shall have the authority on behalf of the City to approve any such changes. The parties acknowledge that Developer shall prepare or cause to be prepared construction document packages ("Construction Drawings") for façade / envelope, MEP/structural and core and shell

items for the Project. The Construction Drawings shall be submitted to the City's Building Department to obtain building permits for the Project. Upon approval of the Construction Drawings for issuance of a building permit ("Final Project Drawings"), Developer shall develop and construct the Project in accordance with the Final Project Drawings. In the event of a conflict between the Final Project Drawings and the Scope of Development, the Scope of Development shall control unless variations previously approved.

II. DEVELOPMENT

The Project shall be designed and constructed in compliance with the Permits and all other laws, codes, ordinance and regulations of any federal, state, county or local authority having jurisdiction. In the event that any laws, codes, ordinances or regulations conflict with another, then the more stringent shall apply to the Project. The architect will document with the City all code related interpretations that would affect the construction and occupancy of the Project throughout the design process. All "Conditions of Approval" stipulated by an applicable jurisdiction shall be incorporated into the design and noted in the construction documents by the architects, engineers and other consultants. The private and public improvements on the Site shall be constructed in accordance with the Final Project Drawings.

The Project shall deliver to the City an expansion space for The Tech in warm shell condition as set forth herein that enables the The Tech to realize its multi-functional event and office space. The City of San Jose Public Works Department serves as the City's design arbiter; specifically, coordinating amongst the drawings provided by the Developer and the Tech. The City will in all cases act reasonably to effectuate the intent of the Scope of Development as set forth herein.

Notwithstanding anything to the contrary contained in this Agreement, for purposes of this Agreement, the term "**Phase I Off-Site Utility Work**" shall have the meaning set forth below. The term "**Phase II Work**" shall have the meaning set forth below.

Phase I Off-Site Utility Work:

Developer shall prepare plans and specifications and provide, or cause to be provided, improvements to relocate and remove utility systems connecting to and through the Site and within public rights of way adjacent to the Site within Park Avenue and Almaden Avenue in preparation for Phase II Work (collectively, the "**Phase I Off-Site Utility Work**"). The Phase I Off-Site Utility Work shall be designed and constructed so as to minimize, to the extent practicable, construction impacts on The Tech and other adjacent properties during construction of the Phase II Work and any subsequent construction related to The Tech.

Phase II Work

A. Site Preparation. Pursuant to the DDA and this Scope of Development, the Developer shall, at Developer's sole cost and expense, perform the following Site preparation work:

1. All costs and expenses to remove the solar panel system located on the roof of Parkside Hall shall be borne by the Developer, including, but not limited to, the physical removal of all components of the System, the repair of any damage to the Tech caused by such removal (however the developer shall not be required to repair any damage to any portion of Parkside Hall which is ultimately going to be demolished), and any buy-out price for solar panel system components and/or termination fee/liquidated damages payable to Solar Star under the Solar Star Agreements dated March 7, 2008, which are required by the terms thereof to terminate the same. Notwithstanding the forgoing, the Developer shall not be responsible for any amounts which are payable Solar Star Agreements prior to the Solar Agreements Termination Date or as a result of the City's or TMI's negligence or willful misconduct. The Developer shall bear the cost of preparing any documents (including amendments to or assignments of the Solar Star Agreements) in connection with the removal of the System, but each of the City and TMI shall bear their own costs in connection with their review of any such documents, including the fees and expenses of their legal counsel.

2. Demolish and remove all above ground structures, pavement, walks, curbs, gutters, and other above ground improvements located on the Site.

3. To the extent not completed as a part of the Phase I Off-Site Utility Work, remove and/or relocate (i) overhead utility systems and subsurface utility systems now in service which lie below the Site's surface and which would be located within the perimeter of the Project after construction, and (ii) utilities servicing the Site and now in service, such as storm sewers, sanitary sewers, water systems, underground electrical systems and telephone gas systems.

4. Remove to storage the public art piece located on the Site entitled "Civic Stage Set" by David Bottini and/or relocate such public art piece to a location approved by the City and the artist and as outlined in the Fifth Amendment to the Agreement between The City of San Jose and David Bottini Regarding Civic Stage Set Artwork dated November 1, 2017, and pay to David Bottini any amounts due from City thereunder.

5. Site excavation pursuant to the Final Project Drawings except as required for the demolition and remediation work included in the Off-Site Improvements described in section C below.

6. Provide protection for the Tech Museum of Innovation and McCabe Hall located adjacent to the Project as set forth on the Final Project Drawings.

Prior to the commencement of Site Preparation, Developer shall notify the City so that the City can inform users of the adjacent properties of the commencement of Site Preparation, including TMI and Team San Jose.

B. Private Improvements. Pursuant and subject to the DDA and this Scope of Development, the Developer shall design and construct the following improvements on the Site:

1. Office Space. Approximately 928,116 square feet of creative technology office space within a high-rise structure;

2. Retail Space. Approximately 8,409 square feet of retail space within a high-rise structure and located generally on the ground floor level of said structure and generally fronting Almaden Avenue.

3. Project Garage. A parking garage to serve the Project containing parking spaces for a minimum of four hundred (400) vehicles, and provided that Developer may elect to utilize mechanical equipment and/or valet services to accommodate said vehicles, together with additional on-site and/of offsite parking as necessary to fulfill all applicable City requirements; and

4. Common Area. Common area improvements associated with the Project such as landscaped courtyards, exercise areas and community rooms, entry lobbies and portals, and other shared facilities within the interior of the Site.

C. Off-Site improvements. To the extent not completed as a part of the Phase I Off-Site Utility Work, the Developer shall provide, or cause to be provided, all public improvements necessary and required for the development of the Site in accordance with this Scope of Development and the Permits (collectively the "Off-Site Improvements"). The Developer shall design and construct the Off-Site Improvements in accordance with this Scope of Development and the Permits. The Off-Site Improvements shall be those listed below and any other Off-Site Improvements required under the Permits:

1. Clear, grub and grade where the Off-Site Improvements are to be located.

2. Design and improve street frontages along the boundaries of the Site to such standards as required under the Permits. Off-Site Improvements under this Section and undergrounding of certain utilities will consist of curbs and gutters, sidewalks, necessary improvements in the street right-of-way associated with the Project, landscaping as described below, irrigation, fire hydrants, street lighting and other utilities necessary to service (to the property lines) the improvements on the Site.

3. Install fire hydrants in locations within the street rights-of-way which are necessary and sufficient to serve the Project and/or are required by the Fire Marshall of the City of San Jose or other applicable government authority.

4. Provide, or cause to be provided, utility stubs, including, without limitation, water, gas, electricity, sewer, storm, cable television and telephone service, at the edge of the Site in locations as reasonably necessary and sufficient to serve the Project.

5. Provide all related utility infrastructure improvements and/or upgrades to support the Project as approved by the City Public Works Department.

6. All permanent public open spaces around the perimeter of the Project (including setback areas) shall be landscaped in such a manner so that the public open spaces shall be integrated with the Project and the Off-Site Improvements for the Project. Landscaping shall include such materials as trees, shrubs and other plant materials, tree grates and guards, topsoil preparation, automatic irrigation, and landscape and pedestrian lighting. Landscaping shall carry out the objectives and principals of the Developer's and City's desire to accomplish a first-class, high-quality aesthetic environment. All landscape plans require City approval prior to commencement of the work.

7. Remove and relocate the J.C. DeCaux public toilet located on Almaden Avenue to a location approved by the City.

D. Tech Expansion Space: As part of the Project, Developer shall construct the Tech Expansion Space, which shall consist of approximately sixty thousand four hundred seventy-five (60,475) square feet of exhibition, office and retail space in a warm shell condition as described below (subject to the provisions of the DDA, including Section 802, and further provided that such square footage may, subject to the prior written consent of TMI, be reduced based upon final design considerations for such space), all as more particularly shown on the Approved Site Plan and as shown in the Final Project Drawings ("**Warm Shell**"). Developer, City, and TMI shall coordinate and cooperate as outlined in the Schedule of Performance, in Section 305 of the DDA and below concerning the design and standards of the Warm Shell, with the understanding and intent that Developer shall deliver to City a public building and space finished sufficiently for City and TMI to complete distribution of utilities within each space and to proceed with implementation of any and all tenant improvements thereto in as efficient and economical manner as is reasonably possible, providing the scope and location thereof have been coordinated with Developer during the course of Warm Shell design.

In the absence of a defined program for the Tech Expansion Space at the signing of this document, TMI, The City and the Developer agree that in February 2020 The Tech Museum shall submit a pre-schematic set outlining warm shell scope (which shall be consistent with the Warm Shell definition contained herein) to the Developer through the City of San Jose Public Works Department. Once all parties (the City, TMI and the Developer) have agreed on these pre-schematic drawings, this will become the basis

for ongoing design submissions. Expansion space shall not require egress or structural upgrades to the base building.

Section 305 of the DDA outlines a general process to ensure timely coordination between the Developer, The City and TMI. The Developer will provide to The City major deliverables as outlined in the Schedule of Performance. During its review period following each major submission, the City will coordinate with TMI to ensure timely comments by the City and TMI are provided to the Developer appropriate to each phase of Work. The City will approve all submittals after coordination and collaboration with both the Developer and TMI and will serve as arbiter of any discrepancies between Tech Drawing submissions and the terms of this Scope of Development following standard procedures used by the City.

In addition, prior to and during construction, the Developer, The City and TMI shall collectively agree to meet monthly to review the project schedule and upcoming project milestones related to the Tech Expansion Space. A project schedule will be circulated to these parties every two weeks to ensure timely notification of major deliverables. This design process will be used to further define key deliverables of the warm shell as outlined below.

During construction of the warm shell space for TMI, the Developer and TMI will coordinate as appropriate an interim walk through with TMI in addition to a walk through at substantial completion, all as more particularly described in the DDA.

1. GENERAL DESCRIPTION OF WARM SHELL

a. Shell and core will comply with all codes and regulations, including fire, building, Title 24 and ADA.

b. Shell exterior façade along Park Avenue at the Tech Expansion Space frontage shall maximize transparency and promote connectivity for the public to the interior space. Exterior glazing and openings shall be commensurate with any retail frontage constructed by Developer on Almaden Avenue.

c. Warm Shell shall include a dedicated conveyance (elevator) between the two Tech Expansion Space Levels.

d. Provide core building systems, such as common building corridors and wall partitions separating the Tech space from the common corridors. Spaces will be compliant with an unoccupied space ready for tenant to fit out and built to code, including code/exit signage, fire/life safety provisions, fire sprinklers, doors to building corridors, switchgear, main electrical distribution panel, telephone conduit to telecom room, water and drain lines stubbed into space and any code-related items to achieve occupancy uses as governed by CBC.

e. All new Tech Expansion Space systems shall be separately metered where possible, or commercially reasonable, unless otherwise directed by code, and TMI

shall maintain access to and control of facilities dedicated solely to the Tech Expansion Space. Developer shall supply sub meters as agreed to during design process.

f. Shafts, structural openings, sleeves, etc. shall be provided where TMI has indicated in the pre-schematic documents and during the design process..

g. Exposed surfaces of concrete structure to be natural as-is in appearance without extra cost or protection but shall be of the same tolerance of level as the concrete floors defined below.

h. In-slab conduits for utilities as agreed to during design process.

i. Opening between the new Tech expansion space and the existing TMI. At a minimum, openings at the property lines must provide the maximum area of opening allowed by per the governing code, fire rating or existing structure.

j. A stair connecting the second floor of the Tech expansion space and the existing TMI corridor.

2. CONCRETE FLOORS

a. Floor flatness/levelness consistent with ASTM E1155/E. Floors will be sealed and maintain a ¼" per 10ft. tolerance.

b. The floors will be designed for structural loading capacity of live load of 150 lb./psf.

3. ELEVATORS

a. Developer shall provide one 3,500 lb.-capacity Otis (or similar manufacturer) elevator. Doors configuration shall conform with TMI design documents. Cab shall be 9'-3" high AFF if possible. Elevator shall service the two main Tech Expansion Space levels and act as both freight and passenger.

b. Cab floors shall be finished with sealed concrete.

c. All elevator cars, lobby call lanterns and call buttons compliant with all codes and regulations.

4. BUILDING CORE ROOMS (toilet rooms, elevators, stairwells, janitor closets and electrical / MDF /utility rooms)

a. TMI shall indicate the location and layout of its restrooms and janitor closets as part of its pre-schematics submittal. Developer shall provide two restroom cores (one men's, one women's) per floor, with fitout to be completed as part of warm shell requirements. Finishes and fixtures will match standard bathroom and janitor closets used elsewhere in the building and the number of restrooms and janitor closets will be defined by the occupancy use (assembly use for the applicable zone on level 1) pursuant to CBC. Restroom

finishes provided will include lights, finished walls and ceiling and wall and floor tile.

b. FLS Exits and Stairwells shall be part of Warm Shell work.

c. Other finishes delivered by Developer are assumed as follows:

1. Exit Corridors: Lights, finished walls and ceiling,

2. Electrical Rooms: lights and finished walls

3. Exit stairwells: with painted walls, handrails, lights, and sealed floors stairs and landings – lighting per code.

4. Code compliant doors, complete with frame, trim and hardware, installed at all stairwells, toilet rooms and service areas.

5. WASTE WATER, DOMESTIC WATER, VENT SYSTEM AND NATURAL GAS (PLUMBING)

a. TMI shall review and comment on waste water, domestic water, venting and gas lines during design process to assure conformance with TMI design provided at pre-schematics. Sizing and location will be determined by the assembly/occupancy use pursuant to CBC.

b. Water and gas meters to be separate from building meters if possible, as defined by applicable codes or through coordination during design process. If not possible, then Developer shall provide sub meter.

c. Sewer for expansion space shall be sized and located according to applicable code based upon the assembly/occupancy use pursuant to CBC. Occupancy to be defined by Tech in their pre-schematics deliverable for purposes of sizing the sewer.

d. TMI shall coordinate its design documents with Developer and review all wet services and future Electrical, Server, MDF rooms during design process.

e. Connection to grease traps, mechanical exhaust systems for kitchens provided in coordination with Developer, should Developer install such systems in the base building. Should this not be designed into building; developer agrees to provide as part of “Additional Work” requested by the Tech at TMI expense assuming TMI provides the approximate location and scope of work desired within the pre-schematic deliverable to be advanced during the Schematic Design phase.

6. ELECTRICAL AND POWER SYSTEM

a. Location and capacity of electrical transformer, panels and panels and distribution per floor of Tech Expansion Space will be included in the pre-schematics package.. Tech programming shall not require changes to the base building systems without approval of City and Developer.

b. Emergency lighting on each floor as required to obtain Certificate of Occupancy for warm shell. Location and capacity of system to be developed during the design process and approved by City.

c. Electrical meter to be separate from other building meters if possible. Otherwise, Developer will sub meter, as defined by applicable codes or through coordination with TMI design documents

7. HVAC SYSTEM

a. HVAC units and main HVAC distribution will trunk on each floor with fire damper distribution by TMI. Location and capacity of system to be developed during design process.

b. DDC system (with control wiring, sensors, thermostats, and control panels for common core areas only. System will be expandable for the addition of DDC controls for future tenant improvements.). Location and capacity of system to be developed during design process.

c. AHU per level as required by the occupancy use pursuant to CBC.

8. FIRE AND LIFE SAFETY SYSTEMS

a. Fire mains shall be mounted tight to structure wherever possible, as defined by applicable codes or through coordination during design process. Sprinklers shall be dropped to accommodate the main being mounted tight to structure.

b. FLS monitoring system per Fire Code. TMI shall review plans during design process for conformance with TMI design documents.

c. Connection and synchronization of Fire Alarm Systems to existing Tech Museum or a dual reporting system depending on Fire Department input.

d. Voice evacuation and fire alarm system with sounding devices and strobe lights or same system as provided throughout the building.

9. ADDITIONAL WORK

As requested by TMI, and only if agreed upon by the Developer, the City and TMI, Developer shall provide additional work requested by TMI with all associated costs covered by TMI. Developer shall be under no obligation to approve any additional work requested by TMI and may, in its discretion, condition any such approval on (i) TMI paying the cost of such additional work, and (ii) providing such security for the payment of such costs as the Developer may require, including but not limited to cash collateral, guaranties from creditowrhty parties and other security determined by the Developer. If desired by the Developer, and approved by the City, the project schedule will be adjusted to respond to this additional, optional work.

E. Architecture and Design: The Design Development and Final Project Drawings shall reflect the following standards:

1. Utility Installations: All utility installations (including, but not limited to, transformers, gas valves and meters, water backflow preventers and meters, irrigation controllers and post indicator valves) are to be located within the building envelope to the extent reasonably possible. Developer shall work with City agencies,

PG&E, San Jose Water Company, and other utility providers as necessary for a building of this scale and technological quality to incorporate utilities within building envelope wherever possible.

2. Trash: Trash bins and compactors are to be located within the building envelope. Plans shall provide for food garbage to be handled in such a way that odors and drainage are confined to the immediate storage area; waterproof surfaces, hose bibs, and drainage, as appropriate; and air conditioning, as necessary.

3. Grease Traps and Interceptors: If included in the Project, the size and efficacy of grease traps and/or grease interceptors must be approved by the County of Santa Clara Health Department and City of San Jose Environmental Services Department. Grease traps and grease interceptors may not be located in the public right of way. Grease interceptors may not be located inside any building. The location of all grease traps and/or interceptors must be approved by both the Building Department and the County Health Department.

4. Exhaust: The Project shall not exhaust air to parks or public rights-of-way or towards the Paseo (Almaden Avenue) in any way that degrades public comfort or the health of plants by reason of velocity, noise, odor and/or moisture.

5. HVAC: If the HVAC units are located on the roof of the Buildings, they shall be screened from view so as to minimize the visual impact of such equipment, and any other equipment located on the roof, from the surrounding uses. Such screening shall be reasonably approved by the City.

6. Streetscape: The Project shall be designed to comply with the San Jose Downtown Streetscape Master Plan.

7. Driveways: Driveways shall provide aprons to curb returns so that the sidewalk maintains an even grade without curbs or ramps. This same standard shall apply to loading ramps and other points of vehicle and pedestrian access. All slopes must meet minimum ADA standards.

8. Parking Guidance System: All publicly accessible parking structures and parking lots must be linked to the City's Parking Guidance System.

9. Finish Materials: Finish materials shall be selected for quality and permanence, conveying an intended image of an urban character for such improvements appropriate in a downtown core area.

F. Signs

The Developer shall require a sign program that illustrates the size, types and locations of the signage for the retail tenants' use as part of the Final Project Drawings. All signs on the exteriors of buildings and structures developed as a part of

the Developer's improvements are of special concern and must conform to City of San Jose sign regulations and the Approved Site Plan.

III. EASEMENTS

The City and the Developer shall grant to each other, if necessary or appropriate, all non-exclusive easements and rights reasonably required for the development of the Site, including, but not limited to, easements and rights of vehicular access, pedestrian access, all utility services, structural support and attachments and ventilation.

IV. ENVIRONMENTAL MITIGATION RESPONSIBILITIES

Prior to execution of this Agreement, the City Council adopted a resolution certifying the Addendum to the Museum Place Mixed-Use Project Supplemental Environmental Impact Report to the Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942), and addenda thereto, File No. SPA17-031-01.

V. MISCELLANEOUS

Plans and Data

The Developer shall make available to the City upon request copies of all plans, drawings, surveys, tests, data and other information obtained or available to the Developer for the Project or the Site.

ATTACHMENT NO. 4

SCHEDULE OF PERFORMANCE

Note:
References herein to "this Agreement" and "DDA" mean the Amended and Restated Disposition and Development Agreement (DDA) of which this Attachment No. 4 is a part; references to the "Developer" mean the Developer and its permitted successors and assigns; references to "Attachments" mean the Attachments to the DDA unless otherwise specified. Except as otherwise defined in this Attachment No. 4, all capitalized terms used in this Attachment No. 4 shall have the same meanings set forth in the DDA. This Attachment 4 is intended to set forth critical milestones and times for performance in the pre-development and development of the Project. In the event of any conflict between the terms and provisions of this Attachment and the DDA, the DDA shall control. For purposes of this Schedule of Performance, Developer's satisfaction of any of the milestones hereunder and the commencement of any City review period shall occur when the submittal required hereunder is full and complete and contains all of the information and documentation required for such submittal. The Parties acknowledge that the "City Review Target Date" as set forth below for the City's review of, and response to, Developer submittals represents the normal and customary times for City to review and respond to such submittals. The parties agree that if the time period for the City's review and response to any Developer submittal exceeds the applicable City Review Target Date and such delay is unreasonable and results in the Developer failing to meet a subsequent milestone under this Schedule of Performance, then Developer's time to meet such subsequent milestone shall automatically be extended for the period of such delay. Prior to and during construction all parties shall collectively agree to meet monthly to review the project schedule and upcoming project milestones related to the Tech Expansion Space.

A. Obligations Relating to Design and Construction of Phase I Off-Site Utility Work of the Project	
1. City to provide list and plans and specifications for all City controlled work with Developer which shall include Public Art, Tech solar system relocation (if applicable), and Automatic Public Toilet.	On or before December 1, 2019.
2. Developer submittal of evidence of financing for Phase I Off-Site Utility Work	On or before February 1, 2020.
3. Developer shall submit to City construction documents for the Phase I Off-Site Utility Work, including an updated Project Budget.	On or before February 1, 2020.

