

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF POMONA

And

MAYA CINEMAS NORTH AMERICA, INC

April 2, 2018

DRAFT

TABLE OF CONTENTS

	<u>Page</u>
SEC. 100 SUBJECT OF AGREEMENT	1
Sec. 101 Purpose of Agreement.....	1
Sec. 102 The Property.....	1
Sec. 102.1 Street Vacation.....	2
Sec. 103 Intentionally Deleted.....	3
Sec. 104 Parties to the Agreement.....	3
Sec. 104.1 The City	3
Sec. 104.2 Intentionally Deleted.....	3
Sec. 104.3 The Developer.....	3
Sec. 104.4 Prohibition Against Transfer, Change in Ownership, Management and Control of Developer.....	4
Sec. 105 Representations and Warranties.....	5
Sec. 105.1 City's Representations.....	5
Sec. 105.2 Developer's Representations	6
SEC. 200 DISPOSITION OF THE PROPERTY.....	7
Sec. 201 Acquisition of the Developer Property.	7
Sec. 202 Sale, Purchase and Deposit of City Property	7
Sec. 202.1 Liquidated Damages	8
Sec. 203 Option to Purchase City Property 2	8
Sec. 204 Option to Purchase Gist Property	9
Sec. 205 Escrow.....	9
Sec. 205.1 Opening of Escrow	9
Sec. 205.2 Close of Escrow	9
Sec. 205.3 Developer's Deposits in Escrow	9
Sec. 205.4 City's Deposits in Escrow.....	10
Sec. 205.5 Escrow Instructions.....	10
Sec. 205.6 Condition of Title and Title Insurance.....	11
Sec. 205.7 Conveyance of Title and Delivery of Possession	12
Sec. 205.8 Form of Deed	12
Sec. 205.9 Time and Place for Delivery of Deeds.....	13
Sec. 205.10 Recordation of Deeds.....	13
Sec. 205.11 Taxes, Assessments and Prorations	13
Sec. 205.12 Evidence of Financing and New Market Tax Credits.....	13
Sec. 206 Condition of the City Property.....	14
Sec. 206.1 Developer Due Diligence.....	15
Sec. 207 Conditions Precedent to Close of Escrow.....	16
Sec. 207.1 Developer's Conditions Precedent	16
Sec. 207.2 Failure of Developer's Conditions Precedent; Termination	17
Sec. 207.3 Conditions Precedent to City's Obligations.....	17

Sec. 207.4	Failure of City’s Conditions Precedent; Termination.....	18
Sec. 208	Environmental Compliance	19
Sec. 209	Memorandum of DDA.....	19
SEC. 300	DEVELOPMENT OF THE PROPERTY.....	20
Sec. 301	Development of Developer Project.....	20
Sec. 301.1	Scope of Development.....	20
Sec. 301.2	Temporary Parking	20
Sec. 301.3	Validated Parking.....	20
Sec. 301.4	City Approval of Plans, Drawings and Related Documents.....	21
Sec. 301.5	Cost of Development	21
Sec. 301.6	Public Improvements	21
Sec. 301.7	Developer Project Performance Bond	22
Sec. 301.8	New Market Tax Credit Financing Not Required.....	22
Sec. 302	Schedule of Performance	22
Sec. 303	Insurance; Indemnity	22
Sec. 304	Environmental Indemnity	24
Sec. 304.1	Environmental Release	24
Sec. 304.2	Environmental Indemnity	24
Sec. 304.3	Defense of Claims.....	25
Sec. 304.4	Definitions.....	25
Sec. 305	City and Other Governmental City Permits.....	27
Sec. 306	Rights of Access	27
Sec. 307	Local, State and Federal Laws.....	27
Sec. 308	Taxes, Assessments, Encumbrances and Liens	28
SEC. 400	SECURITY FINANCING; RIGHTS OF HOLDERS.....	28
Sec. 401	No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases Back or Other Financing for Development.....	28
Sec. 402	Intentionally Deleted.....	28
Sec. 403	Intentionally Deleted.....	28
Sec. 404	Holder Not Obligated to Construct Improvements.....	28
Sec. 405	Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure	28
Sec. 406	Failure of Holder to Complete Improvements	29
Sec. 407	Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default.....	29
Sec. 408	Rights of City to Satisfy Other Liens on the Property After Title Passes.....	30
Sec. 409	Estoppel.....	30
SEC. 500	USE OF THE CITY PROPERTY AND COVENANTS	30
Sec. 501	Uses and Covenants	30
Sec. 502	Obligation to Refrain from Discrimination.....	31
Sec. 503	Form of Nondiscrimination and Non-segregation Clauses.....	31
Sec. 504	NMTC Operating Covenants	32
Sec. 505	Release of Construction Covenants	32
Sec. 506	Management and Maintenance Covenant.....	33

