

CITY COUNCIL
Mayor
Alma Hernandez, Mayor Pro-Tem
Jane Day
Michael J. Hudson
Wanda Williams



CITY COUNCIL MEETING

First and Third Tuesday
Every Month

A G E N D A

REGULAR MEETING OF THE SUISUN CITY COUNCIL

SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, AND HOUSING AUTHORITY TUESDAY, OCTOBER 4, 2022

6:30 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

NOTICE

Pursuant to Government Code Section 54953, subdivision (b), and in accordance with the provisions of SB 361 (2021), the following Council/Successor Agency/Housing Authority meeting includes teleconference participation by: Council/Board Members Jane Day, Michael Hudson, Wanda Williams, Mayor Pro Tem Alma Hernandez. Teleconference locations are on file at City Hall, 701 Civic Center Blvd., Suisun City, CA 94585.

FACE MASKS ARE RECOMMENDED FOR MEMBERS OF THE PUBLIC WHILE IN CITY FACILITIES IF NOT FULLY VACCINATED. IF YOU DO NOT HAVE A FACE MASK, ONE WILL BE PROVIDED FOR YOU.

THE CITY COUNCIL HAS RESUMED IN-PERSON MEETINGS IN ADDITION TO ZOOM. A LIMITED NUMBER OF SEATS ARE AVAILABLE, TO RESERVE A SEAT PLEASE CONTACT THE CITY CLERK AT clerk@suisun.com OR 707 421-7302.

ZOOM MEETING INFORMATION:

WEBSITE: <https://zoom.us/join>

MEETING ID: 883 3604 9676

CALL IN PHONE NUMBER: (707) 438-1720

*REMOTE PUBLIC COMMENT IS AVAILABLE FOR THE CITY COUNCIL MEETING
BY EMAILING CLERK@SUISUN.COM (PRIOR TO 6 PM) OR
VIA WEBSITE OR PHONE APPLICATION, ZOOM*

*(If attending the meeting via phone press *9 to raise your hand and *6 to unmute/mute for public comment.)*

(Next Ord. No. – 796)

(Next City Council Res. No. 2022 – 134)

Next Suisun City Council Acting as Successor Agency Res. No. SA2022 - 04)

(Next Housing Authority Res. No. HA2022 – 02)

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320
FIRE 425-9133 ■ RECREATION & COMMUNITY SERVICES 421-7200 ■ POLICE 421-7373 ■ PUBLIC WORKS 421-7340
SUCCESSOR AGENCY 421-7309 FAX 421-7366

ROLL CALL

Council / Board Members

Pledge of Allegiance

Invocation

CONFLICT OF INTEREST NOTIFICATION

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

REPORTS: (Informational items only)

1. City Manager/Executive Director/Staff

PRESENTATION/APPOINTMENTS

(Presentations, Awards, Proclamations, Appointments).

2. Introduction and Swearing-in of Suisun City Police Department Personnel – (Roth: aroeth@suisun.com).
3. Proclamations Presented at Meeting – (Hernandez: ahernandez@suisun.com).
 - a. Proclamation Proclaiming the Week of October 9 – 15, 2022, as “Fire Prevention Week” in Suisun City.
 - b. Proclamation Proclaiming September 15 - October 15, 2022, as “Hispanic Heritage Month” in Suisun City.

PUBLIC COMMENTS

(Request by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3. Comments are limited to no more than 3 minutes unless allowable by the Mayor/Chair. Speaker cards are available on the table near the entry of the meeting room and should be given to the City Clerk. By law, no prolonged discussion or action may be taken on any item raised during the public comment period, although informational answers to questions may be given and matters may be referred for placement on a future agenda.)

COUNCIL COMMENTS

4. Council/Boardmembers Updates

CONSENT CALENDAR

Consent calendar items requiring little or no discussion may be acted upon with one motion.

City Council

5. Council Consideration and possible action to adopt Resolution No. 2022-__: A Resolution of the City Council of the City of Suisun City proclaiming a local emergency persists and authorizing the use of remote teleconference meeting procedures by the City’s legislative bodies, as authorized by government code section 54953(e) *et seq.*, through November 2, 2022 – (Folsom: gfolson@suisun.com).

Joint City Council / Suisun City Council Acting as Successor Agency / Housing Authority

6. Council/Agency/Authority Approval of the Minutes of the Regular and/or Special Meetings of the Suisun City Council, Suisun City Council Acting as Successor Agency, and Housing Authority held on August 16, 2022 - (Skinner: askinner@suisun.com).

PUBLIC HEARINGSuisun City Council Acting as Successor Agency

7. PUBLIC HEARING:
Successor Agency Adoption of Resolutions Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext: - (Bermudez: jbermudez@suisun.com).
- a. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.17 Acres Located at the Northeast Corner of Main Street and Solano Street (Solano County Assessor's Parcel Number 0032-142-300)
 - b. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.15 Acres Located at the East Side of Kellogg Street (Solano County Assessor's Parcel Number 0032-142-280)
 - c. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.21 Acres Located at the North Side of Line Street in Downtown Suisun City (Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250)

GENERAL BUSINESSCity Council

8. Finance Department Showcase - (Deol: lideol@suisun.com).

REPORTS: (Informational items only)

9. Non-Discussion Items

ADJOURNMENT

A complete packet of information containing staff reports and exhibits related to each item for the open session of this meeting, and provided to the City Council, are available for public review at least 72 hours prior to a Council /Agency/Authority Meeting at Suisun City Hall 701 Civic Center Blvd., Suisun City. Agenda related writings or documents provided to a majority of the Council/Board/Commissioners less than 72 hours prior to a Council/Agency/Authority meeting related to an agenda item for the open session of this meeting will be made available for public inspection during normal business hours. An agenda packet is also located at the entrance to the Council Chambers during the meeting for public review. The City may charge photocopying charges for requested copies of such documents. Assistive listening devices may be obtained at the meeting

PLEASE NOTE:

1. The City Council/Agency/Authority hopes to conclude its public business by 10:00 P.M. Ordinarily, no new items will be taken up after the 10:00 P.M. cutoff and any items remaining will be agendized for the next meeting. The agendas have been prepared with the hope that all items scheduled will be discussed within the time allowed.

2. Suisun City is committed to providing full access to these proceedings; individuals with special needs may call 421-7300.
3. Agendas are posted at least 72 hours in advance of regular meetings at Suisun City Hall, 701 Civic Center Boulevard, Suisun City, CA. Agendas may be posted at other Suisun City locations including:
 - Suisun City Fire Station, 621 Pintail Drive, Suisun City, CA;
 - Suisun City Senior Center, 318 Merganser Drive, Suisun City, CA;
 - Joe Nelson Center, 611 Village Drive, Suisun City, CA;
 - Harbor Master Office, 800 Kellogg Street, Suisun City, CA.

I, Donna Pock, Deputy City Clerk for the City of Suisun City, declare under penalty of perjury that the above agenda was posted and available for review, in compliance with the Brown Act.

AGENDA TRANSMITTAL

MEETING DATE: October 4, 2022

CITY AGENDA ITEM: Council Consideration and possible action to adopt Resolution No. 2022-__: A Resolution of the City Council of the City of Suisun City proclaiming a local emergency persists and authorizing the use of remote teleconference meeting procedures by the City's legislative bodies, as authorized by government code section 54953(e) *et seq.*, through November 2, 2022.

FISCAL IMPACT: None.

STRATEGIC PLAN: Provide Good Governance.

BACKGROUND: A number of laws have changed since the beginning of the COVID pandemic related to the Brown Act as it relates to teleconferenced public meetings, both from Governor Newsom's Executive Orders and recently from the enactment of Assembly Bill 361, which took effect October 1, 2021, allowing continued remote teleconference meetings without traditional Brown Act compliance, provided certain findings can be made related to the ongoing state of emergency and subject to adherence to certain new noticing and public participation requirements.

The City, as all public agencies in California, must invoke and adhere to AB 361 and its modifications on certain elements of remote public meetings, or else revert to traditional Brown Act compliance. The major change associated with continuing remote meetings under AB 361 is that the public must now be allowed to make comments in real-time during the public comment period, either telephonically or electronically (such as by Zoom). No physical location for public comment need be provided.

Assembly Bill 361, which took effect October 1, 2021, allowing continued remote teleconference meetings without traditional Brown Act compliance, provided certain findings can be made related to the ongoing state of emergency and subject to adherence to certain new noticing and public participation requirements

On October 19, 2021 the City of Suisun City passed a resolution proclaiming that a local emergency persists and authorizing the transition to use of remote teleconference meeting procedures by City's the legislative bodies, as authorized by government code section 54953(e) *et seq.*, for the initial period of October 19, 2021 through November 18, 2021.

STAFF REPORT: This is a recurring resolution, after 30 days following the initial invocation of AB 361, continued reliance on AB 361 for subsequent meetings requires the following:

1. Either the "state of emergency" must remain active, or state or local officials have imposed or recommended measures to promote social distancing; and
2. No later than 30 days after teleconferencing for the first time under AB 361 rules, and every 30 days thereafter, the legislative body, by majority vote, finds that it has

PREPARED/APPROVED BY:

Greg Folsom, City Manager

reconsidered the circumstances of the state of emergency and at least one of the following circumstances exist:

- The state of emergency continues to impact the ability of the members to meet safely in person; or
- State or local officials continue to impose recommended measures to promote social distancing

Continued reliance on AB 361 will require adoption of a new resolution making the required findings every 30 days.

STAFF RECOMMENDATION: It is recommended that the City Council adopt Resolution No. 2022- ____: A Resolution of the City Council of the City of Suisun City proclaiming a local emergency persists and authorizing the transition to use of remote teleconference meeting procedures by City's the legislative bodies, as authorized by government code section 54953(e) et seq., through November 2, 2022.

ATTACHMENTS:

1. Resolution 2022-____ A Resolution of the City Council of the City of Suisun City proclaiming a local emergency persists and authorizing the transition to use of remote teleconference meeting procedures by City's the legislative bodies, as authorized by government code section 54953(e) et seq., through November 2, 2022.

RESOLUTION NO. 2022-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN
CITY PROCLAIMING A LOCAL EMERGENCY PERSISTS AND
AUTHORIZING THE TRANSITION TO USE OF REMOTE
TELECONFERENCE MEETING PROCEDURES BY CITY'S THE
LEGISLATIVE BODIES, AS AUTHORIZED BY GOVERNMENT
CODE SECTION 54953(E) *ET SEQ.*, THROUGH NOVEMBER 2, 2022.**

WHEREAS, the City Council of the City of Suisun City is committed to preserving and nurturing public access, transparency, observation and participation in its meetings and the meetings of each of its legislative bodies; and

WHEREAS, all meetings of the City's legislative bodies are open and public, as required by the Ralph M. Brown Act, codified as Government Code sections 54950 *et seq.*, so that any member of the public may attend, participate, and observe the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, as amended by Assembly Bill 361 (2021), amending Government Code section 54953(e) *et seq.*, allows for remote teleconferencing observation and participation in meetings by members of a legislative body and members of the public, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, the initial required condition is a declaration of a state of emergency by the Governor pursuant to the California Emergency Services Act, Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state and within the boundaries of the City, as provided in Government Code section 8558; and

WHEREAS, on March 4, 2020, pursuant to Government Code Section 8625, Governor Newsom declared the existence of a state of emergency for the State of California, in response to the outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on March 16, 2020, the City's Director of Emergency Services declared a local emergency for the City pursuant to Chapter 2.32 of the Suisun City Municipal Code, finding that conditions of extreme peril to the safety of persons and property have arisen within the City as a result of the COVID-19 virus and that these conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the City; and

WHEREAS, on March 17, 2020, the City Council adopted Resolution No. 2020-40, ratifying the Director of Emergency Services' declaration of local emergency; and

WHEREAS, Government Code section 54953(e) further requires that state or local officials have imposed or recommended measures to promote social distancing; or, the legislative body of the City finds that meeting in person would present imminent risk to the health and safety of attendees; and

1 **WHEREAS**, the Council hereby finds that such emergency conditions now exist in
2 the City, such that meeting in person for the meetings of the legislative bodies of the City
3 would present imminent risk to the health and safety of attendees as a result of the increased
4 risk of the spread of the COVID-19 virus among those in attendance; and

5 **WHEREAS**, the Council hereby finds that the state of emergency due to the COVID-
6 19 virus and the conditions related thereto has caused, and will continue to cause, conditions
7 of extreme peril to the safety of persons within the City that are likely to be beyond the
8 control of services, personnel, equipment, and facilities of the City, and thereby affirms,
9 authorizes, and proclaims that the existence of a local emergency persists throughout the City,
10 and ratifies the proclamation of state of emergency by the Governor of the State of California;
11 and

12 **WHEREAS**, the Council hereby finds that, as a consequence of the existing local
13 emergency, the legislative bodies of the City shall conduct their meetings without compliance
14 with Government Code section 54953(b)(3), and shall instead comply with the remote
15 teleconference meeting requirements as authorized by Government Code section 54953(e) *et*
16 *seq.*; and

17 **WHEREAS**, the Council affirms that it will allow for observation and participation by
18 Councilmembers and the public by allowing limited in-person attendance, as well as allowing
19 public participation and comment in real time via Zoom or by telephone, in an effort to
20 protect the constitutional and statutory rights of all attendees.

21 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUISUN CITY**
22 **FINDS, RESOLVES, AND ORDERS AS FOLLOWS:**

23 Section 1. The Recitals set forth above are true and correct and are incorporated herein
24 Resolution by reference.

25 Section 2. The Council hereby recognizes and affirms the existence and conditions of
26 a state of emergency as proclaimed by the Governor, the existence of emergency conditions in
27 the City, and affirms, authorizes, and proclaims that the existence of a local emergency
28 persists throughout the City.

29 Section 3. The Council hereby ratifies the Governor of the State of California's
30 Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

31 Section 4. Further, the Council finds that holding the meetings of the City's legislative
32 bodies in person with no limitations to attendance would present imminent risk to the health
33 and safety of attendees as a result of the increased risk of the spread of the COVID-19 virus
34 among those in attendance, as required by Government Code section 54953(e) *et seq.*

35 Section 5. The City Manager and legislative bodies of the City are hereby authorized
36 and directed to take all actions necessary to carry out the intent and purpose of this Resolution
37 including, conducting open and public meetings in accordance with Government Code section
38 54953(e) and other applicable provisions of the Brown Act.

Section 6. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) November 2, 2022, or (ii) such time the Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the City may continue to teleconference without compliance with Government Code section 54953(b)(3).

PASSED AND ADOPTED at the Regular Meeting of the City Council of the City of Suisun City duly held on October 4, 2022, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

WITNESS my hand and the seal of said City this 4th day of October 2022.

Anita Skinner
City Clerk

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CITY COUNCIL

Mayor

Alma Hernandez, Mayor Pro-Tem

Jane Day

Michael J. Hudson

Wanda Williams

Item 6
CITY COUNCIL MEETING

First and Third Tuesday
Every Month



MINUTES

SPECIAL MEETING OF THE SUISUN CITY COUNCIL

AND

**SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY**

TUESDAY, AUGUST 16, 2022

5:30 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

NOTICE

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ZOOM MEETING INFORMATION:

WEBSITE: <https://zoom.us/join>

MEETING ID: 875 4730 1440

CALL IN PHONE NUMBER: (707) 438-1720

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BY EMAILING CLERK@SUISUN.COM (PRIOR TO 4pm) OR
VIA WEBSITE OR PHONE APPLICATION, ZOOM**

*(If attending the meeting via phone press *9 to raise your hand and *6 to unmute/mute for public comment.)*

ROLL CALL

Vice Mayor Hernandez called the meeting to order at 5:31 p.m. with the following Council Members present:

PRESENT: Day, Hernandez, Hudson
ABSENT: Williams (arrived at 5:41 p.m.)

CONFLICT OF INTEREST NOTIFICATION None

(Any items on this agenda that might be a conflict of interest to any Councilmembers/Boardmembers should be identified at this time.)

PUBLIC COMMENT None

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CLOSED SESSION

Pursuant to California Government Code Section 54950 the Suisun City Council and Suisun City Council Acting as Successor Agency will hold a Closed Session for the purpose of:

1. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Discussion of potential significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) (1 potential case). Three Workers Compensation Claims by Joanne Ledford.
2. Conference with Legal Counsel - Existing Litigation
Name of case: Louisa Pickering and Michael Pickering (Plaintiffs) v. City of Suisun City (Defendants), et al - Case # FCS055707

Joint City Council / Suisun City Council Acting as Successor Agency

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR
Pursuant to California Government Code Section 54956.8., the Suisun City Council Acting as Successor Agency to the Redevelopment Agency of Suisun City will hold a Closed Session for the purpose of Conference with Real Property Negotiator.
Property Under Negotiation: Assessor's Parcel Numbers: 0032-142-300; 32-142-280; 32-142-240 and 250 - Main Street West (MSW) Properties.
Negotiating Party: City Manager
Parties Negotiating: Lionext Inc.
Under Negotiations: Terms and payment

Council entered into closed session at 5:34 p.m.

CONVENE OPEN SESSION

There were no announcements.

ADJOURNMENT

There being no further business the meeting was adjourned at 6:16 p.m.

Anita Skinner, City Clerk



CITY COUNCIL
Mayor
Alma Hernandez, Mayor Pro-Tem
Jane Day
Michael J. Hudson
Wanda Williams

CITY COUNCIL MEETING

First and Third Tuesday
Every Month

MINUTES

REGULAR MEETING OF THE SUISUN CITY COUNCIL

SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, AND HOUSING AUTHORITY TUESDAY, AUGUST 16, 2022

6:30 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

NOTICE

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ZOOM MEETING INFORMATION:

WEBSITE: <https://zoom.us/join>

MEETING ID: 850 4282 4837

CALL IN PHONE NUMBER: (707) 438-1720

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(Next Ord. No. – 796)

(Next City Council Res. No. 2022 – 114)

Next Suisun City Council Acting as Successor Agency Res. No. SA2022 - 04)

(Next Housing Authority Res. No. HA2022 – 02)

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320
FIRE 425-9133 ■ RECREATION & COMMUNITY SERVICES 421-7200 ■ POLICE 421-7373 ■ PUBLIC WORKS 421-7340
SUCCESSOR AGENCY 421-7309 FAX 421-7366

ROLL CALL

Vice Mayor Hernandez called the meeting to order at 6:33 p.m. with the following Council Members present:

PRESENT: Day, Hernandez, Hudson, Williams

ABSENT: None

Pledge of Allegiance was led by Council Member Hudson.

Invocation was given by City Manager Greg Folsom.

CONFLICT OF INTEREST NOTIFICATION None

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

REPORTS: (Informational items only)**1. City Manager/Executive Director/Staff**

- Candidate nomination period closed on Friday 8/12. There is 1 candidate for short term Mayor; 2 candidates for full term mayor and 5 candidates for two council seats.
- Press release has been sent out for the Joint Planning Commission/City Council meeting on 8/30 for the Draft Housing Element.
- Video from the July 4th was shown to those in attendance and will be on the city website for public viewing.

PRESENTATION/APPOINTMENTS

(Presentations, Awards, Proclamations, Appointments).

2. City Council Appointments to Community Advisory Committees – (Hernandez: ahernandez@suisun.com).

Council Member Williams appointed Patrick Perkins to the Public Safety Committee.

Motion by Council Member Williams to approve the appointment and seconded by Council Member Hudson. Motion passed by the following vote:

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

3. Proclamations Presented - (Hernandez: ahernandez@suisun.com).

Proclamation Proclaiming the Week of September 4-10, 2022 as “National Suicide Prevention Week 2022” in Suisun City.

Vice Mayor Hernandez read the proclamation which Council Member Williams presented to Patty Philips with Nami Walks. Ms. Philips thanked the Council and stated that the new phone number nationwide is 988.

4. Proclamations Not Presented - (Hernandez: ahernandez@suisun.com).

Proclamation Proclaiming August 13, 2022 as “Sudie M. Smith Foundation Day” in Suisun City.

Vice Mayor Hernandez read the proclamation which was presented at luncheon this past weekend at a foundation luncheon. For 25 years scholarships have been awarded to students pursuing the medical field.

PUBLIC COMMENTS

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Clerk read email received from Daphne Day. Ms. Day commented she lives in the Peterson Ranch area and continuously observes violation of the speed limit along Walters Road. She is requesting that reminder signs be posted in hopes of better enforcement and to save lives.

Drew Diefenach spoke about the proposed use of 1240 Kellogg Street site and advocates it becoming a family pickle ball facility.

Steve Olry praised the proclamation on suicide prevention. He thanked Council Members Williams Hudson and Day, Clerk Skinner and several members of staff for reaching out to him after his procedure and apologized to his supporters for having to step back from following through with his political campaign. He also commented on the \$3-4 million going out in expenditures with little to no revenue.

George Guynn agrees with Mr. Olry's comments on expenditures. There have been too many managers hired with little to no staff to do the actual work. Need to tighten up on city spending.

Donna LeBlanc spoke about the proclamation for mental health stating it is nothing to be ashamed of; if you are depressed talk to your doctor; call 988 and talk to someone.

Adopt a Neighborhood/Sustainable Solano putting on a workshop called "Big gardens in small spaces" on 8/27 at the Suisun Library from 10:00 a.m. -12:00 p.m.; wished the candidates good luck, will be watching and talking to all of you and may the best people win.

Mark Langdon commented on the continued unabated nuisance at 301 Line Street which is the home of Jim Swenson; after the fire last month and red tagging of the building it was hoped that relief was coming; some homeless still remain on the property along with the homeowner; the homeowner believes he can get repairs done; there must be some type of time line requiring homeowners to repair or demolish the buildings; asking that the process be started and notification be given to the homeowner.

COUNCIL COMMENTS

5. Council/Boardmembers Updates

Council Member Hudson thanked Public Works for cutting the weeds along the bike path; and has noticed there is some spray paint on the walls that need to be addressed.

Council Member Williams thanked Public Works for removing the mattress that was floating in the harbor; asked the public please do not illegally dump; call for bulk pick up and utilize

the coupons that were sent out; take pride in our community; Adopt a Neighborhood program is based on volunteers and are always looking for new member free workshops, additional programs in October geared towards children.

Council Member Day commented that the Swenson property on Line Street is a problem and hopes the city will take care of it.

Vice Mayor Hernandez appointed to an ad hoc committee to review the RFP proposals for the ? properties which are Council Members Hudson and Williams. Attended the Northern Division of League of California Cities luncheon on a presentation for SB1333 also known as Care Court; FSUSD committee meeting luncheon Measures S and asked that they come to Suisun City to give a presentation on the Measure; attended the School District Backpack give away and requesting that something similar be hosted within Suisun City; attended the 4th annual Shoveler Drive Garage Sale which was well attended by the community.

CONSENT CALENDAR

Consent calendar items requiring little or no discussion may be acted upon with one motion.

City Council

6. Council Consideration and possible action to adopt Resolution No. 2022-114: A Resolution of the City Council of the City of Suisun City proclaiming a local emergency persists and authorizing the use of remote teleconference meeting procedures by the City's legislative bodies, as authorized by government code section 54953(e) *et seq.*, through September 14, 2022 – (Folsom: gfolson@suisun.com).
7. Council Adoption of Resolution No. 2022 - ____: Authorizing the Purchase of 31 Sets of Structural Firefighting Turnouts from Allstar Fire Equipment Inc. in an amount not to exceed \$98,000.00– (Renucci: grenucci@suisun.com).
8. Council Adoption of Resolution No. 2022-116: Authorize Payment in the Amount of \$37,141.30 to Hi-Tech Emergency Vehicle Service, Inc. for Repairs, Annual Testing and Certification for Ladder Truck 47 - (Renucci: grenucci@suisun.com).
9. Council Adoption of Resolution No. 2022-117: Authorizing the City Manager to Execute a Professional Services Agreement on the City's Behalf with Stantec Consulting Services Inc. to Complete the Necessary Environmental Review and Document for a Commercial Project on a Vacant Site Located North of Highway 12, East of Sunset Shopping Center, and West of Snow Drive – (Bermudez: jbernandez@suisun.com).
10. Council Adoption of Resolution No. 2022-118: Authorizing the City Manager to Execute a Software Licensing Purchase for Microsoft 365 and SQL (Structured Query Language) Licenses for the City and Police Department – (Deol: ideol@suisun.com).
11. Council Adoption of Resolution No. 2022-119: Authorizing the City Manager to Execute the Lease Agreement Between the City of Suisun City and Bulldog Baseball & Softball Club for Field Use at the Lambrecht Sports Complex – (Lofthus: klofthus@suisun.com).
12. Council Adoption of Resolution No. 2022-120: Accepting the Suisun City Dock Box Replacement Project as Complete and Authorizing the City Manager to Record the Notice of Completion for the Project - (Lofthus: klofthus@suisun.com).

13. Council Consideration of Shelter Solano Memorandum of Understanding – (Roth: aroth@suisun.com).
- a. Council Adoption of Resolution No. 2022-121: Authorizing the City Manager to sign a Memorandum of Understanding (MOU) and contract with Shelter Solano to sponsor two shelter beds for 12 months.
 - b. Council Adoption of Resolution No. 2022-122 Adopting the 1st Amendment to the Annual Appropriation Resolution No. 2022-90 to Appropriate Funds for Solano Shelter Program– (Roth: aroth@suisun.com).
14. Council Adoption of Resolutions Establishing the Job Classifications of Code Enforcement Officer I/II and Amending the City of Suisun City Salary Schedule – Penland: cpenland@suisun.com).
- a. Council Adoption of Resolution No. 2022-123: Establish the Code Enforcement Officer I/II Job Classifications; and
 - b. Council Adoption of Resolution No. 2022-124: Amending the City of Suisun City Salary Schedule to Establish a Salary for Code Enforcement Officer I/II and Correct the Bargaining Unit Designation of the Dispatcher Classifications from SCEA to SCPOA
15. Council Adoption of Resolution No. 2022-125: A Resolution of the Suisun City Council Approving the Amended and Restated Joint Exercise of Powers Agreement for the Community Action Partnership of Solano Joint Powers Authority (JPA); Appoint a Voting Member and Alternate to the new JPA Board of Directors and Appointing a Representative to the newly constituted Technical Advisory Committee (TAC) – (Folsom/Lawton: gfolson@suisun.com / klawton@suisun.com).

Joint City Council / Suisun City Council Acting as Successor Agency / Housing Authority

16. Council/Agency/Authority Approval of the Minutes of the Regular and/or Special Meetings of the Suisun City Council, Suisun City Council Acting as Successor Agency, and Housing Authority held on July 19, 2022 - (Skinner: askinner@suisun.com).

Joint City Council / Suisun City Council Acting as Successor Agency

17. Council/Agency Approval of July 2022 Payroll Warrants in the Amount of \$850,678.67 and Council/Agency Approval of the July 2022 Accounts Payable Warrants in the Amount of \$2,847,347.01 – (Finance).

Council Member Hudson pulled Items #13.

PUBLIC COMMENTS

Item #14

George Guynn asked where is money was going to come from for the officer and that we had an officer before but was pulled to do other things; need to take care of infrastructure, no money for dredging.

Item #7

Donna LeBlanc asked if the uniforms were all men sizes as we have some female firefighters.

Deputy Fire Chief Renucci responded.

Council Member Williams pulled Item #7 for clarification.

Motion by Council Member Williams to approved Consent Calendar Items 6,8,9,10,11,12, 14,15,16,17 and seconded by Council Member Day. Motion passed by the following vote:

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

Item #7 for clarification

Council Member Williams asked for clarification that uniforms were for current firefighter and asked if there were current female firefighters.

Chief Renucci responded.

Item #13

Council Member Hudson stated the appearance of homelessness in the city has gotten worse; have had contract with Shelter Solano for a while; doesn't see results that he was hoping for and not sure Shelter Solano is providing all the necessary services that are required for the homeless. Why should we continue the contract?

Police Chief Roth and Brandon Wirth from Shelter Solano were present to answer concerns and questions.

PUBLIC COMMENTS

Steve Olry commented he feels this conversation is being poorly moderated; it's not solution oriented and the way it is being directed we will make the same mistakes; Suisun is failing with its homeless problem.

George Guynn commented this is a complex problem; a lot of people don't want to be helped; need to push for change rather than more of the same.

Donna LeBlanc commented we need to approve this item because we need those two beds; would like to see a timeline of transition from when they arrive at the shelter to temp or permanent housing; if beds are available, it shouldn't matter what city they are picked up in, we need to share and use those beds.

Motion by Council Member Williams to approve Item #13 and seconded by Vice Mayor Hernandez. Motion passed by the following vote:

AYES: Day, Hernandez, Williams

NOES: Hudson

ABSENT: None

PUBLIC HEARING**Housing Authority**

18. Housing Authority Resolution No. HA 2022- 02: A Resolution of the Housing Authority of the City of Suisun City for Approval of the First Amendment to the November 2, 2021 Disposition and Development Agreement with Harbor Park LLC for the Sale and Development of APNs 0032-101-420 and 0032-102-160 (Almond Gardens), in the City of Suisun City – (Bermudez: jbermudez@suisun.com).

Director Bermudez presented the staff report and background on the project site.

Vice Mayor Hernandez opened the Public Hearing

Donna LeBlanc commented she is not happy with the removal of the maintenance part of the agreement; need something in the agreement that tells future owners there are consequences if property is not maintained to a specific level; need to think 15-20 years in the future as to what that property will look like if we don't have standards in writing now.

Katrina Garcia asked if moving residents around been done before; are we taking into consideration a child that will be uprooted and will that school age child be able to concentrate when they are being moved from place to place.

Joe Joyce commented on the displacement of residents in the old Crescent neighborhood when it was being development into Victorian Harbor. He feels that most residents will not come back to Suisun.

There being no further comments the Public Hearing was closed.

Hearing no further comments PH was closed

Motion by Council Member Williams to approve Item 18 and seconded by Vice Mayor Hernandez. Motion passed by the following vote:

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

GENERAL BUSINESS**City Council**

19. Council Consideration and Approval of Resolution No. 2022-126: A Resolution of the City Council of the City of Suisun City Approving the Appointment of Brad Lopez as Fire Chief and Authorizing the City Manager to Execute an Employment Agreement – (Penland: cpenland@suisun.com).

Christy Lopez, City Attorney, stated it is required by law to give an oral report.

Christina Penland explained the recruitment process of Brad Lopez.

Chief Lopez joined the meeting via ZOOM stating he was excited to have been selected as the next fire chief.

Mr. Folsom stated that Chief Lopez will be at the joint Planning Commission/City Council meeting on 8/30/22.

Council welcomed Chief Lopez to Suisun City and thanked everyone that participated in the recruitment process.

Council Member Hudson moved to approve Item #19 and seconded by Council Member Williams. Motion passed by the following vote:

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

20. Discussion and Direction regarding Suisun City Community Based Transportation Plan (CBTP) Final Report – (Folsom: gfolson@suisun.com).

Ron Grassi introduced Debbie McQuilkin and Richard Weiner who gave the presentation.

PUBLIC COMMENT

Donna LeBlanc thanked everyone for a wonderful report and thanked them for listening to what the community said they needed; great asset to the community.

Motion by Council Member Hudson to accepting recommendations presented and seconded by Council Member Williams. Motion passed by the following vote:

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

21. Council Consideration of Resolution No. 2022-115: Approving the allocation of \$1,620,459 of FY 2022-23 Transportation Development Act (TDA) Funds which will be claimed through Solano Transportation Authority September claim and TDA Matrix through the Metropolitan Transportation Commission for FY 2022-23 – (Folsom: gfolson@suisun.com).

Ron Grassi presented the power point and gave the staff report

Motion by Council Member Hudson to approve and seconded by Council Member Day. Motion passed by the following vote:

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

22. Council Consideration of Resolution No. 2022-127: Authorizing the City Manager to enter into an agreement for two years with Solano Transportation Authority for transit management services, compliance, finance tasks and staffing estimated to be at \$50,000 annually; and Authorizing the City Manager to have Solano Transportation Authority release an RFP for Operations and Maintenance of the Suisun Transit Services, estimated to be \$560,000 annually; and Authorizing the City Manager to purchase two transit vans for the Suisun City Microtransit Program, estimated at \$140,000 – (Folsom: gfolson@suisun.com).

STA staff members gave the presentation.

PUBLIC COMMENTS

George Guynn commented he was glad to see big busses will be gone; talked about electric vehicles and charging stations; glad there will not be an additional cost to the city.

Donna LeBlanc asked if there was an update on information for school kids going outside city limits.

Brandon commented they are still working with school district.

**Motion by Council Member Williams to approve and seconded by Council Member Day.
Motion passed by the following vote:**

AYES: Day, Hernandez, Hudson, Williams

NOES: None

ABSENT: None

REPORTS: (Informational items only)

23. Non-Discussion Items

ADJOURNMENT

There being no further business the meeting was adjourned at 9:41 p.m.

Anita Skinner, City Clerk

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AGENDA TRANSMITTAL

MEETING DATE: October 4, 2022

AGENCY AGENDA ITEM: Public Hearing: Successor Agency Adoption of Resolutions Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext:

- a. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.17 Acres Located at the Northeast Corner of Main Street and Solano Street (Solano County Assessor's Parcel Number 0032-142-300)
- b. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.15 Acres Located at the East Side of Kellogg Street (Solano County Assessor's Parcel Number 0032-142-280)
- c. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.21 Acres Located at the North Side of Line Street in Downtown Suisun City (Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250)

FISCAL IMPACT: A third-party appraisal by Valbridge Property Advisors determined that the properties would sell for the following:

Parcel 3 – \$130,000
 Parcel 7 – \$110,000
 Parcel 8 and 9 – \$160,000

The proceeds will be distributed to the affected taxing entities pursuant to redevelopment agency dissolution law, (less applicable disposition fee). The City's general fund will not be immediately impacted from the sale.

STRATEGIC PLAN: Provide Good Governance and Develop Sustainable Economy.

BACKGROUND: The three properties are owned by the Successor Agency (SA) as part of the Main Street West (MSW) Disposition and Development Agreement (DDA). The properties are identified in the MSW DDA as Parcels, although, it should be noted that the legal property reference for all properties is the Solano County Assessor Parcel Number. As part of the Settlement Agreement entered by MSW and the Successor Agency and approved by the Solano County Oversight Board and the California Department of Finance, the remaining properties contained in the DDA are to be sold prior to October 28, 2022.

PREPARED BY:	Jim Bermudez, Development Services Director
APPROVED BY:	Greg Folsom, City Manager

The properties are located in the Waterfront District Specific Plan and the land use designations are as follows:

- Parcel 3 – Main Street Mixed Use (MSMU)
- Parcel 7 – Downtown Mixed Use (DMU)
- Parcel 8 and 9 – Downtown Mixed Use (DMU)

Although the properties have distinctive land use designations, the character of this district is considered the “Shopping, Entertainment, and Culture” area, comprising the commercial, mixed-use, and civic portions of the Downtown Waterfront District.

Staff prepared and published a Request for Proposals (RFP) for the MSW properties and Lionext expressed interest in the three properties. Initial indications from Lionext reflected development of a commercial venture that consisted of some type of mixed-use project. After further discussions with Lionext additional details reflect that the three properties will consist of ground floor restaurants with second-floor luxury apartment rentals. The order and timing of development for each property is reflected in its independent DDA. Staff met with the City Council on several occasions to share details pertaining to appraisal value for the property and timing of development. After consideration of the potential development of the three properties, the City Council recommended that staff move forward with the DDAs.

STAFF REPORT: Staff has determined that the price and terms are consistent with a price per square foot formula; however, the planned timing and orderly development of the properties is unique and warrants its independent DDA to ensure performance and future construction occurs in methodological process. As such, the basic structure of the sale of property is to be captured in independent DDAs for each property.

Like other MSW sales agreements, the structure of the DDA is quite similar to past agreements approved by the City Council. As outlined below, the basic structure of the agreements is similar but with varying financial details since the properties have different physical characteristics, such as size, which reflects different price and fee values. All escrow instructions and performance measures are similar.