4. City shall review and comment on Phase I Off-Site Utility Work in coordination with TMI.	**City Review Target Date**: forty-five (45) days after Developer submittal Developer shall have thirty (30) days to respond to any City comments.
5. Developer submittal of executed construction contract for the Phase I Off-Site Utility Work.	On or before May 1, 2020.
6. Developer submittal of Construction Impact Mitigation Plan for Phase I Off-Site Utility Work.	Prior to or with application for construction permits for Phase I Off-Site Utility Work.
7. Commencement of the Phase I Off-Site Utility Work.	Upon issuance of construction permits for the Phase I Off-Site Utility Work, but in no event later than July 1, 2020
8. Substantial completion of Phase I Off-Site Utility Work.	Within nine (9) months after commencement of the Phase I Off-Site Utility Work, but no later than February 1, 2021.
9. Developer shall provide evidence of financing for the Phase II Work.	On or before March 2021
D. Obligations Relating to Design and Construction of the Phase II Work	
1. Developer shall convene and coordinate a series of monthly meetings as needed with TMI and City regarding the Project	Beginning within 30 days of Effective Date and continuing throughout the design and construction periods impacting TMI.
2. Developer shall distribute every two weeks to the City and TMI a working schedule for the Project. This project schedule will be used to ensure that TMI has 30 days notice before delivery of the Museum Place Schematic Design set and 45 days notice before delivery of the Design Development and Construction Documents sets.	Beginning within 30 days of Effective Date and continuing throughout the design and construction periods impacting TMI.
3. Tech Museum shall submit a pre-schematic set outlining separately warm shell and TI scope to the Developer through the City of San Jose Public Works	February 29, 2020

Department in line with the warm shell definitions outlined in the DDA. Once all parties have agreed on these pre-schematic drawings, this will become the basis for ongoing submissions.	
4. Developer to submit construction documents for all demolition, excavation and foundation work ("D, E & F Work") work to City.	On or before March 2021
5. City shall provide comments and response to D, E & F Work construction documents in coordination with TMI.	**City Review Target Date**: forty-five (45) days after Developer submittal. Developer shall have thirty (30) days to respond to City comments.
6. With respect to the Phase II Work, Developer shall submit to the City those items set forth in Section **402** of the DDA.	On or before May 2021.
7. City approval or disapproval of the items set forth in Section **402** of the DDA.	Within thirty (30) days after receipt.
8. Developer to submit design documents to City for coordination with TMI for Phase II Work.	As appropriate to meet the milestone for Developer's City submittals of construction documents.
9. City shall provide design development documents for the Tech Expansion Space tenant improvements to Developer.	Not less than one hundred fifty (150) days prior to the Developer's submittal of the construction documents.
10. Developer to submit all construction documents for the Phase II Work to City, including an updated Project Budget.	On or before April 15, 2021.
11. City shall provide comments and response to the Phase II Work construction documents in coordination with TMI	**City Review Target Date**: forty-five (45) days after Developer submittal Developer shall have thirty (30) days to respond to City comments.
12. Submittal of Construction Impact Mitigation Plan for the Phase II Work.	Prior to or with application for building permit for the Phase II Work.

13. Commence construction of the Phase II Work	On or before June 2021
14. A Substantial Completion of the Tech Expansion Space Warm Shell	On or before April 2024
15. Substantial Completion of the Tech Expansion Space Warm Shell and transfer of the Tech Expansion Space Parcel to the City.	On or before April 2024
16. Substantial Completion of the Phase II Work.	On or before April 2024
17. City issuance of Certificate of Compliance (Phase)	Upon completion of each Phase of the Project
18. City issuance of Certificate of Compliance (Final)	Upon completion of the final Phase of the Project
E. Obligations Relating to Opening and Close of Escrow	
1. Parties to Open Escrow.	Completed.
2. Submittal of Developer certifications per Section **202B**.	On or before May 2020
3. Close of Escrow	Upon satisfaction of all conditions to Closing per Section **202C** but in no event later than June 2020.

ATTACHMENT NO. 5

FORM OF GRANT DEED
(TECH EXPANSION SPACE)

When recorded mail to:
_____
_____
_____
_____

APN: _____

GRANT DEED
(Tech Expansion Space)

The undersigned Grantor(s) declare(s): DOCUMENTARY TRANSFER TAX $_____; CITY TRANSFER TAX $_____; SURVEY MONUMENT FEE $_____

[_____]_____
Signature of Declarant

[_____] computed on the consideration or full value of property conveyed; OR
[_____] computed on the consideration or full value less of liens and/or encumbrances remaining at time of sale,
[_____] unincorporated area; [x] City of San Jose, and
[_____] Exempt from transfer tax; Reason:

_____
_____
Declarant's signature (must be signed if no transfer tax is being paid)

Mail Tax Statement to: same as above address

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MUSEUM PLACE OWNER LLC, a Delaware limited liability company ("Grantor") hereby grants to the City of San Jose, a municipal corporation of the State of California, ("Grantee") all that real property situated in the City of San Jose, County of Santa Clara County, State of California as more particularly described in Exhibit A attached hereto ("Property"). The Property is the Tech Expansion Space.

The Property is conveyed pursuant to and subject to the terms, conditions and limitations contained in the Amended and Restated Disposition and Development Agreement (the "DDA," to which reference is made for the meaning of each capitalized term used, but not otherwise

defined, herein) entered into by and between the Grantor and the Grantee dated _____, 2019. For clarity, notwithstanding anything to the contrary contained in this instrument, the Tech Expansion Space Parcel shall not include any right, title or interest in or to the ground beneath the Tech Expansion Space Parcel or the air above the Tech Expansion Space Parcel, but shall include easements appurtenant to the Tech Expansion Space Parcel created by the Declaration.

The Property is conveyed subject to the provisions of the Rider to Grant Deed (Tech Expansion Space) - Right of First Offer, which is attached hereto and incorporated herein in full by this reference.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this _____ day of _____, 201__.

"Grantor"

MUSEUM PLACE OWNER LLC,
a Delaware limited liability company

By:_____
Its:_____

The Grantee hereby accepts this written deed, subject to all of the matters hereinabove set forth.

GRANTEE:

_____,
_____

By: _____

Its: _____

RIDER
TO
GRANT DEED
(Tech Expansion Space)
RIGHT OF FIRST OFFER

1. This Rider is incorporated in and shall for all purposes be part of the Grant Deed (Tech Expansion Space) to which it is attached.

2. If Grantee, after complying with any and all applicable laws related to the disposition of surplus property, is legally authorized and elects to sell the Property in a transaction in which, simultaneously and in the same transaction, all of its right, title and interest in and to [describe parcel which is subject to the Tech Lease and on which the TMI sits] is not simultaneously transferred to the same party, (a "Disposition Event") Grantee shall first offer the Property to Grantor or, if different from Grantor, to the then record owner of the Office Space, as that term is defined in the DDA ("Grantor's Successor"), in accordance with the provisions of this Rider. For purposes of the following provisions of this Rider, "Grantor" shall be deemed to mean Grantor or Grantor's Successor, as applicable.

3. In the event Grantee proposes at any time to transfer the Property pursuant to a Disposition Event, Grantee shall deliver written notice to Grantor setting forth the price and other terms upon which Grantee proposes to transfer the Property ("Grantee's Notice"). Grantor shall have forty-five (45) days following its receipt of Grantee's Notice to provide written notice to Grantee indicating Grantor's agreement to acquire the Property on the terms set forth in Grantee's Notice and Grantee shall thereafter transfer and convey the Property to Grantor on the terms stated in Grantee's Notice; provided, however, that Grantee and Grantor shall cooperate and coordinate in good faith to arrange a closing at the earliest reasonably convenient closing date.

4. If Grantor does not indicate its agreement to acquire the Property within such forty-five (45) day period, Grantee shall thereafter have the right to engage in the Disposition Transaction in a bona fide transfer to a third party for at least the same economic and other terms set forth in Grantee's Notice. Upon the consummation of a Disposition Transaction in a bona fide transfer to a third party for at least the same economic and other terms set forth in Grantee's Notice, this Right of First Offer shall terminate. Grantee shall not at any time engage in a Disposition Transaction on terms less favorable to Grantee than the terms set forth in Grantee's Notice without first re-offering the Property to Grantor on such less favorable terms in accordance with the procedure set forth above. In addition, if Grantee has not consummated the Disposition Transaction to a third party on the terms set forth in Grantee's Notice within 270 days after delivery of Grantee's Notice, Grantee shall not transfer the Property to any third party on any terms without first re-offering the Property to Grantor in accordance with the procedure set forth above.

5. The provisions of this Rider are binding upon and for the benefit of Grantor and Grantee, and their respective successors and assigns, and constitute covenants running with the land comprising the Property and the Office Space and equitable servitudes thereon.

EXHIBIT A

Legal Description

[Final Legal Description to be Attached.]

ATTACHMENT NO. 6

FORM OF DECLARATION

RECORDING REQUESTED BY
AND WHEN RECORDED SEND TO:

City of San Jose
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113-1905
Attn: City Real Estate

DECLARATION OF COVENANTS AND RESTRICTIONS
AND RECIPROCAL EASEMENT AGREEMENT
(Museum Place – Tech Expansion Space)

This Declaration of Covenants and Restrictions And Reciprocal Easement Agreement (hereinafter referred to as the "REA") is made and entered into as of the ____ day of _____, 2019, by and between MUSEUM PLACE OWNER LLC, a Delaware limited liability company (hereinafter referred to as "Developer"), and the CITY OF SAN JOSE (hereinafter referred to as the "City"). The City and Developer are each referred to herein as a Party or together as "Parties".

RECITALS

A. Developer and the City entered into an Amended and Restated Disposition and Development Agreement dated _____, 2019 ("DDA"). The DDA contemplated the development of a mixed use urban development located adjacent to the Tech Museum of Innovation ("Tech Museum") at 201 S. Market Street, San Jose, California, on the block bounded by Park Avenue, South Market Street, West San Carlos Street and South Almaden Boulevard in San Jose, California. The development is to include a high rise building ("Building"), which will contain office space, retail space, a parking garage and the Tech Expansion Space (defined below), all as more particularly described in the DDA (collectively, "Project").

B. Pursuant to the DDA, the City transferred the real property on which the Project is to be constructed to Developer ("Real Property"). The Real Property is more particularly described on Exhibit A attached hereto.

C. As part of the development of the Project, Developer was required under the DDA to construct within the Project approximately sixty thousand four hundred seventy-five (60,475) square feet of expansion space for the Tech Museum consisting of office and retail space ("Tech Expansion Space"). Upon completion of the Project, Developer is required under the DDA to convey to the City fee simple title to the Tech Expansion Space as an airspace parcel ("Tech Expansion Space Parcel").

D. The City will thereafter lease the Tech Expansion Space to the Tech Museum of Innovation, a California nonprofit public benefit corporation ("TMI"), pursuant to an Amended and Restated Lease Agreement dated _____, 2019 ("Tech Lease").

E. Pursuant to and in compliance with the requirements of the DDA, the Parties have agreed to enter into and record this REA in order to provide for rights of access, easements and other rights as necessary for the Parties (and their respective Permittees (as defined below)) to access and utilize the Tech Expansion Space and the Developer Site (as defined below) in accordance with the terms of the DDA. The Tech Expansion Space Parcel is more particularly described on Exhibit B attached hereto.

F. Concurrently herewith, Developer has conveyed to the City by grant deed the Tech Expansion Space Parcel in accordance with the terms of the DDA. Developer and the City hereby create and provide for certain rights, privileges and easements and to impose certain restrictions and covenants on the Developer Site and the Tech Expansion Space Parcel as hereinafter more specifically set forth.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises, covenants and agreements herein contained, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

As used in this REA, the following terms have the following meanings:

1.1 Common Building Components. "Common Building Components" refers to any single Improvement or portion of any Improvement which is structurally a part of or provides structural support to both Properties, including, but not limited to, any common wall, whether it be load bearing or not, the structural walls of the Tech Expansion Space, and the structural support columns which are a part of the Tech Expansion Space and which form a portion of the facade of the Tech Expansion Space, the roof of the Building, and the foundation for the Building.

1.2 Dedicated Facilities. "Dedicated Facilities" means any and all HVAC, plumbing, fire protection, sanitary sewer, natural gas and other systems, facilities, and/or

components located in the Developer Site or the Tech Expansion Space Parcel, but which exclusively serves or benefits the Property owned by the other Party. Certain of the Dedicated Facilities are depicted on Exhibit [ ] attached hereto and incorporated herein. [EXHIBIT TO BE ATTACHED UPON FINALIZATION OF PLANS]

1.3 Developer. "Developer" shall mean the Museum Place Owner LLC, and includes any successor, transferee or assignee.

1.4 Developer Site. "Developer Site" shall mean the Real Property and the Project, as configured from time to time, excluding the Tech Expansion Space.

1.5 Improvements. "Improvements" shall mean all structures and appurtenances thereto of every type and kind constructed on the Real Property and/or as part of the Project. Improvements shall include all Common Building Components, Utility Facilities, and Dedicated Facilities.

1.6 Indemnified Persons. "Indemnified Persons" shall mean each Party's members, officers, directors, shareholders, employees, and agents.

1.7 Joint Use Area. "Joint Use Area" shall mean all areas within the Properties, as configured from time to time and including any indoor and outdoor areas, which under this REA are, or are to be made available for, the nonexclusive use, convenience and benefit of some or all of the Parties and their Permittees as hereinafter defined; provided, however, the Joint Use Area shall consist only of those areas depicted as "Joint Use" on Exhibit [ ] attached hereto and incorporated herein. The Joint Use Area may be reconfigured from time to time by written agreement signed by the Developer, City and TMI in compliance with Section 2.12 hereof, as reasonably necessary to reflect the particular areas provided for the nonexclusive use, convenience and/or benefit of some or all of the Parties and their Permittees included in the final Improvements, as constructed. [PRELIMINARY EXHIBIT REFLECTING JOINT USE AREA, PASEO AND PEDESTRIAN ROW ATTACHED; EXHIBIT TO BE FINALIZED UPON FINALIZATION OF PLANS.]

1.8 Mortgage. "Mortgage" means any mortgage or deed of trust made on all or a portion of the Developer Site or the Tech Expansion Space in good faith and for value, together with all other instruments securing the payment of the indebtedness secured by such mortgage, indenture, deed of trust or other instruments, and all amendments, modifications, supplements and extensions of such instruments. Mortgage does not include any such instrument given by or with respect to a Person who is not a Party.

1.9 Mortgagee. "Mortgagee" means the holder of a Mortgage (including, without limitation, the beneficiary of a deed of trust).

1.10 "Paseo" shall mean a portion of the Developer Site, to be used for the benefit of the general public, Permittees of the Project and the Tech Museum as a public

use area, which is depicted on Exhibit [___] attached hereto and incorporated herein.

1.11 Pedestrian Right of Way. “Pedestrian Right of Way” is the property adjacent to the Property, shown as the “Pedestrian Access Easement” depicted on the map of the Property attached hereto as Exhibit B and incorporated herein by reference, which shall include and any public sidewalks located adjacent to the Property that are not dedicated to the City.

1.12 Permittees. "Permittees" shall mean the respective officers, directors, employees, agents, partners, architects, engineers, contractors, subcontractors, suppliers, customers, tenants, lessees, sublessees, visitors, invitees, licensees and concessionaires of the Parties, and the City’s Permittees include (without limitation) TMI and its officers, directors, employees, agents, partners, contractors, customers, tenants, lessees, sublessees, visitors, invitees, licensees and concessionaires.

1.13 Person. “Person” shall include individuals, partnerships, firms, associations, trusts, corporations, any other form of business entity and any governmental agency or instrumentality, and the singular shall include the plural.

1.14 Property. “Property” may refer to Developer Site or the Tech Expansion Space Parcel, as applicable, and “Properties” may refer to both properties, collectively, as the context may require.

1.15 TMI. “TMI” has the meaning assigned in Recital D hereof and shall include any successor, transferee or assignee of TMI.

1.16 Utility Facilities. "Utility Facilities" means all storm drainage facilities, sanitary sewer systems, natural gas systems, domestic water systems, ventilation systems, fire protection water systems, fire life safety systems, electrical systems, telephone and cable systems, and any other utility systems and facilities necessary for the utilization of the Tech Expansion Space contemplated to be included as part of the Improvements. The Utility Facilities are generally depicted in Exhibit [__] attached hereto and incorporated herein.

ARTICLE 2
EASEMENTS

2.1 Utility Easements. Developer hereby grants to the City for the benefit of the Tech Expansion Space Parcel a nonexclusive easement on, under, over and though the Developer Site for the purposes of use, installation, maintenance, operation and replacement of the Utility Facilities in the general locations shown on Exhibit [__], and in any locations in which such Utility Facilities may be located in the Improvements, as constricted and configured from time to time.

2.2 Joint Use Areas. Each Party hereby grants to the other Party for the benefit of the other Party’s Property a nonexclusive easement over its Property

designated as Joint Use Areas, for the following purposes: (a) pedestrian and vehicular ingress and egress for emergency access and exit; (b) the right to store trash and other debris in appropriate receptacles, in areas of the Improvements designated for such use; (c) subject to the restrictions set forth in Section 2.14 below, ingress and egress for vehicles for loading and unloading of goods, and merchandise and equipment at the loading dock(s); and (d) ingress to and egress for the passage and accommodation of pedestrians, in the areas reasonably designated for such pedestrian use (which shall in no event include the trash storage and loading dock areas), including pedestrian ingress and egress between the Tech Expansion Space and pedestrian ingress and egress to the public rights of way and/or public sidewalks located on the Developer Site, in the areas expressly designated for any of the foregoing uses. The Joint Use Areas shall be used solely for their intended purposes and only for the Project (e.g. trash room shall be used solely for trash receptacle for trash generated in the Project). Further, each Party hereby grants to the other Party for the benefit of the other Party's Property a nonexclusive easement over its Property for the purposes of installation, maintenance, operation and replacement of the Improvements located in the Joint Use Area as necessary or required pursuant to the terms of this REA, which may include appropriate improvements to limit access by the general public to the non-public areas of the Project.

2.3 Dedicated Facilities. Each Party hereby grants to the other Party for the benefit of the other Party's Property a nonexclusive easement on, over, under and through its Property for the purposes of use, installation, maintenance, operation and replacement of the Dedicated Facilities, in the locations of such Dedicated Facilities as may exist in the Improvements as constructed and configured from time to time.

2.4 Common Building Components. Each Party hereby grants to the other Party for the benefit of the other Party's Property a nonexclusive easement over its Property for the purposes of use, installation, maintenance, operation and replacement of the Common Building Components, in the locations of such Common Building Components as may exist in the Improvements as constructed and configured from time to time. The right to use the Common Building Components by the City shall include the right of City and City's Permittees, at the City's sole cost and expense, to install a sign(s) in accordance with Developer's signage plan applicable to all Permitees of the Project that have such signage rights, or as agreed between the City and Developer pursuant to the DDA. Any signs installed on Common Building Components or any exterior signs shall at all times comply with the City's sign code set forth in the City of San José Municipal Code and subject to Developer's approval, not to be unreasonably withheld, conditioned or delayed.

2.5 Construction and Support Easements. The Parties each grant to the other Party for the benefit of the other Party's Property easements on and through its Property for: (a) the installation, use, maintenance, repair, replacement and removal of the following Common Building Components: common walls, common footings, supports and foundations; (b) the installation, use, maintenance, repair, replacement and removal of underground footings; (c) the installation, use, maintenance, repair, replacement and removal of the Dedicated Facilities benefitting a Party which are located on the Property

of the other Party; (d) the right of support and the right of the user in respect of and to maintain the columns, supports and foundations required for the support of the Improvements on each Property, the drains, utility lines, and other improvements required in connection with the initial construction of the Improvements in accordance with the DDA to the extent not included in any other easement expressly granted hereunder, together with the right of access to install, use, maintain, repair, replace or remove such columns, supports, foundations and other facilities, but only to the extent such repair, replacement or removal does not impair the structural integrity and/or support provided to the Improvements and/or Property of the other Party; and (e) where Improvements on one Property or the airspace included in any Property are built in airspace located over or on, and/or supported, by the Improvements on the other Property, the right to support of such airspace, including, without limitation, the right to use the upper slab surface of the Improvements on the lower Property, as reasonably required to support such Party's Improvements (the "Construction and Support Easements"). Notwithstanding anything to the contrary in the foregoing, no Party shall take any action which would adversely affect the structural integrity or safety of the Improvements situated within the Project.

2.6 Museum Unit Connecting Easement. The Parties each grant to the other Party for the benefit of the other Party's Property a nonexclusive easements over and across the structure of the Building as necessary and required to connect the Tech Expansion Space to the adjacent Tech Museum for the period of time during which the adjoining Tech Museum is owned by the City and said Tech Museum is held in common ownership with the Tech Expansion Space Parcel, and as required to support such connection (the "Connecting Easement").

2.7 Easements Reserved by Developer. Nonexclusive easements over the Project are hereby reserved by Developer for Developer and its Permittees to have access to, and ingress and egress over and across the Joint Use Areas and any other area of the Project, as reasonably necessary or advisable in connection with the maintenance, repair, replacement and restoration thereof subject to the terms of Article 7 below.

2.8 Structure Encroachment. The boundaries of the Tech Expansion Space Parcel have been fixed to correspond to the face of the interior walls of the completed Tech Expansion Space. It may be, however, that in connection with the completion of the Project and/or the Improvements, or by the repair or settlement thereof, minor and insignificant deviations occur so that one or more small portions of the structures on the Tech Expansion Space may encroach upon the Developer Site, or that small portions of the structures on the Property may encroach onto the Tech Expansion Space Parcel. In any such case of minor and insignificant encroachment, and notwithstanding any acceptance of the Tech Expansion Space under the DDA, valid easements for each encroachment and the maintenance and repair and reconstruction thereof shall exist in favor of the owner of the encroaching structure so long as such encroachment does not materially interfere with the use and operation of the servient Property in accordance with the terms of this REA, subject to the last sentence of this Section. The encroachment easement shall exist for so long as such encroachment exists, and the encroachment

structure shall be treated for all purposes as if it were situated entirely on the Property of its owner. Notwithstanding the foregoing, reconstruction following damage or destruction shall, to the extent reasonably practical, eliminate any such encroachment.

2.9 Appurtenant. The easements granted by a Party to this REA shall be appurtenant to the Property benefitted by the relevant easements, for the benefit of the Party owning such property and such Party's Permittees, and shall constitute a servitude upon the Property of the Party granting such easements.

2.10 Exercise of Easements. The exercise of easements under this Article must not result in permanent damage or injury to the Improvements of either Party that is not repaired, and must not unreasonably interfere with or interrupt the business operations conducted by any Party, or its Permittees then occupying such Property, affect the structural integrity of any Improvements on any servient tenement, or materially increase any costs associated with operating the Tech Expansion Space or the Project (collectively, "Interference"). In addition, each Party using an easement for the benefit of such Party, shall subject to Article 7 hereof, promptly repair, replace or restore the Joint Use Area, Common Building Components, Utility Facilities, Dedicated Facilities located on the burdened Party's Property, if any Improvements containing the relevant easements are damaged or destroyed by said Party or its Permittees in the exercise of the easements granted under this Article.