Sec. 507	Effect and Duration of Covenants.....	33
SEC. 600	DEFAULTS AND REMEDIES	34
Sec. 601	Defaults—General	34
Sec. 601.1	Limitation of Damages	34
Sec. 602	Legal Actions	34
Sec. 602.1	Institution of Legal Actions	34
Sec. 602.2	Applicable Law	34
Sec. 602.3	Acceptance of Service of Process	34
Sec. 603	Rights and Remedies Are Cumulative.....	35
Sec. 604	Remedies and Rights of Termination Prior to Conveyance.....	35
Sec. 604.1	Termination by Developer	35
Sec. 604.2	Termination by City.....	35
Sec. 605	Remedies of City for Default by Developer After Passage of Title and Prior to Completion of Construction.....	36
Sec. 605.1	Termination and Damages	36
SEC. 700	GENERAL PROVISIONS	36
Sec. 701	Notices, Demands and Communications Between the Parties	36
Sec. 702	Conflicts of Interest.....	36
Sec. 703	Enforced Delay; Extension of Times of Performance	37
Sec. 704	Non-Liability of Officials and Employees of the City.....	37
SEC. 800	EMPLOYMENT OPPORTUNITIES	37
Sec. 801	Job Opportunities Created by Developer.....	37
SEC. 900	SPECIAL PROVISIONS.....	38
Sec. 901	Submission of Documents to the City for Approval.....	38
Sec. 902	Amendments to this Agreement.....	38
Sec. 903	Operating Memoranda	38
Sec. 904	Real Estate Commissions.....	39
Sec. 905	Survivor Provisions.....	39
Sec. 906	Reservation of Discretion	39
Sec. 907	Costs and Attorneys’ Fees.	39
SEC. 1000	ENTIRE AGREEMENT, WAIVERS	39
SEC. 1100	TIME FOR ACCEPTANCE OF AGREEMENT	40

LIST OF ATTACHMENTS

	Page
ATTACHMENT NO. 1 DEPICTION OF THE CITY PROPERTY AND GIST PROPERTY	41
ATTACHMENT NO. 2 LEGAL DESCRIPTION OF THE CITY PROPERTY AND GIST PROPERTY	42
ATTACHMENT NO. 3 DEPICTION OF DEVELOPER PROPERTY	43
ATTACHMENT NO. 4 LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY	44
ATTACHMENT NO. 5 DEPICTION OF CITY PROPERTY2	45
ATTACHMENT NO. 6 LEGAL DESCRIPTION OF CITY PROPERTY 2	46
ATTACHMENT NO. 7 STREET VACATIONS	47
ATTACHMENT NO. 8 SCHEDULE OF PERFORMANCE.....	48
ATTACHMENT NO. 9 OPTION AGREEMENT	49
ATTACHMENT NO. 9A GIST OPTION AGREEMENT.....	125
ATTACHMENT NO. 10 GRANT DEED.....	165
ATTACHMENT NO. 11 MEMORANDUM OF DDA	174
ATTACHMENT NO. 12 RELEASE OF CONSTRUCTION COVENANTS	178
ATTACHMENT NO. 13 MANAGEMENT AND MAINTENANCE COVENANT	181
ATTACHMENT NO. 14 DEVELOPER PUBLIC IMPROVEMENTS LIST.....	189
ATTACHMENT NO. 15 CITY PUBLIC IMPROVEMENTS LIST.....	191

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (hereinafter the "**DDA**" or "**Agreement**") dated for reference purposes only _____, 2018 is entered into by and between the CITY OF POMONA ("**City**" or "**Seller**") and MAYA CINEMAS NORTH AMERICA INC., a Delaware corporation ("**Maya**" or "**Developer**" or "**Buyer**"). City and Developer are sometimes hereinafter collectively referred to herein as the Parties. The City and Developer hereby agree as follows:

SEC. 100 SUBJECT OF AGREEMENT

Sec. 101 Purpose of Agreement

(1) The purpose of this Agreement is to assemble and develop underutilized Vehicle Parking District ("**VPD**") Lot No. 7 and a portion of VPD Lot No. 6 ("**City Property**") and other private property ("**Developer Property**") for the construction of an approximately 12-14 screen multiplex theater of approximately 56,000 to 66,000 square feet to be owned and operated by Developer (**Developer Project**).

(2) It is the further purpose of this Agreement to provide a means for the future development of retail/commercial/restaurant uses on three parcels of property owned by the City/VPD. These three properties consist of property commonly known as the Gist Building, property located on Second Street (approximately 26,050 square feet) between Park Avenue and South Gordon Street and on VPD Lot No. 6. To effectuate this purpose City will grant to Maya options to purchase the Gist Building, the property located on Second Street (approximately 26,050 square feet) between Park Avenue and South Gordon Street and VPD Lot No. 6 pursuant to the terms of this Agreement.

(3) The sale of the City Property by City to Developer and Developer's completion and operation of the Developer Project in accordance with this Agreement is in the vital and best interest of the City, and in accord with the public purposes and provisions of the General Plan and Downtown Specific Plan and applicable state and local laws and requirements. The Developer Project will be a benefit to the City. This Agreement is entered into for the purpose of development and not for speculation in land holding.

Sec. 102 The Property

(1) The City Property consists of VPD Lot No. 7 constituting approximately 31,200 square feet ("**City Parcel No. 1**") and the portion of VPD Lot No. 6 depicted on Attachment No. 1. The real property commonly known as the Gist Building located on Second Street, Pomona, California ("**City Parcel No. 2**" or "**Gist Property**") may be developed at a later date pursuant to an option agreement. The City Property and the Gist Property including Parcels No. 1 and No. 2 are depicted on **Attachment No. 1**, and legally described on **Attachment No. 2**, attached hereto and incorporated herein. The Developer Property is approximately 12,670 square feet of privately held real property located on Second Street adjacent to the School of Arts and Enterprises to be acquired by Developer from third parties as depicted on **Attachment No. 3** and legally described on **Attachment No. 4**, attached hereto and incorporated herein.

(2) The "**City Property 2**" consists of the remaining portion of VPD Lot No.6 constituting approximately _____ square feet ("**City Parcel 3**") and VPD owned vacant

real property located on Second Street constituting approximately 26,050 square feet (**City Parcel No. 4**”). The City Property 2, including City Parcels No. 3 and No. 4, are depicted on **Attachment No. 5** and legally described on **Attachment No. 6**, attached hereto and incorporated herein. The City Property, Gist Property and the City Property 2 are sometimes referred to in this agreement cumulatively as the “**City Properties.**”

Sec. 102.1 Street Vacation

(1) The City Property and Gist Property may include all or portions of certain alleys and streets to be vacated by the City consisting of approximately the easterly one-half of South Gordon Street between Second and Third Streets, and the alleys within the boundaries of City Parcels No. 1 and No. 2 as shown on **Attachment No. 7** ("**Street Portions**"). City shall cooperate with Developer to accomplish the foregoing.