Parcel 3

Staff has negotiated an Agreement for Purchase and Sale of Real Property with Lionext, for property identified by MSW as Parcel 3, legally referred to Solano County Assessor’s Parcel Number 0032-142-300. The terms of the agreement are outlined below:

Property Description:	0.17 Acres (Solano County Assessor’s Parcel Number 0032-142-300).
Purchase Price:	\$130,000 as determined by an appraisal prepared by Valbridge Property Advisors.
Lighthouse Dev. Fee:	\$1.0029 per square foot (Approximately \$7,480).
Deposit:	\$13,000

Feasibility Period:	60 days (upon opening of escrow).
Close of Escrow:	60 days after execution of the DDA and no event later than December 31, 2022.
Property Condition:	As Is.

Parcel 7

Staff has negotiated an Agreement for Purchase and Sale of Real Property with Lionext, for property identified by MSW as Parcel 7, legally referred to Solano County Assessor's Parcel Number 0032-142-280. The terms of the agreement are outlined below:

Property Description:	0.15 Acres (Solano County Assessor's Parcel Number 0032-142-280).
Purchase Price:	\$110,000 as determined by an appraisal prepared by Valbridge Property Advisors.
Lighthouse Dev. Fee:	\$1.0029 per square foot (Approximately \$6,390.48).
Deposit:	\$11,000.
Feasibility Period:	60 days (upon opening of escrow).
Close of Escrow:	60 days after execution of the DDA and no event later than December 31, 2022.
Property Condition:	As Is

Parcel 8 and 9

Staff has negotiated an Agreement for Purchase and Sale of Real Property with Lionext, for property identified by MSW as Parcel 8 and 9, legally referred to Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250. The terms of the agreement are outlined below:

Property Description:	0.21 Acres (Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250)
Purchase Price:	\$160,000 as determined by an appraisal prepared by Valbridge Property Advisors.
Lighthouse Dev. Fee:	\$1.0029 per square foot (Approximately \$9,226.68).
Deposit:	\$16,000
Feasibility Period:	60 days (upon opening of escrow)
Close of Escrow:	60 days after execution of the DDA and no event later than December 31, 2022.
Property Condition:	As Is

RECOMMENDATION: Successor Agency Adoption of Resolutions Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext:

- a. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.17 Acres Located at the Northeast Corner of Main Street and Solano Street (Solano County Assessor's Parcel Number 0032-142-300)
 - b. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.15 Acres Located at the East Side of Kellogg Street (Solano County Assessor's Parcel Number 0032-142-280)
 - c. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.21 Acres Located at the North Side of Line Street in Downtown Suisun City (Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250)
-

ATTACHMENTS:

- 1. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.17 Acres Located at the Northeast Corner of Main Street and Solano Street (Solano County Assessor's Parcel Number 0032-142-300)
- 2. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.15 Acres Located at the East Side of Kellogg Street (Solano County Assessor's Parcel Number 0032-142-280)
- 3. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement and Joint Escrow Instructions with Lionext, Inc for the Sale of Approximately 0.21 Acres Located at the North Side of Line Street in Downtown Suisun City (Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250)
- 4. Property Parcel Location Map
- 5. PowerPoint Presentation

RESOLUTION NO. SA 2022-

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND JOINT ESCROW INSTRUCTIONS WITH LIONEXT, INC FOR THE SALE OF APPROXIMATELY 0.17 ACRES LOCATED AT THE NORTHEAST CORNER OF MAIN STREET AND SOLANO STREET (SOLANO COUNTY ASSESSOR'S PARCEL NUMBER 0032-142-300)

WHEREAS, the Successor Agency ("**Agency**") is the owner of that certain unimproved real property located on the northeast corner of Main Street and Solano Street in the City of Suisun City, County of Solano, State of California (Assessor Parcel No. 0032-142-300) ("**Property**"); and

WHEREAS, the Property (together with a number of other parcels of real property) is subject to that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Main Street West Partners, LLC, ("**MSW**") and the Redevelopment Agency of the City of Suisun City as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; (iv) that certain Fourth Amendment to the DDA dated April 29, 2016; and Resolution SA 2020-02 (cumulatively the "**Amendments**"). The Original DDA as modified by the Amendments is hereinafter referred to as the "**DDA**". Under the DDA, the Property was commonly referred to as Lot 10; and

WHEREAS, the Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement which the DOF approved and executed on February 1, 2016 ("**DOF Settlement Agreement**"). However, the DOF Settlement Agreement required the approval of the Oversight Board which did approve it pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and a binding obligation of the Successor Agency; and

WHEREAS, MSW and Agency each alleged that the other had breached the DDA. Subsequently MSW and the Agency entered into that certain Settlement Agreement and General Release of all Claims which was approved by the Successor Agency Board on November 17, 2020 and executed by the Agency on December 1, 2020 ("**2020 Settlement Agreement**"). Pursuant to the 2020 Settlement Agreement, the parties agreed to cooperate with respect to the sale of the remaining parcels including the Property to a Qualified Successor Developer and upon the closing of the sale, a prorata portion of the \$200,000 Disposition Fee shall be paid to MSW, the Qualified Successor Developer will be responsible

1 for the Economic Impact Fee and the Lighthouse Development Fee, and all the DDA shall
2 terminate with respect to the Property; and

3 **WHEREAS**, MSW has requested that it be entitled to assign its rights with respect to
4 the Property to Lionext, Inc (“**Lionext**”) as a Qualified Successor Developer and the Agency
5 desires to permit such assignment to Lionext with respect to the Property consistent with the
6 terms of the DDA and the 2020 Settlement Agreement; and

7 **WHEREAS**, pursuant to an appraisal prepared by Valbridge and Associates, the fair
8 market value for the property was determined to be \$130,000 (“**FMV**”); and

9 **WHEREAS**, the Agency and Lionext have negotiated terms of that certain Vacant
10 Land Purchase Agreement and Joint Escrow Instructions for the sale of the Property for FMV
11 of \$130,000. Pursuant to the DDA, Lionext will open escrow with a \$13,000 deposit with
12 Placer Title Company as escrow holder, a due diligence/feasibility period of 60 days and a
13 closing date of 60 days after the execution of the PSA (“**Property Sale Price**”); and

14 **WHEREAS**, the Agency desires to sell the Property to Lionext for a proposed mixed-
15 use development consistent with the City’s General Plan and Downtown Waterfront Specific
16 Plan, consistent with the terms of the Lionext DDA (Exhibit A), subject to all necessary
17 future analysis, approvals and mitigation measures as required by the California
18 Environmental Quality Act (“**CEQA**”), and as provided pursuant to the terms and conditions
19 of the Lionext DDA; and

20 **WHEREAS**, the net proceeds from the sale of the Property will be distributed to the
21 affected taxing entities pursuant to redevelopment agency dissolution laws; and

22 **WHEREAS**, CEQA requires the review of projects that have the potential to
23 adversely impact the environment. Before proceeding with the action before the City Council,
24 Lionext requires the execution of the DDA before it can invest time, money and effort in the
25 preparation of detailed development plans. At the time adequate detail is known about
26 development of the Property, the appropriate review as required under CEQA will be
27 undertaken.

28 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL ACTING
AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY
OF SUISUN CITY, AS FOLLOWS:**

Section 1. The above recitals are true and correct.

Section 2. The DDA with Lionext in substantially the form attached hereto is
hereby approved as well as the Assignment and Release Agreement among Lionext, MSW
and the Agency attached hereto. The Executive Director (or designee) is hereby authorized
on behalf of the Successor Agency to execute the DDA, and to make revisions to the DDA
(including approvals and extensions) which do not materially or substantially increase the
Agency’s obligations thereunder, to sign all documents, to make all approvals and take all
actions necessary or appropriate to carry out and implement the DDA and to administer the
Agency’s obligations, responsibilities and duties to be performed under the DDA.

PASSED AND ADOPTED at a regular meeting of the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Tuesday, October 4, 2022, by the following vote:

AYES: Boardmembers:
NOES: Boardmembers:
ABSENT: Boardmembers:
ABSTAIN: Boardmembers:

WITNESS my hand and the seal of said City this 4th day of October 2022.

Anita Skinner
City Clerk

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DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF SUISUN CITY
a public body, corporate and politic**

(“Agency”)

AND

**LIONEXT, INC.
a California corporation**

(“Developer”)

MSW Parcel 3

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of October 4, 2022 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public body, corporate and politic ("**Agency**"), and LIONEXT, INC., a California corporation ("**Developer**"). The parties agree as follows:

IV. (§100) PURPOSE OF THE AGREEMENT

A. Background. Agency owns that certain real property located at the southeast corner of Solano Street and Main Street in the City of Suisun City constituting Assessor's Parcel No. 0032-142-300 ("**Property**").

B. MSW DDA. The Property (together with a number of other parcels of real property) is subject to that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Main Street West Partners, LLC, ("**MSW**") and the Redevelopment Agency of the City of Suisun City (Seller's predecessor) ("**Original DDA**") as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; and (iv) that certain Fourth Amendment to the DDA dated April 29, 2016 (cumulatively the "**Amendments**"). The Original DDA as modified by the Amendments is hereinafter referred to as the "**MSW DDA**".

The Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract, and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement, which the DOF approved and executed on February 1, 2016 ("**Settlement Agreement**"). The Settlement Agreement required the approval of the Oversight Board, which was provided pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and constitutes a binding obligation of Seller as successor in interest to the RDA.

Pursuant to the MSW DDA, the Property is raw land. As set forth in the Schedule of Performance (as attached to the Fourth Amendment), MSW can assign its rights to acquire the Property to a third-party buyer and, upon assumption by the buyer of the development obligations with respect to the Property, the Property will no longer be subject to the terms of the DDA and MSW is released of its duties with respect to the Property.

MSW is willing to assign its rights under the DDA with respect to the Property to Developer. Agency is willing to permit such assignment to Developer which assignment will be deemed approved upon the Opening of Escrow (as defined below).

C. Best Interests. The Project is in the best and vital interests of Agency and the City of Suisun City (“**City**”), and the health, safety and welfare of the residents and taxpayers in the City, and is in accord with the public purposes and provisions of applicable state and local laws. Construction of the Project will provide additional jobs and may provide housing in accordance with the purposes and goals of Agency.

V. (§200) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

A. (§ 201) Affiliate.

The term “**Affiliate**” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Developer, which shall include, without limitation, each of the constituent members of Developer’s limited liability company. For this provision, “**control**” means (i) with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and (ii) with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

B. (§ 202) Agreement.

The term “**Agreement**” shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference. The Attachments included with this Agreement include the following:

Attachment No. 1	Legal Description of Property
Attachment No. 1-A	Property Map
Attachment No. 2	Scope of Development
Attachment No. 3	Schedule of Performance
Attachment No. 4	Grant Deed
Attachment No. 5	Release of Construction Covenants
Attachment No. 6	Assignment, Assumption & Release Agreement

C. (§ 203) Appraisal.

The term “**Appraisal**” shall mean that certain appraisal prepared by Valridge Property Advisors dated May 9, 2018, which established the Purchase Price for the Site.

D. (§ 204) Appraised Value.

The term “**Appraised Value**” shall mean the fair market value established in the Appraisal and shall be the Purchase Price for the Site.

E. (§ 205) Assignment/Assumption Agreement.

The term “Assignment/Assumption” Agreement shall mean that certain Assignment, Assumption and Release Agreement in the form of Attachment No. 6 to be executed by Developer, Agency and MSW in accordance with Section 404.1.

F. (§ 206) Broker.

The term “**Broker**” shall have the meaning set forth in Section 902.3.

G. (§ 207) City.

The term “**City**” shall mean the City of Suisun City, California.

H. (§ 208) Closing

The term “**Closing**” or “**Closing Date**” shall mean the closing of Escrow by the Escrow Agent recording the Grant Deed distributing the funds and documents received through Escrow to the party entitled thereto as provided herein, which closing shall occur on or before the date established in the Schedule of Performance which **must occur absolutely not later than December 31, 2022 pursuant to requirements of the Surplus Land Act. Developer understands that the outside closing date CANNOT be extended for any reason.**

Developer Initials.

I. (§ 209) Commission.

The term “**Commission**” shall mean the sum to be paid to the Broker in accordance with Section 902.3

J. (§ 210) Days.

The term “**days**” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

K. (§ 211) Deposit.

The term “**Deposit**” shall mean the sum of Thirteen Thousand Dollars (\$13,000) delivered by Developer to Escrow Agent as set forth in the Schedule of Performance to be applied to the Purchase Price at the Closing.

L. (§ 212) Effective Date.

The term “**Effective Date**” shall mean the date this Agreement is executed by Agency and Developer after it has been approved by Agency at a public hearing.

M. (§ 213) Enforced Delay.

The term “**Enforced Delay**” shall mean any delay described in Section 903 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 903.

N. (§ 214) Escrow.

The term “**Escrow**” shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Property from Agency to Developer.

O. (§ 215) Escrow Agent.

The term “**Escrow Agent**” shall mean Placer Title Company which shall act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Kelly Guglielmo at Placer Title Company, 1300 Oliver Road, Suite 120, Fairfield, California 94534; (707) 429-2211; email address: kuglielmo@placertitle.com.

P. (§ 216) Feasibility Period.

The term “**Feasibility Period**” shall mean the sixty (60) day period as defined in Section 401 in which Developer shall determine whether the physical condition of the Property is suitable for Developer's intended use in accordance with this Agreement.

Q. (§ 217) Grant Deed.

The term “**Grant Deed**” shall mean that Grant Deed in substantially the form attached hereto as Attachment No. 4 by which Agency as Grantor will convey fee title to the Property to Developer as grantee.

R. (§ 218) Lighthouse Development Fee.

The term “**Lighthouse Development Fee**” shall mean the Lighthouse Development Fee as required by Agency Resolution 2004-10 which is set at \$1.0029 per square foot of land area and will paid by Developer to City through Escrow at the Closing.

S. (§ 219) MSW.

The term “**MSW**” shall mean Main Street West as defined in Recital B.

T. (§ 220) MSW Payment.

The term “**MSW Payment**” shall mean the payment amount specified in Section 5 of the Assignment/Assumption Agreement to be paid to MSW at Closing.

U. (§ 221) Opening of Escrow.

Escrow shall be deemed open when the documents and funds specified in Section 404.1 are received by Escrow Agent.

V. (§ 222) Project

The term “**Project**” shall mean the facilities to be constructed by Developer on the Property as described in the Scope of Development attached hereto as Attachment No. 2.

W. (§ 223) Project Budget

The term “**Project Budget**” shall mean the budget for the Project to be approved by the Agency during the Feasibility Period.

X. (§ 224) Purchase Price

The term “**Purchase Price**” means the sum of One Hundred Thirty Thousand Dollars (\$130,000). The Purchase Price is the fair market value as established by the Appraisal.

Y. (§ 225) Release of Construction Covenants

The term “**Release of Construction Covenants**” shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Attachment No. 5, which shall evidence that the construction and development of the New Facilities have been satisfactorily completed.

Z. (§ 226) Property

The term “**Property**” shall mean the real property consisting of approximately .17 of an acre (APN 0032-142-300) legally described on Attachment No. 1.

AA. (§ 227) Property Map

The Project shall be located upon the Property, which is within the City, as shown in the “**Property Map**” attached hereto as Attachment No. 1-A.

BB. (§ 228) Surplus Land Act

The term “**Surplus Land Act**” shall mean California Government Code Sections 54220 et seq. and the applicable regulations which applies to the disposition of surplus real estate by governmental agencies.

CC. (§ 229) Title

The term “**Title**” shall mean the fee title to the Property which shall be conveyed to Developer pursuant to the Grant Deed.

DD. (§ 230) Title Company

The term “**Title Company**” shall mean Placer Title Company.

EE. (§ 231) Title Officer.

The term “**Title Officer**” shall mean Eric Seastrom at Placer Title Company, 1300 Oliver Road, Suite 120, Fairfield, California 94534; (707) 429-2211; email address: eseastrom@placertitle.com.

VI. (§300) PARTIES TO THE AGREEMENT; SURPLUS LAND ACT.

A. (§301) Agency.

1. Agency. Agency is the Successor Agency to the Redevelopment Agency of the City of Suisun City, a public body, corporate and politic. The term "Agency" as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the Agency. The office of Agency is located at 701 Civic Center Blvd, Suisun City, California 94585.

2. FIRPTA. Agency is not a “foreign person” within the parameters of the Foreign Investment in Real Property Tax Act (“**FIRPTA**”) or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or Agency has complied and will comply with all the requirements under FIRPTA or any similar state statute.

3. No Conflict. Agency’s execution, delivery and performance of its obligations set forth in this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

4. No Litigation. To Agency’s actual knowledge, there is no threatened or pending litigation against Agency challenging the validity of this Agreement or any of the actions proposed to be undertaken by Agency or Developer pursuant to this Agreement. “**Actual knowledge,**” as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of Agency’s employees and agents who have participated in the preparation of this Agreement and Developer’s acquisition of the Property.

5. Agency’s Participation. Agency’s participation in the Project is solely as seller of the Property and Agency is not participating in the Project as a developer or owner. Any actions by Agency which are not fully consistent with Agency’s role as seller of the Property are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to Developer. As such, the Project and Agency’s participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

6. MSW. MSW is willing to assign its rights and duties under the DDA with respect to the Property to Developer effective concurrently with the Effective Date (as defined below). Agency is willing to consent to such assignment and, as of the Effective Date (as defined in Section 2.1), the Property will no longer be subject to the DDA.

Developer agrees to purchase from Agency, and Agency agrees to sell to Developer the Property in AS-IS condition upon the terms and conditions in this Agreement.

B. (§302) Developer.

1. **Identification.** Developer is Lionext Inc., a California corporation, or its transferee as described in Section 303. The principal office of Developer for the purposes of this Agreement is located at 13021 Leffingwell Road, Santa Fe Springs, CA 90670. Developer represents and warrants to Agency that, as of the Effective Date and the Closing Date, Developer is and will be qualified to do business, is in good standing under the laws of the State of California, and has all requisite power and Agency to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. **Successors and Assigns.** Except as may be expressly provided herein below, all of the terms, covenants, and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer and the permitted successors, assigns and nominees of Developer as to each portion of the Property. Wherever the term "**Developer**" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. **Qualifications.** The qualifications and identity of Developer are of particular concern to Agency, and it is because of such qualifications and identity that Agency has entered into this Agreement with Developer. Agency has considered the experience, financial capability, and product being marketed by Developer, the Property location and characteristics, the public costs of acquiring and developing the Property and return on investment, and the product mix necessary to produce a Project. Based upon these considerations, Agency has imposed those restrictions on transfer set forth in this Agreement.

C. (§303) Restrictions on Transfer.

1. **Transfer Defined.** As used in this Section, the term "**Transfer**" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Property, or the improvements thereon, and conveyance of the Property from Agency to Developer, a limited partnership or a limited liability company in which Developer (or its affiliate) is the administrative general partner or managing member (as applicable), provided for in this Agreement. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Transferor's immediate family. In the event Developer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer, or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Prior to issuance of the Release of Construction Covenants, Developer shall not Transfer this Agreement or any of Developer's rights hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Agency, which shall not be unreasonably withheld or delayed, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval to any Transfer by Developer of its interest in the Property before the issuance of the Release of Construction Covenants, which Transfer requires Agency approval, Agency shall consider factors such as (i) whether the completion or implementation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of a specific written agreement by Agency, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest in the Property or this Agreement (including without limitation an assignment or transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Property which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency an assumption agreement, in a form approved by Agency, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following, all of which shall constitute "**Permitted Transfers**" and shall not require the prior consent of Agency:

a. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512, but Developer shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Property.

b. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of and improvements on the Property, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

c. A transfer in connection with a foreclosure or deed-in-lieu of foreclosure under any mortgage, deed of trust, or other form of conveyance described in subsection (a) above.

d. The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation

of the Property.

e. A sale or Transfer of forty-nine percent (49%) or more of ownership or control interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the Trustor or Transfers to a corporation or partnership in which the immediate family members or shareholders of the Transferor have a controlling majority interest of fifty-one percent (51%) or more.

f. A sale or Transfer to a California limited partnership in which Developer, or an Affiliate of Developer, is a general partner or to a California corporation in which Developer, or an Affiliate of Developer is the managing member. The term “**Affiliate**” shall mean (i) any entity in which Developer directly or indirectly owns or controls fifty percent (50%) or more of the voting and/or membership interests, or (ii) any entity in which the owner(s) of Developer directly or indirectly own or control fifty percent (50%) or more of the voting or membership interest.

g. The admission of a nonprofit corporation or a limited liability company wholly owned by a nonprofit corporation as a managing general partner of Developer, or the permitted successor thereof.

h. Execution of residential leases for the Units in the ordinary course of operations of the Property.

4. Restrictions After Completion. Subsequent to the issuance of the Release of Construction Covenants, except as set forth in Section 303.3 above, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Property without complying with any Transfer restrictions contained within the Grant Deed and the Regulatory Agreement, as applicable.

(§304) Applicability of Surplus Land Act. The parties believe that the sale of the Property under this Agreement is exempt from the Surplus Land Act under Government Code Section 54234 due to the existing MSW DDA.

VII. (§400) ACQUISITION AND DISPOSITION OF THE PROPERTY

A. (§ 401) Feasibility Period.

Within 5 days after the Effective Date, Agency shall deliver to Developer any and all documents related to the Property which it has in its possession and control (“**Due Diligence Documents**”). Due Diligence Documents shall not include the title information which shall be governed pursuant to Section 408.

Developer shall have a period of sixty (60) days from the date that Agency provides to Developer copies of all Due Diligence Documents (“**Feasibility Period**”).

During the Feasibility Period, Developer shall have the right to inspect the physical condition of the Property for the Project and, at its sole cost and expense, cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other

investigations as Developer, in its sole discretion, may desire, to permit Developer to determine the suitability of the Property for the uses permitted by this Agreement to conduct such other review and investigation which Developer deems appropriate to satisfy itself to acquire the Property. Developer shall further have the right to make an examination of all licenses, permits, authorizations, approvals and governmental regulations which affect the Property, including zoning and land use issues and conditions imposed upon the Property by governmental agencies. During the Feasibility Period, Developer shall have access to the Property provided it complies with the provisions of Section 409.4.

Developer shall notify Agency on or before the end of the Feasibility Period, in writing, whether Developer has approved or disapproved the results of its investigation, such approval or disapproval to be given or withheld in Developer's reasonable discretion. If Developer disapproves the results of its investigations, such disapproval shall terminate the Agreement, in which case the Deposit will be returned to Developer as specified in Section 405, and the parties shall have no further obligations to the other under this Agreement. If Developer approves the results of its investigations, this Agreement shall remain in full force and effect, the Deposit shall become non-refundable (except in the case of a material Default by Agency), and the parties hereto shall have all of the rights and obligations as set forth herein. Failure of Developer to notify Agency of its approval or disapproval before the end of the Feasibility Period shall be conclusively deemed Developer's disapproval hereunder.

B. (§ 402) Conveyance.

In accordance with and subject to all the terms, covenants and conditions of this Agreement including the Schedule of Performance and payment of the Purchase Price, Agency agrees to convey the Property to Developer subject to the terms of the Grant Deed, and Developer specifically agrees to accept the Property in AS-IS condition and subject to the covenants to develop the Property for the uses consistent with the Scope of Development and the permissible uses as further described in Section 601 and the Grant Deed. The Purchase Price is the fair market value of the Property pursuant to the Appraisal.

C. (§ 403) Financial Capability.

Within the time set forth in the Schedule of Performance, Developer shall submit to Agency's Executive Director for approval evidence reasonably satisfactory to the Executive Director that Developer has the financial capability necessary for development of the Project thereon pursuant to this Agreement. Developer covenants and agrees to take all action, furnish all information, give all consents, and pay all sums reasonably required to keep the construction loan commitment in full force and effect and shall comply in all material respects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, audited financial statements, and documents in connection therewith.

D. (§404) Escrow.

1. Opening of Escrow. Within three (3) days of the Effective Date, the parties shall open an Escrow with Escrow Agent by causing an executed copy of this Agreement to be deposited with Escrow Agent which Escrow Agent shall sign and accept. Escrow shall

be deemed opened upon Escrow Agent's receipt of all of the following ("**Opening of Escrow**"): (i) the fully executed copies of this Agreement; (ii) Developer's Deposit; (iii) MSW deposits three (3) copies of the Assignment, Assumption and Release Agreement in the form of Attachment No. 6 executed by MSW ("**Assignment/Release Agreement**"); (iv) Developer deposits three (3) executed copies of the Assignment/Release Agreement; and (v) Agency deposits three (3) executed copies of the Assignment/Release Agreement. If Escrow is not opened (as defined above) within five (5) days after the Effective Date, Agency shall have the right to terminate this Agreement upon written notice to Buyer and Escrow Agent prior to the actual Opening of Escrow.

2. Completion and Distribution of Assignment/Release Agreements.

Upon Opening of Escrow, Escrow Holder shall (i) complete the "Effective Date" in the Assignment/Release Agreements with the date of Opening of Escrow; and (ii) complete the date of this Agreement in Paragraph 2. Thereafter, Escrow Holder shall deliver one (1) fully executed copy of the Assignment/Release to MSW at 710 Kellogg Street, Suisun City, CA 92585 Attn: President; one (1) fully executed copy of the Assignment/Release to Agency; and one (1) fully executed copy of the Assignment/Release to Developer.

3. Joint Escrow Instructions. This Agreement shall constitute the joint escrow instructions of Agency and Developer for the Property, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. Agency and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional Escrow instructions shall modify this document without specific written approval of the modifications by Developer and Agency.

E. (§405) Deposit.

Upon Opening of Escrow in accordance with Section 404, Developer shall deliver the Deposit directly to Escrow Agent.

If Developer defaults in its obligations under this Agreement, then Agency shall retain the Deposit as liquidated damages to compensate Agency for its expenses in obtaining a new developer, and other actual and consequential damages. In the event that Developer defaults in its obligations under this Agreement, then Agency shall retain the Deposit as liquidated damages under Section 411(4) for its expenses and costs and other actual and consequential damages.

F. (§406) Conditions to Close of Escrow for Acquisition by Developer.

1. Developer's Conditions to Closing. Developer's obligation to accept the Property and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, "**Developer's Conditions to Closing**") within the time provided in the Schedule of Performance:

- a. Developer shall have approved the condition of the Property as set

forth in Section 401 and Developer shall have received any and all approvals required under CEQA (if required) provided the Property is deemed categorically exempt.

b. Title Company is committed to issue Developer's Title Policy insuring title to the Property is vested in Developer subject to conditions and exceptions specified in Section 408(4).

c. Agency shall have deposited into Escrow certificates ("**FIRPTA Certificates**") in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

d. Developer shall have obtained financing commitments for the development of the Property acceptable to Developer in accordance with Sections 403(1), and Agency shall have approved such commitments.

e. Agency shall have deposited or caused to be deposited into Escrow all the documents required under Section 407(3).

f. Agency is not in default under this Agreement.

Any waiver of the foregoing conditions must be express and in writing. In the event that the foregoing conditions have not been satisfied within the time provided therefor in the Schedule of Performance, either party may terminate this Agreement by delivering a written notice in accordance with Section 411, in which event the Deposit shall be returned to Developer.

2. Agency's Conditions to Closing. Agency's obligation to convey the Property and Agency's obligation to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Agency, be conditional and contingent upon the satisfaction, or waiver by Agency, of each and all of the following conditions (collectively, "**Agency's Conditions to Closing**") within the time provided in the Schedule of Performance:

a. Developer shall have obtained evidence of financing commitments for the development of the Property in accordance with Sections 403(1) and Agency shall have approved such commitments.

b. Title Company is committed to issue Developer's Title Policy insuring title to the Property is vested in Developer subject to conditions and exceptions specified in Section 408.4.

c. d. Developer shall have deposited or caused to be deposited into Escrow all the documents required under Section 407(4).

d. Developer is not in breach of this Agreement.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy Agency's foregoing conditions or defaults in the performance of its obligations hereunder, Agency may terminate this Escrow.

3. **Both Parties' Conditions to Closing.** Prior to the Closing Date, Developer and Agency shall execute and deliver one or more certificates ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Property, date of closing, gross price, and taxpayer identification number for Developer and Agency. Prior to the Closing, Developer and Agency shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

G. (§407) Conveyance of the Property.

1. **Time for Conveyance.** Escrow shall close after satisfaction of all conditions to close of Escrow, but not later than the date specified in the Schedule of Performance, unless extended by the mutual agreement of the parties or any Enforced Delay. Possession of the Property shall be delivered to Developer concurrently with the conveyance of title to Developer.

2. **Escrow Agent to Advise of Costs.** On or before the date set in the Schedule of Performance, the Escrow Agent shall advise Agency and Developer in writing of the fees, charges, and costs necessary to clear title and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. **Deposits By Agency Prior to Closing.** On or before, but not later than 1:00 p.m. of the date set in the Schedule of Performance, Agency shall execute, acknowledge and deposit into Escrow the Grant Deed and such other documents are required to consummate the transaction.

4. **Deposits By Developer Prior to Closing.** On or before, but not later than 1:00 p.m. of the date set in the Schedule of Performance, Developer shall execute and acknowledge as may be required and deposit into Escrow (i) the Acceptance of Grant Deed to be attached to the Grant Deed prior to recordation (ii) the preliminary change of ownership form as required by Solano County; and (iii) funds and documents as required to consummate the transaction.

5. **Recordation and Disbursement of Funds.** Upon the completion by Agency and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to (i) buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause the Grant Deed to be recorded in the appropriate records of Solano to vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver Developer's Title Policy to Developer insuring title and conforming to the requirements of Section 408(4). Following recordation, the Escrow Agent shall deliver conformed copies of said instruments to Developer and Agency.

H. (§408) Title Matters.

1. **Condition of Title.** Agency shall convey to Developer fee title of the Property subject only to: (i) this Agreement and conditions in the Grant Deed; (ii) current real property taxes, a lien not yet payable; (iii) any liens caused by Developer including any such resulting from Developer's entry onto the Property under Section 409(4); and (v) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer. Agency shall convey title to Developer pursuant to the Grant Deed in the form set forth in Attachment No. 4.

2. **Agency Not to Encumber Property.** Agency covenants to Developer that it has not and will not, from the Effective Date of this Agreement through close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Property without express written permission of Developer.

3. **Approval of Title Exceptions.** Prior to the date in the Schedule of Performance, Agency shall deliver a preliminary report for the Property, dated no earlier than the date of this Agreement, to Developer including copies of all documents referenced therein ("**Title Report**"). Prior to the date in the Schedule of Performance ("**Title Approval Date**"), Developer shall deliver to Agency written notice, with a copy to Escrow Agent, specifying in detail any exception disapproved and the reason therefor. Prior to the date in the Schedule of Performance, Agency shall deliver written notice to Developer as to whether Agency will or will not cure the disapproved exceptions. If Agency elects not to cure the disapproved exceptions, Developer may terminate this Agreement without any liability of Agency to Developer, or Developer may withdraw its earlier disapproval. If Agency elects to cure the disapproved exceptions, Agency shall do so on or before the close of Escrow. If, after the Title Approval Date, Developer receives a supplement to the Title Report from the Title Company setting forth any new matter of record encumbering the Property which was not set forth on the original Title Report (or any previous supplement thereto) and of which Developer was not otherwise aware as of the Title Approval Date ("**New Title Matter**"), Developer may, on or prior to 5:00 p.m. P.S.T. on the fifth (5th) business day following Developer's receipt of notice of such New Title Matter ("**New Matter Approval Date**"), object to such New Title Matter by sending written notice thereof to Agency and Escrow Agent; provided, however, Agency shall remove any monetary liens which constitute New Title Matters regardless of whether Developer timely objects to such monetary liens. Developer's failure to object in writing to any New Title Matter on or prior to the New Matter Approval Date shall be automatically deemed to be Developer's approval of such New Title Matter and such New Title Matter shall thereafter be deemed to be a permitted encumbrances. If Developer delivers written objection to any New Title Matter on or prior to the New Matter Approval Date applicable thereto, and Agency does not deliver as of 5:00 p.m. P.S.T. on the fifth (5th) business day following the New Matter Approval Date ("**Agency Response Date**") written notice that Agency covenants and agrees to remove prior to the Closing such New Title Matter objected to by Developer, then Developer may terminate this Agreement by delivery of written notice thereof to Agency and Escrow Agent on or before 5:00 p.m. P.S.T. on the second (2nd) business day following Agency Response Date ("**New Matter Termination Date**"). Developer's failure to terminate this Agreement in writing as a result of any New Title Matter on or prior to the New Matter Termination Date shall constitute

Developer's waiver of its right to terminate this Agreement as a result of such New Title Matter.

4. Developer's Title Policy. At the Closing at Developer's expense, Title Company shall issue to Developer an ALTA (non-extended) owner's policy of title insurance ("**Developer's Title Policy**") with title to the Property vested in Developer with an insured amount equal to the Purchase Price, containing only exceptions as approved, waived or caused by Developer in accordance with this Section. Developer's Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested at Developer's cost and expense.

I. (§409) Condition of Property; AS-IS Acquisition.

1. AS-IS Acquisition.

DEVELOPER ACKNOWLEDGES AND AGREES THAT AGENCY IS CONVEYING THE PROPERTY TO DEVELOPER IN "AS-IS" CONDITION WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND AND SHALL NOT BE RESPONSIBLE FOR ANY HAZARDOUS MATERIALS OR CONDITIONS ON THE PROPERTY.

2. Property Assessment and Remediation.

Developer shall be responsible for conducting assessments of the Property and for any required remediation if Developer accepts the Property pursuant to the terms of this Agreement. Agency shall be entitled to review any remedial workplan prepared for the Property. Agency is conveying the property in an "AS-IS" condition and shall not be responsible for any Hazardous Materials or hazardous conditions on the Property. Agency is acquiring the Property solely to accommodate the Project and, therefore, Developer acknowledges that the provisions of this Section 409 is material to Agency's entering into this Agreement.

3. Disclaimer of Warranties.

Upon the Close of Escrow, Developer shall acquire the Property in its "AS-IS" condition and shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, abandoned wells or other structures located on, under or about the Property. Agency makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, the suitability of the Property for the Project, or the present use of the Property, and specifically disclaims all representations or warranties of any nature concerning the Property made by them, the City and their employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate air, water rights, utilities, present and future zoning, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. Agency makes no representation or warranty concerning the compaction of soil upon the Property, nor of the suitability of the soil for construction.

4. Right to Enter Property; Indemnification.

Subject to compliance with the requirements set forth below, Agency grants to Developer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Developer's sole cost and expense.

Prior to entering the Property, Developer shall obtain Agency's written consent which shall not be unreasonably withheld or delayed provided Developer complies with all the following requirements. Developer shall (i) notify Agency prior to each entry of the date and the purpose of intended entry and provide to Agency the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations (including issuance of City permits); (iv) allow an employee of Agency to be present at all times; (v) keep the Property free and clear of all materialmen's liens, lis pendens and other liens or encumbrances arising out of the entry and work performed under this paragraph; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California; (vii) provide to Agency prior to initial entry a certificate of insurance evidencing that Developer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) which insurance names Agency as additional insured; and other requirements specified in Section 506; (viii) repair all material damage to the Property resulting from Developer's entry and investigation of the Property and leave the Property in a safe condition; (ix) provide Agency copies of all studies, surveys, reports, investigations and other tests derived from any inspection without representation or warranty but with the right of Agency to use the report without further consent from or payment to the issuer; and (x) take the Property at Closing subject to any title exceptions caused by Developer exercising this license to enter.

Developer agrees to indemnify, defend and hold Agency free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Agency may suffer or incur as a consequence of Developer's exercise of the license granted pursuant to this Section or any act or omission by Developer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Developer (except Agency and its agents) with respect to the Property, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Developer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Agency.

Notwithstanding termination of this Agreement for any reason, the obligations of Developer under this Section shall remain in full force and effect.