2.11 Indemnity.

(a) City shall indemnify, defend, protect and hold harmless Developer and Developer's Indemnified Persons, from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees (collectively, "Claims") which may be imposed upon or incurred by or asserted against Developer and Developer's Indemnified Persons by reason of any of the following occurrences during the term of the REA except (i) to the extent caused by the negligence or willful misconduct of any of the Developer, Developer's Indemnified Persons and/or the Developer's contractor, design professional, subcontractors, and suppliers, (ii) to the extent caused by any breach of this REA by any of the Developer and Developer's Indemnified Persons, or (iii) to the extent caused by the acts or omissions of Developer or any of its Permittees:

(1) Any exercise of the easements contained herein by the City or its Permittees; or

(2) Any work or thing done in, on, or about the Tech Expansion Space Parcel, the Joint Use Area or other facilities of the Project, by or at the direction of City or any of its Permittees; or

(3) Any negligence or willful misconduct on the part of the City or any of its Permittees; or

(4) Any accident, injury or damage to any person or property occurring in the Tech Expansion Space Parcel; or

(5) Any failure on the part of City or any of its Permittees to perform or comply with any of the terms, provisions, covenants and conditions contained in this REA or the Project rules and regulations promulgated by the Developer, to be performed or complied with by the City or any of its Permittees; or

(6) Any Interference with the use of the Developer Site caused by the City or any of its Permittees.

(b) Developer shall indemnify, defend, protect and hold harmless City, its Indemnified Persons and TMI from and against all Claims which may be imposed upon or incurred by or asserted against any of the City and City's Indemnified Persons and TMI by reason of any of the following occurrences during the term of the REA except (i) to the extent caused by the negligence or misconduct of any of the City, City's Indemnified Persons and TMI, (ii) to the extent caused by any breach of this REA by any of the City, City's Indemnified Persons and TMI, or (iii) to the extent caused by the acts or omissions of City or any of its Permittees:

(1) Any exercise of the easements contained herein by the Developer or its Permittees; or

(2) Any work or thing done in, on or about the Project by or at the direction of the Developer or any of its Permittees; or

(3) Any negligence or willful misconduct on the part of Developer or any of its Permittees; or

(4) Any failure on the part of Developer or any of its Permittees to perform or comply with any of the terms, provisions, covenants and conditions contained in this REA, to be performed or complied with by Developer or any of its Permittees; or

(5) Any Interference with the use of the Tech Expansion Space caused by the Developer or its Permittees.

(c) Developer and City and TMI promptly shall give one another written notice of any Claim which might entitle any of them to indemnification pursuant to this Section and upon such notice, Developer or City, as applicable, shall immediately defend the other at its sole cost and expense by counsel reasonably acceptable to the indemnified Party; provided, however, that Developer acknowledges that representation in any such matter by the City Attorney's Office shall be deemed acceptable to Developer.

(d) The provisions of this Section shall survive expiration or sooner termination of this REA.

2.12 Relocation or Modification of Easements. The precise location of the easements granted herein may from time to time be modified, so long as the easements (as so relocated or modified) provide materially the same benefits to the Party initially benefited by such easement, such Party approves in writing any relocation and the requesting Party desiring to relocate or modify the easement bears the full cost and expense of any relocation or modification, including, without limitation any amendment to this REA required to confirm and evidence the relocation of any area covered by and made expressly subject to any easement created under this REA. Any Party not affected by such relocation will reasonably cooperate with the affected parties in connection with the recording of any such amendment, provided the cooperating party will not be required to incur any expense in connection therewith. All Parties shall use reasonable efforts not to interfere in any material manner with the relocation or other modification of the easements. Without limiting the foregoing, if a condominium plan is filed showing the location of final Utility Facilities, Joint Use Areas, Dedicated Facilities, Common Building Components, Construction and Support Easements and/or Connecting Easement, as constructed, any exhibit to this REA depicting any of such easements shall be deemed amended to reflect the final easements as shown in any condominium plan.

2.13 Further Assurances. The Parties acknowledge that it was their express intent under the DDA and this REA that the transfer of the Tech Expansion Space to the City shall include any and all rights of access, easements and other rights as necessary for the City and the City's Permittees to utilize the Tech Expansion Space in an integrated manner with the Tech Museum and for the Developer and its Permittees to utilize the Developer Site. Each of the Parties agrees that it will, without further consideration, execute and deliver such other documents or amend this REA, as necessary, and take such other actions, as may be reasonably requested by the other party, to provide such rights of access, easements or other rights to the extent such rights have not been provided hereunder or to consummate more effectively the purposes or subject matter of this REA.

2.14 Rules and Regulations. Developer may, upon no less than thirty (30) days prior written notice to the City and TMI (during the term of the TMI Lease) adopt and impose reasonable and non-discriminatory rules and regulations to facilitate the use, operation and construction of the Project that are not inconsistent with the terms of the REA and which shall not materially, adversely affect City's or the City's Permittees' operations or materially increase any costs associated with operating the Tech Expansion Space and/or Tech Museum, including, without limitation, with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work, and insurance requirements. At all times, the City (or the City's Permittees, as applicable) shall use its dedicated loading dock(s) and to the extent City (or the City's Permittees, as applicable) must use the loading dock(s) located on the Developer Site, the City (or the City's Permittees, as applicable) shall first notify Developer and coordinate such usage. Each Party shall comply and use reasonable efforts to cause their respective Permittees to comply with such rules and regulations.

2.15 Compliance With Law. Each Party shall be responsible for the compliance of all Improvements on its Property and all activities thereon with all applicable law, except that any Party who is responsible for maintaining any Improvements on another Party's Property, shall be responsible for the compliance of such Improvements with all applicable law. Each benefitted Party shall not use the easement areas in any manner that would (a) violate applicable law; (b) constitute a hazardous condition; (c) constitute a public or private nuisance; (d) emit or discharge unusual, noxious or objectionable, fumes, vapors or odors that can be detected outside of the easement areas; (e) cause any excessive noise or vibrations; (f) cause any damage to the Improvements; or (g) significantly overburden the portions of the Project affected by any such Easement in a manner that would interfere with the normal use and operation of the portions of the Project used by the other Party. Any benefitted Party shall use commercially reasonable efforts to prevent its Permittees from doing any of the foregoing.

2.16 Compliance With Insurance Requirements. Each Party shall comply with the requirements of any insurance policy affecting insurance coverage on such Properties or any portion thereof if noncompliance by it would: (a) substantially alter the risk profile of the Property resulting in a premium increase of 10% or more, or (b) create a valid defense to a right to collect insurance proceeds under policies insuring the Properties or any portion thereof. In the event of any noncompliance the Party alleging a violation will send notice to the other party that shall specify the nature of the violation and corrective measures proposed by the Party alleging a violation that would be consistent with the terms and conditions of this REA governing each Party's use of the Project. The Parties will have thirty (30) days from the date of the relevant notice to agree on a resolution, provided if the Parties are unable to do so within such thirty (30) day period, such dispute will be resolved by [specify AAA or JAMS].

2.17 Harmonious Development. The City and the Developer acknowledge that the Developer intends to develop and operate the Project as a class A mixed-use office project with ancillary commercial uses, and the City and the Developer each intend that uses of the Tech Expansion Space and other areas of the Project should not interfere with the routine operation of the Project as a class A mixed-use office project with ancillary commercial uses. Notwithstanding the foregoing, with respect to TMI's uses when undertaken by TMI shall be deemed to be harmonious so long as such uses are consistent with Exhibit C attached hereto.

2.18 Non-Compete Provisions. From and after the date of this REA, City (including any successor owner of the Tech Expansion Space shall not, and shall not permit any person or entity to, directly or indirectly, (i) engage in the Restricted Business (as defined below) in or on the Tech Expansion Space, (ii) contract with any Competitor (as defined below), by selling or leasing to, lending to or borrowing from, or entering into any ground lease, lease, license, occupancy agreement, management contract or similar arrangement with a Competitor, in each case with respect to a Competitor's use of the Tech Expansion Space for a Restricted Business, or (iii) install signage or other physical branding or advertising materials for a Restricted Business on any part of Tech Expansion

Space. Nowithstanding the foregoing,TMI's harmonious uses described in Section 2.17 above shall be deemed compliant with the foregoing restrictictions.

As used herein: (1) the term "Restricted Business" means (a) the design, development, marketing, operating and/or managing of a member-based shared working office space environment with shared services available for members (including, without limitation, flexible workplace center, executive/shared office suites, an incubator-type office/facility, and/or virtual office space) and/or (b) "co-living" residences or a similar residential property that generally includes (x) property management primarily intended to create community among residents, including by hosting and organizing activities, (y) furnished dwelling spaces for residents, including micro-dwelling units; and (z) amenities and common areas primarily built and operated to foster interaction among residents; and (2) the term "Competitor" means any person, entity, business or enterprise that engages directly in a Restricted Business in any capacity.

City shall ensure that any future tenant or occupant in any building on the Tech Expansion Space shall agree, in such future tenant's lease or such future occupant's occupancy agreement, to be bound by the terms of this Section 2.18 to the same extent as if it were a party hereto, and City shall be responsible for any breach by any such future tenant of such agreement. City acknowledges that a breach or threatened breach of this Section 2.18 would give rise to irreparable harm to Developer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by City of any such obligations, Developer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond). City acknowledges that the restrictions contained in this Section 2.18 are reasonable and necessary to protect the legitimate interests of Developer and constitute a material inducement to Developer to enter into this REA and consummate the transactions contemplated by this REA.

ARTICLE 3
PASEO

Paseo; Access and Programming of Pedestrian Right of Way. Developer, its successors and assigns, shall have the right to utilize, control and secure the Paseo, in its reasonable discretion, including, without limitation, locate in the Paseo certain improvements for the serving and sales of food and beverages subject to the requirements under this Article 3. Developer acknowledges that the Pedestrian Right of Way, as shown on the map of the Property, is subject to a no-build easement, a pedestrian access easement and an emergency vehicle easement (collectively, "Access Restrictions"). In compliance with the Access Restrictions, Developer shall keep the Pedestrian Right of Way free and clear of any and all structures, furniture, fixtures and

equipment, or obstructions of any kind unless approved in writing by the City or in connection with any repair or restoration of the Joint Use Area as provided in, and in compliance with, Article 4 below. The parties acknowledge that the Pedestrian Right of Way may be temporarily closed and used for special events only pursuant to permitting procedures adopted by the City.

ARTICLE 4
MAINTENANCE; REPAIR

4.1 Obligation to Maintain. Excluding casualties resulting in damage or destruction which would require substantial capital expenditure, which shall be governed by Article 5, each Party shall, at its own cost, perform reasonable and adequate maintenance of its Property and the Improvements located thereon or therein, and the structural integrity thereof, to the extent necessary to allow the continued use and enjoyment of the Joint Use Area, the Common Building Components, the Utility Facilities and the Dedicated Facilities. Notwithstanding the foregoing, (a) Developer, at its own cost, shall be responsible for the maintenance, repair and as needed, restoration and/or replacement of the Joint Use Area, Common Building Components and Utility Facilities (to the extent such Utility Facilities are not Dedicated Facilities), and (b) City, at its own cost, shall be responsible for the maintenance, repair and as needed, restoration and/or replacement of the Utility Facilities to the extent such Utility Facilities are Dedicated Facilities. Developer shall have the right at all times to the extent needed for the purposes of performing its obligations hereunder (a) to enter the public areas of the Tech Expansion Space during its normal business hours and (during the term of the Tech Lease) following coordination with TMI, and (b) upon reasonable advance notice (which shall be at least one business days' notice to the City) and (during the term of the Tech Lease) following coordination with TMI, to enter the Tech Expansion Space (i) during nonbusiness hours and (ii) to enter nonpublic areas upon reasonable notice (which shall be at least one business days' notice) to the extent access is requested to nonpublic areas or during nonbusiness hours. Notwithstanding the foregoing, Developer shall have the right to immediate access to conduct any emergency repairs to any Improvements that Developer is responsible for which are located in the Tech Expansion Space.

4.2 Special Duty to Repair. Subject to the provisions of Section 4.1 above, each Party shall at its expense repair, replace or restore the Joint Use Area, Common Building Components, Utility Facilities and any Improvements of, or Dedicated Facilities benefiting, the other Party to the extent the need for such repair, replacement or restoration is caused by the negligence or intentional wrongful conduct or by a breach of any term or provision of this REA of the Party required to make the relevant repairs, or its Permittees. Such maintenance, repair, replacement or restoration shall be commenced within thirty (30) days after the Party otherwise responsible to maintain the relevant area provides written notice to the Party responsible for the repair that such damage has occurred and is required to be repaired hereunder. Any required repairs, and shall be diligently completely as soon as practicable and in accordance with Section 4.3 below. Notwithstanding the foregoing, either Party may provide reasonable notice to the other Party that work needs to commence sooner in order to avoid unreasonable disruption to

either Party's (or its Permittees', to the extent applicable) business operations or losses or material additional expenses. However, work called for under this paragraph shall not cause or result in any Interference with the use of the Tech Expansion Space or the Developer Site, as applicable, without the City's (and TMI's during the term of the Tech Lease) and Developer's (as the case may be) prior written consent which shall not be unreasonably withheld so long as any such request for consent is made within a reasonable time prior to the exercise and so long as Developer or the City make reasonable efforts to coordinate with the other Party to avoid any Interference and any such work shall be at no cost to the other Party.

4.3 Right to Perform Certain Maintenance and Repairs. Notwithstanding any other provision or time for performance in this REA, if a Party fails to commence and timely perform any of its maintenance or repair obligations set forth in this REA within thirty (30) days after the receipt of written notice of the necessity for such maintenance or repair from the other Party (or less if shorter written notice is provided and agreed upon as stated in Section 4.2 above), such other Party shall have the right but not the obligation to perform such maintenance or repair unless the non-repairing Party timely commences such maintenance and repair and continue to diligently prosecute until completion. The non-repairing Party shall reimburse the repairing Party for all reasonable third party costs incurred by such Party in such performance within fifteen (15) business days of written demand for reimbursement by the repairing Party accompanied by documentation of such costs. Any amounts not paid when due shall bear interest at the lower of the highest rate allowed by law or the prime rate then charged by Bank of America, commencing upon the date such amounts were due and continuing until the unpaid amounts together with interest thereon have been repaid. If the particular repair or maintenance requires entry onto the other Party's property, the repairing Party and its designees shall have the right to enter the other Party's Property for such purposes; provided, however, that the repairing Party shall exercise reasonable care so as to minimize any disruption of the use and operations conducted on the other Party's Property.

4.4 Prevention of Water Leakage. The owner of the Developer Site shall have the duty, responsibility and obligation to maintain and repair, at its sole cost and expense, that portion of the Improvements on the Developer Site which are over the roof area of the Tech Expansion Space as well as any other system, utility or device not operated by the City or its Permittees so as to prevent any water leakage or other adverse impact on the Tech Expansion Space, including the business operations of the Tech Museum. The owner of the Developer Site shall be liable to the City and its Permittees for any water damage or other damage to the Tech Expansion Space, or any personal property or fixtures located thereon, and for loss of use and interference with business operations to the extent the owner of the Developer Site fails to comply with the obligations contained herein; provided that the owner of the Developer Site shall not be liable for any conditions, losses or damages resulting from or due to the actions or negligence of the owner of the Tech Expansion Space Parcel or its Permitees.

ARTICLE 5
DAMAGE AND DESTRUCTION

5.1 Notice of Material Casualty Affecting Developer Site. In the event of any material damage or destruction of the Developer Site, Developer shall give the City written notice within one hundred and twenty (120) days after the occurrence of the casualty event which notice will describe the portions of the Property affected, shall indicate whether the Developer intends to repair the Improvements on the Developer Site following the relevant casualty, and shall include the estimated cost of the relevant repairs (collectively a "Casualty Notice"), which time period may be extended upon the request of either Party for good cause. As used herein, the term "material" shall mean for any damage or destruction, the estimated repair or reconstruction cost exceeds $500,000.

5.2 Casualty Affecting Tech Expansion Space and the Developer Site. For those casualties that are material and which affect all or a part of the Tech Expansion Space, and that also affect the Improvements on the Developer Site, the following shall apply. For purposes of this Section, "material" shall mean for any damage or destruction as it relates to the Tech Expansion Space, the estimated repair or reconstruction cost exceeds $50,000.

5.2.1 Subject to any Mortgagee requirements, all damage and destruction to and affecting the Tech Expansion Space (collectively "TES Damage") must be repaired if and to the extent there is full funding therefor as described in Subsection 5.2.1.1 below ("TES Damage Repair Funding").

5.2.1.1 "TES Damage Repair Funding" shall mean the proceeds which would have been available to fund the repairs if insurance were maintained as otherwise required by the terms of this REA, subject to any rights of the Mortgagee. For the purposes of determining the amount of TES Damage Repair Funding available for the cost of repairs, the amount of any "self-insurance" held by the Developer and/or the City to fund repairs to the portion of the Property that is damaged hereunder, as well as the amount of "deductibles," shall be deemed to be available insurance proceeds for purposes of determining whether the TES Damage Repair Funding is sufficient to repair TES Damage and restore the Tech Expansion Space. However, any portion of the TES Damage that is covered under insurance that TMI is required to maintain under the Tech Lease covering the Tech Expansion Space, including any "self-insurance" or "deductibles" thereunder, not be considered part of the TES Damage to be restored hereunder and shall not be the obligation of Developer to restore.

5.2.1.2 If there is a shortfall in TES Damage Repair Funding when compared to the cost of repairing TMI Damage, after considering self-insurance and deductibles as provided above, at its sole discretion, the City may within one hundred and twenty (120) days after the date of the Casualty Notice, which time period may be extended upon the request of either Party for good cause, elect by written notice to the

Developer to augment insurance proceeds with other funds available to the City for purposes of funding any shortfall in the TES Damage Repair Funding.

5.2.1.3 Further if there is a shortfall in TES Damage Repair Funding when compared to the cost of repairing TMI Damage, after considering self-insurance and deductibles as provided above, and the City does not elect to fund such shortfall in full, at its sole discretion, TMI may within one hundred and twenty (120) days after the date of the Casualty Notice, which time period may be extended upon the request of either Party for good cause, elect by written notice to the Developer to augment insurance proceeds with other funds available to TMI for purposes of determining whether sufficient TES Damage Repair Funding is available to fund the relevant repairs in full.

5.2.1.4 The Developer shall commence and expeditiously and diligently complete any TES Damage repair and Tech Expansion Space restoration, that is the responsibility of Developer hereunder, in a good and workmanlike manner, to the level originally provided in the DDA or as otherwise mutually agreed upon by the Parties (collectively the "Restoration"). Developer shall commence the Restoration immediately once all available funds are secured and diligently proceed to endeavor to complete the Restoration within two hundred seventy (270) days from receipt of all available funds subject to governmental requirements and disbursement requirements under any mortgagee documents, which time period may be extended upon the request of either Party for good cause.

5.2.2 If TES Damage Repair Funding is insufficient to effect the repair of the TES Damage that Developer would be required to undertake hereunder were such funding available, Developer shall (in coordination with the City) obtain an estimate of the total cost of the Restoration ("Total Restoration Cost"), including any shortfall, as soon as reasonably possible, but not later than one hundred and twenty (120) days after the date of the Casualty Notice, which time period may be extended upon the request of either Party for good cause, and the following shall apply:

5.2.2.1 If there is a difference between the TES Damage Repair Funding and the Total Restoration Cost (the "Insurance Shortfall") and the City or TMI shall not have made an election under Sections 5.2.1.2 or 5.2.1.3, above to fund any shortfall, the City and TMI shall, within sixty (60) days after the occurrence of the casualty event, elect by written notice to the Developer to use diligent good faith efforts to fund the Insurance Shortfall over the time period provided herein. If such election is made by the City and TMI, Developer shall not be required to commence the Restoration unless TES Damage Repair Funding sufficient to pay the cost of retoring the TES Damage is secured. If the City and TMI make such election and are unable to raise the Insurance Shortfall within one (1) year following the event of damage or destruction, Restoration shall not be required and the Developer shall instead, transfer the insurance proceeds it received that are allocable to the TES Damage to the City. If the City and TMI raise the Insurance Shortfall within one (1) year following the event of damage or destruction, Developer shall diligently after the funds are provided proceed to endeavor to complete the Restoration within two hundred seventy (270) days from receipt of all available funds subject to

governmental requirements and disbursement requirements under any mortgagee documents, which time period may be extended upon the request of either Party for good cause.

5.2.2.2. If the Developer is not required to restore TES Damage hereunder and the City receives proceeds from Developer on account of such TES Damage, any restoration shall be governed under Section 5.4 hereof.

5.3 Restoration Affecting Developer Site and Tech Expansion Space. If Developer indicates in the Casualty Notice that it intends to restore the Improvements located on the Developer Site, and the Developer is required to perform Restoration of the Tech Expansion Space pursuant to the provisions of Section 5.2, above, the Developer shall commence and expeditiously and diligently complete restoration of the Developer Site and Tech Expansion Space and related facilities, in a good and workmanlike manner, to the level originally provided in the DDA or as otherwise mutually agreed upon by the Parties subject to governmental requirements, insurance adjustment delays and disbursement requirements under any mortgagee documents. In the event that the Developer elects to restore the Improvements on the Developer Site, all insurance proceeds which otherwise would have been available to the City or its Permittees for restoration of the Developer Site and/or for and the Tech Expansion Space shall be delivered to the Developer, for disbursement in accordance with standard construction disbursement procedures employed by major construction lenders, or as required by any Mortgagee to the Developer. As used herein, the term "insurance proceeds available" shall mean proceeds which would have been available if insurance were maintained as otherwise required by the terms of this REA, subject to any rights of the Mortgagee.

5.4 Restoration Affecting Developer Site and Tech Expansion Space – Developer Does Not Restore Developer Site. If the casualty affects the Tech Expansion Space, but Developer has indicated in its Casualty Notice that the Developer has elected not to restore, and the Developer is required to perform Restoration of the Tech Expansion Space pursuant to Section 5.2, above, the Developer shall, at its cost, construct or repair the utility and other facilities as required to maintain the benefit of the easements created hereunder to the Tech Expansion Space, to the extent provided in Section 5.9, below. This shall include, without limitation, support or relocation on the Developer Site of the Tech Expansion Space as an integrated facility of comparable functionality to the functionality existing prior to such casualty.

5.5 Less Than Material Damage or Destruction. If any damage or destruction occurs that is not material, as defined above, each Party promptly repair its Property to the condition existing prior to the relevant damage or destruction.