(2) The vacation of the Street Portions is a discretionary action of the City Council of the City of Pomona that cannot be required by this Agreement. However, the City agrees to commence street vacation proceedings as soon as possible. Therefore the Close of Escrow for City Parcels No. 1 and No.2 is contingent on the vacation of the portions of South Gordon Street and the alleys within the boundaries of City Parcels No. 1 and No. 2 by the City of Pomona. Since the vacation of the Street Portions is within the legally required discretion of the City, the Developer understands and agrees that the City cannot be bound by the terms of this agreement to vacate the Street Portions.

(3) To the extent that the Street Portions contain public utilities, pipes, conduits, other public facilities or are subject to easements, licenses or other property interests, Developer shall relocate or otherwise satisfy the owners or holders of such public utilities, easements or other property rights, all at the expense of Developer. Developer shall allow City and the public utility companies affected by the vacation of the Street Portions to maintain and use the existing utilities and easements located on the City Property until such utilities are abandoned pursuant to the terms of a separate agreement to be entered by and between Developer and the utility companies affected thereby. Developer shall use good faith efforts to accomplish the foregoing prior to Close of Escrow. City shall cooperate with Developer to accomplish the foregoing. If the City vacates the Street Portions within its sole discretion, it shall adopt a City Resolution vacating the Street Portions which is only effective upon Close of Escrow. The city shall deposit the Resolution in Escrow at least three days before the Close of Escrow and the Resolution shall not be effective until it is recorded.

(4) Developer shall deliver into Escrow fully executed and notarized Irrevocable Offers of Dedication for any street or alley which is to be vacated at the Close of Escrow. The escrow agent shall record the Irrevocable Offers of Dedication immediately subsequent to the Resolution which implements the vacation of the street or alley. At such time as a certificate of occupancy is issued by the City for the Developer Project and the City Project the City shall sign, notarize and record a Release of the Irrevocable Offer of Dedication for the applicable street or alley.

(5) In exchange and consideration for the vacation of the closed-end of S. Gordon Street and the alleys within the boundaries of City Parcels No. 1 and No. 2, Developer shall undertake at its sole cost and expense, the following improvements to VDP Lot #6:

- (a) pave the surface of VDP Lot #6 to serve as a replacement parking lot;

- (b) paint parking stripes to designate vehicle parking stalls;
- (c) install parking gates at entrances to the parking lot;
- (d) install equipment at entrances to issue parking tickets;
- (e) install equipment to facilitate the payment of parking charges; and
- (f) maintain the parking area and equipment in clean and good working order.

Sec. 103 Intentionally Deleted

Sec. 104 Parties to the Agreement

Sec. 104.1 The City

(1) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing as a charter city under California Constitution. The City's address for purposes of this Agreement is:

To City:

City Manager
City of Pomona
505 South Garey Avenue
Pomona, California 91766
Phone:
Fax:
Email:

Sec. 104.2 Intentionally Deleted

Sec. 104.3 The Developer

(1) The Developer, as used herein, refers to Maya Cinemas North America, Inc., a Delaware Corporation authorized to do business in the State of California. The principal office and address for Developer for the purposes of this Agreement is:

To Developer:

Maya Cinemas North America, Inc.
150 S. Arroyo Parkway, Suite 102
Pasadena, CA 91105
Phone: 213-805-5533
Fax: 213-805-5332

Copy to:

Joseph S. Avila
AVILA & PUTNAM, PLC

113 E. Eula Drive
Montebello, California 90640-3964
Tel: (323) 727-6900
javila@avilaputnam.com

Sec. 104.4 Prohibition Against Transfer, Change in Ownership, Management and Control of Developer

(1) The qualifications and identity of Developer and its managing members are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with Developer. No voluntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(2) The Developer shall promptly notify the City of any and all changes regarding the status of Moctesuma Esparza as a member, partner, stockholder, representative of Developer of which it or any of its officers have been notified or otherwise have knowledge or information. City must approve any such changes in writing and shall not unreasonably withhold or delay such approval.

(3) The Developer may not assign all or any part of this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed except for wholly owned subsidiaries or affiliates of Developer. If Developer seeks an assignment, Developer shall promptly notify City in writing of the proposed assignment. Any such proposed assignment shall be subject to the terms of section 104.3(5) of this Agreement.

(4) Prior to recordation by the City of a Release of Construction Covenants for construction of the Property, Developer shall not, except as may be required by a tenant for the development of the Improvements and as permitted by this Agreement, make any total or partial sale, transfer, conveyance, or assign the whole or any part of the Property or the buildings or structures or any Parcel in the Property, excluding necessary financing transactions as permitted in this agreement, without the prior written approval of the City which shall not be unreasonably withheld or delayed. This prohibition shall not be deemed to prevent the granting of temporary easements or permits to facilitate development of the Property or leasing in the ordinary course of business.

(5) Except as expressly hereinafter provided, any such proposed transferee, for which the City's consent is required hereunder, shall have the qualifications and necessary financial resources, as may be reasonably determined by City, to fulfill the obligations undertaken by Developer in this Agreement. Any such proposed transferee, for which consent City approval is needed shall expressly assume all obligations of Developer under this Agreement, including the loan obligation, and agree to be subject to all conditions and restrictions under this Agreement to which Developer is subject. Any such transfer shall be made by an instrument in writing satisfactory to City. All instruments and other legal documents proposed to effect any such transfer, shall be submitted to City for review. If approved by the City, its approval shall be indicated to Developer in writing.