5. Natural Hazard Disclosure Report. Within five (5) days of the Opening of Escrow, Escrow Agent shall order a Natural Hazards Disclosure report issued on the Property by Disclosure Source ("**NHD Report**") to be delivered to Developer. If Developer disapproves the NHD Report, it must do so in writing within ten (10) days of receipt or Developer is deemed to have approved the NHD Report.

6. Hazardous Materials. Except for any material Due Diligence Documents in Agency's possession and control which was not provided to Developer, Developer understands and specifically agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Property, but under no circumstances shall Developer look to Agency or City for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Agency, City, their directors, officers, employees, and agents, and their respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Agency and City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against Agency or City, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:**

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

DEVELOPER'S INITIALS: _____ **AGENCY'S INITIALS:** _____

For purposes of this Section 409, the following terms shall have the following meanings:

a. "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted, or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

b. "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Property is capable of such compliance.

d. "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental Agency, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivative product or byproduct thereof; (B) defined as a "hazardous waste" or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(n)(1)-(2) of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely

hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer's release as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity, with respect to any act or omission of Developer (its employees, persons, invitees, agents, assignees, contractors, subcontractors) related to the Property and/or the Project.

J. (§410) Costs of Escrow.

1. **Allocation of Costs.** Escrow Agent is directed to allocate costs as follows:

(i) Developer shall pay the cost of Developer's Title Policy including premiums for any additional insurance, extended coverage or special endorsements and the Lighthouse Development Fee (which is to be paid to the City).

(ii) Agency shall pay any documentary transfer taxes, the cost of the NHD Report, the MSW Payment (pursuant to the Assignment/Assumption Agreement) and the Commission.

(iii) Developer shall pay any recording fees in connection with the recordation of the Grant Deed.

(iv) Developer and Agency shall each pay one-half (1/2) of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges as well as any title cancellation fees.

2. **Proration and Adjustments.** As Agency is exempt from real estate taxes and assessments on the Property, no prorations shall be made by the Escrow Agent. Developer shall be responsible for any and all real estate taxes effective commencing with the Closing.

3. **Extraordinary Services of Escrow Agent.** It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest

in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. Escrow Agent's Right to Retain Documents. Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The parties jointly and severally promise to pay such sums upon demand.

K. (§411) Termination of Escrow.

1. Termination. Escrow may be terminated by demand of either party which then shall have fully performed its obligations hereunder required to be performed by the date of such demand if:

a. The Conditions to Closing have not occurred or have not been approved, disapproved, or waived as the case may be, by the approving party by the date established herein for the occurrence of such Condition, including any grace period pursuant to this Section; or

b. Either party is in breach of the terms and conditions of this Agreement after the expiration of any applicable notice and cure periods; or

c. Either party has been granted such right expressly in this Agreement, including, but not limited to, the right to terminate pursuant to Section 407.

In the event of the foregoing, the terminating party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party. No demand shall be recognized by the Escrow Agent until fifteen (15) days after the Escrow Agent shall have mailed copies of such demand to the non-terminating party, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the fifteen (15) day period. In the event of such objections, the opportunity to cure shall be provided as stated below in subsection 2 of this Section. In addition, the Escrow Agent is authorized to hold all money, papers, and documents until instructed in writing by both Developer and Agency or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible and neither party shall have any further liability to the other.

2. Opportunity to Cure. Prior to Closing, in the event any of the Conditions to Closing are not satisfied or waived by the party with the power to approve said Conditions ("**Approving Party**"), then such party shall explain in writing to the other party ("**Non-approving Party**") the reason for the disapproval. Thereafter, the Non-approving Party shall have thirty (30) days ("**Cure Period**") to satisfy any such Condition to Closing, and only if such Conditions still cannot be satisfied may the Approving Party terminate the Escrow. In the event Escrow is not in a condition to close because of a default by any party, and the performing party has made demand as stated in subsection 1 of this Section, then upon the

non-performing party's delivering its objection to Escrow Agent and the performing party within the Cure Period, the non-performing party shall have the right to cure the default in accordance with and in the time provided in Section 801.

3. Other Duties upon Termination. Upon termination of Escrow pursuant to this Section for any reason, the Parties shall have the following duties and obligations in addition to any others described above:

a. In the event such termination is due to the default of Developer, then subject to the rights and consents of the third party authors, all non-privileged and non-proprietary plans, drawings, specifications, reports, and other documents prepared by Developer or Developer's contractors or vendors shall become the property of Agency and shall be delivered to Agency, without representation or warranty, by Developer within ten (10) days of receipt of notice from Agency.

b. In the event such termination is due to the default of Agency, Developer shall be entitled to terminate this Agreement, and in such case Developer shall not be required to repay Agency any of the amounts described in subparagraph (b) above, but Developer shall not be entitled to any damages of any kind; provided, however, Agency shall reimburse Developer for reasonable Project costs, incurred prior to such termination, but not yet paid as of termination.

c. Any portion of the Property that has been conveyed to Developer prior to such termination shall be reconveyed to Agency within thirty (30) days following such termination. Developer agrees to execute any documents and take all actions necessary to accomplish the reconveyance.

4. Liquidated Damages.

THE PARTIES HERETO, BEFORE ENTERING INTO THIS TRANSACTION, HAVE BEEN CONCERNED WITH THE FACT THAT SUBSTANTIAL DAMAGES WILL BE SUFFERED BY AGENCY IN THE EVENT THAT ESCROW SHOULD FAIL TO CLOSE. WITH THE FLUCTUATION IN LAND VALUES, THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENTAL REGULATIONS, THE FLUCTUATING MONEY MARKET FOR REAL ESTATE, AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY, THE PARTIES REALIZE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY PRIOR TO SIGNING THIS AGREEMENT, THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY AGENCY IN THE EVENT THAT ESCROW FAILED TO TIMELY CLOSE. ACCORDINGLY, THE PARTIES HEREBY AGREE THAT A REASONABLE ESTIMATE OF SAID DAMAGES IS THE AMOUNT OF THE DEPOSIT TO BE MADE BY DEVELOPER, PURSUANT TO SECTION 404 ABOVE. IF ESCROW FAILS TO CLOSE DUE TO THE DEFAULT OF DEVELOPER, AGENCY SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THIS PROVISION DOES NOT APPLY TO OR LIMIT IN ANY WAY THE INDEMNITY OBLIGATIONS OF DEVELOPER UNDER THIS AGREEMENT.

Agency's Initials _____ Developer's Initials _____

L. (§412) Responsibilities of Escrow Agent.

1. **Depositing of Funds.** In accordance with Section 404, all funds received in Escrow shall be deposited by the Escrow Agent in a federally insured special interest-bearing Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. **Notices.** All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 901 of this Agreement for notices, demands and communications between Agency and Developer.

3. **Sufficiency of Documents.** The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and Agency's instructions for their use.

4. **Completion of Documents.** The Escrow Agent shall complete the date of Closing into the Assignment Assumption and Release of Agreement as the Effective Date.

5. **Exculpation of Escrow Agent.** The Escrow Agent shall in no case or event be liable for the failure of any of the Conditions to Closing of this Escrow, or for forgeries or false personation, unless such liability or damage is the result of negligence or willful misconduct by the Escrow Agent.

6. **Responsibilities in the Event of Controversies.** If any controversy documented in writing arises between Developer and Agency or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Property prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and Agency of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

VIII. (§500) DEVELOPMENT OF THE PROPERTY.

A. (§501) Scope of Development.

The Property shall be developed by Developer as provided in the Scope of Development and the plans and permits approved by Agency and City pursuant to Section 502. Developer shall commence and diligently prosecute the Project to completion within the time provided and otherwise in strict compliance with this Agreement. Construction of the Project shall commence as specified in the Schedule of Performance.

B. (§502) Development Plans, Final Building Plans and Environmental Review.

1. Proposed Development's Consistency With Plan and Codes.

Developer shall obtain all entitlements at its own cost for approval of the Project. Agency warrants and represents that the City's General Plan and Zoning Ordinance permit Developer's proposed development, and construction, operation, and use of the Property as provided in this Agreement including, without limitation, the Scope of Development, subject only to (i) those development approvals yet to be obtained, including, if necessary, proposed General Plan and Zoning Ordinance amendments, Property Plan Review and subdivision approval (if required), and (ii) City's and Agency's review and approval of the Project in accordance with the California Environmental Quality Act; provided that it is expressly understood by the parties hereto that Agency makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City and Agency, Agency and City reserving full police power Agency over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, Agency has reviewed Developer's Basic Concept Drawings. On or before the date set forth in the Schedule of Performance, Developer shall submit to the City preliminary, and thereafter final, drawings and specifications for development of the Property and each Property thereof in accordance with the Scope of Development, and all in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include Property plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by City (if applicable) and by mutual consent of Agency and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including for Property plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Property.

3. Developer Efforts to Obtain Approvals. Developer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Agency Assistance. Subject to Developer's compliance with (i) the applicable City and Agency development standards for the Property, and (ii) all applicable

laws and regulations governing such matters as public hearings, Property plan review and environmental review, Agency agrees to provide reasonable assistance to Developer, at no cost to Agency, in the processing of Developer's submittals required under this Section. City or Agency's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Disapproval. Agency shall approve or disapprove any submittal made by Developer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Developer will note the 30-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing the reason for the disapproval and the changes which Agency requests be made. Agency's failure to disapprove the submittal within thirty (30) days shall be deemed an approval of the submittal. Developer shall make the required changes and revisions which would not materially impact the economic feasibility of the Project and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days after the date of disapproval. Thereafter, Agency shall have an additional thirty (30) days for review of the resubmittal, but if Agency disapproves the resubmittal, then the cycle shall repeat, until Agency's approval has been obtained. The foregoing time periods may be shortened if so specified in the Schedule of Performance.

6. CEQA. The term "**Environmental Review**" shall mean the investigation and analysis of the Project's impacts on the environment as may be required under the California Environmental Quality Act ("**CEQA**"), Public Resources Code §21000, et seq., and the National Environmental Policy Act (42 U.S.C. §4321 *et seq.*, "**NEPA**") if required. or of the Project's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species as may be required by the California Endangered Species Act ("**CESA**"), Fish and Game Code §2050, et seq., and/or the U.S. Endangered Species Act ("**USESA**"), 16 U.S.C. §1531, et seq., or other applicable California or federal law or regulation.

C. (§503) Schedule of Performance; Progress Reports.

Subject to Section 903, Developer shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay, as defined in Section 903. Developer shall keep Agency informed of the progress of construction and shall submit monthly written reports of the progress of the construction to Agency in the form required by Agency.

D. (§504) Indemnification During Construction.

During the periods of construction on the Property and until such time as Agency has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold Agency and the

City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Property and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of Agency or the City, or their respective agents, servants, employees, or contractors. Agency and City shall not be responsible for any acts, errors, or omissions of any person or entity except Agency and the City and their respective agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination of this Agreement.

E. (§505) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Property pursuant to Sections 409(4) and prior to the commencement of any demolition work and/or construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Agency, during the entire term of such entry or construction, the following policies of insurance, as applicable:

1. **Commercial General Liability Insurance.** A policy of commercial general liability insurance written on a per occurrence basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate.

2. **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Developer, against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement.

3. **Automobile Insurance.** A policy of automobile liability insurance written on a per accident basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned (if applicable), leased, hired, and non-owned vehicles.

4. **Builder's Risk Insurance.** A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name Agency, City, and their officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Agency, City, and their officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may

not be amended or cancelled without providing thirty (30) days prior written notice to Agency, City and Developer. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. No work or services under this Agreement shall commence until Developer has provided Agency with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by Agency.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("**Risk Manager**") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain (if applicable) the same policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

F. (§506) City and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Property which are Developer's responsibility under the applicable Scope of Development, Developer shall at his own expense secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City or Agency which are standard for and uniformly applied to similar projects in the City.

G. (§507) Rights of Access.

Representatives of Agency shall have the reasonable right to access the Property upon reasonable prior notice without charges or fees, at any time during normal construction hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of Agency shall be those who are so identified in writing by the Executive Director of Agency. Each such representative of Agency shall identify himself or herself at

the job Property office upon his or her entrance to the Property, and shall provide Developer, or the construction superintendent or similar person in charge on the Property, a reasonable opportunity to have a representative accompany him or her during the inspection. Agency shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of Agency's exercise of this right of access.

H. (§508) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

I. (§509) Nondiscrimination During Construction.

Developer, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

J. (§510) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied subsequent to conveyance of title of the Property. Until the date Developer is entitled to the issuance by Agency of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Property, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

K. (§511) Rights of Holders of Approved Security Interests in Property.

1. **Definitions.** As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. **No Encumbrances Except Mortgages to Finance the Project.** Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the development and/or construction of the improvements are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for the construction and development of improvements on the Property, and for any other expenditures necessary and appropriate to develop the Property under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the

existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. Developer (or any entity permitted to acquire title under this Section) shall notify Agency in advance of any mortgage, if Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of Agency, which shall not be unreasonably withheld. Any lender approved by Agency pursuant to Section 403 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, Developer shall promptly notify Agency of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Property, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Property whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion.

5. Notice of Default to Holders of Mortgages, Deed of Trust or other Security Interest. Whenever Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Agency therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of Agency are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

- a. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and
- b. add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or

as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first submitting evidence satisfactory to Agency that it has the qualifications and financial responsibility necessary to construct and complete the improvements and enter into an agreement with Agency with respect to the obligations hereunder. Any holder properly completing such improvements shall be entitled, upon written request made to Agency, to a Release of Construction Covenants from Agency.

7. Agency's Rights upon Failure of Holder to Complete Improvements.

In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Property or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Agency may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- b. All expenses incurred by the holder with respect to foreclosure, if any;
- c. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Property, such as insurance premiums or real estate taxes, if any;
- d. The costs of any improvements made by such holder, if any; and
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by Agency.

In the event that the holder does not exercise its option to construct afforded in this Section, and Agency elects not to purchase the mortgage of holder, upon written request by the holder to Agency, Agency agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Agency). The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs a. through e. hereinabove, and any balance remaining thereafter shall be applied as follows:

- (1) First, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(2) Second, to reimburse Agency, on its own behalf and on behalf of the City, for all payments made by Agency to discharge any other encumbrances or liens on the Property or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(3) Third, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(4) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of Agency to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Agency of a Release of Construction Covenants for the Property or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Agency may cure the default prior to completion of any foreclosure. In such event, Agency shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by Agency in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to:

- a. Any mortgage for financing permitted by this Agreement; and
- b. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided, that nothing herein shall be deemed to impose upon Agency any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Property in the event of its enforcement of its lien.

9. Right of Agency to Satisfy Other Liens on the Property After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property or any portion thereof, Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

L. (§512) Release of Construction Covenants.

Upon the completion of all construction required to be completed by Developer on the Property, Agency shall furnish Developer with a Release of Construction Covenants for the Property in the form attached hereto as Attachment No. 5 upon written request therefor by Developer. The Release of Construction Covenants shall be executed by the Executive

Director and notarized so as to permit it to be recorded in the office of the Recorder of Solano County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Property and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Property shall not be permitted. A partial Release of Construction Covenants applicable to less than the entire Property may be issued in the sole discretion of the Agency.

After the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Property, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed. After issuance of a Release of Construction Covenants, Agency shall not have any rights or remedies under this Agreement with respect to the Property, except as otherwise set forth or incorporated in the Deed.

Agency shall not unreasonably withhold or delay a Release of Construction Covenants. If Agency refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, Agency shall provide a written statement of the detailed reasons Agency refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Agency's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Agency will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred percent (100%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Agency.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the City before the Release of Construction Covenants is issued.

M. (§513) Estoppels.

No later than fifteen (15) days after the written request of Developer or any holder of a mortgage or deed of trust, Agency shall, from time to time and upon the request of such holder, execute and deliver to Developer or such holder a written statement of Agency that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of Agency, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to

Agency.

IX. (§600) USES AND MAINTENANCE OF THE PROPERTY

A. (§601) Uses of the Property.

Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Property pursuant to this Agreement and thereafter, neither the Property nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Property or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Property or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain the Property in accordance with this Agreement and the Grant Deed.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Property solely for the purpose of constructing, maintaining and operating the Project meeting the requirements and restrictions of this Agreement.

B. (§602) Obligation to Refrain from Discrimination.

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof (except as permitted by this Agreement). The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

C. (§603) Form of Nondiscrimination and Non-segregation Clauses.

Subject to the tenancy/occupancy restrictions on the Affordable Restricted Units not prohibited by federal law as embodied in this Agreement, which may modify the following nondiscrimination clauses, the following shall apply: Developer shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

1. Deeds: In deeds the following language shall appear: "The grantee herein

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

2. Leases: In leases the following language shall appear: “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 race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

3. Contracts: Any contracts which Developer or Developer’s heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the Property shall contain a nondiscrimination and non-segregation clause substantially as set forth in Section 603 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

D. (§604) Maintenance of Improvements.

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, that, after Agency’s issuance of its Release of Construction Covenants, Developer shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to Developer’s approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in perpetuity. Developer’s further obligations to maintain the Property, and Agency’s remedies in the event of Developer’s default in performing such obligations, are set forth in Grant Deed. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply.

E. (§605) Effect of Covenants.

Agency is a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, whether appearing in the Grant Deed in its

own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Agency shall run without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Property, and shall be effective as both covenants and equitable servitudes against the Property. Agency shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. In the event Agency no longer exists or lacks legal Agency to enforce the terms and provisions of this Agreement or any of the covenants provided pursuant to this Agreement, the same may be enforced by the City. With the exception of the City, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Grant Deed.

X. (§700) SPECIAL PROVISIONS

F. (§ 703) Minor Amendments.

Each party agrees to consider reasonable requests for amendments to this Agreement which may be made by the other party, lending institutions, or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of Agency and Developer. On behalf of Agency, the Executive Director shall have Agency to make minor amendments to this Agreement, including, but not limited to, the granting of extensions of time to Developer, so long as such actions do not materially change the Agreement or make a commitment of additional funds of Agency. All other changes, modifications, and amendments shall require the prior approval of Agency's governing board.

XI. (§800) DEFAULTS, REMEDIES AND TERMINATION

F. (§801) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

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 until thirty (30) days after giving such notice. 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 provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing

any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to 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.

G. (§802) Legal Actions.

1. **Institution of Legal Actions.** In addition to any other rights or remedies, and subject to the requirements of Section 801, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Solano, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

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

3. **Acceptance of Service of Process.** In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director or Secretary of Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or outside of the State of California.

H. (§803) Rights and Remedies are Cumulative.

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

I. (§804) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy; provided, however, this remedy may not be imposed on Developer prior to the Closing.

J. (§805) Right of Reverter.

Agency shall have the right, at its option, upon one hundred twenty (120) days prior written notice, to reenter and take possession of Agency Parcel or any portion thereof with all improvements thereon and to terminate and re-vest in Agency the estate conveyed to

Developer, if after conveyance of the estate and prior to the recordation of the Release of Construction Covenants, Developer (or his successors in interest) shall:

1. Fail to commence construction of the improvements as required by this Agreement, if such failure is in violation of the Schedule of Performance for a period of one hundred twenty (120) days, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to this Agreement; or

2. Abandon or substantially suspend construction of the improvements (other than as caused by force majeure or an Enforced Delay) for a period of one hundred twenty (120) days after written notice of such abandonment or suspension from Agency, provided that Developer shall not have obtained an extension of time to which Developer may be entitled pursuant to this Agreement; or

3. Assign or attempt to assign this Agreement, or any rights herein, or Transfer, or suffer any involuntary Transfer of, the Property, or any part thereof, in violation of this Agreement, and such violation shall not be cured within one hundred twenty (120) days after the date of receipt of written notice thereof by Agency to Developer.

The right to re-enter, repossess, terminate, and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security interests permitted by this Agreement; or

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

Upon the re-vesting in Agency of possession of the Property, or any part thereof, as provided in this Section 805, Agency shall, pursuant to its responsibilities under state law, use its best efforts to release, or resell or re-grant the Property, as necessary and legally permitted, as the case may be, or any part thereof, as soon and in such manner as Agency shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Agency and in accordance with the uses specified for the Property.

In the event of a resale, the proceeds thereof shall be applied as follows:

1. First, to reimburse Agency on its own behalf or on behalf of the City for all reasonable costs and expenses incurred by Agency, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Property (but less any income derived by Agency from the Property or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by Agency, as would have been payable if the Property were not so exempt); any payments made or necessary to be made to

discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property or part thereof; and amounts otherwise owing Agency by Developer, its successors, or transferees; and

2. Second, to reimburse Developer, its successor or transferee, up to the amount equal to (i) the costs incurred for the development of the Property and for the agreed development expenses and improvements existing on the Property at the time of the re-entry and repossession, less (ii) any gains or income withdrawn or made by Developer from the Property or the improvements thereon.

3. Any balance remaining after such reimbursements shall be retained by Agency as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against Agency, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that Agency will sell the Property to Developer for development, and not for speculation in undeveloped land.

K. (§806) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between Developer and Agency only, in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as the same may be amended or re-codified from time to time. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs, including expert witness fees, the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

XII. (§900) GENERAL PROVISIONS

F. (§901) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and

persons as each party may from time to time by written notice designate to the other and who initially are:

Agency: Suisun City Successor Agency
701 Civic Center Blvd
Suisun City, California 94585
Attn: Executive Director

Copy to: Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245
Attn: Elena Gerli, Esq.

Owner: Lionext Inc.
13021 Leffingwell Road
Santa Fe Springs, CA 90670
Attn: Hin (Joe) Ming Law, CEO

Copy to: _____

G. (§902) Nonliability of City and Agency Officials and Employees; Conflicts of Interest; Commissions.

1. **Personal Liability.** No member, official, employee, agent or contractor of City or Agency shall be personally liable to Developer in the event of any default or breach by Agency or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Agency's liability.

2. **Financial Interest.** No member, official, employee or agent of City or Agency shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **Commissions.** Developer retained broker Eric Dakin ("**Developer's Broker**"). Agency has agreed to pay at Closing a commission to Developer's Broker equal to Two Thousand Six Hundred Dollars (\$2,600) ("**Commission**"). Agency shall have no further duty to Developer's Broker, including the right of the Agency to voluntarily consent to termination of this Agreement with Developer. Except for the Limited Commission, each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

H. (§903) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement.

Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Property and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Agency or City shall not excuse performance by Agency unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as provided in Section 401), and (ii) Developer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Agency and Developer. The Executive Director of Agency shall have Agency on behalf of Agency to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days, excluding any Enforced Delay, with respect to the development of the Property.

I. (§904) Books and Records.

1. Developer to Keep Records. Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by Agency.

2. Right to Inspect. Either party shall have the right, upon not less than seventy-two (72) hours prior written notice, during normal business hours, to inspect the books and records of any other party pertaining to the Property as pertinent to the purposes of this Agreement.

3. Ownership of Documents. Subject to the rights and consents of the authors, copies of all material drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not proprietary, privileged or confidential shall be delivered to Agency upon request in the event of a termination of this Agreement; however, Developer shall be entitled to reimbursement from Agency for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors as a result

of the exercise by Agency of its rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer or Developer's subcontractors and/or consultants shall be delivered without representation or warranty by Developer. Agency shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by Agency, and Developer shall have no liability therefor.

J. (§905) Assurances to Act in Good Faith.

Agency and Developer agree to execute all documents and instruments and to take all action, including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Property as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Property in accordance with the provisions hereof. Agency and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

K. (§906) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety. The recitals are incorporated herein.

L. (§907) Entire Agreement, Waivers and Amendments.

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Agency or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

M. (§908) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

N. (§909) Time for Acceptance of Agreement by Agency.

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency, after consideration at a public meeting. After

execution by Developer, this Agreement shall be considered an irrevocable offer until such time as Agency is authorized to execute and deliver the Agreement.

O. (§910) City as Third Party Beneficiary.

City is a third party beneficiary of this Agreement and all the related documents.

P. (§911) Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Either party may execute this Agreement by electronic signature which will be valid and effective for all purposes; provided that the e-signature must with through a company compliant with UETA and ESign, such as AdobeSign or DocuSign

2. Agency represents and warrants that: (i) it is a housing Agency duly organized and existing under the laws of the State of California; (ii) by proper action of Agency, Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Agency does not violate any provision of any other agreement to which Agency is a party.

3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by Agency.

REMINDER: PARTIES NEED TO INITIAL SECTIONS 409(5) and 411(4).

DEVELOPER:

LIONEXT INC.,
a California corporation

By: _____
Hin (Joe) Ming Law
Chief Executive Officer

By: _____
Ming Wai Ng
Secretary

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY, a public agency,
corporate and politic

By: _____
Alma Hernandez, Chair Pro Tem

Date: _____, 2022

ATTEST:

Anita Skinner
Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Elena Q. Gerli
Agency Counsel

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

LOT 4, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, AT PAGE 72, SOLANO COUNTY RECORDS.

ATTACHMENT NO. 1-A
PROPERTY MAP



ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

A. PROJECT CONCEPT

The term “Project” shall mean a mixed use development with commercial/retail on the first floor, likely restaurant, and housing on the upper floors, consistent with the current zoning of the Agency Property, which is in the Main Street Mixed Use (MSMU) zone within the Waterfront District Specific Plan, with a residential capacity equivalent to the Residential High Density (RHD) zone. As such, the residential capacity is 24.1 to 54 dwelling units per acre. The dwelling unit density may increase if Developer obtains a density bonus under Government Code Section 65915.

B. DEMOLITION AND CLEARANCE

Developer will complete demolition of any improvements on the Property. Developer shall be responsible for all on-Property work and improvements, including, but not limited to the following:

1. Developer shall be responsible for all utility relocation, and other work necessary to prepare the Property for the improvements contemplated by the DDA, and shall be responsible for all construction of the Affordable Restricted Units in accordance with the approved plans thereof.
2. Restoring those streets adjacent to the Property, if any, that undergo utility trenching needed to provide house connections to service the Property. The streets shall be restored to the condition prior to construction, with materials acceptable to the Director of Public Works.
3. Developer shall be responsible for the repair and protection of off-Property improvements during construction of the on-Property improvements. Any off-Property improvements found damaged shall be reconstructed or provided for by Developer to the satisfaction of the Director of Public Works.
4. Developer shall plant or provide for street trees adjacent to the Property, including tree root barriers, to the satisfaction of the Director of Public Works. All required street trees, and any landscaping and sprinkler systems, shall be maintained by Developer and/or successors.
5. Developer shall provide or construct sidewalks, as shown on the approved Conceptual Plans, to the satisfaction of the Director of Public Works.
6. Developer shall submit a drainage plan with hydrology and hydraulic calculations, if requested, showing building elevations and drainage patterns and slopes, for review and approval by the Director of Community Development and the Director of Public Works. All required drainage/grading shall be provided in accordance with approved plans.

C. PROPERTY PREPARATION

Developer shall, at its sole cost and expense, perform or cause to be performed grading plan preparation, fine grading and related compaction, and other Property preparation as necessary for construction of the Project, as approved by the City Engineer. Plans shall be

prepared by a licensed civil engineer in good standing and subject to the approval of the City Engineer.

Developer shall, at its sole cost and expense, scarify, over-excavate, cut, fill, compact, rough grade, and/or perform all grading as required pursuant to an approved grading plan(s) to create finished lots, building pads, and appropriate rights-of-way configurations necessary to develop the Project described herein.

D. PROJECT DESIGN

1. DESIGN PROCESS

Developer and its representatives, including its architect and engineer, shall work with City and Agency staff to develop and execute the architectural concept, architectural drawings, Property plan, tentative tract map, grading plan, off-Property improvement plans, and related drawings and documents consistent with Planning Commission and Agency direction pursuant to the Suisun City Municipal Code.

2. ARCHITECTURAL CONCEPT

The Project shall be designed and constructed as an integrated development in which the buildings shall have architectural excellence. The improvements to be constructed on the Property shall be of high architectural quality, shall be well landscaped, and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building, structure, and other improvements must be consistent with, visually related to, physically related to, and an enhancement to each other and, to the extent reasonably practicable, to adjacent improvements existing or planned within the Project Area. Developer's plans, drawings, and proposals submitted to Agency for approval shall describe in reasonable detail the architectural character intended for the Project. The open spaces between buildings on the residential portion of the Property, where they exist, shall be designed, landscaped and developed with the same degree of excellence.

3. PROPERTY WORK

The Project shall substantially conform to the Property and building plans approved pursuant to Subsection A above. It shall be the responsibility of Developer, the architect and the contractor to develop the Project consistent with the aforementioned plans. Any substantial modification to the approved Property or building plans, as determined by the Director of Community Development, shall be referred to the Planning Commission for review and approval through a conformity report. Developer shall be responsible for the construction and installation of all improvements to be constructed or installed on the Property, including but not limited to the following:

a. Parking

Developer shall develop on-Property parking areas for the Property consisting of not less than required by applicable law.

b. Landscaping

Developer shall install and maintain on-Property landscaping and automatic irrigation pursuant to approved plans consistent with Chapter 20.47 of the Suisun City Municipal Code.

c. Lighting

Developer shall install and maintain on-Property lighting in a manner consistent the approved lighting and electrical plans. The design of light standards and fixtures shall be subject to the approval of the Director of Community Development.

d. Trash Storage

Trash storage areas shall be provided, of sufficient size to ensure containment of all solid waste materials generated from the Property in trash disposal and recycling bins. Adequate access shall be provided to the enclosures for refuse pickup.

e. Signs

A sign program shall be submitted to the City for approval. Building and, where necessary, electrical permits shall be obtained prior to installation, painting or erection of signs. Signs shall be designed, installed, and maintained in a manner consistent with the approved Property Plan and sign program.

4. UNDERGROUNDING UTILITIES

All new utility service connections servicing the Property shall be installed underground, including connections to facilities within the public right-of-way.

5. MECHANICAL EQUIPMENT

On-Property mechanical equipment, whether roof or ground mounted, shall be completely screened from public view. Screening material shall be constructed of materials which coordinate with the overall architectural theme. Where public visibility will be minimal, the Director of Community Development may permit use of landscaping to screen ground mounted equipment.

6. APPLICABLE CODES

All improvements shall be constructed in accordance with the California Building Code (with Suisun City modifications), the County of Solano Fire Code (with Suisun City modifications), the Suisun City Municipal Code, and current City standards.

7. OFFSITE IMPROVEMENTS

Pursuant to the Agreement, Developer shall perform, or cause to be performed, all offsite improvements required by law or as a condition to any governmental or local approval or permit.

ATTACHMENT NO. 3 SCHEDULE OF PERFORMANCE

	ITEM TO BE PERFORMED	TIME FOR PERFORMANCE
1.	Developer executes 3 copies of DDA and delivers same to Agency together with check for Deposit payable to Escrow Agent.	Prior to the public hearing specified in Event 2
2.	Agency holds public hearing on DDA and environmental document, approves or disapproves DDA (“ Effective Date ”)	On or before October 4, 2022.
3.	Agency executes 3 copies of DDA and delivers 1 copy with the Deposit check to Escrow Agent and 1 copy to Developer	Within 3 days of the Effective Date
4.	Developer delivers the Deposit to Escrow Agent.	Within 3 days of the Effective Date
5.	Developer, Agency and MSW execute and deliver to Escrow Agent 3 copies of the Assignment/Assumption	Within 3 days of the Effective Date
6.	Agency provides copies of any Due Diligence Documents and Developer commences, in its discretion, to physically inspect and conduct environmental investigations on the Property and perform all due diligence it requires.	Within 5 days after the Effective Date
7.	Title Company delivers Preliminary Report to Developer	Within 5 days of Opening of Escrow.
8.	Developer approves or disapproves title exceptions on Preliminary Report	Within 14 days after Event 7.
9.	Agency notifies Developer whether Agency will cure any disapproved exceptions	Within 5 days of Event 8.
10.	Developer prepares and submits to City and Agency preliminary plans, drawings and specifications in accordance with Concept Drawings and Property Plan, including architectural theme and treatment for the entire Property.	Within 30 days of commencement of Feasibility Period
11.	Agency approves Preliminary Drawings	Within 5 days of Event 10.
12.	Escrow Agent gives notice of fees, charges, costs and documents to close Escrow	3 days prior to Closing
13.	Deposits into Escrow by Agency:	See below

	ITEM TO BE PERFORMED	TIME FOR PERFORMANCE
	a) Grant Deed	On or before 1 business day preceding the Closing Date
	b) Taxpayer ID Certificate	Prior to Closing Date
14.	Deposits into Escrow by Developer:	See below
	a) Certificate of Acceptance (to be attached to the Grant Deed)	On or before 1 business day preceding the Closing Date
	b) PCOR	On or before 1 business day preceding the Closing Date
	c) Taxpayer ID Certificate	Prior to Closing Date
15.	Close of Escrow with recordation of Grant Deed and delivery of documents and monies (Close of Escrow)	Within 60 days after Opening of Escrow, <u>but in no event later than December 31, 2022</u>
16.	Developer commences pursuit of all necessary approvals and permits from City	Within 6 months from Close of Escrow
17.	Construction commences and Developer diligently pursues to completion	Not later than the 90 days following Event 16
18.	Developer completes construction of improvements and obtains a certificate of occupancy.	Within six (6) months of commencement of construction.
19.	Agency issues Certificate of Completion.	Within 15 days of Developer's request after Event 18.

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text of the Agreement; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and Agency. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The Executive Director of Agency shall have Agency to approve extensions of time without Agency Board action not to exceed a cumulative total of ninety (90) days as provided in Section 803 (but in no event may Close of Escrow occur after December 31, 2022).

ATTACHMENT NO. 4
GRANT DEED

FREE RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

Lionext Inc.
13021 Leffingwell Rd.
Santa Fe Springs, CA 90670
Attn: Hin Ming Law, CEO

(Space Above This Line For Recorder's Office Use Only)

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public agency, corporate and politic ("**Grantor**"), acting to carry out its functions under the Housing Law of the State of California, hereby grants to LIONEXT INC., a California corporation ("**Grantee**"), the real property ("**Property**") legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

As consideration for this conveyance, the Grantee covenants by and for itself and any successors in interest for the benefit of (i) Grantor, and (ii) the City of Suisun City ("**City**") as a third party beneficiary, as follows:

1. Governing Documents. The Property is conveyed pursuant to that certain Disposition and Development Agreement ("**DDA**") entered into by and between Grantor and Grantee dated _____, 2022. Grantee covenants and agrees for itself and its successors and assigns to use, operate and maintain the Property in accordance with the DDA and this Deed. In the event of any conflict between this Grant Deed and the DDA, the provisions of the DDA shall control.

2. Maintenance Covenants. Grantee covenants and agrees for itself, its successors and assigns, and every successor of any interest in the Property or any part thereof, that, after Agency's issuance of its Release of Construction Covenants, Grantee shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to the approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in perpetuity. Agency shall have all applicable remedies available at law or equity to enforce these covenants. Grantee hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply to actions by the City.

3. Use of Property. Grantee covenants that Grantee may only use the Property for residential purposes as consistent with the time period and other terms, covenants and

conditions set forth in the DDA. Grantee shall have no right to subdivide, separate, or partition the Property except as provided in the DDA. Breach of the terms, covenants, conditions, and provisions of the DDA shall be a material breach of this conveyance.

4. Encumbrances Prohibited. Prior to issuance of the Release of Construction Covenants by the Grantor as provided in the DDA, the Grantee shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Property, the construction of improvements on the Property, and any other expenditures necessary and appropriate to develop the Property, except as specifically provided in the DDA.

5. Non-Discrimination. Grantee covenants that except for the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with references to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

6. Reservation of Existing Streets. Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

7. Form of Nondiscrimination Clauses in Agreements. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, the following shall apply: Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons 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 land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, 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 race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee 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, sublessees, subtenants, or vendees in the land herein leased.”

c. **Contracts**: In contracts the following language shall appear: “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, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 of the land.”

The foregoing covenants shall remain in effect in perpetuity.

8. **Mortgage Protection**. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. **Covenants to Run With the Land**. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Property, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be duly executed by respective officers as of this _____ day of _____, 202__.