5.6 Casualty Not Affecting Tech Expansion Space If a casualty occurs that does not affect the Tech Expansion Space, subject to Developer's obligation under Section 5.9 below, Developer may elect to either repair or reconstruct the Improvements located on the Developer Site in any manner permitted by law, so long as the resulting

Project shall, in addition to satisfying Section 5.9, below, be reasonably compatible with the continued operation of the Tech Museum and the Tech Expansion Space, as reasonably determined by the City, or may elect to raze the relevant Improvements, and construct or repair the utility and other facilities as required to maintain the benefit of the easements created hereunder to the Tech Expansion Space, to the extent provided in Section 5.9, below. This shall include, without limitation, support or relocation on the Developer parcel of the Tech Expansion Space as an integrated facility of comparable functionality to the functionality existing prior to such casualty. If Developer razes the Improvements, Developer shall install landscaping and other amenities as reasonably approved by the City, that shall be reasonably compatible with the restored Tech Expansion Space and related facilities, as reasonably approved by the City consistent with applicable legal requirements.

5.7 Casualty Affecting Only Tech Expansion Space, or Casualty Where City Has Elected Not to Restore. In the event that any Improvements within the Tech Expansion Space are partially or totally destroyed by any casualty and the Developer elects not to restore the Tech Expansion Space pursuant to the terms of Section 5.2.2.1 above, the City may, within one hundred twenty (120) days of written notice of such election by Developer, give the Developer written notice to sell the Tech Expansion Space Parcel and all improvements thereon to the Developer, in which case the Developer shall acquire the fee title interest in the Tech Expansion Space Parcel for the fair market value thereof immediately prior to any event of destruction ("FMV") as determined by an independent, qualified, third party appraiser acceptable to the City and the Developer. If the Parties are unable to agree upon an appraiser, the Parties shall each select a disinterested appraiser within ten (10) days thereafter and the two appraisers shall select one an independent, qualified, third party appraiser and the determination of such appraiser shall be conclusive and binding upon the Parties. If a Party fails to timely select an appraiser, the FMV shall be determined by the appraiser timely selected by the other Party. City and Developer shall obtain an appraisal within sixty (60) days after the City delivers notice of its election to sell the Tech Expansion Space Parcel to the Developer. Developer shall have one hundred twenty (120) days after the FMV is determined by the process specified herein, to close on the acquisition of the Tech Expansion Space Parcel.

5.7.1 Insurance proceeds transferred by the Developer to the City pursuant to Section 5.2.2.1 above, shall be credited towards the Developer's payment of the purchase price for the Tech Expansion Space Parcel.

5.7.2 In the event of the City's sale of the Tech Expansion Space Parcel pursuant to this Section 5.7, (a) the Tech Lease will terminate as to the Tech Expansion Space, and (b) Developer shall receive the Tech Expansion Space free and clear of any obligations to the City or TMI, including, without limitation, any obligations under the Tech Lease.

5.8 Casualty Affecting Tech Expansion Space Only. If the Tech Expansion Space is affected by a casualty that does not affect the Improvements on the Developer Site, City shall repair any relevant damage and reconstruct the Tech Expansion Space,

expeditiously and diligently, subject to governmental requirements, insurance adjustment delays and disbursement requirements under any mortgagee documents.

5.9 Damage or Destruction of Improvements within Joint Use Area and Common Building Elements. Notwithstanding anything contrary set forth in this Article 5, if any Improvements within the Joint Use Area or any Common Building Components are damaged or destroyed by any casualty, the Developer shall repair or reconstruct such Improvements to the extent required to provide (i) adequate ingress and egress from Tech Expansion Space to the public rights of way, and (ii) structural support granted hereunder. Developer's repair obligation hereunder shall be subject to governmental requirements, insurance adjustment delays and disbursement requirements under any mortgagee documents.

ARTICLE 6
CONDEMNATION

6.1 Definitions. As used in this Article 6, the following terms shall have the following meanings:

(a) "Appropriation" shall mean any taking by exercise of a right of condemnation (direct or inverse) or eminent domain, or requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance or the sale under threat of condemnation. The net condemnation award received from an Appropriation hereunder, after deduction of expenses incurred in obtaining the award, shall constitute an "award" as that term is used herein.

(b) "Partial Appropriation" shall mean, with respect to either the Developer Site or the Tech Expansion Space, an Appropriation of any portion of such property, such that the portion remaining after such Appropriation may, with the award from such Appropriation, reasonably be reconstructed or otherwise modified into an architecturally distinct, economically feasible project, the use of which would be consistent with the Improvements it replaces and which would in all material respects be architecturally harmonious with, and would not interfere with the operations of, the other Improvements and such properties as a whole.

(c) "Total Appropriation" shall mean, with respect to either the Developer Site or the Tech Expansion Space, any Appropriation which is not a Partial Appropriation.

6.2 Rebuilding Following Appropriation.

If there is a Partial Appropriation of either the Developer Site or the Tech Expansion Space, or both, each Party shall, at its sole cost and expense, reconstruct or otherwise modify the Improvements on its remaining non-appropriated property such that its remaining portion of such property shall be useable in accordance with the terms and

provisions of this REA; provided, however, that to the extent such cost exceeds the amount of the award available to that Party, then the decision for restoration or modification shall be within the sole discretion of the owner of the appropriated property.

6.3 Distribution of Award.

In the event of an Appropriation, any award of compensation or damage relating to such Appropriation, whether by legal proceeding in connection therewith or deed in lieu thereof, shall be paid to the affected Parties as their respective interests appear.

ARTICLE 7
CONSTRUCTION, ALTERATION AND REMODELING

7.1 Construction During Term. Any construction, remodeling, reconstruction, alteration, replacement or repair work undertaken in or on the Developer Site which is adjacent to the Tech Expansion Space shall be of architectural design consistent with the original construction of the Tech Expansion Space and the Developer Site, and the quality of the Project required to be maintained hereunder, or as otherwise approved by the City. Any exterior construction, remodeling, reconstruction, alteration, replacement or repair work undertaken in or on the Tech Expansion Space which is adjacent to the Developer Site shall be of architectural design consistent with the original construction of the Tech Expansion Space or as otherwise approved by Developer. Prior to the commencement of any work contemplated under this Article 7, each Party shall be notified in writing. Each Party (and TMI during the term of the Tech Lease) shall designate a representative with respect to the construction matters set forth herein.

7.2 Provisions Related to Construction. All construction work undertaken by any Party under this REA shall be performed: (a) at the sole expense of the Party causing such work or is otherwise responsible pursuant to the terms of this REA; (b) with reasonable diligence to completion once commenced, subject to delays beyond a Party's control, provided the constructing Party will use efforts to minimize, to the extent reasonable and practical, any interference with the use, operation, occupancy or enjoyment or ingress to and egress from any Property or any Improvements located thereon by any Party; (c) in a good and workmanlike manner and in accordance with this REA, including the maintenance standard hereunder, and all legal requirements; (d) so as not to cause any material increase in the cost of any subsequent construction by any Party, impose any material additional obligations upon any Party, or unreasonably interfere with any construction performed by any Party, and (e) so as not to cause any Improvements located on the other Party's Property to be in violation of any legal requirements. No Party shall permit any mechanics' liens or materialmen's liens, stop notices or other liens to stand against any other Party's Property for labor, material or services furnished to or on behalf of such Party for a period in excess of thirty (30) days from the date of filing of any such lien; provided, however, that each Party shall have the right to contest the validity or amount of any such lien or stop notice, provided that such contest is made diligently and in good faith, and, with respect to liens, the contesting Party

either furnishes security reasonably acceptable to the other Parties to ensure that the lien, plus applicable costs and charges, will be paid if the contest is unsuccessful, or secures a bond sufficient to release such lien.

ARTICLE 8
INSURANCE

8.1 Developer's Insurance. During the term of this REA, Developer shall maintain or cause to be maintained the insurance policies described in Exhibit [__] attached hereto and incorporated herein by this reference.

8.2 Waiver of Subrogation. Each Party hereby releases the other and each person claiming by, through or under the other Party (including its Mortgagee and Permittees) from all liability for injury to any person or damage to any property that is caused by or results from a risk which is actually insured against or which is required to be insured against under this REA, without regard to the negligence or willful misconduct of the entity so released, provided any party whose willful act results in liability, damage or injury for which insurance coverage is not or would not be available had the required coverage been maintained, as a result of such willful act will not be deemed so released. Each Party will use commercially reasonable efforts to cause each insurance policy held by each such Party to provide that the insurer thereunder waives all right of recovery by way of subrogation as required herein in connection with any injury or damage covered by the policy. If any insurer shall assess an additional charge or premium for such waiver, the Party obtaining the waiver will provide written notice to the other Party of the amount of the charge by providing an invoice or other evidence showing the amount of such charge and if the other Party does not pay the cost of the waiver in thirty (30) days after it receives such invoice, the Party will not be required to have the waiver in place of the relevant policy period. If any insurance policy required hereunder cannot be obtained with a waiver of subrogation as required by this Section, the Party that cannot obtain waiver will, promptly after such Party becomes aware that the waiver cannot be obtained, provide written notice to the other Party that the waiver cannot be obtained for the relevant policy period. Failure to obtain a waiver for a particular policy period will not excuse a party from using reasonable efforts to obtain a waiver for subsequent periods. The foregoing release and waiver of subrogation shall apply regardless of whether an express indemnification of a party to this REA, given pursuant to this REA, would otherwise make that party liable or otherwise responsible for a loss, damage, injury, cost, liability or claim that would not exist in the absence of such express indemnity.

ARTICLE 9
OPERATING REQUIREMENTS

9.1 Use Standards. Developer will maintain the Project to a level of quality of character and operation which is equal to the level of quality of character and operation to which similar Class "A," highest quality, mixed-use developments in the Downtown

San Jose market are maintained, subject to such ordinary wear and tear and aging of the Improvements as is common in the Downtown San José market for Class "A" mixed use properties of comparable age and design; provided, however, that the Developer's obligations pursuant to this sentence shall not include the obligation to maintain any portion of the Project as to which the obligation to maintain (if any) has been delegated to the City under this REA.

9.2 Other Operating Requirements. Developer further covenants and agrees for itself, its successors and assigns, subject to the continued existence of Improvements on the Property (as they may be renovated from time to time), that the following covenants and restrictions shall remain on the Property until terminated pursuant to the terms of this REA:

a. Developer, the City, and their respective successors and assigns, shall not:

(1) Use or permit the noise or sound amplification in violation of applicable law; or

(2) Permit undue accumulation of garbage, trash, rubbish or any other refuse; or

(3) Conduct or permit, unless directed by order of court, any bankruptcy sale, or any fire sale or "going out of business" sale in any portion of the Improvements if signs or other exterior advertising of any such sale would be required (liquidation sales or foreclosure sales entirely within premises in the Building that are not advertised in the exterior areas of the Building or the portions of the Project accessible to the general public shall be permitted); or

(4) Create, cause, maintain or permit any nuisance in violation of applicable law; or

(5) Commit or suffer to be committed any waste, other than normal wear and tear, subject to the maintenance standard hereunder; or

(6) Use or allow the use of the Project or any portion thereof for any unlawful purpose; or

(7) Cause or permit obnoxious odors to emanate or be dispelled in violation of applicable law.

b. The Joint Use Area and Joint Use Area improvements shall be maintained and operated by the Developer, to the standard provided herein for Developer's Improvements. The obligations to maintain and operate the Joint Use Area shall include, but not be limited to, the following:

(1) Paving and Curbs. All paved surfaces, including parking areas, and curbs of the Joint Use Area shall be maintained in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing of the parking area, driveway areas and curbs.

(2) Sweeping. Papers, debris, filth and refuse shall be removed, and the Joint Use Area shall be washed and swept to the extent necessary to keep the Joint Use Area in a clean and orderly condition.

(3) Directional Signs and Markers. Appropriate directional signs, markers and lines shall be placed, kept in repair, and replaced and repainted as necessary from time to time.

(4) Lighting. Installing and maintaining such Joint Use Area lighting facilities as may be reasonably necessary or required by applicable laws, including all lighting necessary or appropriate for Joint Use Area security and exterior lights attached to the improvements that are intended to illuminate the Joint Use Area. Such lighting shall be operated, kept in repair, cleaned and replaced and/or reballasted as necessary from time to time in accordance with Developer's building standards. Notwithstanding the foregoing, the City shall be responsible for the installation and maintenance for all public street lights and/or lamp posts for the Paseo and Public Right of Way as typical for San Jose streets.

(5) Landscaping. Landscaped areas located within the Joint Use Area shall be cleaned and maintained in a neat and orderly manner, and other landscaping shall be replaced as necessary.

(6) Utilities. All common storm drains, utility lines, sewers and other utility systems and services located in the Joint Use Area which are necessary for the operation of the Joint Use Area and the other improvements on the Property shall be maintained, cleaned, and repaired as reasonably necessary from time to time.

(7) Obstruction. The Joint Use Area shall be kept free from obstructions that materially limit the intended purpose of the Joint Use Areas unless such obstruction is required or permitted under the provision of this REA (provided nothing in this REA will be deemed to prohibit temporary obstruction of such areas as required for construction permitted hereunder, subject to Section 7 hereof).

(8) Signs. All signs in the Joint Use Area shall be maintained and repaired as reasonably required.

(9) Sidewalks. All sidewalks shall be cleaned (including washing and/or steam cleaning), maintained and repaired as reasonably required.

(10) Governmental Requirements. All applicable requirements of governmental agencies shall be complied with in all material respects.

(11) Security. Provide security measures, including personnel, in the Joint Use Area as necessary. Developer and Developer's Indemnified Parties shall have no liability in connection with the provision, or lack, of such services, including losses due to theft, vandalism, or like causes.

ARTICLE 10
SUCCESSORS IN INTEREST; RELEASE OF LIABILITY

10.1 Successors Bound. This REA is for the benefit of and shall apply to and bind each of the Parties hereto and each and all of their respective heirs, successors, assigns, grantees, mortgagees and Permittees during the period of their ownership of their respective interests in the Developer Site or the Tech Expansion Space Parcel.

10.2 Transfer of Interest, Rights, Powers and Obligations. In no event shall the rights, powers and obligations conferred upon the Parties hereto pursuant to this REA, be at any time transferred or assigned by either of the Parties except through a transfer of the Parties' respective interests in their respective Properties, and then only to the extent provided in this REA.

ARTICLE 11
RUNNING COVENANTS; EQUITABLE SERVITUDES

This REA is executed pursuant to the City's Envision San Jose 2040 General Plan for the use and improvement of the Tech Expansion Space and the Developer Site and is intended to be for the mutual benefit of the Parties and their successors in interest. The Parties hereby declare that the provisions of this REA are easements, licenses, covenants, conditions and restrictions upon the Tech Expansion Space and the Developer Site. All the easements, licenses, covenants, conditions and restrictions shall run with said real property, shall be binding upon all persons who now or hereafter own any right, title or interest in said real property or any part thereof and shall be for the joint and several benefit of all such persons.

The easements established in this REA are not intended to create, nor will they create, any prescriptive rights in the public. Neither the execution of this REA or any instrument which may be executed in connection herewith nor the granting of the easements described herein shall be deemed to grant any other easement to any third party or to establish any easement by implication. Each Party understands and agrees that the only easements made and granted by such Party are those easements which are expressly made and granted by this REA. Each Party hereby reserves the right to eject or cause the ejection from its Property any person not authorized, empowered or privileged to use that Property. Further, each Party reserves the right to restrict access to its Property for such reasonable period or periods of time as may be legally necessary

to prevent the acquisition of prescriptive rights by any person; provided, however, that prior to such restriction of access the Party exercising that right shall give at least thirty (30) days advance written notice to the other Party of its intention to do so and shall confer with such other Party in establishing a mutually agreeable program to restrict access so that no unreasonable interference with the operation of the other Party's Property shall occur. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any Property to the general public or for the general public or for any public purpose whatsoever.

All the provisions of this REA shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the California Civil Code. It is expressly agreed that each covenant to do or refrain from doing some act on each Party's Property (a) is for the benefit of the Property of the other Party; (b) runs with the Developer Site and the Tech Expansion Space Parcel, as applicable and (c) shall benefit or be binding upon each Party and any successive owner of any portion of the Property of a Party affected hereby and each person having or acquiring any interest in a Property, whether directly or derived through any owner of the Property affected hereby.

ARTICLE 12
ENFORCEMENT

A Party's failure to timely perform any of its obligations hereunder, constitutes a default. Except as provided in Section 4.3, above, when such default remains uncured for thirty (30) business days after any Party provides written notice to the defaulting Party (except in the case of emergencies, in which case (2) hours telephonic or personal notice shall be adequate to provide notice to the other party that the relevant default has occurred, if followed up within three (3) business days of the original personal or telephonic notice by a written notice), the other Party shall have the right, but not obligation, to cure such default, after providing at least ten (10) business days advance written notice to the other party of its intent to effect such cure, unless the defaulting Party timely commences such cure and then diligently prosecutes such cure to completion. All reasonable third party expenses and costs incurred in connection with any cure by a non-defaulting Parry that complies with the foregoing shall be reimbursed by the defaulting Party within ten (10) business days after written notice, which shall include documentation of such costs. Any amounts not paid within such ten (10) business day period, shall bear interest at the lower of the highest rate allowed by law or the prime rate then charged by Bank of America, commencing from the end of such ten (10) business day period and continuing until the unpaid amounts together with interest thereon have been repaid.

ARTICLE 13

MISCELLANEOUS

13.1 Nondiscrimination. Each Party covenants by and for itself, its successors

in interest and assigns, and all persons claiming under and through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Properties, nor shall either Party or any person claiming under or through that Party establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Properties.

13.2 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this REA.

13.3 Estoppel Certificate. Within ten (10) business days after written request by a Party, each Party, without charge, will deliver to the requesting Party, or to any Mortgagee or prospective purchaser, an estoppel certificate stating: (1) whether the answering Party is aware of any defaults under this REA and listing each known default, if any; (2) whether this REA has been modified or amended and stating the nature of modifications or amendments; and (3) that to the best of the stating Party's knowledge and belief, this REA is in full force and effect.

13.4 Breach Shall Not Defeat Mortgage. A breach of any of the terms, conditions, covenants and restrictions of this REA shall not defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all terms, conditions, covenants and restrictions of this REA shall be binding on any person who becomes a Party by acquiring title to the Developer Site or the Tech Expansion Space Parcel or any portion thereof by foreclosure, trustee's sale or otherwise.

13.5 Default Shall Not Permit Termination of REA. No default under this REA shall entitle any Party to cancel, terminate, or rescind this REA, but this limitation shall not affect any other rights and remedies, at law or in equity, that the Parties may have by reason of any default under this REA.

13.6 Notice. All notices or demands under this REA shall be in writing, delivered personally; via U.S. mail, first class, postage prepaid, registered or certified mail, with return receipt requested; or via express mail for the next business day delivery using a nationally recognized delivery service provider (e.g., FedEx or USPS). Such notices or demands shall be deemed effective/delivered as follows: if by personal delivery, upon delivery; if by U.S. mail, upon five (5) days from the date of mailing if return receipt is signed confirming delivery; and if by express mail, upon the next business day from the date of mailing. Notwithstanding any other provision herein, any notice or demand under this REA shall be effective/delivered not later than the date of actual receipt by the party to whom such notice or demand is directed.

Notices shall be addressed to:

CITY: City of San Jose

200 East Santa Clara Street, 17th Floor Tower
San Jose, CA 95113
Attn: Department of Real Estate

With a copy to: City Attorney's Office
City of San Jose
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113
Attn: Real Estate Attorney

DEVELOPER: Museum Place Owner, LLC
260 Homer Avenue, Ste. 201
Palo Alto, CA 94303
Attn: Gary Dillabough

With a copy to: Manatt, Phelps & Phillips, LLP
One Embarcadero Center, Floor 30
San Francisco, California 94111
Attn: Clayton B. Gantz

TMI: Tech Museum of Innovation
Attn: President or CFO
201 S. Market Street
San Jose, CA 95113

With a copy to: Hopkins Carley
Jay M. Ross
70 South First Street
San Jose, CA 95113

or to such other address as either Party may from time to time designate for this purpose by a written notice complying with this Section.

Where a Party must respond within a certain time, or be deemed to have approved or waived a matter, the item submitted for approval shall be accompanied by a notice bearing the following heading of all capital letters: NOTICE: THIS LETTER COMMENCES THE RUNNING OF A PERIOD OF [PERIOD STATED] BY WHICH YOU MUST RESPOND OR LOSE YOUR RIGHT TO OBJECT.

13.7 Term. This REA shall remain in full force and effect until fifty (50) years from the date hereof, and shall automatically be extended for successive ten (10) year periods unless terminated by a written agreement between City and the Developer; provided, however, that this REA shall terminate upon such earlier date as may be required in order that it will not be invalidated or subject to invalidation by reason of a limitation imposed by law on the duration hereof. Notwithstanding the preceding

sentence, any easement granted pursuant to this REA shall continue until such time as a casualty destroys the Improvements to the extent that domestic water, fire protection water supply, heating hot water and primary electrical power are no longer being utilized by the Developer Site and the Tech Expansion Space and the Parties elect not to rebuild the Improvements.

13.8 Amendment. This REA may be amended only by a written instrument signed and acknowledged by the Parties, and recorded in the Office of the County Recorder of Santa Clara County.

13.9 Force Majeure. A Party's inability to perform an obligation hereunder, other than an obligation to pay money, shall be excused for that period of time that such inability is attributable to any of the following causes: war or insurrection; unforeseeable labor strikes; riots; floods; earthquakes; fires; casualties; acts of God; epidemics or quarantine restrictions; freight embargoes; acts or omissions of the other party, acts or failure to act of any governmental agency (except that acts or failure to act by the City shall not excuse performance by the City); or governmental or judicial restrictions enjoining the performance of the terms of this REA; unusually severe weather; hidden conditions on the Properties that are unknown to the applicable Party; inability to secure necessary labor, materials or tools; or any other cause beyond the control of the excused Party. The failure to lease or sell or to obtain a satisfactory mortgage commitment or equity or operating funds or other such economic circumstance will not excuse any Party from performing. In order for a Party to be entitled to the temporary excusal provided for in this Section, that Party must also give written notice of the delay and reason therefor to the other party within thirty (30) days after the commencement of the cause.

13.10 Time for Maintenance, Restoration. Wherever a Party is obligated by this REA to perform maintenance, repair, restoration, rebuilding or modification of Improvement (collectively "repair"), it shall commence performance as soon as reasonably possible, and in no event later than the time stated in this REA for such performance, and shall diligently prosecute the same to completion. If no time is stated, then the time for completion shall be deemed to be reasonably promptly but not more than sixty (60) days from the date of the event giving rise to the need to repair, provided, however, if the nature of the repair is such that it cannot reasonably be completed within the time stated for performance, then the Party obligated to repair shall not be in default so long as it commences such repair within the time stated and then diligently prosecutes its completion.