(6) In the absence of a specific written agreement by the City, no such transfer, assignment or approval by the City shall be deemed to relieve Developer or any other

party from any obligations under this Agreement until completion of construction and resale of the particular Property.

(7) The prohibition shall not apply to the transfer, conveyance, or assignment by way of a deed of trust or other security instrument, or by way of a foreclosure of such deed of trust or other security instrument, or a sale or transfer pursuant thereto, or a deed in lieu of foreclosure, in connection with the financing of the City Property and development thereon.

(8) Maya Cinemas North America Inc. specifically covenants, warrants and guarantees performance of all of the duties and obligations on its part to be performed pursuant to this Agreement, and to remain liable for any damages arising from failure to perform any of such duties and obligations, without regard to whether or not such duty, obligation or performance has been transferred or assigned by Maya Cinemas North America, Inc. to another party.

Sec. 105 Representations and Warranties

1. The City and Developer acknowledge that neither the City nor Developer is relying upon any representations or warranties other than those set out in this Agreement, and that the representations and warranties set out in this Agreement constitute all of the representations and warranties of the City and Developer in regard to this transaction.

Sec. 105.1 City's Representations

The City represents and warrants as follows:

(1) There are no physical or legal facts, circumstances, problems or governmental actions known to City with respect to the City Properties which, if disclosed to Developer, would materially or adversely impact decisions regarding acquisition and development of the Property, except the right of first offer and exclusive right of negotiation affecting the City Property contained in sections 9.1 and 9.2 of that certain agreement entitled Agreement of Purchase and Sale and Joint Escrow instructions between Arts Colony, LLC as seller and the City of Pomona as buyer.

(2) The City has no knowledge of any violations of governmental codes, ordinances, regulations or orders with respect to the Property.

(3) City has duly authorized, executed and delivered this Agreement and City has or will authorize, execute and deliver, within the times set forth therefore in the Schedule of Performance (Attachment No. 8), any and all other agreements and documents required to be authorized, executed and delivered by City in order to carry out, give effect to and consummate the transaction contemplated by this Agreement.

(4) City has performed all acts necessary to validly enter into this Agreement.

(5) City is the fee title owner of the City Properties.

Each of the foregoing items (1) through (4) shall be deemed to be an on-going representation and warranty and shall survive in perpetuity. The City shall advise Developer in writing, if there is any change pertaining to any matters set forth or referenced in the foregoing items (1) through (5).

Sec. 105.2 Developer's Representations

Developer represents and warrants to the City that:

(1) Immediately following the approval of this DDA by City and subject to Section 201 below, Developer will commence work on the Developer Project entitlement application process and will diligently pursue completion of the Developer Project in accordance with the "**Schedule of Performance**," as may be amended from time-to-time, as set forth in **Attachment No. 8**, attached hereto.

(2) Developer has duly authorized, executed and delivered this Agreement and Developer has or will authorize, execute and deliver, within the times set forth therefore in the Schedule of Performance, any and all other agreements and documents required to be authorized, executed and delivered by Developer in order to carry out, give effect to and consummate the transaction contemplated by this Agreement.

(3) Neither this Agreement nor anything provided to be done hereunder by Developer violates or shall violate any contract, agreement, or instrument to which Developer is a party.

(4) Maya Cinemas North America, Inc. is a Delaware corporation duly organized and validly existing under the laws of the State of Delaware and is registered and authorized to conduct business in the State of California. Maya Cinemas North America, Inc. has full power and authority to own property and conduct its business as provided for in this Agreement, and has full power and authority to enter into this Agreement.

(5) This Agreement is a valid and binding agreement enforceable against Developer in accordance with its terms, subject to laws relating to bankruptcy and creditor's rights and generally applicable equitable principles.

(6) Developer is not relying upon any representations or warranties by City other than those expressly set forth in this Agreement and the representations and warranties of City set forth herein constitute all of the representations and warranties of City in regard to this transaction.

(7) Developer has not entered into any agreements which will adversely affect the title to the City Properties or Developer's right to construct either the Developer Project or the City Project, as provided in this Agreement.

(8) Developer represents and warrants to the City that there is no suit, legal action, administrative arbitration or other proceeding or governmental investigation process which has been served upon Developer or, which to Developer's best knowledge, is otherwise pending or threatened against Developer in which any party is making or has made a claim or defense that, if sustained, would materially and adversely affect the performance of Developer under this Agreement or materially and adversely interfere with the ability of Developer to consummate the transactions contemplated herein.

(9) Developer possesses or will acquire prior to close of escrow adequate financial resources and has the skill and experience to develop and operate the Developer Project and to construct the City Project.

(10) Developer is entering into this Agreement for the purpose of redeveloping the Property and not for speculation in land holding or land banking. In this regard, Developer

recognizes the importance of the development of the Developer Project on the City Property to the general welfare of the residents of the City, the substantial public aids that have been made available by law and by government for the purpose of making such development possible, and the fact that the qualifications and identity of Developer are of particular concern to City and that it is because of such qualifications and identity that City is entering into this Agreement with Developer;

Each of the foregoing items (1) through (10) shall be deemed to be an on-going representation and warranty. Developer shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (1) through (10).

SEC. 200 DISPOSITION OF THE PROPERTY

Sec. 201 Acquisition of the Developer Property.