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF SUISUN CITY, a public agency, corporate
and politic

NOT TO BE EXECUTED
By: UNTIL CLOSING _____
Agency Chair

APPROVED AS TO FORM:

Date: _____, 202__

ALESHIRE & WYNDER, LLP

ATTEST:

By: _____
Elena Q. Gerli
Agency Counsel

By: _____
Anita Skinner
Agency Secretary

CERTIFICATE OF ACCEPTANCE

By its acceptance of this Grant Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of the Grant Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns.
2. The provisions of this Grant Deed are hereby approved and accepted.

LIONEXT INC.,
a California corporation

By: NOT TO BE EXECUTED
UNTIL CLOSING
Hin (Joe) Ming Law
Chief Executive Officer

By: NOT TO BE EXECUTED
UNTIL CLOSING
Ming Wai Ng
Secretary

_____, 2022

ATTACHMENT NO. A
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

LOT 4, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, AT PAGE 72, SOLANO COUNTY RECORDS.

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT NO. 5

RELEASE OF CONSTRUCTION COVENANTS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Lionext Inc.
13021 Leffingwell Rd.
Santa Fe Springs, CA 90670
Attn: Hin Ming Law, CEO

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

RELEASE OF CONSTRUCTION COVENANTS

RECITALS:

Pursuant to that certain Disposition and Development Agreement ("**Agreement**") dated _____, 2022 between and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public agency, corporate and politic ("**Agency**") and LIONEXT INC., a California corporation ("**Developer**"), Developer has agreed to develop a residential development ("**Project**") on the Property (as defined below).

- A.** As referenced in the Agreement, Agency is required to furnish Developer with a Release of Construction Covenants upon completion of construction and development, which release shall be in such form as to permit it to be recorded in the Solano Official Records of the County Clerk of the County of Solano, California.
- B.** Developer has requested that Agency furnish Developer with the Release of Construction Covenants for the Property more particularly described on Exhibit A attached hereto and incorporated herein by reference ("**Property**").
- C.** The Agreement provided for certain covenants to run with the land, as those terms are defined in the Agreement.
- D.** This Release of Construction Covenants shall constitute a conclusive determination by Agency of the satisfactory completion by Developer of the construction and development required by the Agreement and of Developer's full compliance with the terms of the Agreement with respect to such construction and development but not the maintenance covenants herein which shall continue to run with the land pursuant to their terms.
- E.** Agency has conclusively determined that the construction and development on the Property required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE, the improvements required to be constructed under the Agreement have been satisfactorily completed in accordance with the provisions of said Agreement.

1. This Release shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof.
2. This Release shall not constitute evidence of Developer's compliance with the maintenance requirements in the Grant Deed, the provisions of which shall continue to run with the land.
3. This Release shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.
4. This Release is not a Notice of Completion as referred to in California Civil Code Section 3093.
5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, Agency has executed this Release of Construction Covenants
this _____ day of _____, 202_.

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY,
a public agency, corporate and politic

NOT TO BE EXECUTED
UNTIL CLOSING

By _____,
_____, Executive Director

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Date: _____, 202

By: _____

Elena Q. Gerli,
Agency Attorney

ATTEST:

Anita Skinner, Agency Secretary

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

LOT 4, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, AT PAGE 72, SOLANO COUNTY RECORDS.

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT NO. 6

ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT

1. **Assignment:** MAIN STREET WEST PARTNERS, LLC, a California limited liability company ("**Assignor**") assigns to LIONEXT INC, a California corporation ("**Assignee**") as a Qualified Successor Developer its right to acquire and develop that certain real property identified as Parcel 3 ("**Assignment**") in that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Assignor and the Redevelopment Agency of the City of Suisun City ("**Agency**") as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; and (iv) that certain Fourth Amendment to the DDA dated April 29, 2016 (collectively the "**DDA**"). The Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement which the DOF approved and executed on February 1, 2016 ("**Settlement Agreement**"). The Settlement Agreement required the approval of the Oversight Board which did approve it pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and a binding obligation of Assignor as successor agency.
2. **Acceptance.** The Assignment shall be deemed automatically accepted by Assignee upon execution of that certain Disposition and Development Agreement between the Assignee and Agency ("**Agreement**").
3. **Qualified Successor Developer.** Agency hereby approves Assignee as a Qualified Successor Developer under the DDA.
4. **Reassignment.** If for any reason, the Agreement is not consummated by recordation of the Grant Deed as set forth therein ("**Grant Deed**"), all rights under this Assignment shall be deemed automatically assigned back to Assignor. Assignee shall cooperate with executing any documents reasonably requested to confirm the reassignment.
5. **Payment to Assignor at Closing.** Concurrently with the recordation of the Grant Deed under the Agreement to Assignee ("**Closing**"), Agency shall pay to Assignor the sum of _____ (\$_____) which is the pro rata portion of the

Disposition Fee pursuant to Section 7 of the Settlement Agreement and General Release of All Claims.

6. **Release on Closing.** Concurrently at the Closing, all obligations under the DDA with respect to Parcel 3 are deemed terminated in their entirety and both Assignee and Assignor are released from any obligations under the DDA as to Parcel 3 and Parcel 3 shall no longer be subject to the DDA. Notwithstanding the foregoing, Assignor shall remain obligated with respect to the remaining DDA obligations pursuant to the Settlement Agreement and General Release of All Claims with the Effective Date of _____, 2022.

ASSIGNOR:

MAIN STREET WEST PARTNERS, LLC, a
California limited liability company

NOT TO BE EXECUTED UNTIL
AFTER DDA EXECUTED

By: _____
Michael E. Rice, President

By: _____
Frank J. Marinello,
Vice President/Member

ASSIGNEE:

LIONEXT INC.,
a California corporation

By: _____
Hin (Joe) Ming Law
Chief Executive Officer

By: _____
Ming Wai Ng
Secretary

AGENCY:

SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY

NOT TO BE EXECUTED UNTIL
AFTER DDA EXECUTED

By: _____
Greg Folsom, Executive Director

ATTEST:

Anita Skinner, Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Elena Q. Gerli, Agency Counsel

RESOLUTION NO. SA 2022-

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING THE EXECUTIVE
DIRECTOR TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT
AND JOINT ESCROW INSTRUCTIONS WITH LIONEXT, INC FOR THE SALE OF
APPROXIMATELY 0.15 ACRES LOCATED AT THE EAST SIDE OF KELLOGG
STREET (SOLANO COUNTY ASSESSOR'S PARCEL NUMBER
0032-142-280)**

WHEREAS, the Successor Agency ("**Agency**") is the owner of that certain unimproved real property located on the northeast corner of Main Street and Solano Street in the City of Suisun City, County of Solano, State of California (Assessor Parcel No. 0032-142-280) ("**Property**"); and

WHEREAS, the Property (together with a number of other parcels of real property) is subject to that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Main Street West Partners, LLC, ("**MSW**") and the Redevelopment Agency of the City of Suisun City as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; (iv) that certain Fourth Amendment to the DDA dated April 29, 2016; and Resolution SA 2020-02 (cumulatively the "**Amendments**"). The Original DDA as modified by the Amendments is hereinafter referred to as the "**DDA**". Under the DDA, the Property was commonly referred to as Lot 10; and

WHEREAS, the Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement which the DOF approved and executed on February 1, 2016 ("**DOF Settlement Agreement**"). However, the DOF Settlement Agreement required the approval of the Oversight Board which did approve it pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and a binding obligation of the Successor Agency; and

WHEREAS, MSW and Agency each alleged that the other had breached the DDA. Subsequently MSW and the Agency entered into that certain Settlement Agreement and General Release of all Claims which was approved by the Successor Agency Board on November 17, 2020 and executed by the Agency on December 1, 2020 ("**2020 Settlement Agreement**"). Pursuant to the 2020 Settlement Agreement, the parties agreed to cooperate with respect to the sale of the remaining parcels including the Property to a Qualified Successor Developer and upon the closing of the sale, a prorata portion of the \$200,000 Disposition Fee shall be paid to MSW, the Qualified Successor Developer will be responsible

1 for the Economic Impact Fee and the Lighthouse Development Fee, and all the DDA shall
2 terminate with respect to the Property; and

3 **WHEREAS**, MSW has requested that it be entitled to assign its rights with respect to
4 the Property to Lionext, Inc (“**Lionext**”) as a Qualified Successor Developer and the Agency
5 desires to permit such assignment to Lionext with respect to the Property consistent with the
6 terms of the DDA and the 2020 Settlement Agreement; and

7 **WHEREAS**, pursuant to an appraisal prepared by Valbridge and Associates, the fair
8 market value for the property was determined to be \$110,000 (“**FMV**”); and

9 **WHEREAS**, the Agency and Lionext have negotiated terms of that certain Vacant
10 Land Purchase Agreement and Joint Escrow Instructions for the sale of the Property for FMV
11 of \$110,000. Pursuant to the DDA (Exhibit A), Lionext will open escrow with a \$13,000
12 deposit with Placer Title Company as escrow holder, a due diligence/feasibility period of 60
13 days and a closing date of 60 days after the execution of the PSA (“**Property Sale Price**”);
14 and

15 **WHEREAS**, the Agency desires to sell the Property to Lionext for a proposed mixed-
16 use development consistent with the City’s General Plan and Downtown Waterfront Specific
17 Plan, consistent with the terms of the Lionext DDA, subject to all necessary future analysis,
18 approvals and mitigation measures as required by the California Environmental Quality Act
19 (“**CEQA**”), and as provided pursuant to the terms and conditions of the Lionext DDA; and

20 **WHEREAS**, the net proceeds from the sale of the Property will be distributed to the
21 affected taxing entities pursuant to redevelopment agency dissolution laws; and

22 **WHEREAS**, CEQA requires the review of projects that have the potential to
23 adversely impact the environment. Before proceeding with the action before the City Council,
24 Lionext requires the execution of the DDA before it can invest time, money and effort in the
25 preparation of detailed development plans. At the time adequate detail is known about
26 development of the Property, the appropriate review as required under CEQA will be
27 undertaken.

28 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL ACTING
AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY
OF SUISUN CITY, AS FOLLOWS:**

Section 1. The above recitals are true and correct.

Section 2. The DDA with Lionext in substantially the form attached hereto is
hereby approved as well as the Assignment and Release Agreement among Lionext, MSW
and the Agency attached hereto. The Executive Director (or designee) is hereby authorized
on behalf of the Successor Agency to execute the DDA, and to make revisions to the DDA
(including approvals and extensions) which do not materially or substantially increase the
Agency’s obligations thereunder, to sign all documents, to make all approvals and take all
actions necessary or appropriate to carry out and implement the DDA and to administer the
Agency’s obligations, responsibilities and duties to be performed under the DDA.

PASSED AND ADOPTED at a regular meeting of the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Tuesday, October 4, 2022, by the following vote:

AYES: Boardmembers:
NOES: Boardmembers:
ABSENT: Boardmembers:
ABSTAIN: Boardmembers:

WITNESS my hand and the seal of said City this 4th day of October 2022.

Anita Skinner
City Clerk

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DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF SUISUN CITY
a public body, corporate and politic**

(“Agency”)

AND

**LIONEXT, INC.
a California corporation**

(“Developer”)

MSW Parcel 7

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of October 4, 2022 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public body, corporate and politic ("**Agency**"), and LIONEXT, INC., a California corporation ("**Developer**"). The parties agree as follows:

IV. **(§100) PURPOSE OF THE AGREEMENT**

A. Background. Agency owns that certain real property located one parcel east of 710 Kellogg Street, and is further identified as Assessor's Parcel Number (APN) 0032-142-280 in the City of Suisun City ("**Property**").

B. MSW DDA. The Property (together with a number of other parcels of real property) is subject to that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Main Street West Partners, LLC, ("**MSW**") and the Redevelopment Agency of the City of Suisun City (Seller's predecessor) ("**Original DDA**") as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; and (iv) that certain Fourth Amendment to the DDA dated April 29, 2016 (cumulatively the "**Amendments**"). The Original DDA as modified by the Amendments is hereinafter referred to as the "**MSW DDA**".

The Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract, and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement, which the DOF approved and executed on February 1, 2016 ("**Settlement Agreement**"). The Settlement Agreement required the approval of the Oversight Board, which was provided pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and constitutes a binding obligation of Seller as successor in interest to the RDA.

Pursuant to the MSW DDA, the Property is raw land. As set forth in the Schedule of Performance (as attached to the Fourth Amendment), MSW can assign its rights to acquire the Property to a third-party buyer and, upon assumption by the buyer of the development obligations with respect to the Property, the Property will no longer be subject to the terms of the DDA and MSW is released of its duties with respect to the Property.

MSW is willing to assign its rights under the DDA with respect to the Property to Developer. Agency is willing to permit such assignment to Developer which assignment will be deemed approved upon the Opening of Escrow (as defined below).

C. Best Interests. The Project is in the best and vital interests of Agency and the City of Suisun City (“**City**”), and the health, safety and welfare of the residents and taxpayers in the City, and is in accord with the public purposes and provisions of applicable state and local laws. Construction of the Project will provide additional jobs and may provide housing in accordance with the purposes and goals of Agency.

V. (§200) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

A. (§ 201) Affiliate.

The term “**Affiliate**” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Developer, which shall include, without limitation, each of the constituent members of Developer’s limited liability company. For this provision, “**control**” means (i) with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and (ii) with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

B. (§ 202) Agreement.

The term “**Agreement**” shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference. The Attachments included with this Agreement include the following:

Attachment No. 1	Legal Description of Property
Attachment No. 1-A	Property Map
Attachment No. 2	Scope of Development
Attachment No. 3	Schedule of Performance
Attachment No. 4	Grant Deed
Attachment No. 5	Release of Construction Covenants
Attachment No. 6	Assignment, Assumption & Release Agreement

C. (§ 203) Appraisal.

The term “**Appraisal**” shall mean that certain appraisal prepared by Valridge Property Advisors dated May 9, 2018, which established the Purchase Price for the Site.

D. (§ 204) Appraised Value.

The term “**Appraised Value**” shall mean the fair market value established in the Appraisal and shall be the Purchase Price for the Site.

E. (§ 205) Assignment/Assumption Agreement.

The term “Assignment/Assumption” Agreement shall mean that certain Assignment, Assumption and Release Agreement in the form of Attachment No. 6 to be executed by Developer, Agency and MSW in accordance with Section 404.1.

F. (§ 206) Broker.

The term “**Broker**” shall have the meaning set forth in Section 902.3.

G. (§ 207) City.

The term “**City**” shall mean the City of Suisun City, California.

H. (§ 208) Closing

The term “**Closing**” or “**Closing Date**” shall mean the closing of Escrow by the Escrow Agent recording the Grant Deed distributing the funds and documents received through Escrow to the party entitled thereto as provided herein, which closing shall occur on or before the date established in the Schedule of Performance which **must occur absolutely not later than December 31, 2022 pursuant to requirements of the Surplus Land Act. Developer understands that the outside closing date CANNOT be extended for any reason.**

Developer Initials.

I. (§ 209) Commission.

The term “**Commission**” shall mean the sum to be paid to the Broker in accordance with Section 902.3

J. (§ 210) Days.

The term “**days**” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

K. (§ 211) Deposit.

The term “**Deposit**” shall mean the sum of Eleven Thousand Dollars (\$11,000) delivered by Developer to Escrow Agent as set forth in the Schedule of Performance to be applied to the Purchase Price at the Closing.

L. (§ 212) Effective Date.

The term “**Effective Date**” shall mean the date this Agreement is executed by Agency and Developer after it has been approved by Agency at a public hearing.

M. (§ 213) Enforced Delay.

The term “**Enforced Delay**” shall mean any delay described in Section 903 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 903.

N. (§ 214) Escrow.

The term “**Escrow**” shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Property from Agency to Developer.

O. (§ 215) Escrow Agent.

The term “**Escrow Agent**” shall mean Placer Title Company which shall act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Kelly Guglielmo at Placer Title Company, 1300 Oliver Road, Suite 120, Fairfield, California 94534; (707) 429-2211; email address: kuglielmo@placertitle.com.

P. (§ 216) Feasibility Period.

The term “**Feasibility Period**” shall mean the sixty (60) day period as defined in Section 401 in which Developer shall determine whether the physical condition of the Property is suitable for Developer's intended use in accordance with this Agreement.

Q. (§ 217) Grant Deed.

The term “**Grant Deed**” shall mean that Grant Deed in substantially the form attached hereto as Attachment No. 4 by which Agency as Grantor will convey fee title to the Property to Developer as grantee.

R. (§ 218) Lighthouse Development Fee.

The term “**Lighthouse Development Fee**” shall mean the Lighthouse Development Fee as required by Agency Resolution 2004-10 which is set at \$1.0029 per square foot of land area and will be paid by Developer to City through Escrow at the Closing.

S. (§ 219) MSW.

The term “**MSW**” shall mean Main Street West as defined in Recital B.

T. (§ 220) MSW Payment.

The term “**MSW Payment**” shall mean the payment amount specified in Section 5 of the Assignment/Assumption Agreement to be paid to MSW at Closing.

U. (§ 221) Opening of Escrow.

Escrow shall be deemed open when the documents and funds specified in Section 404.1 are received by Escrow Agent.

V. (§ 222) Project

The term “**Project**” shall mean the facilities to be constructed by Developer on the Property as described in the Scope of Development attached hereto as Attachment No. 2.

W. (§ 223) Project Budget.

The term “**Project Budget**” shall mean the budget for the Project to be approved by the Agency during the Feasibility Period.

X. (§ 224) Purchase Price.

The term “**Purchase Price**” means the sum of One Hundred Ten Thousand Dollars (\$110,000). The Purchase Price is the fair market value as established by the Appraisal.

Y. (§ 225) Release of Construction Covenants.

The term “**Release of Construction Covenants**” shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Attachment No. 5, which shall evidence that the construction and development of the New Facilities have been satisfactorily completed.

Z. (§ 226) Property.

The term “**Property**” shall mean the real property consisting of approximately .17 of an acre (APN 0032-142-300) legally described on Attachment No. 1.

AA. (§ 227) Property Map.

The Project shall be located upon the Property, which is within the City, as shown in the “**Property Map**” attached hereto as Attachment No. 1-A.

BB. (§ 228) Surplus Land Act.

The term “**Surplus Land Act**” shall mean California Government Code Sections 54220 et seq. and the applicable regulations which applies to the disposition of surplus real estate by governmental agencies.

CC. (§ 229) Title.

The term “**Title**” shall mean the fee title to the Property which shall be conveyed to Developer pursuant to the Grant Deed.

DD. (§ 230) Title Company.

The term “**Title Company**” shall mean Placer Title Company.

EE. (§ 231) Title Officer.

The term “**Title Officer**” shall mean Eric Seastrom at Placer Title Company, 1300 Oliver Road, Suite 120, Fairfield, California 94534; (707) 429-2211; email address: eseastrom@placertitle.com.

VI. (§300) PARTIES TO THE AGREEMENT; SURPLUS LAND ACT.

A. (§301) Agency.

1. **Agency.** Agency is the Successor Agency to the Redevelopment Agency of the City of Suisun City, a public body, corporate and politic. The term "Agency" as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the Agency. The office of Agency is located at 701 Civic Center Blvd, Suisun City, California 94585.

2. **FIRPTA.** Agency is not a “foreign person” within the parameters of the Foreign Investment in Real Property Tax Act (“**FIRPTA**”) or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or Agency has complied and will comply with all the requirements under FIRPTA or any similar state statute.

3. **No Conflict.** Agency’s execution, delivery and performance of its obligations set forth in this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

4. **No Litigation.** To Agency’s actual knowledge, there is no threatened or pending litigation against Agency challenging the validity of this Agreement or any of the actions proposed to be undertaken by Agency or Developer pursuant to this Agreement. “**Actual knowledge**,” as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of Agency’s employees and agents who have participated in the preparation of this Agreement and Developer’s acquisition of the Property.

5. **Agency’s Participation.** Agency’s participation in the Project is solely as seller of the Property and Agency is not participating in the Project as a developer or owner. Any actions by Agency which are not fully consistent with Agency’s role as seller of the Property are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to Developer. As such, the Project and Agency’s participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

6. **MSW.** MSW is willing to assign its rights and duties under the DDA with respect to the Property to Developer effective concurrently with the Effective Date (as defined below). Agency is willing to consent to such assignment and, as of the Effective Date (as defined in Section 2.1), the Property will no longer be subject to the DDA.

Developer agrees to purchase from Agency, and Agency agrees to sell to Developer the Property in AS-IS condition upon the terms and conditions in this Agreement.

B. (§302) Developer.

1. **Identification.** Developer is Lionext Inc., a California corporation, or its transferee as described in Section 303. The principal office of Developer for the purposes of this Agreement is located at 13021 Leffingwell Road, Santa Fe Springs, CA 90670. Developer represents and warrants to Agency that, as of the Effective Date and the Closing Date, Developer is and will be qualified to do business, is in good standing under the laws of the State of California, and has all requisite power and Agency to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. **Successors and Assigns.** Except as may be expressly provided herein below, all of the terms, covenants, and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer and the permitted successors, assigns and nominees of Developer as to each portion of the Property. Wherever the term "**Developer**" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. **Qualifications.** The qualifications and identity of Developer are of particular concern to Agency, and it is because of such qualifications and identity that Agency has entered into this Agreement with Developer. Agency has considered the experience, financial capability, and product being marketed by Developer, the Property location and characteristics, the public costs of acquiring and developing the Property and return on investment, and the product mix necessary to produce a Project. Based upon these considerations, Agency has imposed those restrictions on transfer set forth in this Agreement.

C. (§303) Restrictions on Transfer.

1. **Transfer Defined.** As used in this Section, the term "**Transfer**" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Property, or the improvements thereon, and conveyance of the Property from Agency to Developer, a limited partnership or a limited liability company in which Developer (or its affiliate) is the administrative general partner or managing member (as applicable), provided for in this Agreement. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Transferor's immediate family. In the event Developer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer, or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such Transfer

shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Prior to issuance of the Release of Construction Covenants, Developer shall not Transfer this Agreement or any of Developer's rights hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Agency, which shall not be unreasonably withheld or delayed, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval to any Transfer by Developer of its interest in the Property before the issuance of the Release of Construction Covenants, which Transfer requires Agency approval, Agency shall consider factors such as (i) whether the completion or implementation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of a specific written agreement by Agency, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest in the Property or this Agreement (including without limitation an assignment or transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Property which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency an assumption agreement, in a form approved by Agency, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following, all of which shall constitute "**Permitted Transfers**" and shall not require the prior consent of Agency:

a. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512, but Developer shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Property.

b. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of and improvements on the Property, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

c. A transfer in connection with a foreclosure or deed-in-lieu of foreclosure under any mortgage, deed of trust, or other form of conveyance described in subsection (a) above.

d. The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation of the Property.

e. A sale or Transfer of forty-nine percent (49%) or more of ownership or control interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the Trustor or Transfers to a corporation or partnership in which the immediate family members or shareholders of the Transferor have a controlling majority interest of fifty-one percent (51%) or more.

f. A sale or Transfer to a California limited partnership in which Developer, or an Affiliate of Developer, is a general partner or to a California corporation in which Developer, or an Affiliate of Developer is the managing member. The term “**Affiliate**” shall mean (i) any entity in which Developer directly or indirectly owns or controls fifty percent (50%) or more of the voting and/or membership interests, or (ii) any entity in which the owner(s) of Developer directly or indirectly own or control fifty percent (50%) or more of the voting or membership interest.

g. The admission of a nonprofit corporation or a limited liability company wholly owned by a nonprofit corporation as a managing general partner of Developer, or the permitted successor thereof.

h. Execution of residential leases for the Units in the ordinary course of operations of the Property.

4. Restrictions After Completion. Subsequent to the issuance of the Release of Construction Covenants, except as set forth in Section 303.3 above, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Property without complying with any Transfer restrictions contained within the Grant Deed and the Regulatory Agreement, as applicable.

(§304) Applicability of Surplus Land Act. The parties believe that the sale of the Property under this Agreement is exempt from the Surplus Land Act under Government Code Section 54234 due to the existing MSW DDA.

VII. (§400) ACQUISITION AND DISPOSITION OF THE PROPERTY

A. (§ 401) Feasibility Period.

Within 5 days after the Effective Date, Agency shall deliver to Developer any and all documents related to the Property which it has in its possession and control (“**Due Diligence Documents**”). Due Diligence Documents shall not include the title information which shall be governed pursuant to Section 408.

Developer shall have a period of sixty (60) days from the date that Agency provides to Developer copies of all Due Diligence Documents ("**Feasibility Period**").

During the Feasibility Period, Developer shall have the right to inspect the physical condition of the Property for the Project and, at its sole cost and expense, cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other investigations as Developer, in its sole discretion, may desire, to permit Developer to determine the suitability of the Property for the uses permitted by this Agreement to conduct such other review and investigation which Developer deems appropriate to satisfy itself to acquire the Property. Developer shall further have the right to make an examination of all licenses, permits, authorizations, approvals and governmental regulations which affect the Property, including zoning and land use issues and conditions imposed upon the Property by governmental agencies. During the Feasibility Period, Developer shall have access to the Property provided it complies with the provisions of Section 409.4.

Developer shall notify Agency on or before the end of the Feasibility Period, in writing, whether Developer has approved or disapproved the results of its investigation, such approval or disapproval to be given or withheld in Developer's reasonable discretion. If Developer disapproves the results of its investigations, such disapproval shall terminate the Agreement, in which case the Deposit will be returned to Developer as specified in Section 405, and the parties shall have no further obligations to the other under this Agreement. If Developer approves the results of its investigations, this Agreement shall remain in full force and effect, the Deposit shall become non-refundable (except in the case of a material Default by Agency), and the parties hereto shall have all of the rights and obligations as set forth herein. Failure of Developer to notify Agency of its approval or disapproval before the end of the Feasibility Period shall be conclusively deemed Developer's disapproval hereunder.

B. (§ 402) Conveyance.

In accordance with and subject to all the terms, covenants and conditions of this Agreement including the Schedule of Performance and payment of the Purchase Price, Agency agrees to convey the Property to Developer subject to the terms of the Grant Deed, and Developer specifically agrees to accept the Property in AS-IS condition and subject to the covenants to develop the Property for the uses consistent with the Scope of Development and the permissible uses as further described in Section 601 and the Grant Deed. The Purchase Price is the fair market value of the Property pursuant to the Appraisal.

C. (§ 403) Financial Capability.

Within the time set forth in the Schedule of Performance, Developer shall submit to Agency's Executive Director for approval evidence reasonably satisfactory to the Executive Director that Developer has the financial capability necessary for development of the Project thereon pursuant to this Agreement. Developer covenants and agrees to take all action, furnish all information, give all consents, and pay all sums reasonably required to keep the construction loan commitment in full force and effect and shall comply in all material respects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, audited financial statements, and documents in connection therewith.

D. (§404) Escrow.

1. Opening of Escrow. Within three (3) days of the Effective Date, the parties shall open an Escrow with Escrow Agent by causing an executed copy of this Agreement to be deposited with Escrow Agent which Escrow Agent shall sign and accept. Escrow shall be deemed opened upon Escrow Agent's receipt of all of the following ("**Opening of Escrow**"): (i) the fully executed copies of this Agreement; (ii) Developer's Deposit; (iii) MSW deposits three (3) copies of the Assignment, Assumption and Release Agreement in the form of Attachment No. 6 executed by MSW ("**Assignment/Release Agreement**"); (iv) Developer deposits three (3) executed copies of the Assignment/Release Agreement; and (v) Agency deposits three (3) executed copies of the Assignment/Release Agreement. If Escrow is not opened (as defined above) within five (5) days after the Effective Date, Agency shall have the right to terminate this Agreement upon written notice to Buyer and Escrow Agent prior to the actual Opening of Escrow.

2. Completion and Distribution of Assignment/Release Agreements.

Upon Opening of Escrow, Escrow Holder shall (i) complete the "Effective Date" in the Assignment/Release Agreements with the date of Opening of Escrow; and (ii) complete the date of this Agreement in Paragraph 2. Thereafter, Escrow Holder shall deliver one (1) fully executed copy of the Assignment/Release to MSW at 710 Kellogg Street, Suisun City, CA 92585 Attn: President; one (1) fully executed copy of the Assignment/Release to Agency; and one (1) fully executed copy of the Assignment/Release to Developer.

3. Joint Escrow Instructions. This Agreement shall constitute the joint escrow instructions of Agency and Developer for the Property, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. Agency and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional Escrow instructions shall modify this document without specific written approval of the modifications by Developer and Agency.

E. (§405) Deposit.

Upon Opening of Escrow in accordance with Section 404, Developer shall deliver the Deposit directly to Escrow Agent.

If Developer defaults in its obligations under this Agreement, then Agency shall retain the Deposit as liquidated damages to compensate Agency for its expenses in obtaining a new developer, and other actual and consequential damages. In the event that Developer defaults in its obligations under this Agreement, then Agency shall retain the Deposit as liquidated damages under Section 411(4) for its expenses and costs and other actual and consequential damages.

F. (§406) Conditions to Close of Escrow for Acquisition by Developer.

1. Developer's Conditions to Closing. Developer's obligation to accept the Property and to close Escrow hereunder, shall, in addition to any other conditions set

forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, "**Developer's Conditions to Closing**") within the time provided in the Schedule of Performance:

- a. Developer shall have approved the condition of the Property as set forth in Section 401 and Developer shall have received any and all approvals required under CEQA (if required) provided the Property is deemed categorically exempt.
- b. Title Company is committed to issue Developer's Title Policy insuring title to the Property is vested in Developer subject to conditions and exceptions specified in Section 408(4).
- c. Agency shall have deposited into Escrow certificates ("**FIRPTA Certificates**") in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.
- d. Developer shall have obtained financing commitments for the development of the Property acceptable to Developer in accordance with Sections 403(1), and Agency shall have approved such commitments.
- e. Agency shall have deposited or caused to be deposited into Escrow all the documents required under Section 407(3).
- f. Agency is not in default under this Agreement.

Any waiver of the foregoing conditions must be express and in writing. In the event that the foregoing conditions have not been satisfied within the time provided therefor in the Schedule of Performance, either party may terminate this Agreement by delivering a written notice in accordance with Section 411, in which event the Deposit shall be returned to Developer.

2. Agency's Conditions to Closing. Agency's obligation to convey the Property and Agency's obligation to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Agency, be conditional and contingent upon the satisfaction, or waiver by Agency, of each and all of the following conditions (collectively, "**Agency's Conditions to Closing**") within the time provided in the Schedule of Performance:

- a. Developer shall have obtained evidence of financing commitments for the development of the Property in accordance with Sections 403(1) and Agency shall have approved such commitments.
- b. Title Company is committed to issue Developer's Title Policy insuring title to the Property is vested in Developer subject to conditions and exceptions specified in Section 408.4.
- c. d. Developer shall have deposited or caused to be deposited into Escrow all the documents required under Section 407(4).

- d. Developer is not in breach of this Agreement.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy Agency's foregoing conditions or defaults in the performance of its obligations hereunder, Agency may terminate this Escrow.

3. Both Parties' Conditions to Closing. Prior to the Closing Date, Developer and Agency shall execute and deliver one or more certificates ("**Taxpayer ID Certificate**") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Property, date of closing, gross price, and taxpayer identification number for Developer and Agency. Prior to the Closing, Developer and Agency shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

G. (\$407) Conveyance of the Property.

1. Time for Conveyance. Escrow shall close after satisfaction of all conditions to close of Escrow, but not later than the date specified in the Schedule of Performance, unless extended by the mutual agreement of the parties or any Enforced Delay. Possession of the Property shall be delivered to Developer concurrently with the conveyance of title to Developer.

2. Escrow Agent to Advise of Costs. On or before the date set in the Schedule of Performance, the Escrow Agent shall advise Agency and Developer in writing of the fees, charges, and costs necessary to clear title and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. Deposits By Agency Prior to Closing. On or before, but not later than 1:00 p.m. of the date set in the Schedule of Performance, Agency shall execute, acknowledge and deposit into Escrow the Grant Deed and such other documents are required to consummate the transaction.

4. Deposits By Developer Prior to Closing. On or before, but not later than 1:00 p.m. of the date set in the Schedule of Performance, Developer shall execute and acknowledge as may be required and deposit into Escrow (i) the Acceptance of Grant Deed to be attached to the Grant Deed prior to recordation (ii) the preliminary change of ownership form as required by Solano County; and (iii) funds and documents as required to consummate the transaction.

5. Recordation and Disbursement of Funds. Upon the completion by Agency and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to (i) buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause the Grant Deed to be recorded in the appropriate records of Solano to vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver Developer's Title Policy to Developer insuring title

and conforming to the requirements of Section 408(4). Following recordation, the Escrow Agent shall deliver conformed copies of said instruments to Developer and Agency.

H. (§408) Title Matters.

1. **Condition of Title.** Agency shall convey to Developer fee title of the Property subject only to: (i) this Agreement and conditions in the Grant Deed; (ii) current real property taxes, a lien not yet payable; (iii) any liens caused by Developer including any such resulting from Developer's entry onto the Property under Section 409(4); and (v) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer. Agency shall convey title to Developer pursuant to the Grant Deed in the form set forth in Attachment No. 4.

2. **Agency Not to Encumber Property.** Agency covenants to Developer that it has not and will not, from the Effective Date of this Agreement through close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Property without express written permission of Developer.

3. **Approval of Title Exceptions.** Prior to the date in the Schedule of Performance, Agency shall deliver a preliminary report for the Property, dated no earlier than the date of this Agreement, to Developer including copies of all documents referenced therein ("**Title Report**"). Prior to the date in the Schedule of Performance ("**Title Approval Date**"), Developer shall deliver to Agency written notice, with a copy to Escrow Agent, specifying in detail any exception disapproved and the reason therefor. Prior to the date in the Schedule of Performance, Agency shall deliver written notice to Developer as to whether Agency will or will not cure the disapproved exceptions. If Agency elects not to cure the disapproved exceptions, Developer may terminate this Agreement without any liability of Agency to Developer, or Developer may withdraw its earlier disapproval. If Agency elects to cure the disapproved exceptions, Agency shall do so on or before the close of Escrow. If, after the Title Approval Date, Developer receives a supplement to the Title Report from the Title Company setting forth any new matter of record encumbering the Property which was not set forth on the original Title Report (or any previous supplement thereto) and of which Developer was not otherwise aware as of the Title Approval Date ("**New Title Matter**"), Developer may, on or prior to 5:00 p.m. P.S.T. on the fifth (5th) business day following Developer's receipt of notice of such New Title Matter ("**New Matter Approval Date**"), object to such New Title Matter by sending written notice thereof to Agency and Escrow Agent; provided, however, Agency shall remove any monetary liens which constitute New Title Matters regardless of whether Developer timely objects to such monetary liens. Developer's failure to object in writing to any New Title Matter on or prior to the New Matter Approval Date shall be automatically deemed to be Developer's approval of such New Title Matter and such New Title Matter shall thereafter be deemed to be a permitted encumbrances. If Developer delivers written objection to any New Title Matter on or prior to the New Matter Approval Date applicable thereto, and Agency does not deliver as of 5:00 p.m. P.S.T. on the fifth (5th) business day following the New Matter Approval Date ("**Agency Response Date**") written notice that Agency covenants and agrees to remove prior to the Closing such New Title Matter objected to by Developer, then Developer may terminate this Agreement by delivery of written notice thereof to Agency and Escrow Agent on or before 5:00 p.m. P.S.T. on the second (2nd) business day following Agency Response Date ("**New Matter**").

Termination Date”). Developer’s failure to terminate this Agreement in writing as a result of any New Title Matter on or prior to the New Matter Termination Date shall constitute Developer’s waiver of its right to terminate this Agreement as a result of such New Title Matter.

4. Developer’s Title Policy. At the Closing at Developer’s expense, Title Company shall issue to Developer an ALTA (non-extended) owner’s policy of title insurance (“**Developer’s Title Policy**”) with title to the Property vested in Developer with an insured amount equal to the Purchase Price, containing only exceptions as approved, waived or caused by Developer in accordance with this Section. Developer’s Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested at Developer’s cost and expense.