13.11 Interpretation. This REA shall be interpreted under the laws of the State of California.

13.12 Severability. The invalidity of any one of the easements, licenses, covenants, conditions, restrictions or other provisions herein contained shall in no way affect any of the other easements, licenses, covenants, conditions, restrictions or other provisions hereof, and the same shall remain in full force and effect.

13.13 Counterparts. This REA may be executed in counterparts, all of which,

taken together, shall constitute a single original.

13.14 Third Party Beneficiary. TMI, or its successor in interest, as the operator of the Tech Museum, during the term of the Tech Lease shall be a third-party beneficiary to the terms of this REA and shall, among other things and without limitation, have the right to receive any notice required hereunder or to notify Developer directly in the event of any breach or default by Developer under this REA. Furthermore, and without limitation, TMI shall have the same right as the City to perform any maintenance or repair obligations as provided in Section 4.3 of this REA and the right, but not the obligation, to cure any default as provided in Article 10 of this REA provided that TMI complies with all applicable conditions set forth herein, including without limitation, the provisions of Section 7.2 of this REA. Notwithstanding the generality of the foregoing, all cure and other performance rights hereunder shall only be exercisable by TMI provided the same are approved by and coordinated with the City, which approval or coordination shall not be unreasonably withheld or delayed.

13.15 Mortgagee Request for Notice. If any Mortgagee delivers written notice of its Mortgage to a Party, together with a request for notices of default with respect to the Property encumbered by the Mortgage, the Party receiving such request shall deliver copies of all such notices of default to the Mortgagee making the request concurrently with delivery of such notice to the defaulting Party. After Mortgagee's delivery of said written notice, should any event of default under this REA occur, the Mortgagee of the defaulting Party shall have thirty (30) days after receipt of notice from the non-defaulting Party setting forth the nature of such event of default to cure such event of default before the non-defaulting Party exercises its remedies hereunder (or if the nature of the default is one which cannot be cured within said thirty (30) day period, then such additional period as may be necessary; provided Mortgagee has commenced to cure the default within said thirty (30) day period and thereafter diligently prosecutes the cure to completion) provided that: (a) Mortgagee shall have fully cured any default in the payment of any monetary obligations of the defaulting Party within the thirty (30) day period following receipt of notice and shall continue to pay currently such monetary obligations as and when the same are due and (b) Mortgagee shall have acquired the defaulting Party's Property or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings. All remedies of a Party which arise as the result of the occurrence of any such event of default shall be subject to, and conditioned upon, the such Party having first given Mortgagee of the defaulting Party written notice of such event of default (provided that Mortgagee has requested in writing such notice) and the Mortgagee of the defaulting Party having failed to remedy such default or acquire the defaulting Party's Property or commence foreclosure or other appropriate proceedings in the nature thereof as set forth and within the time specified by this paragraph.

IN WITNESS WHEREOF, the undersigned have executed this instrument on the dates set forth in their acknowledgments.

APPROVED AS TO FORM:

_____
Cameron Day
Deputy City Attorney

CITY OF SAN JOSE

By:_____
_____
_____

MUSEUM PLACE OWNER LLC, a Delaware limited liability company

By:_____
_____
_____

Exhibit [C]

TMI Uses

- Programming and exhibits that are consistent with TMI's educational mission;
- Travelling exhibitions that are consistent with TMI educational mission;
- Science and technology competitions;
- Special event rentals;
- Summer camps;
- Food service;
- Gift shop;
- Community convenings;
- Lectures and talks;
- Live performances;
- Video conferences;
- Multi-day conferences (less than 30 days);
- Pop-up exhibits;
- Movies;
- Alcohol Service with alcohol license.
- A cafe capable of providing 3 meals, take-out, catering;
- A full catering kitchen;
- A coffee shop or similar food amenities;
- A bar with full alcohol license;
- A digital skills training space;
- A workshop;
- A non-profit technology incubator;
- For non-profit research and development.

Exhibit [___]

Developer Insurance Requirements

Developer shall procure and maintain or cause to be maintained during the term of this REA or for such longer term as may be required, insurance as set forth herein, which may be obtained through a combination of primary and excess policies.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Workers' Compensation insurance as required by Statute of the State of California and Employers Liability insurance.

2. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001 or its equivalent).

3. Insurance Services Office Auto Liability (form CA 001) covering symbol 1 "any auto", symbol 2 "owned autos",
symbol 8 'hired autos", and symbol 9 "nonowned autos".

4. Excess liability/umbrella insurance at least as broad as all underlying policies providing additional limits of insurance to cover insurable activities as defined in the scope of this REA.

5. "All Risk' property insurance against all risks of loss (where commercially reasonable) to insure against loss or damage thereto resulting from risks ordinarily with the classification of Cause of Loss. Such insurance may be carried under a policy or policies covering other property owned or controlled by Developer. Property insurance coverage is to include contingent business interruption insurance.

B. Minimum Limits of Insurance

1. Workers' Compensation and Employers Liability Insurance:

Coverage A: Workers Compensation per Statutory limits.

Coverage B: Employers Liability:

Bodily injury by accident: $1,000,000 per accident
Bodily injury by disease: $1,000,000 each employee
Bodily injury by disease: $1,000,000 policy limit

2. General liability insurance: $1,000,000 per occurrence and $2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage.

3. Automobile liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

4. Excess/umbrella liability insurance: A minimum limit of $10,000,000 (such limits of insurance may be maintained through a combination of primary and excess/umbrella insurance). All excess/umbrella policies will provide premise and operations coverage.

5. Property insurance at replacement cost.

C. Deductibles and Self-Insured Retentions

All deductibles and self-insured retentions that exceed $25,000 shall be approved by the City's Risk Management Office.

D. Other Insurance Provisions

1. General Liability Insurance;

a. The City, its officers, employees, agents and contractors, and TMI shall be additional insureds as respect to liability arising out of activities performed by, or on behalf of, the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents and contractors, and TMI.

2. Auto liability for automobiles owned (if applicable), leased, hired or borrowed by the Developer shall contain no special limitation on the scope of protection afforded to the City, its officers, employees, agents and contractors, and TMI.

3. All Risk" Property Insurance: Policy shall contain a loss payable clause in favor of City as its interest may appear.

E. All Coverages

a. The Developer's general liability and umbrella/excess insurance coverage shall be primary insurance as respect to the City, its officers, employees, agents and contractors, and TMI. Any insurance or self-insurance maintained by the City or TMI shall be excess of the Developer's and

TMI's insurance, and shall not contribute to it.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents and contractors, and TMI.

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

d. For all coverages where commercially obtainable, Developer shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City, its officers, employees, contractors and agents, and TMI,

e. To the extent obtainable, each insurance policy required by this REA shall be endorsed to state the City's Risk Manager will be provided with thirty (30) days prior written notice in the event of cancellation, termination, or reduction in limits, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium. In the event such endorsement is not obtainable, Developer shall endeavor to provide such notice to the City's Risk Manager promptly upon receipt from its insurers.

f. A severability of interest provision must apply for all additional insureds.

F. Acceptability of Insureds

a. Insurance is to be placed with insurers that are equal to an "A-VII" from the current A.M. Best Guide (or its equivalent).

G Verification of Coverage

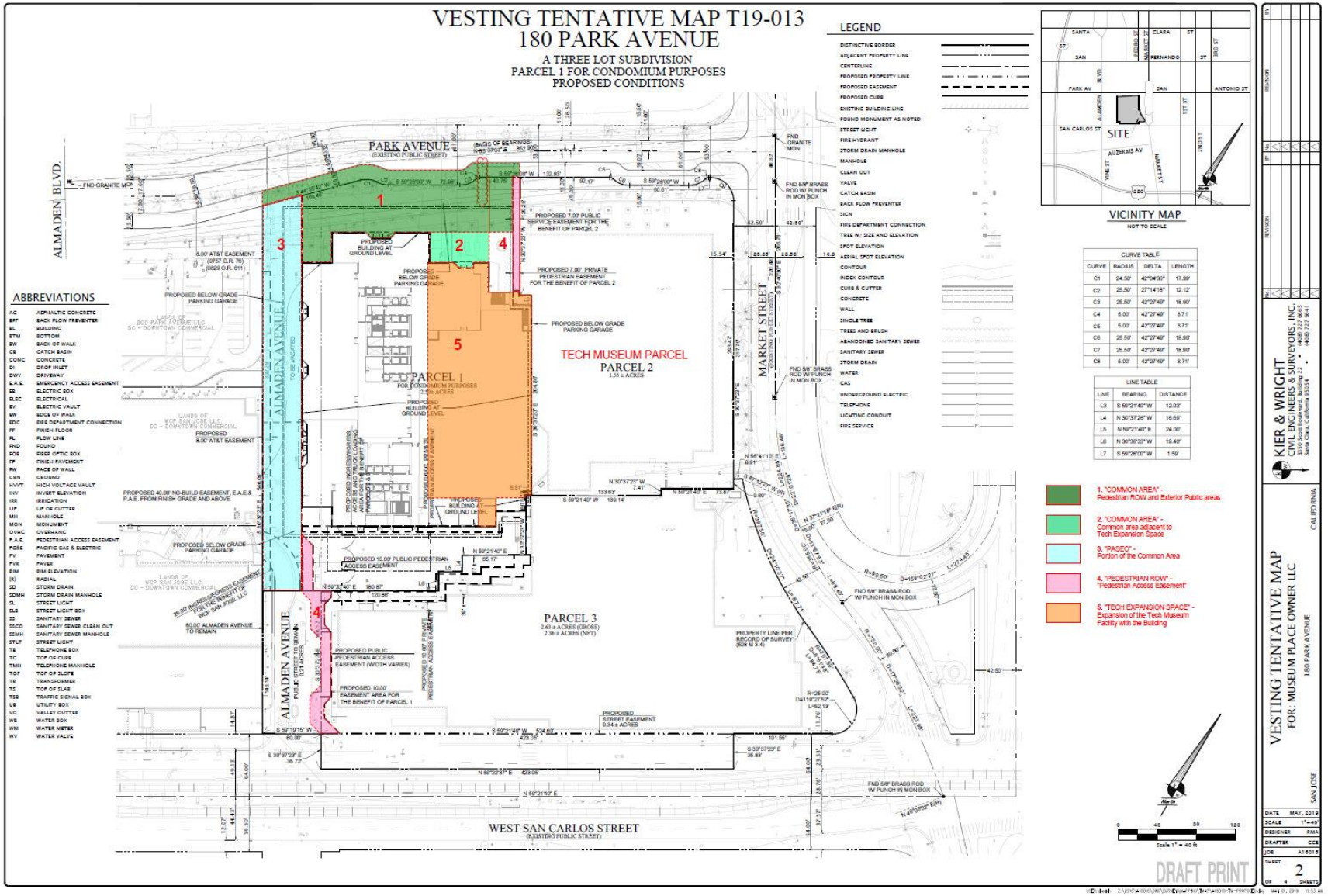
a. Developer shall furnish the City with certificates of insurance with additional insured endorsements affecting coverage required.

b. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City's Risk Manager:

City of San Jose
c/o Risk Management
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113-1905

Exhibit [___]

City Insurance Requirements



ATTACHMENT NO. 7

FORM OF PARKING AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED SEND TO:

City of San Jose
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113-1905
Attn: City Real Estate

(Space above reserved for Recorder's Use)

PARKING AGREEMENT,
EASEMENT
AND DECLARATION OF COVENANTS

This Parking Agreement, Easement and Declaration of Covenants (the "Parking Agreement") is made and entered into as of the __th day of _____, 201__, by and between the CITY OF SAN JOSE (hereinafter "City"), a municipal corporation and MUSEUM PLACE OWNER LLC, a Delaware limited liability company(hereinafter referred to as "Developer").

RECITALS

A. City and Developer entered into that certain Amended and Restated Disposition and Development Agreement dated _____, 201__, ("DDA"), a Memorandum of which was recorded on _____, as Instrument No. _____, in the Official Records of Santa Clara County, which provides for the development of a high density mixed use urban development located adjacent to the Tech Museum of Innovation facility (the "Tech Museum Facility") on the block bounded by Park Avenue, South Market Street, West San Carlos Street and South Almaden Boulevard in San Jose, California as more particularly described on Exhibit A attached hereto ("Property").

B. Capitalized terms not defined herein shall have the meanings specified in the DDA (global change).

C. Pursuant to the DDA, the City transferred the Property to Developer and Developer was to construct a project consisting of a mixed-use development comprised of a high rise structure containing: (a) approximately 918,116 square feet of office space; (b) approximately 8,409 square feet of retail space; (c) approximately 60,475 square feet of office and retail space in a warm shell condition ("Tech Expansion Space") ; (d) a parking garage providing a minimum of 400 vehicle parking spaces, and provided that the Developer may elect to utilize mechanical equipment and/or valet services to accommodate said vehicles ("Project

Garage"); and (e) necessary on-site and off-site improvements (collectively, "Project"). The owners, tenants, occupants permitted users and guests of the Project (excluding members of the public and patrons, employees, volunteers or other permitted users of the Tech Expansion Space) shall be collectively referred to herein as the "Private Users".

D. The Tech Museum Facility is owned by the City and operated and managed by The Tech Interactive, a California nonprofit public benefit corporation ("TMI"), pursuant to an Amended and Restated Lease Agreement dated _____ ("Tech Lease"). Pursuant to the Tech Lease, the Tech Expansion Space will be operated and managed by TMI as part of the Tech Museum Facility. The Tech Museum Facility and the Tech Expansion Space, each of which is more particularly described on Exhibit B attached hereto, shall be referred to collectively hereinafter as the "Tech Museum Facility". The parties acknowledge that, as partial consideration for the City's contributions to the Project under the DDA, Developer shall provide the City, among other things, with certain parking rights for the benefit of the public and the Tech Museum Facility, as more particularly described below. (City, Developer and the TMI may be referred to separately herein as a "Party" or collectively as "Parties".)

E. In partial consideration of the City's contributions to the Project under the DDA and as more particularly set forth in this Parking Agreement, certain of the parking spaces within the Project Garage and certain spaces not within the Project Garage (the "Off-Site Spaces") shall be offered to: (i) TMI for use of the Tech Museum Facility during specified periods of time set forth herein; and (ii) the City for the City's use.

F. This Parking Agreement is intended to set forth certain rights and obligations of the City and the Developer regarding use of the parking spaces within the Project Garage, use of the Off-Site Spaces and operation of the Project Garage, which rights and obligations are covenants that are intended to run with the land, and which are intended to benefit the City, and the Tech Museum Facility and the successive owners and users thereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. PARKING PROVIDED BY THE PROJECT

1.1 Use of Project Garage and Off-Site Spaces

(a) Public Use. Members of the general public shall have access to 400 parking spaces (the "Public Parking Spaces") on an unrestricted, but otherwise non-exclusive and as-available, basis Monday through Friday from 6:00 p.m. to 12:00 midnight and Saturday, Sunday, and generally recognized holidays from 10:00 a.m. to 12:00 midnight (collectively the "Hours of Public Use"). The Public Parking Spaces may be provided by Developer via a mix of parking spaces within the Project Garage and a mix of Off-Site Spaces, as needed. At all other times, the parking spaces within the Project Garage and the Off-Site Spaces shall be maintained for use by the Private Users (as defined above) and for use by the Tech Museum Facility (as specified in Section 1.1(c) below).

(b) Parking Rates. The parking rates charged to the general public during the Hours of Public Use ("Public Rate") shall be no greater than one hundred twenty percent (120%) of the average rates charged by other similar private facilities in downtown San Jose offering public parking, including but not limited to, the following private parking facilities that are currently operated in Downtown San Jose: City View Plaza, 50 West San Fernando, River Park Towers, 60 South Market Street, and Adobe Towers. The City and TMI shall be provided written notice at least sixty (60) days prior to any increase in the Public Rate. For any Tech Museum Facility event, Developer or any "Parking Operator" (as defined below) shall not charge a rate in excess of the Public Rate for use of the Public Spaces without the prior written consent, and at the discretion of TMI.

(c) Tech Museum Facility Use. The City, TMI and all successive owners and users of the Tech Museum Facility shall have access to one-hundred (100) vehicles from 8:00 AM to 6:00 PM Monday through Friday (excluding generally recognized holidays during the term of this Parking Agreement), which will be used solely by the Tech Museum Facility's staff and volunteers ("TMI Parking Spaces"). The TMI Parking Spaces may be provided by Developer via a mix of parking spaces within the Project Garage and a mix of Off-Site Spaces, as needed. At least five (5) of the TMI Parking Spaces shall be located in the Project Garage. Developer may charge a fee for the above-described TMI Parking Spaces in an amount not to exceed the validation program which will otherwise be implemented by the Developer in the Project and charged to the tenants of the Project; provided that in no event shall such fee exceed the lowest rate charged to any tenant in the Project.

(d) Parking Operations. The Project Garage shall be operated in a manner that meets the use and quality standards as are appropriate for the operation of public parking serving a Class A downtown office complex (recognizing the need to serve the parking needs of the Private Users), and are consistent with good operating procedures for similar public parking in major cities in the U.S. The parties acknowledge that Developer may elect to operate the Project Garage using mechanical equipment and/or a valet system. Should the Developer elect to operate the Project Garage using mechanical equipment and/or a valet system, subject to Developer having applied for and received any applicable regulatory approvals, City hereby approves of the use of mechanical equipment and/or a valet system to operate the Project Garage provided that, if such system does not work to effectively handle (i) exiting and entering the Project Garage during major Tech Museum Facility events; (ii) exiting or entering the Project Garage during the Hours of Public Use; or (iii) the TMI Parking Spaces, as determined in the reasonable judgment of City or TMI, the Developer shall promptly (i.e., so as to minimize the impact on and disruption of Tech Museum Facility operations) propose an alternative method of operating the Project Garage during such times reasonably acceptable to City and TMI and, thereafter, the Developer shall promptly modify its operations accordingly.

(e) Independent Parking Operator. At the election of Developer, and subject to the prior written approval of City, not to be unreasonably withheld, conditioned or delayed, Developer may contract with, or grant a concession to, a third-party entity experienced in the management and operation of commercial parking garages to staff and operate the Project Garage ("Parking Operator"). Developer shall notify City and TMI of the selection of any Parking Operator and provide City and TMI with contact names and information prior to Parking Operator's commencement of operations of the Project Garage. Any agreement between

Developer and the Parking Operator shall require the Parking Operator to comply with the provisions of this Agreement, including, but not limited to, the requirements of Section 1.1(c) and the standards set forth in Sections 1.1(d) and 1.2 hereof, and shall include provisions that the Parking Operator cooperate and coordinate with the City and TMI regarding the use of the TMI Parking Spaces and the use of the Project Garage during the Hours of Public Use, including notifying the City and TMI fifteen (15) days in advance if access or use of the Project Garage will be unavailable during the Hours of Public Use or for use of the Public Parking Spaces and/or the TMI Parking Spaces, and to respond immediately and take appropriate action in the event notice is provided by the City or TMI that any of the Public Parking Spaces and/or the TMI Parking Spaces are unavailable or inaccessible when otherwise required to be available and accessible under this Parking Agreement.

(f) Parking Revenue. As consideration for Developer's obligations hereunder, Developer shall retain any and all revenue received from the operation of the Project Garage and any Offsite-Spaces.

(g) Ingress and Egress Easements. Developer hereby grants to the City, subject to the limitation set forth in Section 1.1(c) above, TMI (including its employees, invitees, members, guests, successors and assigns) and the general public such ingress, egress and other easements as necessary to access the Project Garage including, but not limited to, the following:

(i) Project Garage ramp and all facilities related to parking;

(ii) Vertical circulation elements including but not limited to elevators designated for public use, and egress stairwells serving the Tech Expansion Space; and

(iii) Access for Tech Museum Facility exhibit delivery vehicles to have direct access to the freight elevators for loading, unloading, or event set up.

(h) Parking Operations Plan. Prior to the date the Project Garage opens to the Public, the Developer shall prepare for the Developer, City and TMI to agree and enter into a Parking Operations Plan ("POP") that describes in more detail how parking within the Project Garage and at the Off-Site Spaces will be managed. The POP shall identify any Parking Operator and include specific contact information for ingress, egress or access problems to the Project Garage and Off-Site Spaces, after-hours access, use of access cards, and any other items related to the operation of the Project Garage and Off-Site Spaces. The POP shall be amended to the extent the operation of the Project Garage or operation of the Off-Site Spaces changes. Notwithstanding the generality of the foregoing, without the prior written approval of City and TMI, the Off-Site Spaces shall be located not further than 0.33 miles from the Project Garage.

1.2 Maintenance of the Project Garage

(a) Generally. Developer shall ensure that the Project Garage is maintained and operated to a level of quality of character and operation which is equal to the level of quality of character and operation to which similar Class A, highest quality, parking garages in the downtown San Jose market are maintained, subject to such ordinary wear and tear and aging of the physical improvements as is commonly accepted in such parking garages. All Project Garage improvements repaired or replaced under this Section 1.2 shall be repaired or

replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced. Developer or its Parking Operator shall provide reasonable advance written notice to City and TMI in the event that (i) any maintenance or repair work performed hereunder may disrupt operations of the Tech Museum Facility, or (ii) any such work will prevent access to the Project Garage during the Hours of Public Use or (iii) prevent the use of the Public Parking Spaces and/or the TMI Parking Spaces. Developer's obligation to maintain and operate the Project Garage shall include, but not be limited to, the following:

(i) Paving and Curbs. Maintaining all paved surfaces, including parking areas, and curbs in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing of the parking area, driveway areas and curbs, using surfacing material of an appearance and quality equal or superior to the original surfacing material.

(ii) Sweeping. Removal of all papers, debris, filth and refuse, and washing and sweeping the Project Garage to the extent necessary to keep the Project Garage in a clean and orderly condition, and washing down and/or cleaning all hard surfaces including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required.

(iii) Doors, Gates and Entry Points to Garage. Maintaining and keeping in good condition, operation and repair at all times, all interior and exterior doors in and to the Project Garage, gates and all entry and exit points for the Project Garage.

(iv) Directional Signs and Markers. Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines.

(v) Lighting. Operating, keeping in repair, cleaning and replacing and/or reballasting when necessary any lighting facilities as may be reasonably required, including all lighting necessary or appropriate for security.

(vi) Utilities. Maintaining, cleaning and repairing any and all common storm drains, utility lines, sewers and other utility systems and services located in the Project Garage which are necessary for the operation of the Project Garage.

(vii) Obstruction. Keeping the Project Garage free from obstructions not required or permitted hereunder.

(viii) Sidewalks. Cleaning (including washing and/or steam cleaning), maintenance and repair of all sidewalks.