(1) City and Developer understand and agree that the performance and completion of this Agreement is contingent upon the acquisition of the Developer Property by the Developer free and clear of all leasehold interests and other rights to possess or control the Developer Property. In accordance with and subject to all the terms, covenants and conditions of this Agreement, Developer agrees to use its good faith efforts to acquire title to the Developer Property, all within the times required by the Schedule of Performance. Acquisition of the Developer Property by Developer is a condition precedent to any obligation of City or Developer pursuant to this Agreement, except to the extent that the Schedule of Performance requires acts by either Party prior to the acquisition of the Developer Property. Developer shall be deemed to have used good faith efforts to acquire the Developer Property if it offers to purchase the Property for the amount of the Developer's appraisal.

(2) Developer shall hold harmless, defend and indemnify City and the City of Pomona, its officers, employees, agents, contractors and subcontractors against any claim, proceeding, action or damages, including relocation benefits, in any way arising out of the purchase, relocation and reconstruction of the Developer Property.

(3) Developer and City recognize, understand and agree that the acquisition of the Developer Property is subject to risk and uncertainty, and that both parties will spend time, money and effort in the performance of this Agreement. Therefore, if this Agreement is terminated because the Developer determines that it is infeasible to obtain the Developer Property, then neither party shall have any claim, rights or cause of action against the other for any costs, expense or damages incurred by that party in furtherance of this Agreement.

Sec. 202 Sale, Purchase and Deposit of City Property

(1) The City agrees to sell the City Property to the Developer and the Developer agrees to purchase the City Property from the City. Developer shall accept such transfer of the City Property from City, and as consideration for such transfers, shall pay to City the purchase price for the City Property based on the per square foot value of \$13.97 times the total square footage of City Property ("**Purchase Price**"). The actual square footage of the City Property shall be confirmed by an ALTA survey to be paid for by Developer. The ALTA survey shall be completed at least ten (10) business days before the Closing. The square footage of the City

Property shall exclude any Street and alley Portions vacated by the City. The Purchase Price shall be paid as follows:

(a) Upon the Opening of Escrow Developer shall deposit in Escrow the sum of One Hundred Thousand and No Dollars \$(100,000) as a good faith deposit ("**Developer's Escrow Deposit**"). The term Developer's Escrow Deposit includes any interest earned on the deposit. If the Escrow closes successfully the Developer's Escrow Deposit shall be credited toward the Purchase Price. If the Escrow fails to close successfully due to the primary default of the Developer, the Developer's Escrow Deposit shall be transferred to City as liquidated damages pursuant to Section 202.1 of this Agreement. If the Escrow fails to close due to the primary default of City, and Developer elects to terminate this Agreement in accordance with Section 604.1, then the Escrow Deposit shall be refunded to the Developer in accordance with Section 604.1. If the Escrow fails to close without fault of any party, then the Developer's Escrow Deposit shall be returned to Developer.

(b) Developer shall deposit into Escrow the balance of the Purchase Price two business days prior to Close of Escrow.

Sec. 202.1 Liquidated Damages

If through a continuing default after notice and opportunity to cure as provided in this Agreement, Developer fails or refuses to complete the transfer of title to the City Property, to which City is prepared to deliver insurable title in accordance with the terms and conditions of this Agreement, the City, as its sole and exclusive remedy, may terminate this Agreement, and the parties agree that City shall draw down Developer's Escrow Deposit as liquidated damages in an amount of \$100,000 which sum the Parties agree is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Upon payment of the liquidated damages, the Parties shall have no further obligation one to the other hereunder. In placing their initials at the place provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained the consequences of this liquidated damages provision at the time this Agreement was made. This paragraph shall not be construed to grant Developer the option to purchase the City Property or in the alternative to pay the liquidated damages.

Developer initial here: _____ City initial here: _____

Sec. 203 Option to Purchase City Property 2

(1) Developer and City shall execute and deliver into Escrow the option agreement in substantially the form attached hereto and incorporated by reference as **Attachment No. 9 ("Option Agreement")**. The performance of the terms of this Agreement shall be adequate consideration for the grant of the Option Agreement. The Option Agreement shall be valid for a period of five years commencing on the Close of Escrow. The Option Agreement may only be exercised not earlier than thirty (30) days after the completion of a city parking structure on Vehicle Parking District Lot 10, and the issuance of a certificate of occupancy for such parking structure, but not later than the expiration of the Option Agreement.

Sec. 204 Option to Purchase Gist Property

(1) Developer and City shall execute and deliver into Escrow the option agreement in substantially the form attached hereto and incorporated by reference as **Attachment No. 9A (“Gist Option Agreement”)**. The performance of the terms of this Agreement shall be adequate consideration for the grant of the Option Agreement. The Option Agreement shall be valid for a period commencing on the Close of Escrow and continuing until the Developer obtains financing for the Developer Project, but in no event longer than five (5) years from the Close of Escrow. The Option Agreement may be exercised anytime during its effective term.

Sec. 205 Escrow

Sec. 205.1 Opening of Escrow

(1) The City and Developer agree to open an escrow (the **“Escrow”**) with _____ (**“Escrow Agent”**) within fifteen (15) business days after the execution of this Agreement.

(2) If the Escrow is not opened within such fifteen (15) business days, this Agreement shall automatically terminate, unless the time is extended in writing by mutual agreement of City and Developer.

(3) This Agreement shall constitute the joint escrow instructions between the City and Developer, and a duplicate original to this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow (the **“Opening of Escrow”**). The City and Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent is hereby empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section 205 in writing delivered to City and to Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder. In the event of any inconsistency between any escrow instructions and this Agreement, this Agreement shall control, notwithstanding that either party may have intentionally or inadvertently executed such inconsistent instructions.