I. (§409) Condition of Property; AS-IS Acquisition.

1. AS-IS Acquisition.

DEVELOPER ACKNOWLEDGES AND AGREES THAT AGENCY IS CONVEYING THE PROPERTY TO DEVELOPER IN “AS-IS” CONDITION WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND AND SHALL NOT BE RESPONSIBLE FOR ANY HAZARDOUS MATERIALS OR CONDITIONS ON THE PROPERTY.

2. Property Assessment and Remediation.

Developer shall be responsible for conducting assessments of the Property and for any required remediation if Developer accepts the Property pursuant to the terms of this Agreement. Agency shall be entitled to review any remedial workplan prepared for the Property. Agency is conveying the property in an “AS-IS” condition and shall not be responsible for any Hazardous Materials or hazardous conditions on the Property. Agency is acquiring the Property solely to accommodate the Project and, therefore, Developer acknowledges that the provisions of this Section 409 is material to Agency’s entering into this Agreement.

3. Disclaimer of Warranties.

Upon the Close of Escrow, Developer shall acquire the Property in its “AS-IS” condition and shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, abandoned wells or other structures located on, under or about the Property. Agency makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, the suitability of the Property for the Project, or the present use of the Property, and specifically disclaims all representations or warranties of any nature concerning the Property made by them, the City and their employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate air, water rights, utilities, present and future zoning, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the

Property is suited, or drainage. Agency makes no representation or warranty concerning the compaction of soil upon the Property, nor of the suitability of the soil for construction.

4. Right to Enter Property; Indemnification.

Subject to compliance with the requirements set forth below, Agency grants to Developer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Developer's sole cost and expense.

Prior to entering the Property, Developer shall obtain Agency's written consent which shall not be unreasonably withheld or delayed provided Developer complies with all the following requirements. Developer shall (i) notify Agency prior to each entry of the date and the purpose of intended entry and provide to Agency the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations (including issuance of City permits); (iv) allow an employee of Agency to be present at all times; (v) keep the Property free and clear of all materialmen's liens, lis pendens and other liens or encumbrances arising out of the entry and work performed under this paragraph; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California; (vii) provide to Agency prior to initial entry a certificate of insurance evidencing that Developer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) which insurance names Agency as additional insured; and other requirements specified in Section 506; (viii) repair all material damage to the Property resulting from Developer's entry and investigation of the Property and leave the Property in a safe condition; (ix) provide Agency copies of all studies, surveys, reports, investigations and other tests derived from any inspection without representation or warranty but with the right of Agency to use the report without further consent from or payment to the issuer; and (x) take the Property at Closing subject to any title exceptions caused by Developer exercising this license to enter.

Developer agrees to indemnify, defend and hold Agency free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Agency may suffer or incur as a consequence of Developer's exercise of the license granted pursuant to this Section or any act or omission by Developer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Developer (except Agency and its agents) with respect to the Property, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Developer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Agency.

Notwithstanding termination of this Agreement for any reason, the obligations of Developer under this Section shall remain in full force and effect.

5. Natural Hazard Disclosure Report. Within five (5) days of the Opening of Escrow, Escrow Agent shall order a Natural Hazards Disclosure report issued on the Property by Disclosure Source ("**NHD Report**") to be delivered to Developer. If Developer disapproves the NHD Report, it must do so in writing within ten (10) days of receipt or Developer is deemed to have approved the NHD Report.

6. Hazardous Materials. Except for any material Due Diligence Documents in Agency's possession and control which was not provided to Developer, Developer understands and specifically agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Property, but under no circumstances shall Developer look to Agency or City for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Agency, City, their directors, officers, employees, and agents, and their respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Agency and City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against Agency or City, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:**

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

DEVELOPER'S INITIALS: _____ **AGENCY'S INITIALS:** _____

For purposes of this Section 409, the following terms shall have the following meanings:

a. "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted, or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

b. "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Property is capable of such compliance.

d. "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental Agency, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivative product or byproduct thereof; (B) defined as a "hazardous waste" or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(n)(1)-(2) of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground

Storage of Hazardous Substances); (F) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a “toxic pollutant” pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as “Hazardous Material” pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (N) defined as such or regulated by any “Superfund” or “Superlien” law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer’s release as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity, with respect to any act or omission of Developer (its employees, persons, invitees, agents, assignees, contractors, subcontractors) related to the Property and/or the Project.

J. (§410) Costs of Escrow.

1. Allocation of Costs. Escrow Agent is directed to allocate costs as follows:

(i) Developer shall pay the cost of Developer’s Title Policy including premiums for any additional insurance, extended coverage or special endorsements and the Lighthouse Development Fee (which is to be paid to the City).

(ii) Agency shall pay any documentary transfer taxes, the cost of the NHD Report, the MSW Payment (pursuant to the Assignment/Assumption Agreement) and the Commission.

(iii) Developer shall pay any recording fees in connection with the recordation of the Grant Deed.

(iv) Developer and Agency shall each pay one-half (1/2) of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges as well as any title cancellation fees.

2. Proration and Adjustments. As Agency is exempt from real estate taxes and assessments on the Property, no prorations shall be made by the Escrow Agent. Developer shall be responsible for any and all real estate taxes effective commencing with the Closing.

3. **Extraordinary Services of Escrow Agent.** It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. **Escrow Agent's Right to Retain Documents.** Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The parties jointly and severally promise to pay such sums upon demand.

K. (§411) Termination of Escrow.

1. **Termination.** Escrow may be terminated by demand of either party which then shall have fully performed its obligations hereunder required to be performed by the date of such demand if:

a. The Conditions to Closing have not occurred or have not been approved, disapproved, or waived as the case may be, by the approving party by the date established herein for the occurrence of such Condition, including any grace period pursuant to this Section; or

b. Either party is in breach of the terms and conditions of this Agreement after the expiration of any applicable notice and cure periods; or

c. Either party has been granted such right expressly in this Agreement, including, but not limited to, the right to terminate pursuant to Section 407.

In the event of the foregoing, the terminating party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party. No demand shall be recognized by the Escrow Agent until fifteen (15) days after the Escrow Agent shall have mailed copies of such demand to the non-terminating party, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the fifteen (15) day period. In the event of such objections, the opportunity to cure shall be provided as stated below in subsection 2 of this Section. In addition, the Escrow Agent is authorized to hold all money, papers, and documents until instructed in writing by both Developer and Agency or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible and neither party shall have any further liability to the other.

2. **Opportunity to Cure.** Prior to Closing, in the event any of the Conditions to Closing are not satisfied or waived by the party with the power to approve said Conditions ("**Approving Party**"), then such party shall explain in writing to the other party ("**Non-approving Party**") the reason for the disapproval. Thereafter, the Non-approving Party shall

have thirty (30) days ("**Cure Period**") to satisfy any such Condition to Closing, and only if such Conditions still cannot be satisfied may the Approving Party terminate the Escrow. In the event Escrow is not in a condition to close because of a default by any party, and the performing party has made demand as stated in subsection 1 of this Section, then upon the non-performing party's delivering its objection to Escrow Agent and the performing party within the Cure Period, the non-performing party shall have the right to cure the default in accordance with and in the time provided in Section 801.

3. Other Duties upon Termination. Upon termination of Escrow pursuant to this Section for any reason, the Parties shall have the following duties and obligations in addition to any others described above:

a. In the event such termination is due to the default of Developer, then subject to the rights and consents of the third party authors, all non-privileged and non-proprietary plans, drawings, specifications, reports, and other documents prepared by Developer or Developer's contractors or vendors shall become the property of Agency and shall be delivered to Agency, without representation or warranty, by Developer within ten (10) days of receipt of notice from Agency.

b. In the event such termination is due to the default of Agency, Developer shall be entitled to terminate this Agreement, and in such case Developer shall not be required to repay Agency any of the amounts described in subparagraph (b) above, but Developer shall not be entitled to any damages of any kind; provided, however, Agency shall reimburse Developer for reasonable Project costs, incurred prior to such termination, but not yet paid as of termination.

c. Any portion of the Property that has been conveyed to Developer prior to such termination shall be reconveyed to Agency within thirty (30) days following such termination. Developer agrees to execute any documents and take all actions necessary to accomplish the reconveyance.

4. Liquidated Damages.

THE PARTIES HERETO, BEFORE ENTERING INTO THIS TRANSACTION, HAVE BEEN CONCERNED WITH THE FACT THAT SUBSTANTIAL DAMAGES WILL BE SUFFERED BY AGENCY IN THE EVENT THAT ESCROW SHOULD FAIL TO CLOSE. WITH THE FLUCTUATION IN LAND VALUES, THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENTAL REGULATIONS, THE FLUCTUATING MONEY MARKET FOR REAL ESTATE, AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY, THE PARTIES REALIZE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY PRIOR TO SIGNING THIS AGREEMENT, THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY AGENCY IN THE EVENT THAT ESCROW FAILED TO TIMELY CLOSE. ACCORDINGLY, THE PARTIES HEREBY AGREE THAT A REASONABLE ESTIMATE OF SAID DAMAGES IS THE AMOUNT OF THE DEPOSIT TO BE MADE BY DEVELOPER, PURSUANT TO SECTION 404 ABOVE. IF ESCROW FAILS TO CLOSE DUE TO THE DEFAULT OF DEVELOPER, AGENCY SHALL BE ENTITLED TO RETAIN

THE DEPOSIT AS LIQUIDATED DAMAGES. THIS PROVISION DOES NOT APPLY TO OR LIMIT IN ANY WAY THE INDEMNITY OBLIGATIONS OF DEVELOPER UNDER THIS AGREEMENT.

Agency's Initials _____ Developer's Initials _____

L. (§412) Responsibilities of Escrow Agent.

1. Depositing of Funds. In accordance with Section 404, all funds received in Escrow shall be deposited by the Escrow Agent in a federally insured special interest-bearing Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. Notices. All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 901 of this Agreement for notices, demands and communications between Agency and Developer.

3. Sufficiency of Documents. The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and Agency's instructions for their use.

4. Completion of Documents. The Escrow Agent shall complete the date of Closing into the Assignment Assumption and Release of Agreement as the Effective Date.

5. Exculpation of Escrow Agent. The Escrow Agent shall in no case or event be liable for the failure of any of the Conditions to Closing of this Escrow, or for forgeries or false personation, unless such liability or damage is the result of negligence or willful misconduct by the Escrow Agent.

6. Responsibilities in the Event of Controversies. If any controversy documented in writing arises between Developer and Agency or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Property prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and Agency of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

VIII. (§500) DEVELOPMENT OF THE PROPERTY.

A. (§501) Scope of Development.

The Property shall be developed by Developer as provided in the Scope of Development and the plans and permits approved by Agency and City pursuant to Section

502. Developer shall commence and diligently prosecute the Project to completion within the time provided and otherwise in strict compliance with this Agreement. Construction of the Project shall commence as specified in the Schedule of Performance.

B. (§502) Development Plans, Final Building Plans and Environmental Review.

1. Proposed Development's Consistency With Plan and Codes.

Developer shall obtain all entitlements at its own cost for approval of the Project. Agency warrants and represents that the City's General Plan and Zoning Ordinance permit Developer's proposed development, and construction, operation, and use of the Property as provided in this Agreement including, without limitation, the Scope of Development, subject only to (i) those development approvals yet to be obtained, including, if necessary, proposed General Plan and Zoning Ordinance amendments, Property Plan Review and subdivision approval (if required), and (ii) City's and Agency's review and approval of the Project in accordance with the California Environmental Quality Act; provided that it is expressly understood by the parties hereto that Agency makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City and Agency, Agency and City reserving full police power Agency over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, Agency has reviewed Developer's Basic Concept Drawings. On or before the date set forth in the Schedule of Performance, Developer shall submit to the City preliminary, and thereafter final, drawings and specifications for development of the Property and each Property thereof in accordance with the Scope of Development, and all in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include Property plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by City (if applicable) and by mutual consent of Agency and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including for Property plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Property.

3. Developer Efforts to Obtain Approvals. Developer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply

with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Agency Assistance. Subject to Developer's compliance with (i) the applicable City and Agency development standards for the Property, and (ii) all applicable laws and regulations governing such matters as public hearings, Property plan review and environmental review, Agency agrees to provide reasonable assistance to Developer, at no cost to Agency, in the processing of Developer's submittals required under this Section. City or Agency's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Disapproval. Agency shall approve or disapprove any submittal made by Developer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Developer will note the 30-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing the reason for the disapproval and the changes which Agency requests be made. Agency's failure to disapprove the submittal within thirty (30) days shall be deemed an approval of the submittal. Developer shall make the required changes and revisions which would not materially impact the economic feasibility of the Project and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days after the date of disapproval. Thereafter, Agency shall have an additional thirty (30) days for review of the resubmittal, but if Agency disapproves the resubmittal, then the cycle shall repeat, until Agency's approval has been obtained. The foregoing time periods may be shortened if so specified in the Schedule of Performance.

6. CEQA. The term "**Environmental Review**" shall mean the investigation and analysis of the Project's impacts on the environment as may be required under the California Environmental Quality Act ("**CEQA**"), Public Resources Code §21000, et seq., and the National Environmental Policy Act (42 U.S.C. §4321 et seq., "**NEPA**") if required. or of the Project's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species as may be required by the California Endangered Species Act ("**CESA**"), Fish and Game Code §2050, et seq., and/or the U.S. Endangered Species Act ("**USESA**"), 16 U.S.C. §1531, et seq., or other applicable California or federal law or regulation.

C. (§503) Schedule of Performance; Progress Reports.

Subject to Section 903, Developer shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay, as defined in Section 903. Developer shall keep Agency informed of the progress of construction and shall submit monthly written reports of the progress of the construction to Agency in the form required by Agency.

D. (§504) Indemnification During Construction.

During the periods of construction on the Property and until such time as Agency has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold Agency and the City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Property and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of Agency or the City, or their respective agents, servants, employees, or contractors. Agency and City shall not be responsible for any acts, errors, or omissions of any person or entity except Agency and the City and their respective agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination of this Agreement.

E. (§505) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Property pursuant to Sections 409(4) and prior to the commencement of any demolition work and/or construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Agency, during the entire term of such entry or construction, the following policies of insurance, as applicable:

1. Commercial General Liability Insurance. A policy of commercial general liability insurance written on a per occurrence basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate.

2. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Developer, against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement.

3. Automobile Insurance. A policy of automobile liability insurance written on a per accident basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned (if applicable), leased, hired, and non-owned vehicles.

4. Builder's Risk Insurance. A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name Agency, City, and their officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Agency, City, and their officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to Agency, City and Developer. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. No work or services under this Agreement shall commence until Developer has provided Agency with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by Agency.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("**Risk Manager**") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain (if applicable) the same policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

F. (§506) City and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Property which are Developer's responsibility under the applicable Scope of Development, Developer shall at his own expense secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City or Agency which are standard for and uniformly applied to similar projects in the City.

G. (§507) Rights of Access.

Representatives of Agency shall have the reasonable right to access the Property upon reasonable prior notice without charges or fees, at any time during normal construction

hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of Agency shall be those who are so identified in writing by the Executive Director of Agency. Each such representative of Agency shall identify himself or herself at the job Property office upon his or her entrance to the Property, and shall provide Developer, or the construction superintendent or similar person in charge on the Property, a reasonable opportunity to have a representative accompany him or her during the inspection. Agency shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of Agency's exercise of this right of access.

H. (§508) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

I. (§509) Nondiscrimination During Construction.

Developer, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

J. (§510) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied subsequent to conveyance of title of the Property. Until the date Developer is entitled to the issuance by Agency of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Property, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

K. (§511) Rights of Holders of Approved Security Interests in Property.

1. **Definitions.** As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. **No Encumbrances Except Mortgages to Finance the Project.** Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the development and/or construction of the improvements

are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for the construction and development of improvements on the Property, and for any other expenditures necessary and appropriate to develop the Property under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. Developer (or any entity permitted to acquire title under this Section) shall notify Agency in advance of any mortgage, if Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of Agency, which shall not be unreasonably withheld. Any lender approved by Agency pursuant to Section 403 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, Developer shall promptly notify Agency of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Property, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Property whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion.

5. Notice of Default to Holders of Mortgages, Deed of Trust or other Security Interest. Whenever Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Agency therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of Agency are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

- a. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and
- b. add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first submitting evidence satisfactory to Agency that it has the qualifications and financial responsibility necessary to construct and complete the improvements and enter into an agreement with Agency with respect to the obligations hereunder. Any holder properly completing such improvements shall be entitled, upon written request made to Agency, to a Release of Construction Covenants from Agency.

7. Agency's Rights upon Failure of Holder to Complete Improvements.

In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Property or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Agency may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- b. All expenses incurred by the holder with respect to foreclosure, if any;
- c. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Property, such as insurance premiums or real estate taxes, if any;
- d. The costs of any improvements made by such holder, if any; and
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by Agency.

In the event that the holder does not exercise its option to construct afforded in this Section, and Agency elects not to purchase the mortgage of holder, upon written request by the holder to Agency, Agency agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Agency). The proceeds of such a sale shall be applied first to the holder of those items

specified in subparagraphs a. through e. hereinabove, and any balance remaining thereafter shall be applied as follows:

(1) First, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(2) Second, to reimburse Agency, on its own behalf and on behalf of the City, for all payments made by Agency to discharge any other encumbrances or liens on the Property or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(3) Third, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(4) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of Agency to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Agency of a Release of Construction Covenants for the Property or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Agency may cure the default prior to completion of any foreclosure. In such event, Agency shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by Agency in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to:

- a. Any mortgage for financing permitted by this Agreement; and
- b. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided, that nothing herein shall be deemed to impose upon Agency any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Property in the event of its enforcement of its lien.

9. Right of Agency to Satisfy Other Liens on the Property After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property or any portion thereof, Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

L. (§512) Release of Construction Covenants.

Upon the completion of all construction required to be completed by Developer on the Property, Agency shall furnish Developer with a Release of Construction Covenants for the Property in the form attached hereto as Attachment No. 5 upon written request therefor by Developer. The Release of Construction Covenants shall be executed by the Executive Director and notarized so as to permit it to be recorded in the office of the Recorder of Solano County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Property and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Property shall not be permitted. A partial Release of Construction Covenants applicable to less than the entire Property may be issued in the sole discretion of the Agency.

After the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Property, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed. After issuance of a Release of Construction Covenants, Agency shall not have any rights or remedies under this Agreement with respect to the Property, except as otherwise set forth or incorporated in the Deed.

Agency shall not unreasonably withhold or delay a Release of Construction Covenants. If Agency refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, Agency shall provide a written statement of the detailed reasons Agency refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Agency's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Agency will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred percent (100%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Agency.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the City before the Release of Construction Covenants is issued.

M. (§513) Estoppels.

No later than fifteen (15) days after the written request of Developer or any holder of a mortgage or deed of trust, Agency shall, from time to time and upon the request of such

holder, execute and deliver to Developer or such holder a written statement of Agency that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of Agency, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to Agency.

IX. (§600) USES AND MAINTENANCE OF THE PROPERTY

A. (§601) Uses of the Property.

Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Property pursuant to this Agreement and thereafter, neither the Property nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Property or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Property or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain the Property in accordance with this Agreement and the Grant Deed.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Property solely for the purpose of constructing, maintaining and operating the Project meeting the requirements and restrictions of this Agreement.

B. (§602) Obligation to Refrain from Discrimination.

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof (except as permitted by this Agreement). The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

C. (§603) Form of Nondiscrimination and Non-segregation Clauses.

Subject to the tenancy/occupancy restrictions on the Affordable Restricted Units not prohibited by federal law as embodied in this Agreement, which may modify the following nondiscrimination clauses, the following shall apply: Developer shall refrain from restricting

the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

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

2. Leases: In leases the following language shall appear: “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 race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.’”

3. Contracts: Any contracts which Developer or Developer’s heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the Property shall contain a nondiscrimination and non-segregation clause substantially as set forth in Section 603 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

D. (§604) Maintenance of Improvements.

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, that, after Agency’s issuance of its Release of Construction Covenants, Developer shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to Developer’s approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in perpetuity. Developer’s further obligations to maintain the Property, and Agency’s remedies in the event of Developer’s default in performing such obligations, are set forth in Grant Deed. Developer hereby waives

any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply.

E. (§605) Effect of Covenants.

Agency is a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, whether appearing in the Grant Deed in its own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Agency shall run without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Property, and shall be effective as both covenants and equitable servitudes against the Property. Agency shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. In the event Agency no longer exists or lacks legal Agency to enforce the terms and provisions of this Agreement or any of the covenants provided pursuant to this Agreement, the same may be enforced by the City. With the exception of the City, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Grant Deed.

X. (§700) SPECIAL PROVISIONS

F. (§ 703) Minor Amendments.

Each party agrees to consider reasonable requests for amendments to this Agreement which may be made by the other party, lending institutions, or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of Agency and Developer. On behalf of Agency, the Executive Director shall have Agency to make minor amendments to this Agreement, including, but not limited to, the granting of extensions of time to Developer, so long as such actions do not materially change the Agreement or make a commitment of additional funds of Agency. All other changes, modifications, and amendments shall require the prior approval of Agency's governing board.

XI. (§800) DEFAULTS, REMEDIES AND TERMINATION

F. (§801) Defaults, Right to Cure, and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

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 until

thirty (30) days after giving such notice. 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 provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to 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.

G. (§802) Legal Actions.

1. **Institution of Legal Actions.** In addition to any other rights or remedies, and subject to the requirements of Section 801, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Solano, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

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

3. **Acceptance of Service of Process.** In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director or Secretary of Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or outside of the State of California.

H. (§803) Rights and Remedies are Cumulative.

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

I. (§804) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy; provided, however, this remedy may not be imposed on Developer prior to the Closing.

J. (§805) Right of Reverter.

Agency shall have the right, at its option, upon one hundred twenty (120) days prior written notice, to reenter and take possession of Agency Parcel or any portion thereof with all improvements thereon and to terminate and re-vest in Agency the estate conveyed to Developer, if after conveyance of the estate and prior to the recordation of the Release of Construction Covenants, Developer (or his successors in interest) shall:

1. Fail to commence construction of the improvements as required by this Agreement, if such failure is in violation of the Schedule of Performance for a period of one hundred twenty (120) days, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to this Agreement; or

2. Abandon or substantially suspend construction of the improvements (other than as caused by force majeure or an Enforced Delay) for a period of one hundred twenty (120) days after written notice of such abandonment or suspension from Agency, provided that Developer shall not have obtained an extension of time to which Developer may be entitled pursuant to this Agreement; or

3. Assign or attempt to assign this Agreement, or any rights herein, or Transfer, or suffer any involuntary Transfer of, the Property, or any part thereof, in violation of this Agreement, and such violation shall not be cured within one hundred twenty (120) days after the date of receipt of written notice thereof by Agency to Developer.

The right to re-enter, repossess, terminate, and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security interests permitted by this Agreement; or

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

Upon the re-vesting in Agency of possession of the Property, or any part thereof, as provided in this Section 805, Agency shall, pursuant to its responsibilities under state law, use its best efforts to release, or resell or re-grant the Property, as necessary and legally permitted, as the case may be, or any part thereof, as soon and in such manner as Agency shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Agency and in accordance with the uses specified for the Property.

In the event of a resale, the proceeds thereof shall be applied as follows:

1. First, to reimburse Agency on its own behalf or on behalf of the City for all reasonable costs and expenses incurred by Agency, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Property (but less any income derived by Agency from the Property or part thereof in connection

with such management); all taxes, assessments and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by Agency, as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property or part thereof; and amounts otherwise owing Agency by Developer, its successors, or transferees; and

2. Second, to reimburse Developer, its successor or transferee, up to the amount equal to (i) the costs incurred for the development of the Property and for the agreed development expenses and improvements existing on the Property at the time of the re-entry and repossession, less (ii) any gains or income withdrawn or made by Developer from the Property or the improvements thereon.

3. Any balance remaining after such reimbursements shall be retained by Agency as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against Agency, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that Agency will sell the Property to Developer for development, and not for speculation in undeveloped land.

K. (§806) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between Developer and Agency only, in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as the same may be amended or re-codified from time to time. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs, including expert witness fees, the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

XII. (§900) GENERAL PROVISIONS

F. (§901) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing

and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

Agency: Suisun City Successor Agency
701 Civic Center Blvd
Suisun City, California 94585
Attn: Executive Director

Copy to: Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245
Attn: Elena Gerli, Esq.

Owner: Lionext Inc.
13021 Leffingwell Road
Santa Fe Springs, CA 90670
Attn: Hin (Joe) Ming Law, CEO

Copy to: _____

G. (§902) Nonliability of City and Agency Officials and Employees; Conflicts of Interest; Commissions.

1. Personal Liability. No member, official, employee, agent or contractor of City or Agency shall be personally liable to Developer in the event of any default or breach by Agency or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Agency's liability.

2. Financial Interest. No member, official, employee or agent of City or Agency shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. Commissions. Developer retained broker Eric Dakin ("**Developer's Broker**"). Agency has agreed to pay at Closing a commission to Developer's Broker equal to Two Thousand Two Hundred Dollars (\$2,200) ("**Commission**"). Agency shall have no further duty to Developer's Broker, including the right of the Agency to voluntarily consent to termination of this Agreement with Developer. Except for the Limited Commission, each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

H. (§903) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement.

Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Property and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Agency or City shall not excuse performance by Agency unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as provided in Section 401), and (ii) Developer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Agency and Developer. The Executive Director of Agency shall have Agency on behalf of Agency to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days, excluding any Enforced Delay, with respect to the development of the Property.

I. (§904) Books and Records.

1. Developer to Keep Records. Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by Agency.

2. Right to Inspect. Either party shall have the right, upon not less than seventy-two (72) hours prior written notice, during normal business hours, to inspect the books and records of any other party pertaining to the Property as pertinent to the purposes of this Agreement.

3. Ownership of Documents. Subject to the rights and consents of the authors, copies of all material drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not proprietary, privileged or confidential shall be delivered to Agency upon request in

the event of a termination of this Agreement; however, Developer shall be entitled to reimbursement from Agency for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors as a result of the exercise by Agency of its rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer or Developer's subcontractors and/or consultants shall be delivered without representation or warranty by Developer. Agency shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by Agency, and Developer shall have no liability therefor.

J. (§905) Assurances to Act in Good Faith.

Agency and Developer agree to execute all documents and instruments and to take all action, including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Property as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Property in accordance with the provisions hereof. Agency and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

K. (§906) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety. The recitals are incorporated herein.

L. (§907) Entire Agreement, Waivers and Amendments.

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Agency or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

M. (§908) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

N. (§909) Time for Acceptance of Agreement by Agency.

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency, after consideration at a public meeting. After execution by Developer, this Agreement shall be considered an irrevocable offer until such time as Agency is authorized to execute and deliver the Agreement.

O. (§910) City as Third Party Beneficiary.

City is a third party beneficiary of this Agreement and all the related documents.

P. (§911) Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Either party may execute this Agreement by electronic signature which will be valid and effective for all purposes; provided that the e-signature must with through a company compliant with UETA and ESign, such as AdobeSign or DocuSign

2. Agency represents and warrants that: (i) it is a housing Agency duly organized and existing under the laws of the State of California; (ii) by proper action of Agency, Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Agency does not violate any provision of any other agreement to which Agency is a party.

3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by Agency.

REMINDER: PARTIES NEED TO INITIAL SECTIONS 409(5) and 411(4).

DEVELOPER:

LIONEXT INC.,
a California corporation

By: _____
Hin (Joe) Ming Law
Chief Executive Officer

By: _____
Ming Wai Ng
Secretary

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY, a public agency,
corporate and politic

By: _____
Alma Hernandez, Chair Pro Tem

Date: _____, 2022

ATTEST:

Anita Skinner
Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Elena Q. Gerli
Agency Counsel

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SOLANO, CITY OF SUISUN CITY, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOT 10, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997, IN BOOK 67 OF MAPS, AT PAGE 72, SOLANO COUNTY RECORDS.

PARCEL TWO

NON-EXCLUSIVE EASEMENTS FOR PUBLIC ACCESS AND UTILITIES APPURTENANT TO PARCEL ONE ABOVE, OVER AND ACROSS PORTIONS OF LOTS 1 AND 2, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT I, FILED SEPTEMBER 16, 1996 IN BOOK 66 OF MAPS, PAGE 42, BEING MORE PARTICULARLY DESCRIBED IN GRANT DEEDS RECORDED OCTOBER 17, 1997 INSTRUMENT NO. 1996-00070099, AND OCTOBER 3, 1997 INSTRUMENT NO. 1997-00066247, SOLANO COUNTY RECORDS.

APN: 0032-142-280

ATTACHMENT NO. 1-A
PROPERTY MAP



ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

A. PROJECT CONCEPT

The term “Project” shall mean a mixed use development with commercial/retail on the first floor, likely restaurant, and housing on the upper floors, consistent with the current zoning of the Agency Property, which is in the Downtown Mixed Use (DMU) zone within the Waterfront District Specific Plan, with a residential capacity equivalent to the Residential High Density (RHD) zone. As such, the residential capacity is 24.1 to 54 dwelling units per acre. The dwelling unit density may increase if Developer obtains a density bonus under Government Code Section 65915.

B. DEMOLITION AND CLEARANCE

Developer will complete demolition of any improvements on the Property. Developer shall be responsible for all on-Property work and improvements, including, but not limited to the following:

1. Developer shall be responsible for all utility relocation, and other work necessary to prepare the Property for the improvements contemplated by the DDA, and shall be responsible for all construction of the Affordable Restricted Units in accordance with the approved plans thereof.
2. Restoring those streets adjacent to the Property, if any, that undergo utility trenching needed to provide house connections to service the Property. The streets shall be restored to the condition prior to construction, with materials acceptable to the Director of Public Works.
3. Developer shall be responsible for the repair and protection of off-Property improvements during construction of the on-Property improvements. Any off-Property improvements found damaged shall be reconstructed or provided for by Developer to the satisfaction of the Director of Public Works.
4. Developer shall plant or provide for street trees adjacent to the Property, including tree root barriers, to the satisfaction of the Director of Public Works. All required street trees, and any landscaping and sprinkler systems, shall be maintained by Developer and/or successors.
5. Developer shall provide or construct sidewalks, as shown on the approved Conceptual Plans, to the satisfaction of the Director of Public Works.
6. Developer shall submit a drainage plan with hydrology and hydraulic calculations, if requested, showing building elevations and drainage patterns and slopes, for review and approval by the Director of Community Development and the Director of Public Works. All required drainage/grading shall be provided in accordance with approved plans.

C. PROPERTY PREPARATION

Developer shall, at its sole cost and expense, perform or cause to be performed grading plan preparation, fine grading and related compaction, and other Property preparation as necessary for construction of the Project, as approved by the City Engineer. Plans shall be

prepared by a licensed civil engineer in good standing and subject to the approval of the City Engineer.

Developer shall, at its sole cost and expense, scarify, over-excavate, cut, fill, compact, rough grade, and/or perform all grading as required pursuant to an approved grading plan(s) to create finished lots, building pads, and appropriate rights-of-way configurations necessary to develop the Project described herein.

D. PROJECT DESIGN

1. DESIGN PROCESS

Developer and its representatives, including its architect and engineer, shall work with City and Agency staff to develop and execute the architectural concept, architectural drawings, Property plan, tentative tract map, grading plan, off-Property improvement plans, and related drawings and documents consistent with Planning Commission and Agency direction pursuant to the Suisun City Municipal Code.

2. ARCHITECTURAL CONCEPT

The Project shall be designed and constructed as an integrated development in which the buildings shall have architectural excellence. The improvements to be constructed on the Property shall be of high architectural quality, shall be well landscaped, and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building, structure, and other improvements must be consistent with, visually related to, physically related to, and an enhancement to each other and, to the extent reasonably practicable, to adjacent improvements existing or planned within the Project Area. Developer's plans, drawings, and proposals submitted to Agency for approval shall describe in reasonable detail the architectural character intended for the Project. The open spaces between buildings on the residential portion of the Property, where they exist, shall be designed, landscaped and developed with the same degree of excellence.

3. PROPERTY WORK

The Project shall substantially conform to the Property and building plans approved pursuant to Subsection A above. It shall be the responsibility of Developer, the architect and the contractor to develop the Project consistent with the aforementioned plans. Any substantial modification to the approved Property or building plans, as determined by the Director of Community Development, shall be referred to the Planning Commission for review and approval through a conformity report. Developer shall be responsible for the construction and installation of all improvements to be constructed or installed on the Property, including but not limited to the following:

a. Parking

Developer shall develop on-Property parking areas for the Property consisting of not less than required by applicable law.

b. Landscaping

Developer shall install and maintain on-Property landscaping and automatic irrigation pursuant to approved plans consistent with Chapter 20.47 of the Suisun City Municipal Code.

c. Lighting

Developer shall install and maintain on-Property lighting in a manner consistent the approved lighting and electrical plans. The design of light standards and fixtures shall be subject to the approval of the Director of Community Development.

d. Trash Storage

Trash storage areas shall be provided, of sufficient size to ensure containment of all solid waste materials generated from the Property in trash disposal and recycling bins. Adequate access shall be provided to the enclosures for refuse pickup.

e. Signs

A sign program shall be submitted to the City for approval. Building and, where necessary, electrical permits shall be obtained prior to installation, painting or erection of signs. Signs shall be designed, installed, and maintained in a manner consistent with the approved Property Plan and sign program.

4. UNDERGROUNDING UTILITIES

All new utility service connections servicing the Property shall be installed underground, including connections to facilities within the public right-of-way.

5. MECHANICAL EQUIPMENT

On-Property mechanical equipment, whether roof or ground mounted, shall be completely screened from public view. Screening material shall be constructed of materials which coordinate with the overall architectural theme. Where public visibility will be minimal, the Director of Community Development may permit use of landscaping to screen ground mounted equipment.

6. APPLICABLE CODES

All improvements shall be constructed in accordance with the California Building Code (with Suisun City modifications), the County of Solano Fire Code (with Suisun City modifications), the Suisun City Municipal Code, and current City standards.

7. OFFSITE IMPROVEMENTS

Pursuant to the Agreement, Developer shall perform, or cause to be performed, all offsite improvements required by law or as a condition to any governmental or local approval or permit.

ATTACHMENT NO. 3 SCHEDULE OF PERFORMANCE

	ITEM TO BE PERFORMED	TIME FOR PERFORMANCE
1.	Developer executes 3 copies of DDA and delivers same to Agency together with check for Deposit payable to Escrow Agent.	Prior to the public hearing specified in Event 2
2.	Agency holds public hearing on DDA and environmental document, approves or disapproves DDA (" Effective Date ")	On or before October 4, 2022.
3.	Agency executes 3 copies of DDA and delivers 1 copy with the Deposit check to Escrow Agent and 1 copy to Developer	Within 3 days of the Effective Date
4.	Developer delivers the Deposit to Escrow Agent.	Within 3 days of the Effective Date
5.	Developer, Agency and MSW execute and deliver to Escrow Agent 3 copies of the Assignment/Assumption	Within 3 days of the Effective Date
6.	Agency provides copies of any Due Diligence Documents and Developer commences, in its discretion, to physically inspect and conduct environmental investigations on the Property and perform all due diligence it requires.	Within 5 days after the Effective Date
7.	Title Company delivers Preliminary Report to Developer	Within 5 days of Opening of Escrow.
8.	Developer approves or disapproves title exceptions on Preliminary Report	Within 14 days after Event 7.
9.	Agency notifies Developer whether Agency will cure any disapproved exceptions	Within 5 days of Event 8.
10.	Developer prepares and submits to City and Agency preliminary plans, drawings and specifications in accordance with Concept Drawings and Property Plan, including architectural theme and treatment for the entire Property.	Within 30 days of commencement of Feasibility Period
11.	Agency approves Preliminary Drawings	Within 5 days of Event 10.
12.	Escrow Agent gives notice of fees, charges, costs and documents to close Escrow	3 days prior to Closing
13.	Deposits into Escrow by Agency:	See below

	ITEM TO BE PERFORMED	TIME FOR PERFORMANCE
	a) Grant Deed	On or before 1 business day preceding the Closing Date
	b) Taxpayer ID Certificate	Prior to Closing Date
14.	Deposits into Escrow by Developer:	See below
	a) Certificate of Acceptance (to be attached to the Grant Deed)	On or before 1 business day preceding the Closing Date
	b) PCOR	On or before 1 business day preceding the Closing Date
	c) Taxpayer ID Certificate	Prior to Closing Date
15.	Close of Escrow with recordation of Grant Deed and delivery of documents and monies (Close of Escrow)	Within 60 days after Opening of Escrow, <u>but in no event later than December 31, 2022</u>
16.	Developer commences pursuit of all necessary approvals and permits from City	Within 6 months from Close of Escrow
17.	Construction commences and Developer diligently pursues to completion	Not later than the 90 days following Event 16
18.	Developer completes construction of improvements and obtains a certificate of occupancy.	Within 6 months of commencement of construction
19.	Agency issues Certificate of Completion.	Within 15 days of Developer's request after Event 18.