(ix) Governmental Requirements. Complying with all applicable requirements of governmental agencies.

(x) Drainage. Maintaining all surface and storm lateral drainage systems.

(b) Developer's Failure to Perform. If Developer fails to perform any of the

maintenance obligations set forth in this Section 1.2, City or TMI shall notify Developer of such alleged failure ("**City's Notice**") and Developer shall have ten (10) business days from receipt of City's Notice in which to either (i) cure any such alleged failure or (ii) to notify City that it disputes the alleged failure in City's Notice; provided, however, that if such cure cannot reasonably be accomplished within such ten (10) business day period Developer shall not be in default hereunder if it commences such cure within such ten (10) business day period and diligently and in good faith pursues such cure to completion. If Developer does not cure or, as herein provided, commence to cure, the failure to perform alleged in City's Notice within such ten (10) business day period, regardless of whether or not Developer disputed such alleged failure, City or, if it so chooses and upon notice to the City following City's failure to undertake, TMI shall have the right to remedy the alleged failure for the account of Developer. All sums actually paid or incurred by City or TMI, together with interest thereon at the "**Reference Rate**" of the Bank of America plus two percent (2%) and not to exceed the maximum rate for which parties may lawfully contract, shall be payable to City or, in those instances where TMI acts as provided herein, to TMI within thirty (30) days after written demand therefor; provided, however, that if Developer notifies City or, as appropriate, TMI within such ten (10) business day period after receipt of City's Notice that Developer disputes the failure alleged by City or TMI and includes its reasons therefor, Developer shall not be obligated to make such payment unless and until it has been determined by court order or judgment that such alleged failure was in fact an obligation of Developer hereunder (and the Parties agree to file a declaratory relief action in Santa Clara County Superior Court and to pursue such action to completion as promptly as possible). The Parties agree that each Party shall be responsible for its own costs, including, without limitation, attorneys' fees with regard to any such court proceeding.

1.3 Periodic Review of Parking Agreement

One year after the date of recordation of this Parking Agreement, the Parties shall meet and confer to review the historical use of the Project Garage and evaluate the current and future parking needs of the Parties. Following this initial meeting between the Parties, the Parties shall meet and confer every eighteen (18) months to review the historical use of the Project Garage and evaluate the current and future parking needs. The terms of this Parking Agreement may be modified in the manner described below based on changes in current and future parking need.

2. INSURANCE

During the term of this Parking Agreement, Developer shall maintain or cause to be maintained the insurance policies described in Exhibit C attached hereto and incorporated herein by this reference.

3. MISCELLANEOUS

3.1 Term of Parking Agreement. This Parking Agreement shall remain in effect until the destruction or removal of the Project Garage.

3.2 Integrated Agreements. This Parking Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all previous negotiations or previous agreements between the parties with respect to all or part of the subject matter hereof.

3.3 Successors and Assigns. The terms, conditions and covenants of this Parking Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto, and their respective heirs, legal representatives, successors and assigns.

3.4 Notices. If at any time after the execution of this Parking Agreement it shall become necessary or convenient for one of the Parties hereto to serve any notice, demand or communication upon the other Party, such notice, demand or communication shall be in writing and shall be deemed received by the Party to be notified as follows: upon personal delivery; upon sending via facsimile so long as written confirmation of delivery is obtained and a copy of such notice also is sent same day via U.S. Mail, first class, postage prepaid; next business day upon sending via overnight express mail or courier service so long as written confirmation of delivery is obtained; and three (3) business days following sending via U.S. Mail, first class postage prepaid., and (a) if intended for City shall be addressed to:

City of San José
Office of City Manager
200 East Santa Clara Street, 17th Floor
San José, CA 95113-1905
Attn: Office of Economic Development
Fax No._____

With a copy to:

City of San José
Office of City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113-1905
Attn: Real Estate Attorney

And only with respect to notices pertaining to TMI, the Tech Museum Facility or the Tech Expansion Space, with a copy to:

Tech Museum of Innovation
201 South Market Street
San José, CA 95113
Attn: Harvard Sung, CFO

And only with respect to notices pertaining to TMI, the Tech Museum Facility or the Tech Expansion Space, with a copy to:

Hopkins & Carley
70 South First Street
San José, CA 95113
Attn: Jay Ross

If to Developer at:

MUSEUM PLACE OWNER LLC
333 West Santa Clara Street, Suite 805
San Jose, California 95113
Attn: Gary Dillabough

with a copy to:

Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Attn: Clayton B. Gantz

or to such other address as either Party may designate by notice in accordance with this Section. Any notice so mailed shall be deemed to have been given on the delivery date or the date delivery is refused by the addressee, as shown on the return receipt. In the event a postal strike shall be in progress at the time a notice is given or served, such notice shall not be deemed given or served unless and until a copy thereof is personally delivered to the parties entitled thereto.

3.5 Effect of Breach

(a) Mortgagee Protection. Breach of any provision of this Parking Agreement or the enforcement thereof shall not defeat or render invalid the lien of any mortgage, deed of trust or other security interest recorded against Developer's interest in the Property and made in good faith and for value. Furthermore, no breach of any such mortgage, deed of trust or other security interest shall in any way impair, modify or alter the rights and obligations of any of the Parties hereunder and all of the provisions of this Parking Agreement shall be binding and effective against any Party whose title is acquired by foreclosure, trustee's sale or otherwise.

(b) No Cancellation. No breach of any provision of this Parking Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Parking Agreement, but this limitation shall not affect in any manner any other rights or remedies which a Party may have by reason of any such breach.

3.6 Invalidity. If any term or provision of this Parking Agreement or the application thereof to any person or circumstance shall, to any extent be invalid or unenforceable, the remainder of this Parking Agreement shall not be affected thereby.

3.7 Captions. The captions used herein are for convenience of reference only and are not a part of this Parking Agreement and do not in any way limit or amplify the terms and provisions hereof.

3.8 Time of Essence. Time is of the essence of each and all of the agreements, covenants and conditions of this Parking Agreement.

3.9 Approvals. Any approvals required of any Party hereunder (excepting approvals specified to be in the "discretion" or "sole discretion" of a Party, or words of like import) shall not be unreasonably withheld and, where a time period therefor is not specified, shall not be unreasonably delayed.

3.10 Governing Law. This Parking Agreement shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Parking Agreement shall be, in all cases, construed according to its fair meaning and not strictly for or against either Party.

3.11 Estoppel Certificates. Any Party to this Parking Agreement shall, promptly upon the request of any other Party, execute, acknowledge and deliver to or for the benefit of any other Party, at any time, from time to time, and at the expense of the Party requesting a certificate as hereinbelow described, promptly upon request, its certificate certifying (1) that this Parking Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Parking Agreement is in full force and effect, as modified, and stating the modifications), (2) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting the certificate to be performed or observed (and, if so, specifying the same), (3) whether there are then existing any defaults on the part of the Party requesting the certificate known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same), and (4) any other factual matters reasonably requested.

3.12 Modifications. This Parking Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the parties hereto.

3.13 Counterparts. This Parking Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

3.14 Third Party Beneficiary. TMI, or its successor in interest as the operator of the Tech Museum Facility, shall be a third party beneficiary to the terms of this Parking Agreement and shall, among other things and without limitation, have the right to receive any notice required hereunder or to notify Developer directly in the event of any breach or default by Developer or the Parking Operator, if applicable, under this Parking Agreement. Furthermore, and without limitation, TMI shall have the same right as the City to cure any default under Section 1.2 (b) of this Parking Agreement. Notwithstanding the preceding provisions of this Section 3.14 or any other provision of this Parking Agreement to the contrary, nothing in this Parking Agreement shall under any circumstances make, or be deemed to make, TMI or any of its successors in interest a third-party beneficiary of the DDA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by proper persons thereunto duly authorized as of the date first hereinabove written.

APPROVED AS TO FORM:

_____
Cameron Day
Deputy City Attorney

CITY OF SAN JOSE

By:_____
_____
_____

DEVELOPER

MUSEUM PLACE OWNER LLC, a Delaware limited liability company

BY:_____

Its:_____

EXHIBIT C

INSURANCE REQUIREMENTS

Developer shall procure and maintain or cause to be maintained during the term of this Parking Agreement or for such longer term as may be required, insurance as set forth herein, which may be obtained through a combination of primary and excess policies.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Workers' Compensation insurance as required by Statute of the State of California and Employers Liability insurance.

2. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001 or its equivalent), including XCU (explosion, collapse and underground).

3. Garagekeeper's Legal Liability (if applicable) insurance providing coverage against liability for damage to vehicles in their care, custody or control.

4. Insurance Services Office Auto Liability (form CA 001) covering symbol 1 "any auto", symbol 2 "owned autos", symbol 8 'hired autos", and symbol 9 "nonowned autos".

5. Excess liability/umbrella insurance at least as broad as all underlying policies providing additional limits of insurance to cover insurable activities as defined in the scope of this Parking Agreement.

B. Minimum Limits of Insurance

1. Workers' Compensation and Employers Liability Insurance:

Coverage A: Workers Compensation per Statutory limits.

Coverage B: Employers Liability:

Bodily injury by accident:	$1,000,000 per accident
Bodily injury by disease:	$1,000,000 each employee
Bodily injury by disease:	$1,000,000 policy limit

2. General liability insurance: $1,000,000 per occurrence and $2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage.

3. Garagekeeper's legal liability insurance (if applicable): $1,000,000 per occurrence and $2,000,000 in the aggregate for damage to vehicles in the garagekeeper's care, custody and control.

2. Automobile liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

3. Excess/umbrella liability insurance: A minimum limit of $5,000,000 (such limits of insurance may be maintained through a combination of primary and excess/umbrella insurance). All excess/umbrella policies will provide premise and operations coverage with no exclusion for damages from explosion, collapse, and underground collapse (XCU).

C. Deductibles and Self-Insured Retentions

All deductibles and self-insured retentions that exceed $25,000 shall be approved by the City's Risk Management Office.

D. Other Insurance Provisions

1. Workers' Compensation and Employers' Liability Insurance:

a. Developer or Parking Operator shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City, it officers, employees, agents, and contractors, and TMI, for losses arising from work performed under this Parking Agreement.

2. General Liability Insurance;

a. The City, its officers, employees, agents and contractors, and TMI shall be additional insureds as respect to liability arising out of activities performed by, or on behalf of, the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents and contractors, and TMI.

3. Auto liability for automobiles owned, leased, hired or borrowed by the Developer and/or Project Operator, shall contain no special limitation on the scope of protection afforded to the City, its officers, employees, agents and contractors, and TMI.

E. All Coverages

a. The Developer's and Parking Operator's general liability and umbrella/excess insurance coverage shall be primary insurance as respect to the City, its officers, employees, agents and contractors, and TMI. Any insurance or self-insurance

maintained by the City or TMI shall be excess of the Developer's and Parking Operator's insurance and any other available insurance available for the performance of this Parking Agreement.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents and contractors, and TMI.

c. Coverage shall state that the Developer's and/or Project Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. For all coverages where commercially obtainable, Developer and/or Parking Operator shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City, its officers, employees, contractors and agents, and TMI,

e. To the extent obtainable, each insurance policy required by this Parking Agreement shall be endorsed to state the City's Risk Manager will be provided with thirty (30) days prior written notice in the event of cancellation, termination, or reduction in limits, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium. In the event such endorsement is not obtainable, Developer and/or Parking Operator shall endeavor to provide such notice to the City's Risk Manager promptly upon receipt from its insurers.

g. A severability of interest provision must apply for all additional insureds.

F. Acceptability of Insureds

a. Insurance is to be placed with insurers that are equal to an "A-VII" from the current A.M. Best Guide (or its equivalent).

G Verification of Coverage

a. Developer and/or Project Operator shall furnish the City with certificates of insurance with additional insured endorsements affecting coverage required.

b. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City's Risk Manager:

City of San Jose
c/o Risk Management
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113-1905

Exhibit A

PROPERTY DESCRIPTION

[To Be Attached]

ATTACHMENT NO. 8

COMPLETION GUARANTY
(Museum Place)

THIS COMPLETION GUARANTY (the "Guaranty") is made and dated as of the ____ day of _____, 201__ by _____, a _____ ("Guarantor"), for the benefit of the City of San José, a municipal corporation ("City").

RECITALS

A. MUSEUM PLACE OWNER LLC, a Delaware limited liability company ("Developer"), and City have entered into an Amended and Restated Disposition and Development Agreement dated _____, 201___ ("DDA"). The DDA provides for the development of the Project (as defined in the DDA).

B. In exchange for the Site and other consideration set forth in the DDA, Developer is required to develop the [Phase I Off-Site Utility Work (as defined in the DDA][Phase II Work (as defined in the DDA)] for the Project as set forth in the DDA, including the Scope of Development, Attachment No. 3 to the DDA, and to commence and complete construction of the [Phase I Off-Site Utility Work][Phase II Work] for the Project within the time periods set forth in the Schedule of Performance, Attachment No. 4 to the DDA (as modified by any grace and/or cure periods set forth herein). In entering into the DDA, the City bargains to obtain the benefits that a completed Project will bring to the residents of the City of San Jose.

C. [As a condition precedent to transferring the Site to Developer for development, the City requires that the Guarantor execute this Guaranty guaranteeing payment of all amounts necessary to complete the construction of the Phase I Off-Site Utility Work for the Project as provided in the DDA upon the occurrence of certain specified conditions, and providing for the performance of other covenants contained herein on the part of the Guarantor.][As a condition to the demolition of the existing improvements on the Site, the City requires that the Guarantor execute this Guaranty guaranteeing payment of all amounts necessary to complete the construction of the Phase II Work for the Project as provided in the DDA upon the occurrence of certain specified conditions, and providing for the performance of other covenants contained herein on the part of the Guarantor.] The DDA and the transfer of the Site to Developer thereunder provide a benefit to the Guarantor, as the Developer is its affiliate.

GUARANTEE AND AGREEMENT

NOW, THEREFORE, for good and valuable consideration receipt of which is hereby acknowledged, Guarantor guarantees and agrees as follows:

1. Guaranty. Guarantor unconditionally and irrevocably guarantees that the Developer will perform, and the Guarantor covenants and agrees that the Guarantor will be primarily liable for, the full and timely performance of all of the Developer's obligations under the DDA [to construct and complete the Phase I Off-Site Utility Work][to construct and complete the Phase II Work and to execute and record all documents and to convey the Tech Expansion Space Parcel (as defined in the DDA) to the City as required by the terms of the DDA

(the "Conveyance Obligations")] for the Project to be constructed by the Developer pursuant to the DDA in accordance with the DDA and free and clear of (a) all Phase-Related Claims and Liens (as defined in Section 314 of the DDA) that are mechanics liens or stop payment notices, and (b) all Phase-Related Claims and Liens other than mechanics liens or stop payment notices as to which a Guaranty Expansion (as defined in Section 314 of the DDA) has occurred, except as the Guarantor's liability is expressly limited in Section 3 hereof.

2. Remedies. In the event the Developer defaults under the DDA and fails to timely perform its obligations under the DDA with respect to the construction and completion of the [Phase I Off-Site Utility Work][Phase II Work or Conveyance Obligations] for the Project and fails to cure such default as provided in Section 601 of the DDA, the City shall notify Guarantor in writing and Guarantor shall have ninety (90) days to cure, or get Developer to cure, Developer's default under the DDA. If, at the end of such ninety (90) day period, Developer's default under the DDA has not been cured, then the City may, by written notice to the Guarantor, demand that the Guarantor perform the same. If, within sixty (60) days after receiving such demand, the Guarantor advises the City in writing that Guarantor will construct and complete (or will cause to be constructed and completed) the [Phase I Off-Site Utility Work][Phase II Work] for the Project, as provided herein, then the City shall make the Site available to the Guarantor in accordance with the DDA, and the City shall perform for the benefit of the Guarantor any unperformed obligations of the City under the DDA.

In the event that the Guarantor should fail to perform as herein above provided (beyond the expiration of any applicable notice, grace and/or cure periods), the City shall, in addition to other remedies expressly provided herein, have the following remedies:

(a) From time to time and without first requiring performance on the part of the Developer or any other person except as provided above, and without being required to exhaust any or all security held by the City, the right to require performance by the Guarantor of any obligation to be performed on the part of the Guarantor pursuant to the terms hereof, by action at law or in equity or both, and further to collect in any such action compensation for all loss, costs, damage, injury and expense (collectively, "Damages") sustained or incurred by the City, including without limitation any Damages sustained or incurred by City in its capacity as the owner of the Tech (as defined in the DDA) or by TMI (as defined in the DDA) as operator of the Tech, as a consequence of the nonperformance of the Guarantor hereunder, but excluding any Damages (i) that are due to (a) any pre-existing conditions on the property owned by the City which is not part of the Site and which are unknown to the party seeking indemnification except to the extent that such Damages arise from Developer's acts or omissions after discovery of such pre-existing condition by Developer or (b) any pre-existing conditions regardless of where located of which the party seeking indemnification has actual knowledge and which is not known by or otherwise disclosed to Developer prior to the transfer of the Site to the Developer; (ii) are due to the City's or TMI's negligence or willful misconduct or breach of the DDA or any agreement entered into pursuant thereto or in furtherance thereof; (iii) that arise from natural disaster, casualty not arising out of the construction or development of the Project or conduct of third parties unrelated to the construction or development of the Project; or (iv) for lost profits, consequential damages or punitive damages. Guarantor understands that the Damages sustained or incurred as a consequence of the nonperformance of the Guarantor hereunder shall not be limited to the value of consideration provided by the City under the terms of the DDA or the

value of the Tech Expansion Space Parcel. [Bracketed language to be included in Phase I guaranty only: Notwithstanding the foregoing and anything contained herein to the contrary, in no event shall the Guarantor's liability hereunder exceed the then-remaining cost to complete the Phase I Off-Site Utility Work free and clear of Phase-Related Claims and Liens that are mechanics liens or stop payment notices]. Nothing herein shall be construed to prohibit the City from pursuing any remedies under any other agreement, against any person other than the Guarantor and no security held by the City for Guarantor's performance hereunder ("Security") shall limit Guarantor's liability hereunder.

(b) The right to perform any obligation required to be performed by Guarantor under this Guaranty, which City reasonably deems necessary, and expend such sums as City reasonably deems proper in order so to complete such obligation, and irrespective of undertaking any such performance City may also liquidate the full amount of any Security and hold or use such liquidated amounts as it deems necessary or appropriate pending completion of any action (provided that such liquidated amounts shall be applied by the City only to obligations guaranteed by Guarantor hereunder or to mitigate losses caused by failure of Guarantor to timely perform the same, and any liquidated amounts remaining upon satisfaction of Guarantor's obligations hereunder shall be returned to Guarantor). The amount of any and all reasonable expenditures made by City in undertaking any such performance shall be immediately due and payable by Guarantor to City, notwithstanding City's pursuit of any other rights or remedies.

3. Limitations on Guarantor's Liability. The Guarantor's liability pursuant to this Guaranty shall be limited in accordance with the following:

(a) Pre-Construction Period. [Until the time that the Site has been conveyed to Developer under the DDA][Until the time that the demolition of the existing improvements on the Site commences in anticipation of commencement of the Phase II Work] for the Project, the Guarantor shall have no liability hereunder. It being expressly understood by the parties that the effectiveness of this Guaranty shall commence immediately upon [conveyance of the Site to Developer][commencement of demolition of the existing improvements on the Site in anticipation of commencement of the Phase II Work].

(b) Post-Construction Period. The Guarantor shall have no further liability under this Guaranty upon the completion of the [Phase I Off-Site Utility Work, as signified by the issuance of a Certificate of Compliance for the Phase I Off-Site Utility Work][Phase II Work, as signified by the issuance of the Final Certificate of Compliance for the Project (as described in Section 314 of the DDA)].

(c) Termination of DDA. For the avoidance of doubt, neither the termination of the DDA nor City's exercise of its right of reverter under the DDA shall limit Guarantor's liability under this Guaranty.

(d) Work Performed for Others. Further for the avoidance of doubt, in no event shall Guarantor have any liability under this Guaranty with respect to any work which it agrees to perform for the benefit of any other person or entity which work is not included in the Phase I Off-Site Utility Work or the Phase II Work.

4. Interest. Any sums required to be paid by the Guarantor to the City pursuant to the terms hereof shall bear interest at the rate of eight percent (8%) per annum, not to exceed the maximum rate for which the parties may lawfully contract, from the date said sums shall have become due until the date said sums are paid.

5. Consideration. The Guarantor acknowledges that the undertakings given hereunder are given in consideration of the City's execution of the DDA and that the City would not enter into the DDA were it not for execution and delivery of this Guaranty.

6. No Waiver, Extension or Modification. No failure on the part of the City to pursue any remedy hereunder or under the DDA shall constitute a waiver on its part of the right to pursue said remedy on the basis of the same or a subsequent breach. No extension, modification, amendment or renewal of the DDA shall serve to waive the provisions hereof or discharge the Guarantor from any obligation herein contained, in whole or in part, except to the extent expressly approved by the City by written instrument signed by the City, specifying the nature and the extent of the intended waiver and discharge of the Guarantor. This Guaranty shall remain in effect, notwithstanding any extension, amendment, modification, alteration or assignment of the DDA, by the parties thereto or their successors and assigns.

7. Covenants of Guarantor.

For so long as the Guarantor's liability continues under this Guaranty, the Guarantor shall maintain its status as a Qualified Guarantor and continue to satisfy the minimum net worth, liquidity, and other criteria required by Developer's construction lender (the "Required Financial Covenants"), and the failure to do so shall constitute the Guarantor's nonperformance under this Guaranty. The Guarantor shall report the status of its compliance with the Required Financial Covenants to the City as and when reported to the Developer's construction lender.

8. Guaranty Independent; Waiver of Exoneration.

Subject to the limitations set forth in Section 3:

(a) Guarantor agrees that the obligations hereunder are independent of and in addition to the undertakings of the Developer pursuant to the DDA, any other guarantees given in connection with the DDA, and other obligations of the Guarantor to the City.

(b) Guarantor agrees that the validity of this Guaranty shall continue and the obligations of Guarantor hereunder shall in no way be terminated, affected diminished or impaired by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting the Developer or its partners, or their parents or principals, whether or not notice is given to the Guarantor, or by any other circumstances or condition that may grant or result in a discharge, limitation or reduction of liability of the Developer or its partners, or their parents or principals, or of a surety or a guarantor.