Sec. 205.2 Close of Escrow

(1) The **“Close of Escrow”** or the **“Closing”** shall be within thirty (30) days after satisfaction of all Conditions Precedent by City and Developer, unless otherwise extended by the Parties in writing, but not later one (1) year from the date of the approval and full execution of the DDA than December 31, 2018 plus the period of any such extension. The Escrow may be extended for any periods of time with the mutual written agreement of the City and Developer, delivered to Escrow. The City Manager shall have the reasonable discretion to approve extensions of the Close of Escrow, but cumulatively not to exceed a total of one hundred fifty (150) days. The City and Developer agree to deliver all documents necessary for the conveyance of title in conformity with this Agreement.

Sec. 205.3 Developer’s Deposits in Escrow

(1) Developer shall pay/deliver into escrow, to the Escrow Agent, the following fees, charges and costs and documents at the time they are required to place the Escrow in a condition to close:

- (a) One half (½) of the escrow fee;
- (b) One half (½) of the recording fees;
- (c) One half (½) of the notary fees;
- (d) Any State, County or City documentary stamps or transfer tax.
- (e) The Developer's Escrow Deposit.
- (f) The balance of the Purchase Price

Sec. 205.4 City's Deposits in Escrow

(1) The City shall pay/deliver into escrow, to the Escrow Agent, the following fees, charges and costs and documents at the time they are required to place the Escrow in a condition to close:

- (a) One half (½) of the escrow fee;
- (b) One half (½) of the recording fees;
- (c) One half (½) of the notary fees;
- (d) Ad Valorem taxes, if any, upon the City Property, pursuant to Section 205.12 of this Agreement;
- (e) The premium for the ALTA Standard Title Insurance Policy on the City Property. Developer may obtain extended coverage title insurance, ALTA coverage, or surveys at the cost of Developer;
- (f) Costs necessary to place the title in condition for conveyance required by the provisions of this Agreement;
- (g) Grant Deed for the City Property and the costs of drawing the deeds;

Sec. 205.5 Escrow Instructions

(1) The Escrow Agent is authorized to:

- (a) Pay and charge Developer and City for any fees, charges and costs payable under Sections 205.3 and 205.4 of this Agreement. Before such payments are made, the Escrow Agent shall notify City and Developer of such fees, charges and costs. City and Developer will close escrow in accordance with Section 205.2 unless a sooner or later date or termination of this Agreement is mutually agreed upon by each of the Parties to this Agreement.
- (b) Disburse funds and deliver the deeds, and other documents to the Parties entitled thereto, when the conditions of the escrow have been fulfilled by City and Developer. The Purchase Price shall not be disbursed by the Escrow Agent unless and until it

has recorded the Grant Deed and has delivered to the appropriate party a title insurance policy insuring title, acceptable to Developer and the lender, and conforming to the requirements of Section 205.10 of this Agreement.

(c) Record the Grant Deed and any instrument delivered through this escrow, if necessary or proper to vest title in Developer, in accordance with the terms and provisions of this Agreement.

(d) Cause to be prepared on behalf of City and delivered to Developer such disclosure documents and reports concerning flood hazards, earthquake, fire and wildlands as may be required by California Government Code Sections 8589.3, 8589.4 and 51183.5 and California Public Resources Code Sections 2621.9, 2694 and 4136.

(2) All funds received into escrow shall be deposited in an interest bearing account by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made on the basis of a 30-day month. All interest on Developer's deposit shall be credited towards the purchase price set forth in this Agreement or in the event this transaction is terminated for any reason, except the default of Developer, the interest shall be returned to Developer.

(3) The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both City and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

(4) Any amendment of these escrow instructions shall be in writing and signed by both City and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

(5) All communication from the Escrow Agent to the City or Developer shall be directed to the addressees in the manner established in Sections 104.1 and 104.2 of this Agreement. Nothing in this Section 205.5 shall be construed to impair or affect the rights or obligations of the City or Developer as to specific performance.

Sec. 205.6 Condition of Title and Title Insurance

(1) The conveyances of the City Property and City Property 2 shall be by fee simple, merchantable and insurable title free and clear of all recorded liens, encumbrances, covenants, assessments, easements, leases and taxes except as are consistent with this Agreement and approved by the Developer ("**Approved Title Condition**").

(2) Within fifteen days (15) of the opening of the escrow, City shall deliver to the Developer a preliminary title report for a CLTA Standard Owner's Title Insurance Policy ("**Report**") covering the City Property and issued by Fidelity Title Insurance Company 21731 Ventura Blvd. Ste. 100, Woodland Hills, CA 91367, Michael Mahoney, Senior escrow officer, (818) 449-3005 (the "**Title Company**"), together with all readable and legible copies of all instruments, if any, referred to in the Report as exceptions to title. Developer shall, in addition to all other approvals, have the right to review and accept the assessments, and any liens or other matters affecting title, whether or not of record, including all matters affecting title that are incorporated in this Agreement by reference. Within 30 days after receipt of the Title Report and exception documents, Developer shall give written notice to City of any defects in or objections

to the title as so evidenced. The City shall, within thirty (30) days after written notice from Developer of any defects in title, or such reasonable time as may be extended by Developer, exert its best efforts to clear the title of the defects and objections so specified. If City is unable to clear such defects or objections within such 30 day period, it shall give written notice to Developer within 15 days following the 30 day period that City elects to terminate this DDA. Developer shall then have 15 days to give written notice to City that Developer will accept the defects or objections which City was unable to clear. If Developer does not give City such notice of acceptance of defects or objections within 15 days, then this DDA and the Escrow shall be terminated. Upon such automatic termination, Developer shall be entitled to the return of all of its deposits, whereupon the Parties shall have no further obligations one to the other hereunder.