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text of the Agreement; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and Agency. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The Executive Director of Agency shall have Agency to approve extensions of time without Agency Board action not to exceed a cumulative total of ninety (90) days as provided in Section 803 (but in no event may Close of Escrow occur after December 31, 2022).

ATTACHMENT NO. 4
GRANT DEED

FREE RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

Lionext Inc.
13021 Leffingwell Rd.
Santa Fe Springs, CA 90670
Attn: Hin Ming Law, CEO

(Space Above This Line For Recorder's Office Use Only)

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public agency, corporate and politic ("**Grantor**"), acting to carry out its functions under the Housing Law of the State of California, hereby grants to LIONEXT INC., a California corporation ("**Grantee**"), the real property ("**Property**") legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

As consideration for this conveyance, the Grantee covenants by and for itself and any successors in interest for the benefit of (i) Grantor, and (ii) the City of Suisun City ("**City**") as a third party beneficiary, as follows:

1. Governing Documents. The Property is conveyed pursuant to that certain Disposition and Development Agreement ("**DDA**") entered into by and between Grantor and Grantee dated _____, 2022. Grantee covenants and agrees for itself and its successors and assigns to use, operate and maintain the Property in accordance with the DDA and this Deed. In the event of any conflict between this Grant Deed and the DDA, the provisions of the DDA shall control.

2. Maintenance Covenants. Grantee covenants and agrees for itself, its successors and assigns, and every successor of any interest in the Property or any part thereof, that, after Agency's issuance of its Release of Construction Covenants, Grantee shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to the approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in perpetuity. Agency shall have all applicable remedies available at law or equity to enforce these covenants. Grantee hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply to actions by the City.

3. Use of Property. Grantee covenants that Grantee may only use the Property for residential purposes as consistent with the time period and other terms, covenants and

conditions set forth in the DDA. Grantee shall have no right to subdivide, separate, or partition the Property except as provided in the DDA. Breach of the terms, covenants, conditions, and provisions of the DDA shall be a material breach of this conveyance.

4. Encumbrances Prohibited. Prior to issuance of the Release of Construction Covenants by the Grantor as provided in the DDA, the Grantee shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Property, the construction of improvements on the Property, and any other expenditures necessary and appropriate to develop the Property, except as specifically provided in the DDA.

5. Non-Discrimination. Grantee covenants that except for the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with references to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

6. Reservation of Existing Streets. Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

7. Form of Nondiscrimination Clauses in Agreements. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, the following shall apply: Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons 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 land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, 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 race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee 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, sublessees, subtenants, or vendees in the land herein leased.”

c. **Contracts**: In contracts the following language shall appear: “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, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 of the land.”

The foregoing covenants shall remain in effect in perpetuity.

8. **Mortgage Protection**. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. **Covenants to Run With the Land**. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Property, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be duly executed by respective officers as of this _____ day of _____, 202__.

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF SUISUN CITY, a public agency, corporate
and politic

NOT TO BE EXECUTED
By: UNTIL CLOSING _____
Agency Chair

APPROVED AS TO FORM:

Date: _____, 202__

ALESHIRE & WYNDER, LLP

ATTEST:

By: _____
Elena Q. Gerli
Agency Counsel

By: _____
Anita Skinner
Agency Secretary

CERTIFICATE OF ACCEPTANCE

By its acceptance of this Grant Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of the Grant Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns.

2. The provisions of this Grant Deed are hereby approved and accepted.

LIONEXT INC.,
a California corporation

By: NOT TO BE EXECUTED
UNTIL CLOSING
Hin (Joe) Ming Law
Chief Executive Officer

By: NOT TO BE EXECUTED
UNTIL CLOSING
Ming Wai Ng
Secretary

_____, 2022

ATTACHMENT NO. A
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SOLANO, CITY OF SUISUN CITY, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOT 10, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997, IN BOOK 67 OF MAPS, AT PAGE 72, SOLANO COUNTY RECORDS.

PARCEL TWO

NON-EXCLUSIVE EASEMENTS FOR PUBLIC ACCESS AND UTILITIES APPURTENANT TO PARCEL ONE ABOVE, OVER AND ACROSS PORTIONS OF LOTS 1 AND 2, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT I, FILED SEPTEMBER 16, 1996 IN BOOK 66 OF MAPS, PAGE 42, BEING MORE PARTICULARLY DESCRIBED IN GRANT DEEDS RECORDED OCTOBER 17, 1997 INSTRUMENT NO. 1996-00070099, AND OCTOBER 3, 1997 INSTRUMENT NO. 1997-00066247, SOLANO COUNTY RECORDS.

APN: 0032-142-280

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT NO. 5

RELEASE OF CONSTRUCTION COVENANTS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Lionext Inc.
13021 Leffingwell Rd.
Santa Fe Springs, CA 90670
Attn: Hin Ming Law, CEO

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

RELEASE OF CONSTRUCTION COVENANTS

RECITALS:

Pursuant to that certain Disposition and Development Agreement ("**Agreement**") dated _____, 2022 between and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public agency, corporate and politic ("**Agency**") and LIONEXT INC., a California corporation ("**Developer**"), Developer has agreed to develop a residential development ("**Project**") on the Property (as defined below).

- A.** As referenced in the Agreement, Agency is required to furnish Developer with a Release of Construction Covenants upon completion of construction and development, which release shall be in such form as to permit it to be recorded in the Solano Official Records of the County Clerk of the County of Solano, California.
- B.** Developer has requested that Agency furnish Developer with the Release of Construction Covenants for the Property more particularly described on Exhibit A attached hereto and incorporated herein by reference ("**Property**").
- C.** The Agreement provided for certain covenants to run with the land, as those terms are defined in the Agreement.
- D.** This Release of Construction Covenants shall constitute a conclusive determination by Agency of the satisfactory completion by Developer of the construction and development required by the Agreement and of Developer's full compliance with the terms of the Agreement with respect to such construction and development but not the maintenance covenants herein which shall continue to run with the land pursuant to their terms.
- E.** Agency has conclusively determined that the construction and development on the Property required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE, the improvements required to be constructed under the Agreement have been satisfactorily completed in accordance with the provisions of said Agreement.

1. This Release shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof.
2. This Release shall not constitute evidence of Developer's compliance with the maintenance requirements in the Grant Deed, the provisions of which shall continue to run with the land.
3. This Release shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.
4. This Release is not a Notice of Completion as referred to in California Civil Code Section 3093.
5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, Agency has executed this Release of Construction Covenants
this _____ day of _____, 202_.

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY,
a public agency, corporate and politic

NOT TO BE EXECUTED
UNTIL CLOSING

By _____,
_____, Executive Director

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Date: _____, 202

By: _____

Elena Q. Gerli,
Agency Attorney

ATTEST:

Anita Skinner, Agency Secretary

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SOLANO, CITY OF SUISUN CITY, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

LOT 10, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997, IN BOOK 67 OF MAPS, AT PAGE 72, SOLANO COUNTY RECORDS.

PARCEL TWO

NON-EXCLUSIVE EASEMENTS FOR PUBLIC ACCESS AND UTILITIES APPURTENANT TO PARCEL ONE ABOVE, OVER AND ACROSS PORTIONS OF LOTS 1 AND 2, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT I, FILED SEPTEMBER 16, 1996 IN BOOK 66 OF MAPS, PAGE 42, BEING MORE PARTICULARLY DESCRIBED IN GRANT DEEDS RECORDED OCTOBER 17, 1997 INSTRUMENT NO. 1996-00070099, AND OCTOBER 3, 1997 INSTRUMENT NO. 1997-00066247, SOLANO COUNTY RECORDS.

APN: 0032-142-280

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT NO. 6

ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT

1. **Assignment:** MAIN STREET WEST PARTNERS, LLC, a California limited liability company ("**Assignor**") assigns to LIONEXT INC, a California corporation ("**Assignee**") as a Qualified Successor Developer its right to acquire and develop that certain real property identified as Parcel 7 ("**Assignment**") in that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Assignor and the Redevelopment Agency of the City of Suisun City ("**Agency**") as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; and (iv) that certain Fourth Amendment to the DDA dated April 29, 2016 (collectively the "**DDA**"). The Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement which the DOF approved and executed on February 1, 2016 ("**Settlement Agreement**"). The Settlement Agreement required the approval of the Oversight Board which did approve it pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and a binding obligation of Assignor as successor agency.
2. **Acceptance.** The Assignment shall be deemed automatically accepted by Assignee upon execution of that certain Disposition and Development Agreement between the Assignee and Agency ("**Agreement**").
3. **Qualified Successor Developer.** Agency hereby approves Assignee as a Qualified Successor Developer under the DDA.
4. **Reassignment.** If for any reason, the Agreement is not consummated by recordation of the Grant Deed as set forth therein ("**Grant Deed**"), all rights under this Assignment shall be deemed automatically assigned back to Assignor. Assignee shall cooperate with executing any documents reasonably requested to confirm the reassignment.
5. **Payment to Assignor at Closing.** Concurrently with the recordation of the Grant Deed under the Agreement to Assignee ("**Closing**"), Agency shall pay to Assignor the sum of _____ (\$_____) which is the pro rata portion of the

Disposition Fee pursuant to Section 7 of the Settlement Agreement and General Release of All Claims.

6. **Release on Closing.** Concurrently at the Closing, all obligations under the DDA with respect to Parcel 7 are deemed terminated in their entirety and both Assignee and Assignor are released from any obligations under the DDA as to Parcel 7 and Parcel 7 shall no longer be subject to the DDA. Notwithstanding the foregoing, Assignor shall remain obligated with respect to the remaining DDA obligations pursuant to the Settlement Agreement and General Release of All Claims with the Effective Date of _____, 2022.

ASSIGNOR:

MAIN STREET WEST PARTNERS, LLC, a
California limited liability company

NOT TO BE EXECUTED UNTIL
AFTER DDA EXECUTED

By: _____
Michael E. Rice, President

By: _____
Frank J. Marinello,
Vice President/Member

ASSIGNEE:

LIONEXT INC.,
a California corporation

By: _____
Hin (Joe) Ming Law
Chief Executive Officer

By: _____
Ming Wai Ng
Secretary

AGENCY:

SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY

NOT TO BE EXECUTED UNTIL
AFTER DDA EXECUTED

By: _____
Greg Folsom, Executive Director

ATTEST:

Anita Skinner, Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Elena Q. Gerli, Agency Counsel

RESOLUTION NO. SA 2022-

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND JOINT ESCROW INSTRUCTIONS WITH LIONEXT, INC FOR THE SALE OF APPROXIMATELY 0.21 ACRES LOCATED AT THE NORTH SIDE OF LINE STREET IN DOWNTOWN SUISUN CITY (SOLANO COUNTY ASSESSOR'S PARCEL NUMBER 0032-142-240 AND 0032-142-250)

WHEREAS, the Successor Agency ("**Agency**") is the owner of that certain unimproved real property located on the northeast corner of Main Street and Solano Street in the City of Suisun City, County of Solano, State of California (Assessor Parcel No. 0032-142-240 and 0032-142-250) ("**Property**"); and

WHEREAS, the Property (together with a number of other parcels of real property) is subject to that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Main Street West Partners, LLC, ("**MSW**") and the Redevelopment Agency of the City of Suisun City as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; (iv) that certain Fourth Amendment to the DDA dated April 29, 2016; and Resolution SA 2020-02 (cumulatively the "**Amendments**"). The Original DDA as modified by the Amendments is hereinafter referred to as the "**DDA**". Under the DDA, the Property was commonly referred to as Lot 10; and

WHEREAS, the Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement which the DOF approved and executed on February 1, 2016 ("**DOF Settlement Agreement**"). However, the DOF Settlement Agreement required the approval of the Oversight Board which did approve it pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and a binding obligation of the Successor Agency; and

WHEREAS, MSW and Agency each alleged that the other had breached the DDA. Subsequently MSW and the Agency entered into that certain Settlement Agreement and General Release of all Claims which was approved by the Successor Agency Board on November 17, 2020 and executed by the Agency on December 1, 2020 ("**2020 Settlement Agreement**"). Pursuant to the 2020 Settlement Agreement, the parties agreed to cooperate with respect to the sale of the remaining parcels including the Property to a Qualified Successor Developer and upon the closing of the sale, a prorata portion of the \$200,000 Disposition Fee shall be paid to MSW, the Qualified Successor Developer will be responsible

1 for the Economic Impact Fee and the Lighthouse Development Fee, and all the DDA shall
2 terminate with respect to the Property; and

3 **WHEREAS**, MSW has requested that it be entitled to assign its rights with respect to
4 the Property to Lionext, Inc (“**Lionext**”) as a Qualified Successor Developer and the Agency
5 desires to permit such assignment to Lionext with respect to the Property consistent with the
6 terms of the DDA and the 2020 Settlement Agreement; and

7 **WHEREAS**, pursuant to an appraisal prepared by Valbridge and Associates, the fair
8 market value for the property was determined to be \$160,000 (“**FMV**”); and

9 **WHEREAS**, the Agency and Lionext have negotiated terms of that certain Vacant
10 Land Purchase Agreement and Joint Escrow Instructions for the sale of the Property for FMV
11 of \$160,000. Pursuant to the DDA (Exhibit A), Lionext will open escrow with a \$13,000
12 deposit with Placer Title Company as escrow holder, a due diligence/feasibility period of 60
13 days and a closing date of 60 days after the execution of the PSA (“**Property Sale Price**”);
14 and

15 **WHEREAS**, the Agency desires to sell the Property to Lionext for a proposed mixed-
16 use development consistent with the City’s General Plan and Downtown Waterfront Specific
17 Plan, consistent with the terms of the Lionext DDA, subject to all necessary future analysis,
18 approvals and mitigation measures as required by the California Environmental Quality Act
19 (“**CEQA**”), and as provided pursuant to the terms and conditions of the Lionext DDA; and

20 **WHEREAS**, the net proceeds from the sale of the Property will be distributed to the
21 affected taxing entities pursuant to redevelopment agency dissolution laws; and

22 **WHEREAS**, CEQA requires the review of projects that have the potential to
23 adversely impact the environment. Before proceeding with the action before the City Council,
24 Lionext requires the execution of the DDA before it can invest time, money and effort in the
25 preparation of detailed development plans. At the time adequate detail is known about
26 development of the Property, the appropriate review as required under CEQA will be
27 undertaken.

28 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL ACTING
AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY
OF SUISUN CITY, AS FOLLOWS:**

Section 1. The above recitals are true and correct.

Section 2. The DDA with Lionext in substantially the form attached hereto is
hereby approved as well as the Assignment and Release Agreement among Lionext, MSW
and the Agency attached hereto. The Executive Director (or designee) is hereby authorized
on behalf of the Successor Agency to execute the DDA, and to make revisions to the DDA
(including approvals and extensions) which do not materially or substantially increase the
Agency’s obligations thereunder, to sign all documents, to make all approvals and take all
actions necessary or appropriate to carry out and implement the DDA and to administer the
Agency’s obligations, responsibilities and duties to be performed under the DDA.

PASSED AND ADOPTED at a regular meeting of the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Tuesday, October 4, 2022, by the following vote:

AYES: Boardmembers:
NOES: Boardmembers:
ABSENT: Boardmembers:
ABSTAIN: Boardmembers:

WITNESS my hand and the seal of said City this 4th day of October 2022.

Anita Skinner
City Clerk

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DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF SUISUN CITY
a public body, corporate and politic**

(“Agency”)

AND

**LIONEXT, INC.
a California corporation**

(“Developer”)

MSW Parcels 8 & 9

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of October 4, 2022 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public body, corporate and politic ("**Agency**"), and LIONEXT, INC., a California corporation ("**Developer**"). The parties agree as follows:

IV. (§100) PURPOSE OF THE AGREEMENT

A. Background. Agency owns that certain real property consisting of two contiguous parcels located on Line Street in the City of Suisun City constituting Assessor's Parcel Nos. 0032-142-240 and 0032-142-250 ("**Property**").

B. MSW DDA. The Property (together with a number of other parcels of real property) is subject to that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Main Street West Partners, LLC, ("**MSW**") and the Redevelopment Agency of the City of Suisun City (Seller's predecessor) ("**Original DDA**") as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; and (iv) that certain Fourth Amendment to the DDA dated April 29, 2016 (cumulatively the "**Amendments**"). The Original DDA as modified by the Amendments is hereinafter referred to as the "**MSW DDA**".

The Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract, and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement, which the DOF approved and executed on February 1, 2016 ("**Settlement Agreement**"). The Settlement Agreement required the approval of the Oversight Board, which was provided pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and constitutes a binding obligation of Seller as successor in interest to the RDA.

Pursuant to the MSW DDA, the Property is raw land. As set forth in the Schedule of Performance (as attached to the Fourth Amendment), MSW can assign its rights to acquire the Property to a third-party buyer and, upon assumption by the buyer of the development obligations with respect to the Property, the Property will no longer be subject to the terms of the DDA and MSW is released of its duties with respect to the Property.

MSW is willing to assign its rights under the DDA with respect to the Property to Developer. Agency is willing to permit such assignment to Developer which assignment will be deemed approved upon the Opening of Escrow (as defined below).

C. Best Interests. The Project is in the best and vital interests of Agency and the City of Suisun City (“City”), and the health, safety and welfare of the residents and taxpayers in the City, and is in accord with the public purposes and provisions of applicable state and local laws. Construction of the Project will provide additional jobs and may provide housing in accordance with the purposes and goals of Agency.

V. (§200) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

A. (§ 201) Affiliate.

The term “**Affiliate**” shall mean any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Developer, which shall include, without limitation, each of the constituent members of Developer’s limited liability company. For this provision, “**control**” means (i) with respect to a person that is a corporation, the right to exercise, directly or indirectly, at least fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and (ii) with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

B. (§ 202) Agreement.

The term “**Agreement**” shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference. The Attachments included with this Agreement include the following:

Attachment No. 1	Legal Description of Property
Attachment No. 1-A	Property Map
Attachment No. 2	Scope of Development
Attachment No. 3	Schedule of Performance
Attachment No. 4	Grant Deed
Attachment No. 5	Release of Construction Covenants
Attachment No. 6	Assignment, Assumption & Release Agreement

C. (§ 203) Appraisal.

The term “**Appraisal**” shall mean that certain appraisal prepared by Valridge Property Advisors dated May 9, 2018, which established the Purchase Price for the Site.

D. (§ 204) Appraised Value.

The term “**Appraised Value**” shall mean the fair market value established in the Appraisal and shall be the Purchase Price for the Site.

E. (§ 205) Assignment/Assumption Agreement.

The term “Assignment/Assumption” Agreement shall mean that certain Assignment, Assumption and Release Agreement in the form of Attachment No. 6 to be executed by Developer, Agency and MSW in accordance with Section 404.1.

F. (§ 206) Broker.

The term “**Broker**” shall have the meaning set forth in Section 902.3.

G. (§ 207) City.

The term “**City**” shall mean the City of Suisun City, California.

H. (§ 208) Closing

The term “**Closing**” or “**Closing Date**” shall mean the closing of Escrow by the Escrow Agent recording the Grant Deed distributing the funds and documents received through Escrow to the party entitled thereto as provided herein, which closing shall occur on or before the date established in the Schedule of Performance which **must occur absolutely not later than December 31, 2022 pursuant to requirements of the Surplus Land Act. Developer understands that the outside closing date CANNOT be extended for any reason.**

Developer Initials.

I. (§ 209) Commission.

The term “**Commission**” shall mean the sum to be paid to the Broker in accordance with Section 902.3

J. (§ 210) Days.

The term “**days**” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

K. (§ 211) Deposit.

The term “**Deposit**” shall mean the sum of Sixteen Thousand Dollars (\$16,000) delivered by Developer to Escrow Agent as set forth in the Schedule of Performance to be applied to the Purchase Price at the Closing.

L. (§ 212) Effective Date.

The term “**Effective Date**” shall mean the date this Agreement is executed by Agency and Developer after it has been approved by Agency at a public hearing.

M. (§ 213) Enforced Delay.

The term “**Enforced Delay**” shall mean any delay described in Section 903 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 903.

N. (§ 214) Escrow.

The term “**Escrow**” shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Property from Agency to Developer.

O. (§ 215) Escrow Agent.

The term “**Escrow Agent**” shall mean Placer Title Company which shall act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Kelly Guglielmo at Placer Title Company, 1300 Oliver Road, Suite 120, Fairfield, California 94534; (707) 429-2211; email address: kuglielmo@placertitle.com.

P. (§ 216) Feasibility Period.

The term “**Feasibility Period**” shall mean the sixty (60) day period as defined in Section 401 in which Developer shall determine whether the physical condition of the Property is suitable for Developer's intended use in accordance with this Agreement.

Q. (§ 217) Grant Deed.

The term “**Grant Deed**” shall mean that Grant Deed in substantially the form attached hereto as Attachment No. 4 by which Agency as Grantor will convey fee title to the Property to Developer as grantee.

R. (§ 218) Lighthouse Development Fee.

The term “**Lighthouse Development Fee**” shall mean the Lighthouse Development Fee as required by Agency Resolution 2004-10 which is set at \$1.0029 per square foot of land area and will be paid by Developer to City through Escrow at the Closing.

S. (§ 219) MSW.

The term “**MSW**” shall mean Main Street West as defined in Recital B.

T. (§ 220) MSW Payment.

The term “**MSW Payment**” shall mean the payment amount specified in Section 5 of the Assignment/Assumption Agreement to be paid to MSW at Closing.

U. (§ 221) Opening of Escrow.

Escrow shall be deemed open when the documents and funds specified in Section 404.1 are received by Escrow Agent.

V. (§ 222) Project

The term “**Project**” shall mean the facilities to be constructed by Developer on the Property as described in the Scope of Development attached hereto as Attachment No. 2.

W. (§ 223) Project Budget.

The term “**Project Budget**” shall mean the budget for the Project to be approved by the Agency during the Feasibility Period.

X. (§ 224) Purchase Price.

The term “**Purchase Price**” means the sum of One Hundred Thirty Thousand Dollars (\$130,000). The Purchase Price is the fair market value as established by the Appraisal.

Y. (§ 225) Release of Construction Covenants.

The term “**Release of Construction Covenants**” shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Attachment No. 5, which shall evidence that the construction and development of the New Facilities have been satisfactorily completed.

Z. (§ 226) Property.

The term “**Property**” shall mean the real property consisting of approximately .17 of an acre (APN 0032-142-300) legally described on Attachment No. 1.

AA. (§ 227) Property Map.

The Project shall be located upon the Property, which is within the City, as shown in the “**Property Map**” attached hereto as Attachment No. 1-A.

BB. (§ 228) Surplus Land Act.

The term “**Surplus Land Act**” shall mean California Government Code Sections 54220 et seq. and the applicable regulations which applies to the disposition of surplus real estate by governmental agencies.

CC. (§ 229) Title.

The term “**Title**” shall mean the fee title to the Property which shall be conveyed to Developer pursuant to the Grant Deed.

DD. (§ 230) Title Company.

The term “**Title Company**” shall mean Placer Title Company.

EE. (§ 231) Title Officer.

The term “**Title Officer**” shall mean Eric Seastrom at Placer Title Company, 1300 Oliver Road, Suite 120, Fairfield, California 94534; (707) 429-2211; email address: eseastrom@placertitle.com.

VI. (§300) PARTIES TO THE AGREEMENT; SURPLUS LAND ACT.

A. (§301) Agency.

1. Agency. Agency is the Successor Agency to the Redevelopment Agency of the City of Suisun City, a public body, corporate and politic. The term "Agency" as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the Agency. The office of Agency is located at 701 Civic Center Blvd, Suisun City, California 94585.

2. FIRPTA. Agency is not a “foreign person” within the parameters of the Foreign Investment in Real Property Tax Act (“**FIRPTA**”) or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or Agency has complied and will comply with all the requirements under FIRPTA or any similar state statute.

3. No Conflict. Agency’s execution, delivery and performance of its obligations set forth in this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

4. No Litigation. To Agency’s actual knowledge, there is no threatened or pending litigation against Agency challenging the validity of this Agreement or any of the actions proposed to be undertaken by Agency or Developer pursuant to this Agreement. “**Actual knowledge,**” as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of Agency’s employees and agents who have participated in the preparation of this Agreement and Developer’s acquisition of the Property.

5. Agency’s Participation. Agency’s participation in the Project is solely as seller of the Property and Agency is not participating in the Project as a developer or owner. Any actions by Agency which are not fully consistent with Agency’s role as seller of the Property are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to Developer. As such, the Project and Agency’s participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

6. MSW. MSW is willing to assign its rights and duties under the DDA with respect to the Property to Developer effective concurrently with the Effective Date (as defined below). Agency is willing to consent to such assignment and, as of the Effective Date (as defined in Section 2.1), the Property will no longer be subject to the DDA.

Developer agrees to purchase from Agency, and Agency agrees to sell to Developer the Property in AS-IS condition upon the terms and conditions in this Agreement.

B. (§302) Developer.

1. **Identification.** Developer is Lionext Inc., a California corporation, or its transferee as described in Section 303. The principal office of Developer for the purposes of this Agreement is located at 13021 Leffingwell Road, Santa Fe Springs, CA 90670. Developer represents and warrants to Agency that, as of the Effective Date and the Closing Date, Developer is and will be qualified to do business, is in good standing under the laws of the State of California, and has all requisite power and Agency to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. **Successors and Assigns.** Except as may be expressly provided herein below, all of the terms, covenants, and conditions of this Agreement shall be binding on, and shall inure to the benefit of, Developer and the permitted successors, assigns and nominees of Developer as to each portion of the Property. Wherever the term "**Developer**" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. **Qualifications.** The qualifications and identity of Developer are of particular concern to Agency, and it is because of such qualifications and identity that Agency has entered into this Agreement with Developer. Agency has considered the experience, financial capability, and product being marketed by Developer, the Property location and characteristics, the public costs of acquiring and developing the Property and return on investment, and the product mix necessary to produce a Project. Based upon these considerations, Agency has imposed those restrictions on transfer set forth in this Agreement.

C. (§303) Restrictions on Transfer.

1. **Transfer Defined.** As used in this Section, the term "**Transfer**" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Property, or the improvements thereon, and conveyance of the Property from Agency to Developer, a limited partnership or a limited liability company in which Developer (or its affiliate) is the administrative general partner or managing member (as applicable), provided for in this Agreement. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Transferor's immediate family. In the event Developer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer, or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest. In the event that Developer is a joint venture, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Prior to issuance of the Release of Construction Covenants, Developer shall not Transfer this Agreement or any of Developer's rights hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Agency, which shall not be unreasonably withheld or delayed, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval to any Transfer by Developer of its interest in the Property before the issuance of the Release of Construction Covenants, which Transfer requires Agency approval, Agency shall consider factors such as (i) whether the completion or implementation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Developer's obligations hereunder; and (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of a specific written agreement by Agency, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest in the Property or this Agreement (including without limitation an assignment or transfer not requiring Agency approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Property which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Agency an assumption agreement, in a form approved by Agency, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following, all of which shall constitute "**Permitted Transfers**" and shall not require the prior consent of Agency:

a. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512, but Developer shall notify Agency in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Property.

b. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of and improvements on the Property, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

c. A transfer in connection with a foreclosure or deed-in-lieu of foreclosure under any mortgage, deed of trust, or other form of conveyance described in subsection (a) above.

d. The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation

of the Property.

e. A sale or Transfer of forty-nine percent (49%) or more of ownership or control interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the Trustor or Transfers to a corporation or partnership in which the immediate family members or shareholders of the Transferor have a controlling majority interest of fifty-one percent (51%) or more.

f. A sale or Transfer to a California limited partnership in which Developer, or an Affiliate of Developer, is a general partner or to a California corporation in which Developer, or an Affiliate of Developer is the managing member. The term “**Affiliate**” shall mean (i) any entity in which Developer directly or indirectly owns or controls fifty percent (50%) or more of the voting and/or membership interests, or (ii) any entity in which the owner(s) of Developer directly or indirectly own or control fifty percent (50%) or more of the voting or membership interest.

g. The admission of a nonprofit corporation or a limited liability company wholly owned by a nonprofit corporation as a managing general partner of Developer, or the permitted successor thereof.

h. Execution of residential leases for the Units in the ordinary course of operations of the Property.

4. Restrictions After Completion. Subsequent to the issuance of the Release of Construction Covenants, except as set forth in Section 303.3 above, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Property without complying with any Transfer restrictions contained within the Grant Deed and the Regulatory Agreement, as applicable.

(§304) Applicability of Surplus Land Act. The parties believe that the sale of the Property under this Agreement is exempt from the Surplus Land Act under Government Code Section 54234 due to the existing MSW DDA.

VII. (§400) ACQUISITION AND DISPOSITION OF THE PROPERTY

A. (§ 401) Feasibility Period.

Within 5 days after the Effective Date, Agency shall deliver to Developer any and all documents related to the Property which it has in its possession and control (“**Due Diligence Documents**”). Due Diligence Documents shall not include the title information which shall be governed pursuant to Section 408.

Developer shall have a period of sixty (60) days from the date that Agency provides to Developer copies of all Due Diligence Documents (“**Feasibility Period**”).

During the Feasibility Period, Developer shall have the right to inspect the physical condition of the Property for the Project and, at its sole cost and expense, cost to conduct such engineering, feasibility studies, soils tests, environmental studies and other

investigations as Developer, in its sole discretion, may desire, to permit Developer to determine the suitability of the Property for the uses permitted by this Agreement to conduct such other review and investigation which Developer deems appropriate to satisfy itself to acquire the Property. Developer shall further have the right to make an examination of all licenses, permits, authorizations, approvals and governmental regulations which affect the Property, including zoning and land use issues and conditions imposed upon the Property by governmental agencies. During the Feasibility Period, Developer shall have access to the Property provided it complies with the provisions of Section 409.4.

Developer shall notify Agency on or before the end of the Feasibility Period, in writing, whether Developer has approved or disapproved the results of its investigation, such approval or disapproval to be given or withheld in Developer's reasonable discretion. If Developer disapproves the results of its investigations, such disapproval shall terminate the Agreement, in which case the Deposit will be returned to Developer as specified in Section 405, and the parties shall have no further obligations to the other under this Agreement. If Developer approves the results of its investigations, this Agreement shall remain in full force and effect, the Deposit shall become non-refundable (except in the case of a material Default by Agency), and the parties hereto shall have all of the rights and obligations as set forth herein. Failure of Developer to notify Agency of its approval or disapproval before the end of the Feasibility Period shall be conclusively deemed Developer's disapproval hereunder.

B. (§ 402) Conveyance.

In accordance with and subject to all the terms, covenants and conditions of this Agreement including the Schedule of Performance and payment of the Purchase Price, Agency agrees to convey the Property to Developer subject to the terms of the Grant Deed, and Developer specifically agrees to accept the Property in AS-IS condition and subject to the covenants to develop the Property for the uses consistent with the Scope of Development and the permissible uses as further described in Section 601 and the Grant Deed. The Purchase Price is the fair market value of the Property pursuant to the Appraisal.

C. (§ 403) Financial Capability.

Within the time set forth in the Schedule of Performance, Developer shall submit to Agency's Executive Director for approval evidence reasonably satisfactory to the Executive Director that Developer has the financial capability necessary for development of the Project thereon pursuant to this Agreement. Developer covenants and agrees to take all action, furnish all information, give all consents, and pay all sums reasonably required to keep the construction loan commitment in full force and effect and shall comply in all material respects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, audited financial statements, and documents in connection therewith.

D. (§404) Escrow.

1. Opening of Escrow. Within three (3) days of the Effective Date, the parties shall open an Escrow with Escrow Agent by causing an executed copy of this Agreement to be deposited with Escrow Agent which Escrow Agent shall sign and accept. Escrow shall

be deemed opened upon Escrow Agent's receipt of all of the following ("**Opening of Escrow**"): (i) the fully executed copies of this Agreement; (ii) Developer's Deposit; (iii) MSW deposits three (3) copies of the Assignment, Assumption and Release Agreement in the form of Attachment No. 6 executed by MSW ("**Assignment/Release Agreement**"); (iv) Developer deposits three (3) executed copies of the Assignment/Release Agreement; and (v) Agency deposits three (3) executed copies of the Assignment/Release Agreement. If Escrow is not opened (as defined above) within five (5) days after the Effective Date, Agency shall have the right to terminate this Agreement upon written notice to Buyer and Escrow Agent prior to the actual Opening of Escrow.

2. Completion and Distribution of Assignment/Release Agreements.

Upon Opening of Escrow, Escrow Holder shall (i) complete the "Effective Date" in the Assignment/Release Agreements with the date of Opening of Escrow; and (ii) complete the date of this Agreement in Paragraph 2. Thereafter, Escrow Holder shall deliver one (1) fully executed copy of the Assignment/Release to MSW at 710 Kellogg Street, Suisun City, CA 92585 Attn: President; one (1) fully executed copy of the Assignment/Release to Agency; and one (1) fully executed copy of the Assignment/Release to Developer.

3. Joint Escrow Instructions. This Agreement shall constitute the joint escrow instructions of Agency and Developer for the Property, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. Agency and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional Escrow instructions shall modify this document without specific written approval of the modifications by Developer and Agency.

E. (§405) Deposit.

Upon Opening of Escrow in accordance with Section 404, Developer shall deliver the Deposit directly to Escrow Agent.

If Developer defaults in its obligations under this Agreement, then Agency shall retain the Deposit as liquidated damages to compensate Agency for its expenses in obtaining a new developer, and other actual and consequential damages. In the event that Developer defaults in its obligations under this Agreement, then Agency shall retain the Deposit as liquidated damages under Section 411(4) for its expenses and costs and other actual and consequential damages.

F. (§406) Conditions to Close of Escrow for Acquisition by Developer.

1. Developer's Conditions to Closing. Developer's obligation to accept the Property and to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, "**Developer's Conditions to Closing**") within the time provided in the Schedule of Performance:

- a. Developer shall have approved the condition of the Property as set

forth in Section 401 and Developer shall have received any and all approvals required under CEQA (if required) provided the Property is deemed categorically exempt.

b. Title Company is committed to issue Developer's Title Policy insuring title to the Property is vested in Developer subject to conditions and exceptions specified in Section 408(4).

c. Agency shall have deposited into Escrow certificates ("**FIRPTA Certificates**") in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

d. Developer shall have obtained financing commitments for the development of the Property acceptable to Developer in accordance with Sections 403(1), and Agency shall have approved such commitments.

e. Agency shall have deposited or caused to be deposited into Escrow all the documents required under Section 407(3).

f. Agency is not in default under this Agreement.

Any waiver of the foregoing conditions must be express and in writing. In the event that the foregoing conditions have not been satisfied within the time provided therefor in the Schedule of Performance, either party may terminate this Agreement by delivering a written notice in accordance with Section 411, in which event the Deposit shall be returned to Developer.