(c) Guarantor waives all rights and remedies accorded by applicable law to guarantors and agrees not to assert or take advantage of any such rights or remedies including but

not limited to any right to require the City to (1) proceed against the Developer, any partner of the Developer or any other person, (2) proceed against or exhaust any security held by the City, or (3) pursue any remedy in the power of the City whatsoever. If Guarantor is liable pursuant to Section 1 hereof, Guarantor waives any defense arising by reason of any disability or other defense of the Developer or any member of the Developer, or any of their parents of principals, or by reason of the cessation from any cause whatsoever of the liability of the Developer or any partner of the Developer, or any of their parents or principals, other than the full discharge and performance of all of the Developer's obligations under the DDA. Guarantor, except as expressly set forth herein, waives any defense it may acquire by reason of the City's election of any remedy against it or the Developer, or both, even though the Guarantor's right of subrogation may be impaired thereby or extinguished. Without limiting the generality of the foregoing, Guarantor waives (a) any defense that may arise by reason of the lack of authority or of any other person or persons or the failure of City to file or enforce a claim against the estate (in administration, bankruptcy, or any other proceeding) of any other person or persons; (b) demand, protest and notice of any kind including but not limited to notice of any kind including but not limited to notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Developer, City, any endorser or creditor of Developer or Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by City as collateral or in connection with any obligations the performance of which are hereby guaranteed; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any duty on the part of City to disclose to Guarantor any facts City may now or hereafter know about Developer, regardless of whether City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor; (e) any defense arising because of City's election, in any proceeding instituted under the federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code; and (f) any defense based on any borrowing or grant of a security interest under Section 364 of the federal Bankruptcy Code. Without limiting the generality of the foregoing or any other provision hereof, Guarantor hereby expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433 and California Code of Civil Procedure Sections 580(a), 580(b), 580(d), and 726.

(d) Until all of the Developer's obligations under the DDA with respect to the [Phase I Off-Site Utility Work][Phase II Work and Conveyance Obligations] for the Project have been fully performed, Guarantor shall have no right of subrogation, and waives any right to enforce any remedy that the City now has or may hereafter have against the Developer or any partner of the Developer, or any other person, and waives the benefit of, and any right to participate in, any security now or hereafter held by City from the Developer.

(e) This Guaranty shall remain in effect, notwithstanding any bankruptcy, reorganization or insolvency of the Guarantor, and notwithstanding any default or failure of Guarantor to fully perform any of its obligations set forth in this Guaranty.

9. Does Not Supersede Other Guaranties. The obligations of the Guarantor hereunder shall be in addition to any obligations of the Guarantor under any other guarantees of

any other persons or entities heretofore given or hereafter to be given to the City, and this Guaranty shall not affect or invalidate any such other guarantees. The liability of the Guarantor to the City shall at all times be deemed to be the aggregate liability of the Guarantor under the terms of this Guaranty and of any other guarantee heretofore or hereafter given by the Guarantor.

10. Continued Existence; No Transfer or Assignment.

(a) The Guarantor does hereby further agree that as long as this Guaranty is in effect, it will not dispose of all or substantially all of its assets.

(b) The obligations of Guarantor under this Guaranty may not be assigned or transferred without the express written approval of the City.

11. Notice and Right to Perform. The City shall provide the Guarantor with a written notice of default under the DDA at the same time such notice is delivered to the Developer. The Guarantor shall not be liable under this Guaranty unless and until it has received such notice and any such default remains uncured beyond any applicable grace and/or cure periods. The Guarantor shall have the right to perform any and all of the Developer's obligations under the DDA.

12. Miscellaneous.

(a) This agreement shall inure to the benefit of City and its successors and assigns and shall bind the heirs, executors, administrators, personal representatives, successors and assigns of Guarantor.

(b) This Guaranty shall be governed by and shall be construed in accordance with the laws of the State of California.

(c) Time is of the essence hereof.

(d) If more than one person or entity executes this Guaranty, the obligations and promises set forth herein shall be joint and several undertakings of each of the persons executing this Guaranty, and the City may proceed hereunder against any one or more of said persons or entities without waiving its right to proceed against any of the others.

(e) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(f) The Guarantor assumes the responsibility for keeping informed of (1) the financial condition of the Developer, (2) any change in the ownership, management, composition or control of the Developer, and (3) all other circumstances bearing upon the risk of nonperformance by the Developer of its obligations under the DDA.

(g) All terms defined in the DDA and used in this Guaranty which are not specifically defined herein shall have the meanings given in the DDA (including the attachments thereto).

IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the day and year first above written..

"Guarantor"

_____
_____

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description

[Final Legal Description to be Attached.]

ATTACHMENT NO. 9

FORM OF DDA MEMORANDUM

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Jose
200 East Santa Clara Street, 16th Floor Tower
San Jose, California 95113
Attention: City Attorney's Office

RECORDED FOR THE BENEFIT OF THE REDEVELOPMENT CITY OF THE CITY OF SAN JOSE
AND IS EXEMPT FROM FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103

MEMORANDUM OF DISPOSITION
AND
DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement shall provide notice that CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and Museum Place Owner LLC, a Delaware limited liability company ("Developer") have entered into that certain unrecorded Amended and Restated Disposition and Development Agreement dated as of _____, 201___ (the "DDA," to which reference is made for the meaning of capitalized terms used, but not otherwise defined, herein). Said DDA contains terms and covenants affecting the title to and right to possession of that certain real property situated in the City of San Jose, County of Santa Clara, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein ("Property").

Pursuant to the DDA, City will convey certain real property to Developer, and Developer will accept conveyance of such real property pursuant to the terms, covenants and conditions and for the purposes set forth in the DDA. Pursuant to the DDA, upon the occurrence of certain conditions prior to the issuance of a Certificate of Compliance as described in the DDA, the City shall have a right of reverter. A full and complete copy of the DDA is kept in the official records in the offices of the City at 200 East Santa Clara Street, 13th Floor Tower, City Clerk's Office, San Jose, California 95113.

This Memorandum of DDA is being recorded for notice purposes only. Nothing herein shall be deemed to amend, change or modify the terms, covenants and conditions of the DDA referred to herein. Reference should be made to the DDA for all of its terms, covenants and

conditions.

Reference is also made to Section 115 of the DDA, which provides in relevant part as follows:

"The DDA Memorandum will automatically terminate on the later to occur of (i) the Section 306(a) Termination Date, and (ii) the 306(b) Termination Date; whereupon the City will, on Developer's request, confirm such termination and execute and deliver a release of the DDA Memorandum in recordable form."

"DEVELOPER"

MUSEUM PLACE OWNER LLC, a Delaware limited liability company

By:_____

Its:_____

"CITY"

CITY OF SAN JOSE

By_____
Print _____
City Manager

Approved as to form:

_____
Cameron Day
Deputy City Attorney

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

State of California)

County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description

[Final Legal Description to be Attached.]

ATTACHMENT NO. 10

FORM OF GRANT DEED
(SITE)

When recorded mail to:
_____
_____
_____
_____

APN: _____

GRANT DEED

The undersigned Grantor(s) declare(s): DOCUMENTARY TRANSFER TAX $_____; CITY TRANSFER TAX $_____; SURVEY MONUMENT FEE $_____

[_____]_____
Signature of Declarant

[_____] computed on the consideration or full value of property conveyed; OR
[_____] computed on the consideration or full value less of liens and/or encumbrances remaining at time of sale,
[_____] unincorporated area; [x] City of San Jose, and
[_____] Exempt from transfer tax; Reason:

_____
_____
Declarant's signature (must be signed if no transfer tax is being paid)

Mail Tax Statement to: same as above address

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the City of San Jose ("Grantor") hereby grants to Museum Place Owner LLC, a Delaware limited liability company ("Grantee") all that real property situated in the City of San Jose, County of Santa Clara County, State of California as more particularly described in Exhibit A attached hereto ("Property").

(1) The Property is conveyed pursuant and subject to an Amended and Restated Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee dated _____, 201___. All capitalized terms used herein and not otherwise defined shall have the meanings given in the DDA.

(2) Grantee covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

(3) The covenants against discrimination set forth in paragraph (2) of this Grant Deed shall remain in perpetuity and shall not be subject to release.

(4) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Grantor shall be deemed a beneficiary of the covenants provided in Sections (1) and (2) above both for and in its own right and also for the purposes of protecting the interests of the community. All such covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such covenants, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of such covenant.

(5) Except as expressly set forth below to the contrary, no violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in the Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest recorded against the Property; provided, however, that any subsequent owner of the Property or portion thereof shall, from and after its acquisition of title to the Property, unless or to the extent otherwise released, be bound by such covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(6) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property shall be deemed to be merged with this Grant Deed.

(7) Except as otherwise expressly provided, the covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title and in no event shall a violation or breach of the covenants, conditions, restrictions, terms, and provisions contained in this Grant Deed result in a forfeiture of title.

(8) As expressly set forth in, and subject to, Section 607 of the DDA, Grantor shall have the right, at its option, to reenter and take possession of the Property with all improvements thereon and revest in the Grantor the estate previously conveyed to the Grantee, if after conveyance of

title to such the Property and prior to issuance of the Final Certificate of Compliance therefor, the Grantee shall:

(a) Fail to proceed with the construction of the improvements as required by the DDA for a period of six (6) months after written notice thereof from the Grantor;

(b) Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or

(c) Failure to convey the "Tech Expansion Space Parcel" to the Grantor as required by Section 211 of the DDA, or execute and record the "Parking Agreement", "Declaration of Covenants" or "REA", as required by Sections 110, 205 and 206 of the DDA; or

(d) Transfer or suffer any involuntary transfer of the Property or any part thereof in violation of the DDA.

Such right to reenter and take possession of the Property shall, except as otherwise set forth in the DDA, always be subordinate and subject to and limited by, and shall not defeat, render invalid or limit in any way (i) the lien of any Permitted Encumbrance (as defined in the DDA) or any rights or remedies thereunder, or

(b) Any rights, remedies or interests provided in the DDA for the protection of any Permitted Mortgagees (as defined in the DDA), subject to Section 403A of the DDA.

Conversely, any encumbrances or liens, other than Permitted Encumbrances or other encumbrances or liens expressly permitted by the terms of the DDA, shall be subordinate and subject to Grantor's rights hereunder to reenter and take possession of the Property; accordingly, upon exercise of such rights Grantor shall take title to the Property free and clear of all such non-permitted encumbrances and liens, other than those which Grantor has expressly agreed in writing to accept.

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

"Grantor"

CITY OF SAN JOSE

Approved as to form:

_____
Cameron Day, Deputy City Attorney

By:_____
_____
City Manager

The Grantee hereby accepts this written deed, subject to all of the matters hereinabove set forth.

GRANTEE:

MUSEUM PLACE OWNER LLC,
a Delaware limited liability company

By:_____

Its:_____

EXHIBIT A

Legal Description

[Final Legal Description to be Attached]

ATTACHMENT NO. 11

PRELIMINARY TITLE REPORT

Form No. 1402.06
ALTA Owner's Policy (6-17-06)
1100302P050600

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection
   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      (i) to be timely, or
      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
(d) "Insured": The Insured named in Schedule A.
   (i) The term "Insured" also includes
      (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
      (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
      (C) successors to an Insured by its conversion to another kind of Entity;
      (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
         (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
         (2) if the grantee wholly owns the named Insured,
         (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
         (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
   (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
(e) "Insured Claimant": An Insured claiming loss or damage.
(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
(j) "Title": The estate or interest described in Schedule A.
(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
(b) The Company shall have the right, in addition to the options contained in

Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
(i) the Amount of Insurance; or
(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
(i) the Amount of Insurance shall be increased by 10%, and
(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

POLICY OF TITLE INSURANCE

SCHEDULE A

First American Title Insurance Company

Name and Address of the issuing Title Insurance Company:
First American Title Insurance Company
333 W. Santa Clara Street, Ste. 220
San Jose, CA 95113-1714

File No.: **NCS-846827-SC** Policy No.: **846827**
Address Reference: San Carlos Street, San Jose, CA
Amount of Insurance: $[To be determined]
Date of Policy: _____, 20__ at _____ [Date & Time of Recording]

1. Name of Insured:

   Museum Place Owner LLC, a California limited liability company

2. The estate or interest in the Land that is insured by this policy is:

   A Fee as to Parcel One; an easement as to Parcel Two

3. Title is vested in:

   Museum Place Owner LLC, a California limited liability company

4. The Land referred to in this policy is described as follows:

   Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

   PARCEL ONE:

   PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP T19-013 180 PARK AVENUE" DATED JULY 2019, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

   PARCEL TWO:

   NON-EXCLUSIVE EASEMENTS AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT DATED _____, 2019, AND RECORDED _____, 2019 AS INSTRUMENT NO. _____ OF OFFICIAL RECORDS.

   APN: 259-42-023 (portion)

NOTICE: This is a pro-forma policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as part of the pro-forma policy in no way evidences the willingness of the Company to provide any affirmative coverage shown therein.

There are requirements which must be met before a final policy can be issued in the same form as this pro-forma policy. A commitment to insure setting forth these requirements should be obtained from the Company.

SCHEDULE B

File No.: **NCS-846827-SC** Policy No.: **846827**

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code as a result of the transfer of title to the vestee shown in Schedule A, or as a result of changes in ownership or completion of construction occurring on or after the Date of Policy. None due and payable at Date of Policy.

2. An easement for public street and incidental purposes, recorded September 29, 1874 in Book 10 of Deeds, Page 519.
   In Favor of: City of San Jose
   Affects: as described therein

3. An easement for public utilities and incidental purposes as disclosed in a Final Order of Condemnation, recorded February 8, 1974 as Book 0757, Page 76 of Official Records.
   In Favor of: the Pacific Telephone and Telegraph Company
   Affects: as described therein

4. An easement for public utilities and incidental purposes as disclosed in a Final Order of Condemnation, recorded April 2, 1974 as Book 0829, Page 611 of Official Records.
   In Favor of: the Pacific Telephone and Telegraph Company
   Affects: as described therein

5. The rights, if any, of a city, public utility or special district to preserve a public easement in Almaden Avenue as the same may be vacated by the City of San Jose.

6. An easement shown or dedicated on the map filed or recorded _____, 20__ as Book _____, Page(s) _____ of Maps
   For: _____ and incidental purposes.

7. The terms and provisions contained in the document entitled "Amended and Restated Disposition and Development Agreement" recorded _____, 20__ as Instrument No. _____ of Official Records. By and between The City of San Jose, a municipal corporation and Museum Place Owner LLC, a California limited liability company.

8. The following matters disclosed by an ALTA/NSPS survey made by _____ on _____, 20__, designated Job No. _____:

   a. _____

9. The terms, provisions and easement(s) contained in the document entitled "Declaration of Covenants and Restrictions and Reciprocal Easement Agreement" recorded _____, 2019 as Instrument No. _____ of Official Records.

End of Schedule B

NOTE: Prior to the issuance of any policy of title insurance, the Company will require:

(1) One of the following, in accordance with the Subdivision Map Act (Section 66410 et seq. of the
California Government Code):
a. A certificate of compliance recorded in the public records.
b. Filing of a final map or parcel map.
c. A waiver of a final map or parcel map.

(2) Architect's Certification that, when built according to the Plans, the project will not:
a. Violate and CC&Rs
b. Violate any Zoning Ordinances
c. Create any encroachments

(3) ALTA/NSPS Land Title Survey

(4) Zoning Report

(5) Owner's Affidavit

COVENANTS, CONDITIONS AND RESTRICTIONS - UNIMPROVED LAND - OWNER'S POLICY ENDORSEMENT

Issued by
First American Title Insurance Company

Attached to Policy No.: 846827

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For the purposes of this endorsement only, "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

3. The Company insures against loss or damage sustained by the Insured by reason of:
   a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation; or
   b. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
   a. any Covenant contained in an instrument creating a lease;
   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
   c. except as provided in Section 3.b, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**COVENANTS CONDITIONS AND RESTRICTIONS-
LAND UNDER DEVELOPMENT - OWNER'S POLICY ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

   a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

   b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.

   c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.

   d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by _____ dated _____, 20__, last revised _____, 20__, designated as _____ consisting of _____ sheets.

3. The Company insures against loss or damage sustained by the Insured by reason of:

   a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;

   b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or

   c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

   a. any Covenant contained in an instrument creating a lease;

   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;

   c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or

   d. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ZONING ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,

   a. According to applicable zoning ordinances and amendments, the Land is not classified Zone "DC" Downtown Commercial;
   b. The following use or uses are not allowed under that classification: general commercial uses

2. There shall be no liability under this endorsement based on

   a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.
   b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.
   c. The refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ACCESS AND ENTRY
ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Park Avenue (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

UTILITY ACCESS ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

X	Water service	X	Natural gas service	X	Telephone service
X	Electrical power service	X	Sanitary sewer	X	Storm water drainage

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

(1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
(2) a gap between the boundaries of the rights-of-way or easements; or
(3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

SAME AS SURVEY ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by _____ dated _____, 20__, and designated Job No. _____.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

SUBDIVISION ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ENCROACHMENTS - BOUNDARIES AND EASEMENTS - DESCRIBED IMPROVEMENTS AND LAND UNDER DEVELOPMENT ENDORSEMENT
Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
   a. "Improvement" means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of adjoining land at Date of Policy that by law constitutes real property.
   b. "Future Improvement" means any of the following to be constructed on the Land after Date of Policy in the locations according to the Plans and that by law constitutes real property:
      i. a building;
      ii. a structure; or
      iii. a paved area, including any road, walkway, parking area, driveway, or curb.
   c. "Plans" mean the survey, site and elevation plans, or other depictions or drawings prepared by _____ dated _____, 20__, last revised _____, 20__, designated as _____ consisting of _____ sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
   a. An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an Exception in Schedule B of the policy identifies the encroachment;
   b. An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
   c. Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement or Future Improvement; or
   d. Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.
4. Sections 3(c) and 3(d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: NONE

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

DELETION OF ITEM FROM POLICY ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

The policy is amended by deleting paragraph 14 of the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

POLICY AUTHENTICATION ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused this endorsement to be issued and become valid when signed by an authorized officer or licensed agent of the Company.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.
In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.
There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.
FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.
Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.
Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.
Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.
Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.
Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

Form 50-PRIVACY (9/1/10) Page 1 of 1 Privacy Information (2001-2010 First American Financial Corporation)

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      (i) to be timely, or
      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
(d) "Insured": The Insured named in Schedule A.
   (i) The term "Insured" also includes
      (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
      (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
      (C) successors to an Insured by its conversion to another kind of Entity;
      (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
         (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
         (2) if the grantee wholly owns the named Insured,
         (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
         (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
   (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
(e) "Insured Claimant": An Insured claiming loss or damage.
(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
(j) "Title": The estate or interest described in Schedule A.
(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
(b) The Company shall have the right, in addition to the options contained in

Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

POLICY OF TITLE INSURANCE

SCHEDULE A

First American Title Insurance Company

Name and Address of the issuing Title Insurance Company:
First American Title Insurance Company
333 W. Santa Clara Street, Ste. 220
San Jose, CA 95113-1714

File No.: **NCS-846827-SC** Policy No.: **846827 (City)**
Address Reference: San Carlos Street, San Jose, CA
Amount of Insurance: $[To be determined]
Date of Policy: _____, 2019 at _____ [Date & Time of Recording]

1. Name of Insured:

   City of San Jose

2. The estate or interest in the Land that is insured by this policy is:

   A Fee as to Parcel One; an easement as to Parcel Two

3. Title is vested in:

   City of San Jose

4. The Land referred to in this policy is described as follows:

   Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

   PARCEL ONE:

   PARCEL 4, AS SAID PARCEL IS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP T19-013 180 PARK AVENUE" DATED JULY 2019, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

   PARCEL TWO:

   NON-EXCLUSIVE EASEMENTS AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT DATED _____, 2019, AND RECORDED _____, 2019 AS INSTRUMENT NO. _____ OF OFFICIAL RECORDS.

   APN: 259-42-023 (portion)

NOTICE: This is a pro-forma policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as part of the pro-forma policy in no way evidences the willingness of the Company to provide any affirmative coverage shown therein.

There are requirements which must be met before a final policy can be issued in the same form as this pro-forma policy. A commitment to insure setting forth these requirements should be obtained from the Company.

SCHEDULE B

File No.: **NCS-846827-SC** Policy No.: **846827 (City)**

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code. None due and payable at Date of Policy.

2. An easement for public street and incidental purposes, recorded September 29, 1874 in Book 10 of Deeds, Page 519.
   In Favor of: City of San Jose
   Affects: as described therein

3. An easement for public utilities and incidental purposes as disclosed in a Final Order of Condemnation, recorded February 8, 1974 as Book 0757, Page 76 of Official Records.
   In Favor of: the Pacific Telephone and Telegraph Company
   Affects: as described therein

4. An easement for public utilities and incidental purposes as disclosed in a Final Order of Condemnation, recorded April 2, 1974 as Book 0829, Page 611 of Official Records.
   In Favor of: the Pacific Telephone and Telegraph Company
   Affects: as described therein

5. The rights, if any, of a city, public utility or special district to preserve a public easement in Almaden Avenue as the same may be vacated by the City of San Jose.

6. An easement shown or dedicated on the map filed or recorded _____, 20__ as Book _____, Page(s) _____ of Maps
   For: _____ and incidental purposes.

7. The terms and provisions contained in the document entitled "Amended and Restated Disposition and Development Agreement" recorded _____, 20__ as Instrument No. _____ of Official Records. By and between The City of San Jose, a municipal corporation and Museum Place Owner LLC, a California limited liability company.

8. The terms, provisions and easement(s) contained in the document entitled "Declaration of Covenants and Restrictions and Reciprocal Easement Agreement" recorded _____, 2019 as Instrument No. _____ of Official Records.

9. The following matters disclosed by an ALTA/NSPS survey made by _____ on _____, 20__, designated Job No. _____:

   a. _____

End of Schedule B

NOTE: Prior to the issuance of any policy of title insurance, the Company will require:

(1) One of the following, in accordance with the Subdivision Map Act (Section 66410 et seq. of the
California Government Code):
a. A certificate of compliance recorded in the public records.
b. Filing of a final map or parcel map.
c. A waiver of a final map or parcel map.

(2) New Legal Description of the Land must be submitted to the Company.

(3) ALTA/NSPS Land Title Survey

(4) Zoning Report

(5) Owner's Affidavit

**COVENANTS, CONDITIONS AND RESTRICTIONS -
IMPROVED LAND - OWNER'S POLICY ENDORSEMENT**

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For the purposes of this endorsement only,

   a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

   b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.