(3) City shall pay the cost of Title Insurance. Developer may obtain extended coverage title insurance, ALTA coverage, or surveys at the cost of Developer

(4) Concurrent with the recording of the Grant Deed conveying title to the City Property to Developer, the Title Company shall, if requested by Developer, provide Developer with an endorsement to insure the amount of Developer's estimated construction costs for improvements to be constructed upon the Property. Developer shall pay the entire premium for any such additional title insurance coverage.

Sec. 205.7 Conveyance of Title and Delivery of Possession

(1) Subject to any mutually agreed upon extensions of time, conveyance of title and delivery of exclusive possession of the City Property to Developer shall be completed on or prior to the date for close of escrow. City and Developer agree to perform all acts necessary to convey title in sufficient time for title to be conveyed in accordance with the foregoing provisions. If, prior to the Closing, all of the Property, or any portion thereof which, in the reasonable judgment of Developer, would materially and adversely affect the development of the Property consistent with the terms of this Agreement, is condemned, or a notice is received by City or Developer of any such threatened condemnation, then Developer shall have the right to terminate this Agreement pursuant to Section 604.1 at any time prior to close of escrow upon written notice to City.

Sec. 205.8 Form of Deed

(1) Subject to Section 205.7, the City shall convey the title to Developer as follows:

(a) In the condition provided in Section 205.6 of this Agreement.

(b) By “**Grant Deed**” in the form as set forth in **Attachment No. 10**. The Grant Deed shall contain a power of termination which reverts title in the City upon the inability of Developer to obtain financing satisfactory to Developer to develop and construct the Developer Project within the specified time period. The Grant Deed shall contain an initial use covenant restricting use of the City Property to an approximately 12 to 14 screen multiplex theater as described in Section 302.1 of this Agreement.

(c) After review and approval of the title report submitted to Escrow, consistent with the terms of this Agreement, which is mutually satisfactory to the Title Company, the Developer, the Developer’s Lender and the City.

(d) After the Title Company agrees to insure the title herein.

Sec. 205.9 Time and Place for Delivery of Deeds

1. The City shall timely and properly execute, acknowledge and deliver to Escrow a Grant Deed(s) to the City Property with the requirements set forth in Section 205.8 of this Agreement, which is substantially in the form of the Grant Deed attached hereto as Attachment No. 10 and incorporated herein by reference. Subject to any mutually agreed upon extension of time, the City shall deposit the Grant Deed with the Escrow Agent at least two days before close of Escrow.

Sec. 205.10 Recordation of Deeds

(1) Title shall be transferred to Developer by Grant Deed upon or prior to the date for conveyance thereof, provided that the Escrow Agent shall have notified the parties in writing that the deed, properly executed and acknowledged, has been delivered to the Escrow Agent, and that title is in the condition to be conveyed in conformity with the provisions of Section 205.9 of this Agreement and that the parties have complied with all of their obligations and fulfilled all of their responsibilities to be performed by them prior to the conveyance of title. The Escrow Agent shall file the deed for recordation among the land records in the office of the County Recorder for Los Angeles County.

Sec. 205.11 Taxes, Assessments and Prorations

(1) Any ad valorem taxes and/or assessments on the City Property or taxes imposed upon this Agreement, or any rights thereunder levied, assessed or imposed for any period occurring prior to Close of Escrow, shall be borne by City. All ad valorem taxes and assessments levied or imposed on the City Property for any period occurring after Close of Escrow shall be paid by Developer.

(2) Any taxes, assessments, fees or charges which cover a period before and after the Close of Escrow shall be prorated. Prorations shall be made as of the Close of Escrow. All prorations shall be made on the basis of a thirty (30) day month and shall be credited to City if it is entitled thereto, or shall be credited against the cash portion of the Purchase Price if Developer is entitled thereto. Such prorations shall be made by Escrow Agent on the basis of a statement(s) approved by Developer and City and deposited into the Escrow prior to the Close of Escrow.

(3) Supplemental taxes, fees or charges assessed or imposed on the City Property after the Close of Escrow, but which are imposed for a period prior to Close of Escrow shall be prorated between City and Developer as provided in subparagraphs (1) and (2) of this section 205.11.

(4) Expenses of operating the City Property which were prepaid by City for a period beyond the Close of Escrow shall be credited to City.

(5) Developer shall be responsible for obtaining and paying for utility services from and after Close of Escrow.

Sec. 205.12 Evidence of Financing and New Market Tax Credits

(1) Within the time set forth in the Schedule of Performance, Developer shall exercise commercially reasonable efforts to obtain evidence of commitments for sufficient equity capital, debt financing and federal New Market Tax Credits on terms satisfactory to Developer in its sole discretion as necessary to undertake and complete acquisition of the Developer Property

and the City Property and development of the Developer Project thereon, as applicable. Contingent upon its ability to obtain such equity and debt financing within the time set forth in the Schedule of Performance, Developer shall submit such evidence of financing to City's City Manager for review. Such evidence of financing shall include, as applicable, the following: (i) a signed letter of financing commitment from a financing institution; or (ii) a copy of the loan documents (in substantially their final form) to be obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to acquire the Site and develop the Developer Project; or (iii) written documentation and evidence, from the chief financial officer of Developer (or such other person serving in the most comparable capacity for Developer), reasonably satisfactory to City that Developer has sufficient funds for such acquisition and construction and that such funds have been committed to the Developer Project; or (iv) such other documentation reasonably satisfactory to City Manager as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total acquisition and development cost for the Developer Project less financing authorized by those loans referred to in clauses (i and ii) hereinabove. Notwithstanding the foregoing, evidence of equity and debt financing may be evidenced by an executed letter of intent to provide financing and equity, respectively. Loan documents (in substantially their final form) shall be submitted to the City Manager at least five (5) business days prior to Close of Escrow.