2. Agency's Conditions to Closing. Agency's obligation to convey the Property and Agency's obligation to close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Agency, be conditional and contingent upon the satisfaction, or waiver by Agency, of each and all of the following conditions (collectively, "**Agency's Conditions to Closing**") within the time provided in the Schedule of Performance:

a. Developer shall have obtained evidence of financing commitments for the development of the Property in accordance with Sections 403(1) and Agency shall have approved such commitments.

b. Title Company is committed to issue Developer's Title Policy insuring title to the Property is vested in Developer subject to conditions and exceptions specified in Section 408.4.

c. d. Developer shall have deposited or caused to be deposited into Escrow all the documents required under Section 407(4).

d. Developer is not in breach of this Agreement.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy Agency's foregoing conditions or defaults in the performance of its obligations hereunder, Agency may terminate this Escrow.

3. **Both Parties' Conditions to Closing.** Prior to the Closing Date, Developer and Agency shall execute and deliver one or more certificates ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Property, date of closing, gross price, and taxpayer identification number for Developer and Agency. Prior to the Closing, Developer and Agency shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

G. (§407) Conveyance of the Property.

1. **Time for Conveyance.** Escrow shall close after satisfaction of all conditions to close of Escrow, but not later than the date specified in the Schedule of Performance, unless extended by the mutual agreement of the parties or any Enforced Delay. Possession of the Property shall be delivered to Developer concurrently with the conveyance of title to Developer.

2. **Escrow Agent to Advise of Costs.** On or before the date set in the Schedule of Performance, the Escrow Agent shall advise Agency and Developer in writing of the fees, charges, and costs necessary to clear title and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. **Deposits By Agency Prior to Closing.** On or before, but not later than 1:00 p.m. of the date set in the Schedule of Performance, Agency shall execute, acknowledge and deposit into Escrow the Grant Deed and such other documents are required to consummate the transaction.

4. **Deposits By Developer Prior to Closing.** On or before, but not later than 1:00 p.m. of the date set in the Schedule of Performance, Developer shall execute and acknowledge as may be required and deposit into Escrow (i) the Acceptance of Grant Deed to be attached to the Grant Deed prior to recordation (ii) the preliminary change of ownership form as required by Solano County; and (iii) funds and documents as required to consummate the transaction.

5. **Recordation and Disbursement of Funds.** Upon the completion by Agency and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to (i) buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause the Grant Deed to be recorded in the appropriate records of Solano to vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver Developer's Title Policy to Developer insuring title and conforming to the requirements of Section 408(4). Following recordation, the Escrow Agent shall deliver conformed copies of said instruments to Developer and Agency.

H. (§408) Title Matters.

1. **Condition of Title.** Agency shall convey to Developer fee title of the Property subject only to: (i) this Agreement and conditions in the Grant Deed; (ii) current real property taxes, a lien not yet payable; (iii) any liens caused by Developer including any such resulting from Developer's entry onto the Property under Section 409(4); and (v) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer. Agency shall convey title to Developer pursuant to the Grant Deed in the form set forth in Attachment No. 4.

2. **Agency Not to Encumber Property.** Agency covenants to Developer that it has not and will not, from the Effective Date of this Agreement through close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Property without express written permission of Developer.

3. **Approval of Title Exceptions.** Prior to the date in the Schedule of Performance, Agency shall deliver a preliminary report for the Property, dated no earlier than the date of this Agreement, to Developer including copies of all documents referenced therein ("**Title Report**"). Prior to the date in the Schedule of Performance ("**Title Approval Date**"), Developer shall deliver to Agency written notice, with a copy to Escrow Agent, specifying in detail any exception disapproved and the reason therefor. Prior to the date in the Schedule of Performance, Agency shall deliver written notice to Developer as to whether Agency will or will not cure the disapproved exceptions. If Agency elects not to cure the disapproved exceptions, Developer may terminate this Agreement without any liability of Agency to Developer, or Developer may withdraw its earlier disapproval. If Agency elects to cure the disapproved exceptions, Agency shall do so on or before the close of Escrow. If, after the Title Approval Date, Developer receives a supplement to the Title Report from the Title Company setting forth any new matter of record encumbering the Property which was not set forth on the original Title Report (or any previous supplement thereto) and of which Developer was not otherwise aware as of the Title Approval Date ("**New Title Matter**"), Developer may, on or prior to 5:00 p.m. P.S.T. on the fifth (5th) business day following Developer's receipt of notice of such New Title Matter ("**New Matter Approval Date**"), object to such New Title Matter by sending written notice thereof to Agency and Escrow Agent; provided, however, Agency shall remove any monetary liens which constitute New Title Matters regardless of whether Developer timely objects to such monetary liens. Developer's failure to object in writing to any New Title Matter on or prior to the New Matter Approval Date shall be automatically deemed to be Developer's approval of such New Title Matter and such New Title Matter shall thereafter be deemed to be a permitted encumbrances. If Developer delivers written objection to any New Title Matter on or prior to the New Matter Approval Date applicable thereto, and Agency does not deliver as of 5:00 p.m. P.S.T. on the fifth (5th) business day following the New Matter Approval Date ("**Agency Response Date**") written notice that Agency covenants and agrees to remove prior to the Closing such New Title Matter objected to by Developer, then Developer may terminate this Agreement by delivery of written notice thereof to Agency and Escrow Agent on or before 5:00 p.m. P.S.T. on the second (2nd) business day following Agency Response Date ("**New Matter Termination Date**"). Developer's failure to terminate this Agreement in writing as a result of any New Title Matter on or prior to the New Matter Termination Date shall constitute

Developer's waiver of its right to terminate this Agreement as a result of such New Title Matter.

4. Developer's Title Policy. At the Closing at Developer's expense, Title Company shall issue to Developer an ALTA (non-extended) owner's policy of title insurance ("**Developer's Title Policy**") with title to the Property vested in Developer with an insured amount equal to the Purchase Price, containing only exceptions as approved, waived or caused by Developer in accordance with this Section. Developer's Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested at Developer's cost and expense.

I. (§409) Condition of Property; AS-IS Acquisition.

1. AS-IS Acquisition.

DEVELOPER ACKNOWLEDGES AND AGREES THAT AGENCY IS CONVEYING THE PROPERTY TO DEVELOPER IN "AS-IS" CONDITION WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND AND SHALL NOT BE RESPONSIBLE FOR ANY HAZARDOUS MATERIALS OR CONDITIONS ON THE PROPERTY.

2. Property Assessment and Remediation.

Developer shall be responsible for conducting assessments of the Property and for any required remediation if Developer accepts the Property pursuant to the terms of this Agreement. Agency shall be entitled to review any remedial workplan prepared for the Property. Agency is conveying the property in an "AS-IS" condition and shall not be responsible for any Hazardous Materials or hazardous conditions on the Property. Agency is acquiring the Property solely to accommodate the Project and, therefore, Developer acknowledges that the provisions of this Section 409 is material to Agency's entering into this Agreement.

3. Disclaimer of Warranties.

Upon the Close of Escrow, Developer shall acquire the Property in its "AS-IS" condition and shall be responsible for any defects in the Property, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Property, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, abandoned wells or other structures located on, under or about the Property. Agency makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property, the suitability of the Property for the Project, or the present use of the Property, and specifically disclaims all representations or warranties of any nature concerning the Property made by them, the City and their employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate air, water rights, utilities, present and future zoning, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Property is suited, or drainage. Agency makes no representation or warranty concerning the compaction of soil upon the Property, nor of the suitability of the soil for construction.

4. Right to Enter Property; Indemnification.

Subject to compliance with the requirements set forth below, Agency grants to Developer, its agents and employees a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be done at Developer's sole cost and expense.

Prior to entering the Property, Developer shall obtain Agency's written consent which shall not be unreasonably withheld or delayed provided Developer complies with all the following requirements. Developer shall (i) notify Agency prior to each entry of the date and the purpose of intended entry and provide to Agency the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations (including issuance of City permits); (iv) allow an employee of Agency to be present at all times; (v) keep the Property free and clear of all materialmen's liens, lis pendens and other liens or encumbrances arising out of the entry and work performed under this paragraph; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California; (vii) provide to Agency prior to initial entry a certificate of insurance evidencing that Developer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) which insurance names Agency as additional insured; and other requirements specified in Section 506; (viii) repair all material damage to the Property resulting from Developer's entry and investigation of the Property and leave the Property in a safe condition; (ix) provide Agency copies of all studies, surveys, reports, investigations and other tests derived from any inspection without representation or warranty but with the right of Agency to use the report without further consent from or payment to the issuer; and (x) take the Property at Closing subject to any title exceptions caused by Developer exercising this license to enter.

Developer agrees to indemnify, defend and hold Agency free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which Agency may suffer or incur as a consequence of Developer's exercise of the license granted pursuant to this Section or any act or omission by Developer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Developer (except Agency and its agents) with respect to the Property, excepting any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) arising from the mere discovery by Developer of any hazardous materials or conditions and excepting to the extent such claims arise out of the negligence or misconduct of Agency.

Notwithstanding termination of this Agreement for any reason, the obligations of Developer under this Section shall remain in full force and effect.

5. Natural Hazard Disclosure Report. Within five (5) days of the Opening of Escrow, Escrow Agent shall order a Natural Hazards Disclosure report issued on the Property by Disclosure Source ("**NHD Report**") to be delivered to Developer. If Developer disapproves the NHD Report, it must do so in writing within ten (10) days of receipt or Developer is deemed to have approved the NHD Report.

6. Hazardous Materials. Except for any material Due Diligence Documents in Agency's possession and control which was not provided to Developer, Developer understands and specifically agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Property, but under no circumstances shall Developer look to Agency or City for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Agency, City, their directors, officers, employees, and agents, and their respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Agency and City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against Agency or City, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:**

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

DEVELOPER'S INITIALS: _____ **AGENCY'S INITIALS:** _____

For purposes of this Section 409, the following terms shall have the following meanings:

a. "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted, or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

b. "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Property, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Property is capable of such compliance.

d. "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental Agency, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivative product or byproduct thereof; (B) defined as a "hazardous waste" or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(n)(1)-(2) of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely

hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer's release as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity, with respect to any act or omission of Developer (its employees, persons, invitees, agents, assignees, contractors, subcontractors) related to the Property and/or the Project.

J. (§410) Costs of Escrow.

1. **Allocation of Costs.** Escrow Agent is directed to allocate costs as follows:

(i) Developer shall pay the cost of Developer's Title Policy including premiums for any additional insurance, extended coverage or special endorsements and the Lighthouse Development Fee (which is to be paid to the City).

(ii) Agency shall pay any documentary transfer taxes, the cost of the NHD Report, the MSW Payment (pursuant to the Assignment/Assumption Agreement) and the Commission.

(iii) Developer shall pay any recording fees in connection with the recordation of the Grant Deed.

(iv) Developer and Agency shall each pay one-half (1/2) of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges as well as any title cancellation fees.

2. **Proration and Adjustments.** As Agency is exempt from real estate taxes and assessments on the Property, no prorations shall be made by the Escrow Agent. Developer shall be responsible for any and all real estate taxes effective commencing with the Closing.

3. **Extraordinary Services of Escrow Agent.** It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest

in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. Escrow Agent's Right to Retain Documents. Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The parties jointly and severally promise to pay such sums upon demand.

K. (§411) Termination of Escrow.

1. Termination. Escrow may be terminated by demand of either party which then shall have fully performed its obligations hereunder required to be performed by the date of such demand if:

a. The Conditions to Closing have not occurred or have not been approved, disapproved, or waived as the case may be, by the approving party by the date established herein for the occurrence of such Condition, including any grace period pursuant to this Section; or

b. Either party is in breach of the terms and conditions of this Agreement after the expiration of any applicable notice and cure periods; or

c. Either party has been granted such right expressly in this Agreement, including, but not limited to, the right to terminate pursuant to Section 407.

In the event of the foregoing, the terminating party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party. No demand shall be recognized by the Escrow Agent until fifteen (15) days after the Escrow Agent shall have mailed copies of such demand to the non-terminating party, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the fifteen (15) day period. In the event of such objections, the opportunity to cure shall be provided as stated below in subsection 2 of this Section. In addition, the Escrow Agent is authorized to hold all money, papers, and documents until instructed in writing by both Developer and Agency or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the Escrow shall be closed as soon as possible and neither party shall have any further liability to the other.

2. Opportunity to Cure. Prior to Closing, in the event any of the Conditions to Closing are not satisfied or waived by the party with the power to approve said Conditions ("**Approving Party**"), then such party shall explain in writing to the other party ("**Non-approving Party**") the reason for the disapproval. Thereafter, the Non-approving Party shall have thirty (30) days ("**Cure Period**") to satisfy any such Condition to Closing, and only if such Conditions still cannot be satisfied may the Approving Party terminate the Escrow. In the event Escrow is not in a condition to close because of a default by any party, and the performing party has made demand as stated in subsection 1 of this Section, then upon the

non-performing party's delivering its objection to Escrow Agent and the performing party within the Cure Period, the non-performing party shall have the right to cure the default in accordance with and in the time provided in Section 801.

3. Other Duties upon Termination. Upon termination of Escrow pursuant to this Section for any reason, the Parties shall have the following duties and obligations in addition to any others described above:

a. In the event such termination is due to the default of Developer, then subject to the rights and consents of the third party authors, all non-privileged and non-proprietary plans, drawings, specifications, reports, and other documents prepared by Developer or Developer's contractors or vendors shall become the property of Agency and shall be delivered to Agency, without representation or warranty, by Developer within ten (10) days of receipt of notice from Agency.

b. In the event such termination is due to the default of Agency, Developer shall be entitled to terminate this Agreement, and in such case Developer shall not be required to repay Agency any of the amounts described in subparagraph (b) above, but Developer shall not be entitled to any damages of any kind; provided, however, Agency shall reimburse Developer for reasonable Project costs, incurred prior to such termination, but not yet paid as of termination.

c. Any portion of the Property that has been conveyed to Developer prior to such termination shall be reconveyed to Agency within thirty (30) days following such termination. Developer agrees to execute any documents and take all actions necessary to accomplish the reconveyance.

4. Liquidated Damages.

THE PARTIES HERETO, BEFORE ENTERING INTO THIS TRANSACTION, HAVE BEEN CONCERNED WITH THE FACT THAT SUBSTANTIAL DAMAGES WILL BE SUFFERED BY AGENCY IN THE EVENT THAT ESCROW SHOULD FAIL TO CLOSE. WITH THE FLUCTUATION IN LAND VALUES, THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENTAL REGULATIONS, THE FLUCTUATING MONEY MARKET FOR REAL ESTATE, AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY, THE PARTIES REALIZE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY PRIOR TO SIGNING THIS AGREEMENT, THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY AGENCY IN THE EVENT THAT ESCROW FAILED TO TIMELY CLOSE. ACCORDINGLY, THE PARTIES HEREBY AGREE THAT A REASONABLE ESTIMATE OF SAID DAMAGES IS THE AMOUNT OF THE DEPOSIT TO BE MADE BY DEVELOPER, PURSUANT TO SECTION 404 ABOVE. IF ESCROW FAILS TO CLOSE DUE TO THE DEFAULT OF DEVELOPER, AGENCY SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THIS PROVISION DOES NOT APPLY TO OR LIMIT IN ANY WAY THE INDEMNITY OBLIGATIONS OF DEVELOPER UNDER THIS AGREEMENT.

Agency's Initials _____ Developer's Initials _____

L. (§412) Responsibilities of Escrow Agent.

1. **Depositing of Funds.** In accordance with Section 404, all funds received in Escrow shall be deposited by the Escrow Agent in a federally insured special interest-bearing Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. **Notices.** All communications from the Escrow Agent shall be directed to the addresses and in the manner provided in Section 901 of this Agreement for notices, demands and communications between Agency and Developer.

3. **Sufficiency of Documents.** The Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of the Escrow Agent is to accept such documents and follow Developer's and Agency's instructions for their use.

4. **Completion of Documents.** The Escrow Agent shall complete the date of Closing into the Assignment Assumption and Release of Agreement as the Effective Date.

5. **Exculpation of Escrow Agent.** The Escrow Agent shall in no case or event be liable for the failure of any of the Conditions to Closing of this Escrow, or for forgeries or false personation, unless such liability or damage is the result of negligence or willful misconduct by the Escrow Agent.

6. **Responsibilities in the Event of Controversies.** If any controversy documented in writing arises between Developer and Agency or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Property prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and Agency of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

VIII. (§500) DEVELOPMENT OF THE PROPERTY.

A. (§501) Scope of Development.

The Property shall be developed by Developer as provided in the Scope of Development and the plans and permits approved by Agency and City pursuant to Section 502. Developer shall commence and diligently prosecute the Project to completion within the time provided and otherwise in strict compliance with this Agreement. Construction of the Project shall commence as specified in the Schedule of Performance.

B. (§502) Development Plans, Final Building Plans and Environmental Review.

1. Proposed Development's Consistency With Plan and Codes.

Developer shall obtain all entitlements at its own cost for approval of the Project. Agency warrants and represents that the City's General Plan and Zoning Ordinance permit Developer's proposed development, and construction, operation, and use of the Property as provided in this Agreement including, without limitation, the Scope of Development, subject only to (i) those development approvals yet to be obtained, including, if necessary, proposed General Plan and Zoning Ordinance amendments, Property Plan Review and subdivision approval (if required), and (ii) City's and Agency's review and approval of the Project in accordance with the California Environmental Quality Act; provided that it is expressly understood by the parties hereto that Agency makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City and Agency, Agency and City reserving full police power Agency over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, Agency has reviewed Developer's Basic Concept Drawings. On or before the date set forth in the Schedule of Performance, Developer shall submit to the City preliminary, and thereafter final, drawings and specifications for development of the Property and each Property thereof in accordance with the Scope of Development, and all in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include Property plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by City (if applicable) and by mutual consent of Agency and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including for Property plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Property.

3. Developer Efforts to Obtain Approvals. Developer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in City's Municipal Code and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Agency Assistance. Subject to Developer's compliance with (i) the applicable City and Agency development standards for the Property, and (ii) all applicable

laws and regulations governing such matters as public hearings, Property plan review and environmental review, Agency agrees to provide reasonable assistance to Developer, at no cost to Agency, in the processing of Developer's submittals required under this Section. City or Agency's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Disapproval. Agency shall approve or disapprove any submittal made by Developer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Developer will note the 30-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing the reason for the disapproval and the changes which Agency requests be made. Agency's failure to disapprove the submittal within thirty (30) days shall be deemed an approval of the submittal. Developer shall make the required changes and revisions which would not materially impact the economic feasibility of the Project and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days after the date of disapproval. Thereafter, Agency shall have an additional thirty (30) days for review of the resubmittal, but if Agency disapproves the resubmittal, then the cycle shall repeat, until Agency's approval has been obtained. The foregoing time periods may be shortened if so specified in the Schedule of Performance.

6. CEQA. The term "**Environmental Review**" shall mean the investigation and analysis of the Project's impacts on the environment as may be required under the California Environmental Quality Act ("**CEQA**"), Public Resources Code §21000, et seq., and the National Environmental Policy Act (42 U.S.C. §4321 *et seq.*, "**NEPA**") if required. or of the Project's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species as may be required by the California Endangered Species Act ("**CESA**"), Fish and Game Code §2050, et seq., and/or the U.S. Endangered Species Act ("**USESA**"), 16 U.S.C. §1531, et seq., or other applicable California or federal law or regulation.

C. (§503) Schedule of Performance; Progress Reports.

Subject to Section 903, Developer shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay, as defined in Section 903. Developer shall keep Agency informed of the progress of construction and shall submit monthly written reports of the progress of the construction to Agency in the form required by Agency.

D. (§504) Indemnification During Construction.

During the periods of construction on the Property and until such time as Agency has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, Developer agrees to and shall indemnify and hold Agency and the

City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Property and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of Developer or its agents, servants, employees, or contractors. Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of Agency or the City, or their respective agents, servants, employees, or contractors. Agency and City shall not be responsible for any acts, errors, or omissions of any person or entity except Agency and the City and their respective agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination of this Agreement.

E. (§505) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Property pursuant to Sections 409(4) and prior to the commencement of any demolition work and/or construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Agency, during the entire term of such entry or construction, the following policies of insurance, as applicable:

1. **Commercial General Liability Insurance.** A policy of commercial general liability insurance written on a per occurrence basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate.

2. **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Developer, against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Developer in the course of carrying out the work or services contemplated in this Agreement.

3. **Automobile Insurance.** A policy of automobile liability insurance written on a per accident basis in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned (if applicable), leased, hired, and non-owned vehicles.

4. **Builder's Risk Insurance.** A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name Agency, City, and their officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Agency, City, and their officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may

not be amended or cancelled without providing thirty (30) days prior written notice to Agency, City and Developer. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Executive Director. No work or services under this Agreement shall commence until Developer has provided Agency with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by Agency.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("**Risk Manager**") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain (if applicable) the same policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which Developer may be held responsible for the payment of damages to any persons or property resulting from Developer's activities or the activities of any person or persons for which Developer is otherwise responsible.

F. (§506) City and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Property which are Developer's responsibility under the applicable Scope of Development, Developer shall at his own expense secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City or Agency which are standard for and uniformly applied to similar projects in the City.

G. (§507) Rights of Access.

Representatives of Agency shall have the reasonable right to access the Property upon reasonable prior notice without charges or fees, at any time during normal construction hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of Agency shall be those who are so identified in writing by the Executive Director of Agency. Each such representative of Agency shall identify himself or herself at

the job Property office upon his or her entrance to the Property, and shall provide Developer, or the construction superintendent or similar person in charge on the Property, a reasonable opportunity to have a representative accompany him or her during the inspection. Agency shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of Agency's exercise of this right of access.

H. (§508) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

I. (§509) Nondiscrimination During Construction.

Developer, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

J. (§510) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied subsequent to conveyance of title of the Property. Until the date Developer is entitled to the issuance by Agency of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Property, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

K. (§511) Rights of Holders of Approved Security Interests in Property.

1. **Definitions.** As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. **No Encumbrances Except Mortgages to Finance the Project.** Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the development and/or construction of the improvements are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for the construction and development of improvements on the Property, and for any other expenditures necessary and appropriate to develop the Property under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the

existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. Developer (or any entity permitted to acquire title under this Section) shall notify Agency in advance of any mortgage, if Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of Agency, which shall not be unreasonably withheld. Any lender approved by Agency pursuant to Section 403 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, Developer shall promptly notify Agency of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Property, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Property whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion.

5. Notice of Default to Holders of Mortgages, Deed of Trust or other Security Interest. Whenever Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Agency shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Agency therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of Agency are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

- a. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and
- b. add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or

as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first submitting evidence satisfactory to Agency that it has the qualifications and financial responsibility necessary to construct and complete the improvements and enter into an agreement with Agency with respect to the obligations hereunder. Any holder properly completing such improvements shall be entitled, upon written request made to Agency, to a Release of Construction Covenants from Agency.

7. Agency's Rights upon Failure of Holder to Complete Improvements.

In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Property or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Agency may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- b. All expenses incurred by the holder with respect to foreclosure, if any;
- c. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Property, such as insurance premiums or real estate taxes, if any;
- d. The costs of any improvements made by such holder, if any; and
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by Agency.

In the event that the holder does not exercise its option to construct afforded in this Section, and Agency elects not to purchase the mortgage of holder, upon written request by the holder to Agency, Agency agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Agency). The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs a. through e. hereinabove, and any balance remaining thereafter shall be applied as follows:

- (1) First, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(2) Second, to reimburse Agency, on its own behalf and on behalf of the City, for all payments made by Agency to discharge any other encumbrances or liens on the Property or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(3) Third, to reimburse Agency, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Agency, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(4) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of Agency to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Agency of a Release of Construction Covenants for the Property or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Agency may cure the default prior to completion of any foreclosure. In such event, Agency shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by Agency in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to:

- a. Any mortgage for financing permitted by this Agreement; and
- b. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided, that nothing herein shall be deemed to impose upon Agency any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Property in the event of its enforcement of its lien.

9. Right of Agency to Satisfy Other Liens on the Property After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property or any portion thereof, Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

L. (§512) Release of Construction Covenants.

Upon the completion of all construction required to be completed by Developer on the Property, Agency shall furnish Developer with a Release of Construction Covenants for the Property in the form attached hereto as Attachment No. 5 upon written request therefor by Developer. The Release of Construction Covenants shall be executed by the Executive

Director and notarized so as to permit it to be recorded in the office of the Recorder of Solano County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Property and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Property shall not be permitted. A partial Release of Construction Covenants applicable to less than the entire Property may be issued in the sole discretion of the Agency.

After the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Property, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed. After issuance of a Release of Construction Covenants, Agency shall not have any rights or remedies under this Agreement with respect to the Property, except as otherwise set forth or incorporated in the Deed.

Agency shall not unreasonably withhold or delay a Release of Construction Covenants. If Agency refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, Agency shall provide a written statement of the detailed reasons Agency refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Agency's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Agency will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred percent (100%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Agency.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the City before the Release of Construction Covenants is issued.

M. (§513) Estoppels.

No later than fifteen (15) days after the written request of Developer or any holder of a mortgage or deed of trust, Agency shall, from time to time and upon the request of such holder, execute and deliver to Developer or such holder a written statement of Agency that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of Agency, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to

Agency.

IX. (§600) USES AND MAINTENANCE OF THE PROPERTY

A. (§601) Uses of the Property.

Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Property pursuant to this Agreement and thereafter, neither the Property nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Property or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Property or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain the Property in accordance with this Agreement and the Grant Deed.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Property solely for the purpose of constructing, maintaining and operating the Project meeting the requirements and restrictions of this Agreement.

B. (§602) Obligation to Refrain from Discrimination.

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Developer, or any person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof (except as permitted by this Agreement). The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

C. (§603) Form of Nondiscrimination and Non-segregation Clauses.

Subject to the tenancy/occupancy restrictions on the Affordable Restricted Units not prohibited by federal law as embodied in this Agreement, which may modify the following nondiscrimination clauses, the following shall apply: Developer shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

- 1. Deeds:** In deeds the following language shall appear: "The grantee herein

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

2. Leases: In leases the following language shall appear: “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 race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

3. Contracts: Any contracts which Developer or Developer’s heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the Property shall contain a nondiscrimination and non-segregation clause substantially as set forth in Section 603 and in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

D. (§604) Maintenance of Improvements.

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, that, after Agency’s issuance of its Release of Construction Covenants, Developer shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to Developer’s approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in perpetuity. Developer’s further obligations to maintain the Property, and Agency’s remedies in the event of Developer’s default in performing such obligations, are set forth in Grant Deed. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply.

E. (§605) Effect of Covenants.

Agency is a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, whether appearing in the Grant Deed in its

own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Agency shall run without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Property, and shall be effective as both covenants and equitable servitudes against the Property. Agency shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. In the event Agency no longer exists or lacks legal Agency to enforce the terms and provisions of this Agreement or any of the covenants provided pursuant to this Agreement, the same may be enforced by the City. With the exception of the City, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Grant Deed.

X. (§700) SPECIAL PROVISIONS

F. (§ 703) Minor Amendments.

Each party agrees to consider reasonable requests for amendments to this Agreement which may be made by the other party, lending institutions, or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of Agency and Developer. On behalf of Agency, the Executive Director shall have Agency to make minor amendments to this Agreement, including, but not limited to, the granting of extensions of time to Developer, so long as such actions do not materially change the Agreement or make a commitment of additional funds of Agency. All other changes, modifications, and amendments shall require the prior approval of Agency's governing board.

XI. (§800) DEFAULTS, REMEDIES AND TERMINATION

F. (§801) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

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 until thirty (30) days after giving such notice. 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 provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing

any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to 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.

G. (§802) Legal Actions.

1. **Institution of Legal Actions.** In addition to any other rights or remedies, and subject to the requirements of Section 801, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Solano, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

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

3. **Acceptance of Service of Process.** In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director or Secretary of Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or outside of the State of California.

H. (§803) Rights and Remedies are Cumulative.

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

I. (§804) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy; provided, however, this remedy may not be imposed on Developer prior to the Closing.

J. (§805) Right of Reverter.

Agency shall have the right, at its option, upon one hundred twenty (120) days prior written notice, to reenter and take possession of Agency Parcel or any portion thereof with all improvements thereon and to terminate and re-vest in Agency the estate conveyed to

Developer, if after conveyance of the estate and prior to the recordation of the Release of Construction Covenants, Developer (or his successors in interest) shall:

1. Fail to commence construction of the improvements as required by this Agreement, if such failure is in violation of the Schedule of Performance for a period of one hundred twenty (120) days, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to this Agreement; or

2. Abandon or substantially suspend construction of the improvements (other than as caused by force majeure or an Enforced Delay) for a period of one hundred twenty (120) days after written notice of such abandonment or suspension from Agency, provided that Developer shall not have obtained an extension of time to which Developer may be entitled pursuant to this Agreement; or

3. Assign or attempt to assign this Agreement, or any rights herein, or Transfer, or suffer any involuntary Transfer of, the Property, or any part thereof, in violation of this Agreement, and such violation shall not be cured within one hundred twenty (120) days after the date of receipt of written notice thereof by Agency to Developer.

The right to re-enter, repossess, terminate, and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any mortgage, deed of trust, or other security interests permitted by this Agreement; or

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

Upon the re-vesting in Agency of possession of the Property, or any part thereof, as provided in this Section 805, Agency shall, pursuant to its responsibilities under state law, use its best efforts to release, or resell or re-grant the Property, as necessary and legally permitted, as the case may be, or any part thereof, as soon and in such manner as Agency shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Agency and in accordance with the uses specified for the Property.

In the event of a resale, the proceeds thereof shall be applied as follows:

1. First, to reimburse Agency on its own behalf or on behalf of the City for all reasonable costs and expenses incurred by Agency, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Property (but less any income derived by Agency from the Property or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by Agency, as would have been payable if the Property were not so exempt); any payments made or necessary to be made to

discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property or part thereof; and amounts otherwise owing Agency by Developer, its successors, or transferees; and

2. Second, to reimburse Developer, its successor or transferee, up to the amount equal to (i) the costs incurred for the development of the Property and for the agreed development expenses and improvements existing on the Property at the time of the re-entry and repossession, less (ii) any gains or income withdrawn or made by Developer from the Property or the improvements thereon.

3. Any balance remaining after such reimbursements shall be retained by Agency as its property.

To the extent that the right established in this Section involves a forfeiture, it must be strictly interpreted against Agency, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that Agency will sell the Property to Developer for development, and not for speculation in undeveloped land.

K. (§806) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between Developer and Agency only, in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as the same may be amended or re-codified from time to time. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs, including expert witness fees, the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

XII. (§900) GENERAL PROVISIONS

F. (§901) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and

persons as each party may from time to time by written notice designate to the other and who initially are:

Agency: Suisun City Successor Agency
701 Civic Center Blvd
Suisun City, California 94585
Attn: Executive Director

Copy to: Aleshire & Wynder, LLP
2361 Rosecrans Avenue, Suite 475
El Segundo, CA 90245
Attn: Elena Gerli, Esq.

Owner: Lionext Inc.
13021 Leffingwell Road
Santa Fe Springs, CA 90670
Attn: Hin (Joe) Ming Law, CEO

Copy to: _____

G. (§902) Nonliability of City and Agency Officials and Employees; Conflicts of Interest; Commissions.

1. **Personal Liability.** No member, official, employee, agent or contractor of City or Agency shall be personally liable to Developer in the event of any default or breach by Agency or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Agency's liability.

2. **Financial Interest.** No member, official, employee or agent of City or Agency shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. **Commissions.** Developer retained broker Eric Dakin ("**Developer's Broker**"). Agency has agreed to pay at Closing a commission to Developer's Broker equal to Three Thousand Two Hundred Dollars (\$3,200) ("**Commission**"). Agency shall have no further duty to Developer's Broker, including the right of the Agency to voluntarily consent to termination of this Agreement with Developer. Except for the Limited Commission, each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

H. (§903) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement.

Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Property and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Agency or City shall not excuse performance by Agency unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as provided in Section 401), and (ii) Developer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Agency and Developer. The Executive Director of Agency shall have Agency on behalf of Agency to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days, excluding any Enforced Delay, with respect to the development of the Property.

I. (§904) Books and Records.

1. Developer to Keep Records. Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by Agency.

2. Right to Inspect. Either party shall have the right, upon not less than seventy-two (72) hours prior written notice, during normal business hours, to inspect the books and records of any other party pertaining to the Property as pertinent to the purposes of this Agreement.

3. Ownership of Documents. Subject to the rights and consents of the authors, copies of all material drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not proprietary, privileged or confidential shall be delivered to Agency upon request in the event of a termination of this Agreement; however, Developer shall be entitled to reimbursement from Agency for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors as a result

of the exercise by Agency of its rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer or Developer's subcontractors and/or consultants shall be delivered without representation or warranty by Developer. Agency shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by Agency, and Developer shall have no liability therefor.

J. (§905) Assurances to Act in Good Faith.

Agency and Developer agree to execute all documents and instruments and to take all action, including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Property as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Property in accordance with the provisions hereof. Agency and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

K. (§906) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety. The recitals are incorporated herein.

L. (§907) Entire Agreement, Waivers and Amendments.

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Agency or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

M. (§908) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

N. (§909) Time for Acceptance of Agreement by Agency.

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency, after consideration at a public meeting. After

execution by Developer, this Agreement shall be considered an irrevocable offer until such time as Agency is authorized to execute and deliver the Agreement.

O. (§910) City as Third Party Beneficiary.

City is a third party beneficiary of this Agreement and all the related documents.

P. (§911) Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Either party may execute this Agreement by electronic signature which will be valid and effective for all purposes; provided that the e-signature must with through a company compliant with UETA and ESign, such as AdobeSign or DocuSign

2. Agency represents and warrants that: (i) it is a housing Agency duly organized and existing under the laws of the State of California; (ii) by proper action of Agency, Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Agency does not violate any provision of any other agreement to which Agency is a party.

3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by Agency.

REMINDER: PARTIES NEED TO INITIAL SECTIONS 409(5) and 411(4).

DEVELOPER:

LIONEXT INC.,
a California corporation

By: _____
Hin (Joe) Ming Law
Chief Executive Officer

By: _____
Ming Wai Ng
Secretary

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY, a public agency,
corporate and politic

By: _____
Alma Hernandez, Chair Pro Tem

Date: _____, 2022

ATTEST:

Anita Skinner
Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Elena Q. Gerli
Agency Counsel

ATTACHMENT NO. 1
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

PARCEL ONE:

LOT 11, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, PAGE 72, SOLANO COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR PUBLIC ACCESS, PARKING AND PUBLIC SERVICE APPURTENANT TO PARCEL ONE ABOVE, OVER AND ACROSS LOT B, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, PAGE 72, SOLANO COUNTY RECORDS.

APN: 0032-142-250

ATTACHMENT NO. 1-A
PROPERTY MAP



ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

A. PROJECT CONCEPT

The term “Project” shall mean a mixed use development with commercial/retail on the first floor, likely restaurant, and housing on the upper floors, consistent with the current zoning of the Agency Property, which is in the Downtown Mixed Use (DMU) zone within the Waterfront District Specific Plan, with a residential capacity equivalent to the Residential High Density (RHD) zone. As such, the residential capacity is 24.1 to 54 dwelling units per acre. The dwelling unit density may increase if Developer obtains a density bonus under Government Code Section 65915.