3. The Company insures against loss or damage sustained by the Insured by reason of:

   a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;

   b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

   c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

   a. any Covenant contained in an instrument creating a lease;

   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

   c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ZONING - COMPLETED STRUCTURE ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
   a. according to applicable zoning ordinances and amendments, the Land is not classified Zone "DC" Downtown Commercial;
   b. the following use or uses are not allowed under that classification:
   c. There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in paragraph 1.b. or requiring the removal or alteration of the structure, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
   a. Area, width, or depth of the Land as a building site for the structure
   b. Floor space area of the structure
   c. Setback of the structure from the property lines of the Land
   d. Height of the structure, or
   e. Number of parking spaces.

3. There shall be no liability under this endorsement based on:
   a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
   b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

ACCESS AND ENTRY
ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Park Avenue (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

UTILITY ACCESS ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

X	Water service	X	Natural gas service	X	Telephone service
X	Electrical power service	X	Sanitary sewer	X	Storm water drainage

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

(1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
(2) a gap between the boundaries of the rights-of-way or easements; or
(3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

SAME AS SURVEY ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by _____ dated _____, 20__, and designated Job No. _____.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

SUBDIVISION ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy Number: 846827 (City)

The Company insures against loss or damage sustained by the Insured if the exercise of the granted or reserved rights to use or maintain the easement(s) referred to in the Exception(s) 2, 3, 4 and 6 of Schedule B results in:

(1) damage to an existing building located on the Land, or

(2) enforced removal or alteration of an existing building located on the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

DELETION OF ITEM FROM POLICY ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

The policy is amended by deleting paragraph 14 of the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

POLICY AUTHENTICATION ENDORSEMENT

Issued by

First American Title Insurance Company

Attached to Policy No.: 846827 (City)

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused this endorsement to be issued and become valid when signed by an authorized officer or licensed agent of the Company.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

First American Title

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet.
In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.
There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.
FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.
Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.
Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.
Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.
Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.
Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

Form 50-PRIVACY (9/1/10) Page 1 of 1 Privacy Information (2001-2010 First American Financial Corporation)

ATTACHMENT NO. 12

INSURANCE REQUIREMENTS

Developer shall procure and maintain and cause its consultants and contractors to procure and maintain, for the duration of the Agreement or such longer term as may be required, insurance as set forth herein, which may be obtained through a combination of primary and excess policies.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Workers' Compensation insurance as required by Statute of the State of California and Employers Liability insurance.

2. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001 or its equivalent), including XCU (explosion, collapse and underground), and coverage for rigger's liability, if applicable.

3. Insurance Services Office Auto Liability (form CA 0001) covering symbol 1 "any auto" (if applicable), symbol 2 "owned autos", symbol 8 "hired autos", and symbol 9 "nonowned" autos.

   a. If work involves transportation of hazardous or regulated substances, wastes, or materials, the auto liability policy shall have broadened pollution liability coverage as provided by Insurance Services Office endorsement form CA 99 48 or its equivalent.

   b. If required by law, Motor Carrier Act Endorsement hazardous materials clean-up (MCS-90) or its equivalent, must be provided.

.4. Excess liability/umbrella insurance at least as broad as all underlying policies providing additional limits of insurance to cover insurable activities related to the Project. All excess/umbrella policies will provide premises and operations coverage with no explosion, collapse, and underground damage exclusion (XCU).

5. Builders Risk (Course of Construction) insurance providing for "All Risks" of loss for material and equipment that will become a permanent part of the Project. The Builders Risk insurance shall be written on an "All Risk" basis and provide insurance for, but not be limited to, damages from the perils of fire, flood, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition and physical loss of damage. Insurance is to cover all materials and equipment at the Project Site, offsite in storage locations, and in transit.

6. Property insurance coverage for physical damage (including loss of use therefrom) of property not included in the builders risk coverage. Insurance is to include coverage for supplies and equipment (owned, rented or leased). Upon completion of the Project, among other requirements, Developer shall maintain property insurance for the completed Project, as shall be provided in the REA.

7. Pollution liability insurance coverage for losses arising from, but not limited to, the release or escape of pollutants. At a minimum, insurance shall provide coverage for bodily injury, property damage (including loss of use), financial damages, cleanup expenses, and defense costs (including costs and expenses incurred in the investigation or settlement of claims) resulting from a pollution related event (including without limitation, exacerbation of pre-existing pollutants) during the duration of this Project.

8. Professional liability insurance (errors and omissions) to cover the Developer, its consultants and contractors, for financial damages due to design errors and/or omissions in their work, and/or mismanagement of the Project.

B. Minimum Limits of Insurance

1. Workers' Compensation and Employers Liability Insurance:

Coverage A: Workers Compensation per Statutory limits.

Coverage B: Employers Liability:

Bodily injury by accident:	$1,000,000 per accident
Bodily injury by disease:	$1,000,000 each employee
Bodily injury by disease:	$1,000,000 policy limit

2. General liability insurance: Two million dollars ($2,000,000) per occurrence and $4,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage.

3. Automobile liability: Two million dollars ($2,000,000) combined single limit per accident for bodily injury and property damage.

4. Excess/Umbrella liability insurance: A minimum limit of one hundred million dollars ($100,000,000) in project specific excess liability insurance shall be maintained specifically for the Project. Developer may structure the excess liability insurance by implementing an Owner (or Contractor) controlled insurance program ("OCIP" or "CCIP") for the Project.

5. Builders Risk (Course of Construction): An "All Risks" policy in an amount at least equal to the estimated cost of replacing all material and equipment that will become a permanent part of the Project.

6. Property insurance: Insurance coverage shall be maintained at replacement cost.

7. Pollution/Environmental liability insurance: Ten million dollars ($10,000,000)each incident .

8. Professional liability insurance as follows:

- Developer - $10,000,000 per occurrence
- Design/build contractor - $10,000,000 per occurrence
- Architect - $10,000,000 per occurrence
- Structural engineer - $10,000,000 per occurrence
- Civil engineer - $5,000,000 per occurrence
- Mechanical engineer - $5,000,000 per occurrence
- Electrical engineer - $5,000,000 per occurrence

For consultants and contractors not listed above, City's Risk Management office shall establish insurance limits on a case by case basis.

A Project Professional Liability policy ("Professional Wrap") with limits no less than ten million dollars ($10,000,000) may be maintained. If a Professional Wrap is maintained, the professionals (as listed above) insurance limits shall be no less than two million dollars ($2,000,000) per occurrence.

C. Deductibles and Self-Insured Retentions

All deductibles and self-insured retentions shall be approved by the City's Risk Management Office.

D. Other Insurance Provisions

1. Workers' Compensation and Employers' Liability Insurance

a. Developer shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City, its officers, employees, agents, and contractors, and TMI, for losses arising from work performed by or on behalf of Developer for the Project. Developer shall require that all consultants and contractors engaged on this Project verify on their certificates of insurance a waiver of subrogation in favor of the City, its officers, employees, agents, and contractors, and TMI.

2. Commercial General Liability.

a. The City, its officers, employees, agents and contractors, and TMI, shall be additional insureds as respect to liability arising out of activities performed by or on behalf of the Developer, from products and completed operations of the Developer, premises owned, leased or used by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees,

agents and contractors, and TMI, save for claims arising out of the presence of any pre-existing Hazardous Substances on the Site if such contamination was not increased, exacerbated or worsened by any negligent acts (active or passive) or willful misconduct of the Developer, its agents contractors, employees or assigns.

3. Auto Liability for automobiles owned (if applicable), leased, hired or borrowed by the Developer, which shall contain no special limitation on the scope of protection afforded to the City, its officers, employees, agents and contractors, and TMI.

4. Excess/Umbrella liability policies shall provide products and completed operations insurance for the duration of the Project and shall be maintained for a period of ten (10) years following issuance of the Final Certificate of Compliance.

5. Builders Risk policies shall contain the following provisions:

   a. The City, its officers, employees, agents and contractors, and TMI shall be named as loss payee as their interests may appear, and as subordinate to the "Loss Payee's" interest of any Permitted Mortgagee.

   b. The builders risk policy may be written on either a completed value or a reporting form basis.

6. Property policy shall name the City, its officers, employees, agents and contractors, and TMI as loss payee as their interests may appear, and as subordinate to the "Loss Payee's" interest of any Permitted Mortgagee.

7. Pollution Liability

   a. Insurance shall be maintained for the duration of the Project and for an extended period of ten (10) years following issuance of the Final Certificate of Compliance.

   b. The City, its officers, employees, agents and contractors, TMI, and all contractors engaging in on-site and/or off-site work shall be added as additional insureds to the policy.

   c. The pollution liability policy must be written on a "claims-made" basis provided that the policy has a retroactive date of placement prior to or coinciding with the commencement of any services performed on any part of the Project.

   d. Insurance may be satisfied through the placement of an "Environmental/Pollution Wrap" insurance program obtained by the Developer or its contractor.

8. Professional Liability

a. Insurance shall be maintained for the duration of the Project and for an extended period of ten (10) years following issuance of the Final Certificate of Compliance.

b. The professional liability policy must be written on a "claims-made" basis provided that the policy has a retroactive date of placement prior to or coinciding with the commencement of any services performed on any part of the Project.

E. All Coverages

a. The Developer's General Liability and Umbrella/Excess insurance coverage shall be primary insurance as respect to the City and TMI. Any insurance or self-insurance maintained by the City or TMI shall be excess of the Developer's insurance and any other available insurance for the Project. Neither the City nor TMI shall contribute to or limit the amounts payable by Developer's insurer.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents and contractors, and TMI.

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

d. For all coverages where commercially obtainable, Developer shall obtain, and require its consultants and contractors to obtain, an endorsement that requires the insurer to waive all rights of subrogation against the City, its officers, employees, contractors and agents, and TMI.

e. For all coverages where commercially obtainable, the Developer shall be the named insured on all policies. The City, its officers, employees, contractors and agents, and TMI shall be an additional insured on all policies except for Workers' Compensation and Professional Liability policies.

f. To the extent obtainable, each insurance policy required by this Agreement shall be endorsed to state the City's Risk Manager will be provided with thirty (30) days prior written notice in the event of cancellation, termination, or reduction in limits, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium. In the event such endorsement is not obtainable, Developer and/or its contractor shall endeavor to provide such notice to the City's Risk Manager promptly upon receipt from its insurers.

g. A severability of interest provision must apply for all additional insureds.

F. Acceptability of Insurers

Insurance is to be placed with insurers that are equal to an "A-VII" from the current A.M. Best Guide (or its equivalent).

G. Verification of Coverage

Developer shall furnish the City with certificates of insurance and with additional insured endorsements affecting coverage required by the clause.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City's Risk Manager:

City of San Jose

c/o Risk Management

200 East Santa Clara Street, 14th Floor

San Jose, CA 95113 - 1905

H. Blanket Policies.

Any insurance required by this Attachment 12 may be provided through a blanket insurance policy, provided that such blanket insurance policy shall otherwise provide the same protection as would a separate policy insuring only the Property in compliance with the provisions of this Attachment 12.

ATTACHMENT NO. 13

FORM OF CERTIFICATE OF COMPLIANCE (PHASE)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Jose
200 East Santa Clara Street, 16th Floor Tower
San Jose, California 95113
Attn: City Attorney's Office

RECORDED FOR THE BENEFIT OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
AND IS EXEMPT FROM FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103

CERTIFICATE OF COMPLIANCE (PHASE)

This Certificate of Compliance ("Certificate") is provided pursuant to that certain Amended and Restated Disposition and Development Agreement dated as of _____, 201____ ("DDA") by and between the City of San Jose ("City") and Museum Place Owner LLC, a Delaware limited liability company ("Developer"). The DDA contains terms, covenants and conditions affecting the title to and right to possession of that certain real property situated in the City of San Jose, County of Santa Clara, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein ("Property"). The DDA is evidenced by a Memorandum of Disposition and Development Agreement dated _____, 201__ and recorded against the Property in the Official Records of Santa Clara County as Instrument No. _____. All initially capitalized defined terms used in this Certificate shall have the meanings given them in the DDA. This Certificate is not a notice of completion pursuant to Section 3093 of the California Civil Code.

Reference is made to Section 314 of the DDA, which provides in relevant part as follows:

> "Issuance by the City of a Certificate of Compliance as to any Phase shall constitute confirmation that Developer has completed the development of such Phase and has complied with all of Developer's obligations, and other covenants under this Agreement, which relate to the design, development and construction of such Phase; provided, however, that any obligations (a) under Section 306(a)(vi) relating to Developer Performed Work or (b) under Section 306(b) with respect to defective design or Defective Construction which impacts the Tech Expansion Space shall survive the issuance of a Certificate of Compliance with respect to the Phase II Work: Tech Expansion Space (i.e., work described in paragraph D under the rubric "Phase II Work" on Attachment 3 to this Agreement) until (a) in the case of Section 306(a)(vi), the Section 306(a) Termination Date and (b) in the case of Section 306(b), the Section 306(b) Termination Date. Issuance of a Certificate of Compliance shall not constitute evidence that Developer has satisfied any of its other covenants under this Agreement. After issuance of a Certificate of Compliance for a Phase, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in such Phase shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under

this Agreement, except that such party shall be bound by any covenants contained in the Grant Deed and any other document recorded against the property owned by such party; provided, however, that (a) any obligations of the Developer under that portion of Section 306(a)(vi) of this Agreement which provides for indemnification relating to Developer Performed Work shall survive the issuance of a Certificate of Compliance with respect to the TMI Warm Shell Work until the Section 306(a) Termination Date, and (ii) any obligations of the Developer under Section 306(b) of this Agreement (and no other obligations under Section 306) which impacts the Tech Expansion Space shall survive the issuance of a Certificate of Compliance with respect to the TMI Warm Shell Work until the Section 306(b) Termination Date, and in both cases shall be subject to the provisions of Section 313(4)."

Executed this _____ day of _____, 20__, at San Jose, California.

APPROVED AS TO FORM:

_____
Cameron Day, Deputy City Attorney

CITY OF SAN JOSE

By:_____
_____
City Manager

ATTACHMENT NO. 14

FORM OF CERTIFICATE OF COMPLIANCE (FINAL)

RECORDATION REQUESTED BY AND
AFTER RECORDATION RETURN TO:

City of San Jose
200 E. Santa Clara Street, 17th Floor
San Jose, California 95113
Attn: City Real Estate

BY: MAIL (X) PICK-UP ( )
PLEASE RECORD WITHOUT FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

CERTIFICATE OF COMPLIANCE (FINAL)

This Final Certificate of Compliance ("Certificate") is provided pursuant to that certain Amended and Restated Disposition and Development Agreement dated as of _____, 201___ ("DDA") by and between the City of San Jose ("City") and Museum Place Owner LLC, a Delaware limited liability company ("Developer"). The DDA contains terms, covenants and conditions affecting the title to and right to possession of that certain real property situated in the City of San Jose, County of Santa Clara, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein ("Property"). The DDA is evidenced by a Memorandum of Disposition and Development Agreement dated _____, 201__ and recorded against the Property in the Official Records of Santa Clara County as Instrument No. _____ ("Memorandum"). All initially capitalized defined terms used in this Certificate shall have the meanings given them in the DDA. This Certificate is not a notice of completion pursuant to Section 3093 of the California Civil Code.

This Certificate shall evidence City's conclusive determination that Developer has satisfactorily completed construction of the Project required by the DDA on the Property, and that Developer is in full compliance with the terms of the DDA related to the design, development, and construction of the Project.

The Certificate constitutes a termination and release of the DDA as it relates to the Property more particularly described on Exhibit A attached hereto, except as otherwise provided under Section 314 of the DDA.

Reference is made to Section 314 of the DDA, which provides in relevant part as follows:

> "Issuance by the City of a Certificate of Compliance as to any Phase shall constitute confirmation that Developer has completed the development of such Phase and has complied with all of Developer's obligations, and other covenants under this Agreement, which relate to the design, development and construction of such Phase; provided, however, that any obligations (a) under Section 306(a)(vi) relating to Developer Performed Work or (b) under Section 306(b) with respect to defective design or Defective Construction which impacts the Tech Expansion Space shall survive the

issuance of a Certificate of Compliance with respect to the Phase II Work: Tech Expansion Space (i.e., work described in paragraph D under the rubric "Phase II Work" on Attachment 3 to this Agreement) until (a) in the case of Section 306(a)(vi), the Section 306(a) Termination Date and (b) in the case of Section 306(b), the Section 306(b) Termination Date. Issuance of a Certificate of Compliance shall not constitute evidence that Developer has satisfied any of its other covenants under this Agreement. After issuance of a Certificate of Compliance for a Phase, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in such Phase shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the Grant Deed and any other document recorded against the property owned by such party; provided, however, that (a) any obligations of the Developer under that portion of Section 306(a)(vi) of this Agreement which provides for indemnification relating to Developer Performed Work shall survive the issuance of a Certificate of Compliance with respect to the TMI Warm Shell Work until the Section 306(a) Termination Date, and (ii) any obligations of the Developer under Section 306(b) of this Agreement (and no other obligations under Section 306) which impacts the Tech Expansion Space shall survive the issuance of a Certificate of Compliance with respect to the TMI Warm Shell Work until the Section 306(b) Termination Date, and in both cases shall be subject to the provisions of Section 313(4)."

Reference is also made to Section 115 of the DDA, which provides in relevant part as follows:

"The DDA Memorandum will automatically terminate on the later to occur of (i) the Section 306(a) Termination Date, and (ii) the 306(b) Termination Date; whereupon the City will, on Developer's request, confirm such termination and execute and deliver a release of the DDA Memorandum in recordable form."

Executed this _____ day of _____, 20__, at San Jose, California.

APPROVED AS TO FORM:

_____
Cameron Day, Deputy City Attorney

CITY OF SAN JOSE

By:_____
_____
City Manager

ATTACHMENT NO. 15

PROJECT BUDGET

Hard Costs (Tech Museum)	$20,234,167
Hard Costs Phase 1 Work	$13,982,038
Hard Costs & Site Costs & Common Costs	$359,400,118
Broker Commissions	$11,965,616
Tenant Improvement Allowance	$59,420,862
Soft Costs (A&E)	$32,193,404
Soft Costs (Consultants, Tax, Insurance, etc.)	$19,804,478
City Dev. Fees	$31,400,721
Excess Contingency	18,393,286
Organization & Development Fees	$22,543,504
Interest Expense & Financing Fees	$44,649,793
Total Phase I & II Costs	**$633,987,986**

ATTACHMENT NO. 16

SCHEDULE OF CITY FEES

Planning Planning fees are due when Planning applications are submitted. An initial application fee (per the chart online) is due at the time of application, an invoice is generated at the appointment, and the remaining fees are due within two weeks of submittal of the application. A cost estimate for these fees can be provided through the Planning Techs for a fee (approximately $300). Contact John Tu- John.Tu@sanjoseca.gov for more information and to request an estimate. Fees are per the online fee schedule.

Environmental Environmental mitigation fees are determined by the analysis of the project during the analysis of the environmental review document. However, certain areas within the city are subject to the regional Santa Clara Valley Habitat Conservation Plan and associated fees. These fees are collected by the City at the time of issuance of the grading permit for the project. More information is available on the City webpage for the Santa Clara Valley Habitat Plan.

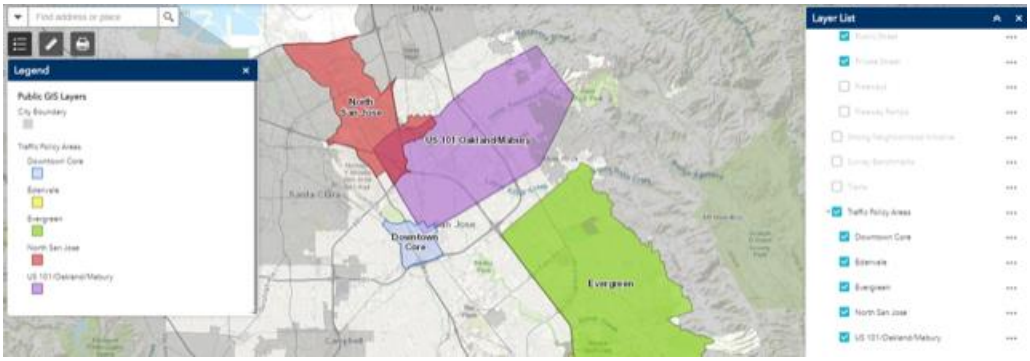
Building Building application review fees are due at the time of submittal. A cost estimate for these fees is available through the Building Division by filling out their Permit Cost Estimate Worksheet and providing it to Terri.Batin@sanjoseca.gov. Additional information on Building Permit fees is available online through the Building Permit Fees webpage. Kristi Ojigho (Kristi.Ojigho@sanjoseca.gov, 408-794-7482) can be contacted with questions.

Construction Taxes Construction taxes and construction taxes are collected by Building at the time of Building Permit issuance. Construction taxes can be estimated with submittal of the Building Permit Cost Estimate Worksheet. Additional information on the tax rates is available online on our Development Construction Taxes webpage.

School Fees School fees are collected by the school districts within the City. The Building Division will require that they are paid prior to the issuance of the Building Permit, although because these fees are based on specific square footage of a project, it is recommended that they are paid at the very end of the review of the Building Permit. Additional information is available through the city's webpage.

Public Works Fees Fees for the review of Public Works applications are due at the time of submittal, although fees for impacts and infrastructure are due at the time of issuance of the associated permit. As the calculation for these fees is precisely associated with the project description, fees are calculated by the applicant's civil engineer and provided to Public Works staff for verification. Substantial information on the calculation of these fees is available on the Public Works website for Development Services Applications. Questions can be referred to Ryan Do (Ryan.Do@sanjoseca.gov).

Traffic Impact Fees There are four areas within the City that are subject to traffic impact fees. These fees are calculated based on the number of trips a project will generate and are outlined in the policy document associated with the policy area. These policies are available online through the Department of Transportation webpage. Our online map viewer can assist in determining whether a site is within one of these Traffic Policy Areas.



Housing Affordable Housing Impact fees are based on the project description and number of residential units provided. These fees are collected at either the issuance of the Building Permit, or at the Certificate of Occupancy once construction is complete. Additional information can be found online at the Housing Website. Questions can be referred to Amy Chen (Amy.Chen@sanjoseca.gov, 975-4489) or Tina Vo (Tina.Vo@sanjoseca.gov, 408-975-4416).

Parks Fees Parks fees are applicable to residential housing projects and are collected at the time of Building Permit issuance through the Public Works Department. More information can be found at the Park Impact and Parkland Dedication Ordinance webpage. Questions can be referred to Zak Mendez (Zacharias.Mendez@sanjoseca.gov, 408-793-4171)