B. DEMOLITION AND CLEARANCE

Developer will complete demolition of any improvements on the Property. Developer shall be responsible for all on-Property work and improvements, including, but not limited to the following:

1. Developer shall be responsible for all utility relocation, and other work necessary to prepare the Property for the improvements contemplated by the DDA, and shall be responsible for all construction of the Affordable Restricted Units in accordance with the approved plans thereof.
2. Restoring those streets adjacent to the Property, if any, that undergo utility trenching needed to provide house connections to service the Property. The streets shall be restored to the condition prior to construction, with materials acceptable to the Director of Public Works.
3. Developer shall be responsible for the repair and protection of off-Property improvements during construction of the on-Property improvements. Any off-Property improvements found damaged shall be reconstructed or provided for by Developer to the satisfaction of the Director of Public Works.
4. Developer shall plant or provide for street trees adjacent to the Property, including tree root barriers, to the satisfaction of the Director of Public Works. All required street trees, and any landscaping and sprinkler systems, shall be maintained by Developer and/or successors.
5. Developer shall provide or construct sidewalks, as shown on the approved Conceptual Plans, to the satisfaction of the Director of Public Works.
6. Developer shall submit a drainage plan with hydrology and hydraulic calculations, if requested, showing building elevations and drainage patterns and slopes, for review and approval by the Director of Community Development and the Director of Public Works. All required drainage/grading shall be provided in accordance with approved plans.

C. PROPERTY PREPARATION

Developer shall, at its sole cost and expense, perform or cause to be performed grading plan preparation, fine grading and related compaction, and other Property preparation as necessary for construction of the Project, as approved by the City Engineer. Plans shall be

prepared by a licensed civil engineer in good standing and subject to the approval of the City Engineer.

Developer shall, at its sole cost and expense, scarify, over-excavate, cut, fill, compact, rough grade, and/or perform all grading as required pursuant to an approved grading plan(s) to create finished lots, building pads, and appropriate rights-of-way configurations necessary to develop the Project described herein.

D. PROJECT DESIGN

1. DESIGN PROCESS

Developer and its representatives, including its architect and engineer, shall work with City and Agency staff to develop and execute the architectural concept, architectural drawings, Property plan, tentative tract map, grading plan, off-Property improvement plans, and related drawings and documents consistent with Planning Commission and Agency direction pursuant to the Suisun City Municipal Code.

2. ARCHITECTURAL CONCEPT

The Project shall be designed and constructed as an integrated development in which the buildings shall have architectural excellence. The improvements to be constructed on the Property shall be of high architectural quality, shall be well landscaped, and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building, structure, and other improvements must be consistent with, visually related to, physically related to, and an enhancement to each other and, to the extent reasonably practicable, to adjacent improvements existing or planned within the Project Area. Developer's plans, drawings, and proposals submitted to Agency for approval shall describe in reasonable detail the architectural character intended for the Project. The open spaces between buildings on the residential portion of the Property, where they exist, shall be designed, landscaped and developed with the same degree of excellence.

3. PROPERTY WORK

The Project shall substantially conform to the Property and building plans approved pursuant to Subsection A above. It shall be the responsibility of Developer, the architect and the contractor to develop the Project consistent with the aforementioned plans. Any substantial modification to the approved Property or building plans, as determined by the Director of Community Development, shall be referred to the Planning Commission for review and approval through a conformity report. Developer shall be responsible for the construction and installation of all improvements to be constructed or installed on the Property, including but not limited to the following:

a. Parking

Developer shall develop on-Property parking areas for the Property consisting of not less than required by applicable law.

b. Landscaping

Developer shall install and maintain on-Property landscaping and automatic irrigation pursuant to approved plans consistent with Chapter 20.47 of the Suisun City Municipal Code.

c. Lighting

Developer shall install and maintain on-Property lighting in a manner consistent the approved lighting and electrical plans. The design of light standards and fixtures shall be subject to the approval of the Director of Community Development.

d. Trash Storage

Trash storage areas shall be provided, of sufficient size to ensure containment of all solid waste materials generated from the Property in trash disposal and recycling bins. Adequate access shall be provided to the enclosures for refuse pickup.

e. Signs

A sign program shall be submitted to the City for approval. Building and, where necessary, electrical permits shall be obtained prior to installation, painting or erection of signs. Signs shall be designed, installed, and maintained in a manner consistent with the approved Property Plan and sign program.

4. UNDERGROUNDING UTILITIES

All new utility service connections servicing the Property shall be installed underground, including connections to facilities within the public right-of-way.

5. MECHANICAL EQUIPMENT

On-Property mechanical equipment, whether roof or ground mounted, shall be completely screened from public view. Screening material shall be constructed of materials which coordinate with the overall architectural theme. Where public visibility will be minimal, the Director of Community Development may permit use of landscaping to screen ground mounted equipment.

6. APPLICABLE CODES

All improvements shall be constructed in accordance with the California Building Code (with Suisun City modifications), the County of Solano Fire Code (with Suisun City modifications), the Suisun City Municipal Code, and current City standards.

7. OFFSITE IMPROVEMENTS

Pursuant to the Agreement, Developer shall perform, or cause to be performed, all offsite improvements required by law or as a condition to any governmental or local approval or permit.

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE

	ITEM TO BE PERFORMED	TIME FOR PERFORMANCE
1.	Developer executes 3 copies of DDA and delivers same to Agency together with check for Deposit payable to Escrow Agent.	Prior to the public hearing specified in Event 2
2.	Agency holds public hearing on DDA and environmental document, approves or disapproves DDA (" Effective Date ")	On or before October 4, 2022.
3.	Agency executes 3 copies of DDA and delivers 1 copy with the Deposit check to Escrow Agent and 1 copy to Developer	Within 3 days of the Effective Date
4.	Developer delivers the Deposit to Escrow Agent.	Within 3 days of the Effective Date
5.	Developer, Agency and MSW execute and deliver to Escrow Agent 3 copies of the Assignment/Assumption	Within 3 days of the Effective Date
6.	Agency provides copies of any Due Diligence Documents and Developer commences, in its discretion, to physically inspect and conduct environmental investigations on the Property and perform all due diligence it requires.	Within 5 days after the Effective Date
7.	Title Company delivers Preliminary Report to Developer	Within 5 days of Opening of Escrow.
8.	Developer approves or disapproves title exceptions on Preliminary Report	Within 14 days after Event 7.
9.	Agency notifies Developer whether Agency will cure any disapproved exceptions	Within 5 days of Event 8.
10.	Developer prepares and submits to City and Agency preliminary plans, drawings and specifications in accordance with Concept Drawings and Property Plan, including architectural theme and treatment for the entire Property.	Within 30 days of commencement of Feasibility Period
11.	Agency approves Preliminary Drawings	Within 5 days of Event 10.
12.	Escrow Agent gives notice of fees, charges, costs and documents to close Escrow	3 days prior to Closing
13.	Deposits into Escrow by Agency:	See below

	ITEM TO BE PERFORMED	TIME FOR PERFORMANCE
	a) Grant Deed	On or before 1 business day preceding the Closing Date
	b) Taxpayer ID Certificate	Prior to Closing Date
14.	Deposits into Escrow by Developer:	See below
	a) Certificate of Acceptance (to be attached to the Grant Deed)	On or before 1 business day preceding the Closing Date
	b) PCOR	On or before 1 business day preceding the Closing Date
	c) Taxpayer ID Certificate	Prior to Closing Date
15.	Close of Escrow with recordation of Grant Deed and delivery of documents and monies (Close of Escrow)	Within 60 days after Opening of Escrow, <u>but in no event later than December 31, 2022</u>
16.	Developer commences pursuit of all necessary approvals and permits from City	Within 6 months from Close of Escrow
17.	Construction commences and Developer diligently pursues to completion	Not later than the 90 days following Event 16
18.	Developer completes construction of improvements and obtains a certificate of occupancy.	Within six (6) months of commencement of construction.
19.	Agency issues Certificate of Completion.	Within 15 days of Developer's request after Event 18.

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text of the Agreement; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and Agency. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The Executive Director of Agency shall have Agency to approve extensions of time without Agency Board action not to exceed a cumulative total of ninety (90) days as provided in Section 803 (but in no event may Close of Escrow occur after December 31, 2022).

ATTACHMENT NO. 4
GRANT DEED

FREE RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:

Lionext Inc.
13021 Leffingwell Rd.
Santa Fe Springs, CA 90670
Attn: Hin Ming Law, CEO

(Space Above This Line For Recorder's Office Use Only)

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public agency, corporate and politic ("**Grantor**"), acting to carry out its functions under the Housing Law of the State of California, hereby grants to LIONEXT INC., a California corporation ("**Grantee**"), the real property ("**Property**") legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

As consideration for this conveyance, the Grantee covenants by and for itself and any successors in interest for the benefit of (i) Grantor, and (ii) the City of Suisun City ("**City**") as a third party beneficiary, as follows:

1. Governing Documents. The Property is conveyed pursuant to that certain Disposition and Development Agreement ("**DDA**") entered into by and between Grantor and Grantee dated _____, 2022. Grantee covenants and agrees for itself and its successors and assigns to use, operate and maintain the Property in accordance with the DDA and this Deed. In the event of any conflict between this Grant Deed and the DDA, the provisions of the DDA shall control.

2. Maintenance Covenants. Grantee covenants and agrees for itself, its successors and assigns, and every successor of any interest in the Property or any part thereof, that, after Agency's issuance of its Release of Construction Covenants, Grantee shall be responsible for maintenance of all improvements that may exist on the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in good working condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Developer shall also maintain all landscaping required pursuant to the approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in perpetuity. Agency shall have all applicable remedies available at law or equity to enforce these covenants. Grantee hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply to actions by the City.

3. Use of Property. Grantee covenants that Grantee may only use the Property for residential purposes as consistent with the time period and other terms, covenants and

conditions set forth in the DDA. Grantee shall have no right to subdivide, separate, or partition the Property except as provided in the DDA. Breach of the terms, covenants, conditions, and provisions of the DDA shall be a material breach of this conveyance.

4. Encumbrances Prohibited. Prior to issuance of the Release of Construction Covenants by the Grantor as provided in the DDA, the Grantee shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, sales and leases back or any other form of conveyance required for financing of the acquisition of the Property, the construction of improvements on the Property, and any other expenditures necessary and appropriate to develop the Property, except as specifically provided in the DDA.

5. Non-Discrimination. Grantee covenants that except for the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with references to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

6. Reservation of Existing Streets. Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

7. Form of Nondiscrimination Clauses in Agreements. Subject to the tenancy/occupancy restrictions not prohibited by federal law as embodied in the DDA, which may modify the following nondiscrimination clauses, the following shall apply: Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. Deeds: In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons 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 land herein conveyed. The foregoing covenants shall run with the land."

b. Leases: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, 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 race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee 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, sublessees, subtenants, or vendees in the land herein leased.”

c. **Contracts**: In contracts the following language shall appear: “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, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee 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 of the land.”

The foregoing covenants shall remain in effect in perpetuity.

8. **Mortgage Protection**. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. **Covenants to Run With the Land**. The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Property, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be duly executed by respective officers as of this _____ day of _____, 202__.

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF SUISUN CITY, a public agency, corporate
and politic

NOT TO BE EXECUTED
By: UNTIL CLOSING _____
Agency Chair

APPROVED AS TO FORM:

Date: _____, 202__

ALESHIRE & WYNDER, LLP

ATTEST:

By: _____
Elena Q. Gerli
Agency Counsel

By: _____
Anita Skinner
Agency Secretary

CERTIFICATE OF ACCEPTANCE

By its acceptance of this Grant Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of the Grant Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns.
2. The provisions of this Grant Deed are hereby approved and accepted.

LIONEXT INC.,
a California corporation

By: NOT TO BE EXECUTED
UNTIL CLOSING
Hin (Joe) Ming Law
Chief Executive Officer

By: NOT TO BE EXECUTED
UNTIL CLOSING
Ming Wai Ng
Secretary

_____, 2022

ATTACHMENT NO. A
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

PARCEL ONE:

LOT 11, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, PAGE 72, SOLANO COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR PUBLIC ACCESS, PARKING AND PUBLIC SERVICE APPURTENANT TO PARCEL ONE ABOVE, OVER AND ACROSS LOT B, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, PAGE 72, SOLANO COUNTY RECORDS.

APN: 0032-142-250

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT NO. 5

RELEASE OF CONSTRUCTION COVENANTS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Lionext Inc.
13021 Leffingwell Rd.
Santa Fe Springs, CA 90670
Attn: Hin Ming Law, CEO

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

RELEASE OF CONSTRUCTION COVENANTS

RECITALS:

Pursuant to that certain Disposition and Development Agreement ("**Agreement**") dated _____, 2022 between and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY, a public agency, corporate and politic ("**Agency**") and LIONEXT INC., a California corporation ("**Developer**"), Developer has agreed to develop a residential development ("**Project**") on the Property (as defined below).

- A.** As referenced in the Agreement, Agency is required to furnish Developer with a Release of Construction Covenants upon completion of construction and development, which release shall be in such form as to permit it to be recorded in the Solano Official Records of the County Clerk of the County of Solano, California.
- B.** Developer has requested that Agency furnish Developer with the Release of Construction Covenants for the Property more particularly described on Exhibit A attached hereto and incorporated herein by reference ("**Property**").
- C.** The Agreement provided for certain covenants to run with the land, as those terms are defined in the Agreement.
- D.** This Release of Construction Covenants shall constitute a conclusive determination by Agency of the satisfactory completion by Developer of the construction and development required by the Agreement and of Developer's full compliance with the terms of the Agreement with respect to such construction and development but not the maintenance covenants herein which shall continue to run with the land pursuant to their terms.
- E.** Agency has conclusively determined that the construction and development on the Property required by the Agreement has been satisfactorily completed by Developer in full compliance with the terms of the Agreement.

NOW, THEREFORE, the improvements required to be constructed under the Agreement have been satisfactorily completed in accordance with the provisions of said Agreement.

1. This Release shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof.
2. This Release shall not constitute evidence of Developer's compliance with the maintenance requirements in the Grant Deed, the provisions of which shall continue to run with the land.
3. This Release shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.
4. This Release is not a Notice of Completion as referred to in California Civil Code Section 3093.
5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, Agency has executed this Release of Construction Covenants this _____ day of _____, 202__.

AGENCY:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY,
a public agency, corporate and politic

By _____
_____, Executive Director

Date: _____, 202__

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____

Elena Q. Gerli,
Agency Attorney

ATTEST:

Anita Skinner, Agency Secretary

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Suisun City, County of Solano, State of California legally described as follows:

PARCEL ONE:

LOT 11, AS SHOWN ON THE MAP OF SUISUN HARBOR PLAZA UNIT II, FILED DECEMBER 5, 1997 IN BOOK 67 OF MAPS, PAGE 72, SOLANO COUNTY RECORDS.

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APN: 0032-142-250

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)
) ss.
COUNTY OF _____)

On _____, 202_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

ATTACHMENT NO. 6

ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT

1. **Assignment:** MAIN STREET WEST PARTNERS, LLC, a California limited liability company ("**Assignor**") assigns to LIONEXT INC, a California corporation ("**Assignee**") as a Qualified Successor Developer its right to acquire and develop that certain real property identified as Parcels 8 & 9 ("**Assignment**") in that certain Disposition and Development Agreement dated as of April 17, 2006 by and between Assignor and the Redevelopment Agency of the City of Suisun City ("**Agency**") as subsequently amended by (i) that certain First Amendment to the DDA dated July 25, 2006; (ii) that certain Second Amendment to the DDA dated September 18, 2007; (iii) that certain Third Amendment to the DDA dated February 19, 2009; and (iv) that certain Fourth Amendment to the DDA dated April 29, 2016 (collectively the "**DDA**"). The Fourth Amendment to the DDA dated April 29, 2016 ("**Fourth Amendment**") was approved by the Successor Agency Board pursuant to resolution and subsequently approved by the Oversight Board ("**OB**") pursuant to Resolutions 2015-01 & 2015-02. However, the California Department of Finance ("**DOF**") disapproved the Fourth Amendment and the OB's resolutions approving the Fourth Amendment. MSW filed a lawsuit for Declaratory Relief, Impairment of Contract and a Petition for Writ of Mandate against the DOF in Superior Court of Sacramento County Case No. 34-2014-00164737 ("**Lawsuit**"). The Lawsuit was settled pursuant to that certain Settlement Agreement which the DOF approved and executed on February 1, 2016 ("**Settlement Agreement**"). The Settlement Agreement required the approval of the Oversight Board which did approve it pursuant to Resolutions 2016-02 and 2016-03. The DOF acknowledged compliance with the required conditions to the Settlement Agreement by its letter dated March 2, 2016. Accordingly, pursuant to Health & Safety Code Section 34170 et seq., the Fourth Amendment is in full force and effect and a binding obligation of Assignor as successor agency.
2. **Acceptance.** The Assignment shall be deemed automatically accepted by Assignee upon execution of that certain Disposition and Development Agreement between the Assignee and Agency ("**Agreement**").
3. **Qualified Successor Developer.** Agency hereby approves Assignee as a Qualified Successor Developer under the DDA.
4. **Reassignment.** If for any reason, the Agreement is not consummated by recordation of the Grant Deed as set forth therein ("**Grant Deed**"), all rights under this Assignment shall be deemed automatically assigned back to Assignor. Assignee shall cooperate with executing any documents reasonably requested to confirm the reassignment.
5. **Payment to Assignor at Closing.** Concurrently with the recordation of the Grant Deed under the Agreement to Assignee ("**Closing**"), Agency shall pay to Assignor the sum of _____ (\$_____) which is the pro rata portion of the

Disposition Fee pursuant to Section 7 of the Settlement Agreement and General Release of All Claims.

6. **Release on Closing.** Concurrently at the Closing, all obligations under the DDA with respect to Parcels 8 & 9 are deemed terminated in their entirety and both Assignee and Assignor are released from any obligations under the DDA as to Parcels 8 & 9 and Parcels 8 & 9 shall no longer be subject to the DDA. Notwithstanding the foregoing, Assignor shall remain obligated with respect to the remaining DDA obligations pursuant to the Settlement Agreement and General Release of All Claims with the Effective Date of _____, 2022.

ASSIGNOR:

MAIN STREET WEST PARTNERS, LLC, a
California limited liability company

NOT TO BE EXECUTED UNTIL
AFTER DDA EXECUTED

By: _____
Michael E. Rice, President

By: _____
Frank J. Marinello,
Vice President/Member

ASSIGNEE:

LIONEXT INC.,
a California corporation

By: _____
Hin (Joe) Ming Law
Chief Executive Officer

By: _____
Ming Wai Ng
Secretary

AGENCY:

SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUISUN CITY

NOT TO BE EXECUTED UNTIL
AFTER DDA EXECUTED

By: _____
Greg Folsom, Executive Director

ATTEST:

Anita Skinner, Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Elena Q. Gerli, Agency Counsel

Main Street West Properties – Lionnext Inc. Parcel Locations



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Lionext Inc. – Disposition and Development Agreements

CITY OF SUISUN CITY, CITY COUNCIL
OCTOBER 4, 2022

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Background

- Main Street West Agreement
- Site Characteristics
- Solicitation RFP
- Lionext Inc. Interest
- Potential Development opportunity for City
- Disposition and Development Agreement

Main Street West Properties – Lionext Inc. Parcel Locations





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DDA Terms

	DDA TERMS		
	PARCEL 3	PARCEL 7	PARCEL 8 & 9
Property Description	0.17- acres	0.15- acres	0.21- acres
Purchase Price	\$130,000	\$110,000	\$160,000
Lighthouse Dev Fee (approx.)	\$7,480	\$6,390	\$9,226
Deposit	\$13,000	\$11,000	\$16,000
Feasibility Period (upon opening of escrow)	60 days	60 days	60 days
Close of Escrow - after execution of the DDA and no event later than December 31, 2022.	60 days	60 days	60 days
Property Condition	As Is	As Is	As Is

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City Council Action

Public Hearing: Successor Agency Adoption of Resolutions Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext:

- a. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext of Parcel 3, Approximately 0.17 Acres located at the northeast corner of Main Street and Solano Street (Solano County Assessor's Parcel Number 0032-142-300).
- b. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext of Parcel 7, Approximately 0.15 Acres located at the east side of Kellogg Street in Downtown Suisun City (Solano County Assessor's Parcel Number 0032-142-280)
- c. Resolution No. SA 2022-___ Authorizing the Executive Director to Execute a Disposition and Development Agreement for Purchase and Sale of Real Property with Lionext of Parcels 8 and 9, Approximately 0.21 Acres located at the north side of Line Street in Downtown Suisun City (Solano County Assessor's Parcel Number 0032-142-240 and 0032-142-250)

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AGENDA TRANSMITTAL

MEETING DATE: October 04, 2022

CITY AGENDA ITEM: Finance Department Showcase.

FISCAL IMPACT: There is no fiscal impact to the General Fund from the item.

STRATEGIC PLAN IMPACT: Provide Good Governance, Section 4.7 – Improve productivity, efficiency, effectiveness, customer service and citizen satisfaction in all areas of municipal organization.

BACKGROUND: This report is provided to give a more in-depth look at the Finance Department operational structure.

STAFF REPORT: To provide transparency, and insight, this report is produced to assist the community and City Council with a detailed view of current staffing, functions, accounting, budgeting, reporting, responsibilities, accomplishments and goals of the Accounting and Information Technology divisions.

RECOMMENDATION: This is an informational only item, and no recommendation is associated with this item.

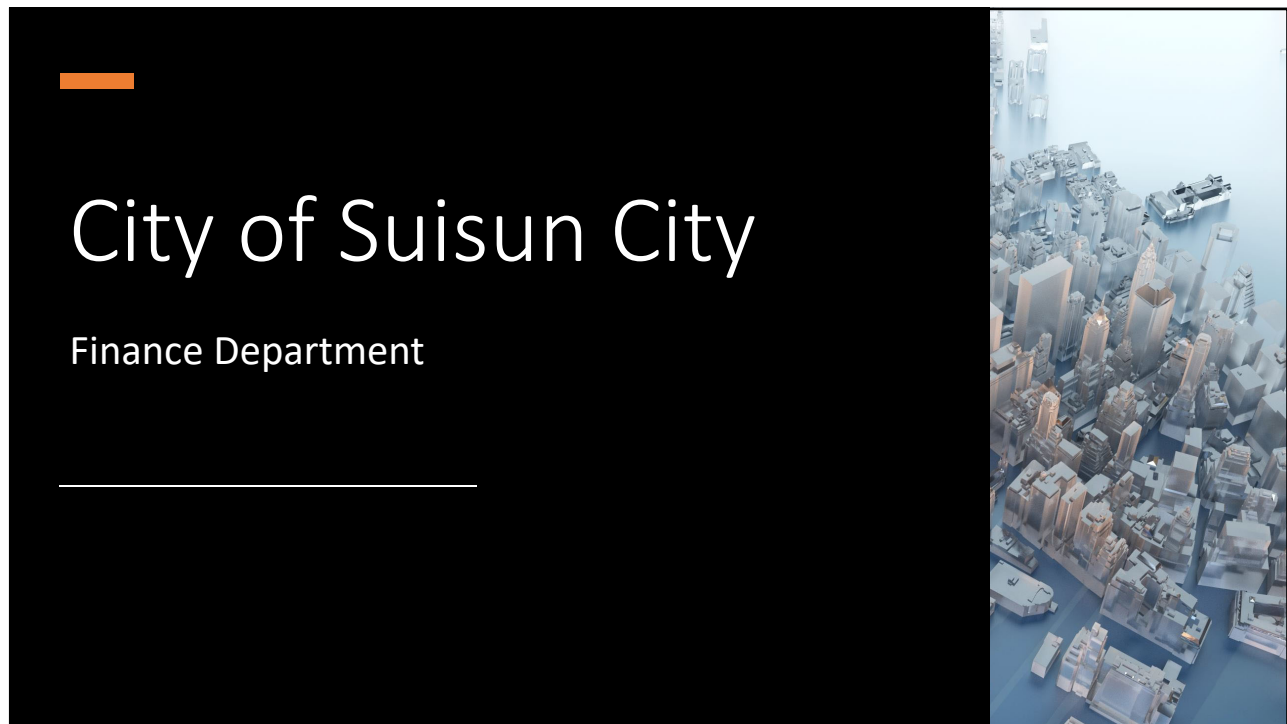
ATTACHMENTS:

1. PowerPoint Presentation

PREPARED BY:
APPROVED BY:

Lakhwinder Deol, Finance Director
Greg Folsom, City Manager

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Finance Department


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Staffing	Finance Director
	Accounting Services Manager
	Accountant
	Accounting Technician
	Account Clerk III
	Account Clerk II
	Account Clerk I (2)

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Accounting

- The Accounting Services Division provides services that includes accounting, auditing, payroll, purchasing, financial systems, business tax license administration, investment, debt services, and utility billing for Suisun-Solano Water Authority (SSWA) and the Fairfield-Suisun Sewer District (FSSD).
- The Division produces the Annual Comprehensive Financial Report of the City; Basic Financial Report of SSWA; and Financial Report of Bay Homes Corporation.
- Accounting for approximately 170 active funds.
- In-charge of grant accounting.

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Budgeting

- Manages \$22 million budget which includes the Finance Budget, Debt Service, ROPS and SSWA.
- Develops Citywide budget including revenues and expenditures.
 - Revenues \$ 91.5M
 - (including I/S funds, beginning balances, transfer ins, reserve)
 - Expenditures \$ 77.9M
 - (including CIP, transfer outs)
- Surplus/Difference \$ 13.6M
 - (Beginning Balances, GF Reserve)

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Reporting (some major requirements...)

Federal	State	Local/County
ARPA	Successor Agency-ROPS	Successor Agency-ROPS-County Oversight Board
CARES Act	City and SSWA Controller's Report	Maintenance of Effort- Public Safety Sales Tax
REAC-HUD Housing	Streets Report	Property Taxes Levy & Liens
Office of Management & Budget-Schedule of Expenditures on Federal Awards	Local Compensation Report	Special Assessments

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Cash & Investment Management




Collects, records, and reconciles all cash activity in the City.


-ranging from 100-300 transactions a day



Tracks and reconcile pooled investments worth \$50 million (All Funds)



Prepares and submit quarterly investment report to Council.



Perform bank reconciliations.

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Payroll

Process payroll on a bi-weekly period.

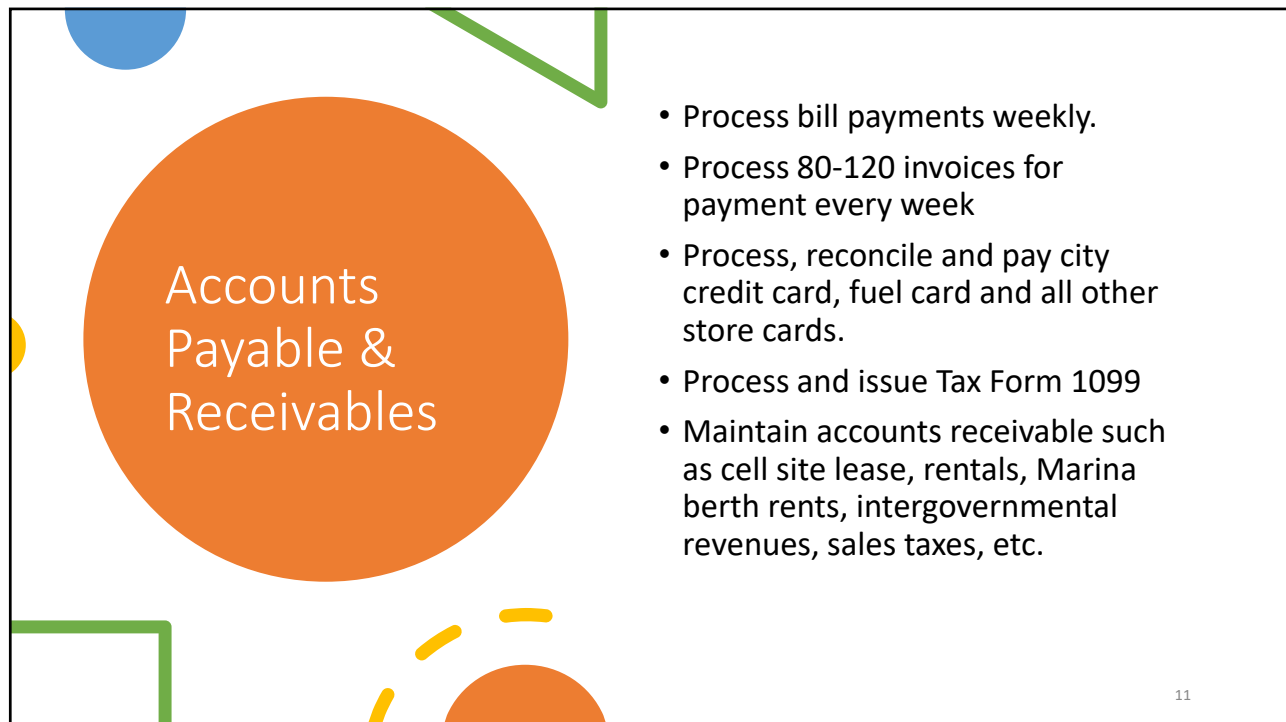
About 83 Full-time; 50 Part-time.

Process and reconciles:

- Payroll taxes (Federal-IRS, State, SDI and SUI)
- CalPERS remittance
- Payroll garnishments
- Health & medical, dental, life insurance
- Worker's Comp coordination of benefits
- Union Dues, cafeteria plan, etc.

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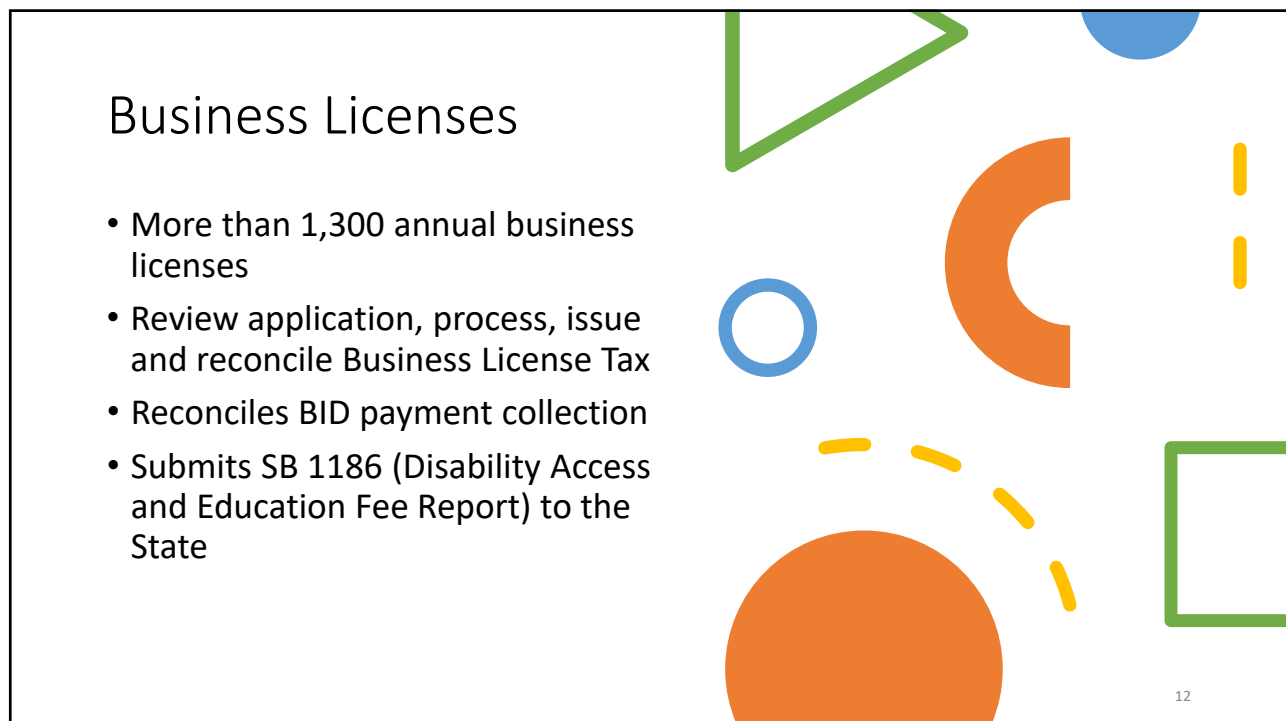


Accounts Payable & Receivables

- Process bill payments weekly.
- Process 80-120 invoices for payment every week
- Process, reconcile and pay city credit card, fuel card and all other store cards.
- Process and issue Tax Form 1099
- Maintain accounts receivable such as cell site lease, rentals, Marina berth rents, intergovernmental revenues, sales taxes, etc.

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Business Licenses

- More than 1,300 annual business licenses
- Review application, process, issue and reconcile Business License Tax
- Reconciles BID payment collection
- Submits SB 1186 (Disability Access and Education Fee Report) to the State

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Utilities

- Provides utility billing services for SSWA and FSSD
- 8,500 utility customers
- In-charge of:
 - Payment collection via cash, check, credit card and ACH
 - Producing utility bills; regular, penalty and shut-off
 - Reviews application, disconnect and transfer requests
 - Liaison between SSWA and FSSD

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Redevelopment/ Successor Agency

- In-charge of annual submission of ROPS (Recognized Obligation Payment Schedule) to County and State Department of Finance.
- Presents to County Oversight Board
- Respond to State and County audit of prior-period adjustments
- In-charge of paying debts and reconciles reserves with bank trustees.

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Housing Authority

Tracks HUD monthly payments

Reconcile Housing bank accounts.

Prepares and submits report to the Federal Government REAC-FASS PH (Real Estate Assessment Center-Financial Assessment of Public Housing)

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Operating Budget - Accounting

Total Expenditures: \$1.74M

Total Revenue: \$288K

SSWA Reimbursement: \$1.32M

Total Cost to the GF: \$132K

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Accomplishments - Finance

- FY 2020-21 Annual Comprehensive Financial Reporting (ACFR)
 - Excellence in Financial Reporting awarded by GFOA for the past 18 years (pending)
- Successfully issued two water revenue bonds worth \$17 million for capital improvement of water supply infrastructure
- Secured Funding for Dredging from the State using RDA Tax increment (FY 2020)
- FY 2022-23 Annual Budget
- Implementation of Questica (Budget) & ClearGov (Budget & Digital Book)
- Update Cost Allocation Plan

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Goals - Finance

- Upgrade a 30-year-old accounting software (ERP upgrade pending)
- Improve online processing of Business License Application (pending)
- Upgrade technology for water payments that can include pay over the phone (part of ERP upgrade pending)
- Add two positions:
 - Management Analyst
 - Accountant

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Functions:

- Support and Maintain all network servers
- Network topology
- All computer workstations and printers
- WiFi networks
- GIS system
- Police & Fire Departments' security camera systems
- Public communications
- Dispatching center and CAD/RMS system
- Provide some contract services to STA

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Infrastructure

- Multi-site network with PtP wireless connectivity
- 19 separate physical and virtual servers
- Three highly available clustered SANs (storage area networks)
- Cameras throughout the city

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New Projects

Physical to Virtual server migration

Agenda Management

City Website update

VoIP Phone System

Enterprise Resource Planning (ERP)

MyCivic Community Outreach Mobile app

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Operating Budget - IT

Total Expenditures:
\$616K

Revenue from STA:
\$6K

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Accomplishments - IT

Migrated from
TriTech to RIMS

Installed card key
lock system at PD,
CH, FD, and Marina

ALPR in the police
cars and other
cameras around
the City

Rapid deployment
of laptops and VPN
in response to
COVID-19

Phone lines audit
(wireless &
landline)

Upgraded Internet
to high speed

Upgraded few
servers

Tablet Command
for FD

First Response 911
– RIMS to medical
dispatch

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Goals – Information Tech

Motorola Radio Communication Project	Communication System upgrade for Council Chamber & Community Center	Marina CCTV project funded by ROPS (pending)	Expand GIS System
City's website upgrade (pending)	Phone system upgrade (pending)	Deployment of MyCivic app (pending)	Add: Computer Analyst position

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Thank you!

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Demonstration

- ClearGov – FY 2022-23 Annual Budget Digital Book
 - <https://city-suisun-city-ca-budget-book.cleargov.com/6141/introduction/transmittal-letter>
- MyCivic – Mobile app to interact with Community

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