(2) City Manager shall review Developer's evidence of financial capability and commitments within five business days after receipt of a complete submittal of loan documents in substantially their final form. The City Manager shall accept a letter of intent to provide financing and equity in lieu of the loan documents in substantially their final form. The review of the City shall be limited to determining that the financing entity is a responsible and sound financial source of adequate financial capability to provide the necessary loan proposed, that the amount of the loan, along with all other loans and equity funds available to Developer, is equal to or greater than the cost of acquiring the Property and the cost of construction and development of the Developer Project, and that the amount of the funds by the terms of the loan documents in substantially their final form or the signed letter of intent will be available at the time required consistent with the other provisions of this Agreement. Review shall not be unreasonably withheld, delayed, or conditioned.

Sec. 206 Condition of the City Property

(1) Except as provided in this Agreement, the City Property shall be conveyed and delivered to Developer in an "as-is" physical condition. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE CITY PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 105.1, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS OR BROKER AS TO ANY MATTERS CONCERNING THE CITY PROPERTY, INCLUDING WITHOUT LIMITATION:

(a) The quality, nature, adequacy and physical condition and aspects of the City Property, including, but not limited to, sewage, and utility systems, the square footage within the City Property.

(b) The quality, nature, adequacy, and physical condition of soils, geology and any groundwater.

(c) The existence, quality, nature, adequacy and physical condition of utilities serving the City Property.

(d) The development potential of the City Property, and the City Property's use, habitability, merchantability, or fitness, or the suitability, value or adequacy of the City Property for any particular purpose.

(e) The zoning or other legal status of the City Property or any other public or private restrictions on use of the City Property.

(f) The compliance of the City Property with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental, entity or of any other person or entity (including, without limitation, the Americans with Disabilities Act).

(g) The presence of hazardous materials on, under or about the City Property or the adjoining or neighboring City Property.

(h) The quality of any labor and materials used in any Improvements.

(i) The economics of the operation of the City Property.

(2) City is not in any way responsible for any demolition or physical site clearance of said City Property, except as specifically set forth in Section 301.(2) and Attachment No. 15 of this Agreement. Developer is solely responsible for the relocation of utilities and easements as necessary on any parcel within the City Property; however, City agrees to fully cooperate with Developer to relocate same.

Sec. 206.1 Developer Due Diligence

(1) Developer will have the later of (a) one hundred and fifty (150) days after the opening of escrow or (b) the final approval by the City of CEQA documentation for the Developer Project and expiration of the appeal period for same (the "**Due Diligence Period**") to conduct any investigation of the City Property.

(2) During the Due Diligence Period Developer is invited, urged, and cautioned to conduct, at Developer's expense, such investigations, inspections, surveys, plans, and tests of the City Property, including, without implied limitation, soils, groundwater, wells, percolation, geology, environmental, drainage, engineering and utilities investigations, inspections, surveys, plans, and tests (collectively, "**Investigations**"), as Developer determines, in Developer's sole discretion, are required to determine the suitability of the City Property for Developer's intended use and development. Such Investigations shall be conducted at the sole cost and expense of Developer. Developer shall hold harmless, indemnify and defend City against all costs, damages, liabilities or expenses, including mechanics lien claims arising out of Developer's activities on the City Property.

(3) City hereby grants to Developer, its employees, representatives, agents and independent contractors, a license to enter the City Property for purposes of conducting such Investigations during normal business hours. Developer shall provide City twenty-four (24) hours notice prior to entering the City Property.

(4) In the event that Developer exercises this right of entry, Developer shall comply with all applicable laws and obtain all permits which may be required with respect to its investigations and testing. Developer further agrees to indemnify, defend, and hold harmless City and the City Property from and against any and all claims, damages, liabilities, and losses arising from such activities of Developer or its employees or agents, and from and against all mechanics', materialmen's', and other liens resulting from any such conduct. Developer shall restore the City Property as nearly as possible to its condition existing immediately prior to any such entry by or on behalf of Developer. Prior to entry upon the Site Developer shall obtain insurance covering Developer's indemnity, hold harmless, and defense obligations to City pursuant to this paragraph. Prior to entry upon the City Property for such Investigations Developer shall furnish to City duplicates of appropriate certificates of commercial general liability insurance in the amount of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage and Two Million Dollars (\$2,000,000) general aggregate limit, naming City as an additional insured, insuring Developer's obligations and responsibilities under this paragraph (4). Developer shall maintain each such policy in effect until the Close of Escrow.

(5) Developer shall notify City in writing of any objections as to the condition of the City Property, by delivering such written objection to escrow within the Due Diligence Period. City shall then have ten (10) days to either correct the objection to the reasonable satisfaction of Developer, or initiate such corrective measures which can be completed without negatively affecting the timing of Developer's development schedule. If corrective measures cannot be completed in a mutually agreed time period, the City may give written notice to Developer through escrow that City elects to terminate the DDA. If City elects to terminate the DDA, Developer shall have ten (10) days to give written notice to City through escrow that Developer waives the objection or terminates the DDA.

Sec. 207 Conditions Precedent to Close of Escrow

Sec. 207.1 Developer's Conditions Precedent

(1) Notwithstanding any other provision set forth in this Agreement to the contrary, Developer's obligation to close the Escrow for the City Property and its obligation to accept conveyance of the City Property from City shall be subject to satisfaction or Developer's written and signed waiver of each of the following conditions precedent (collectively, the "**Developer's Conditions Precedent**"):

(a) At the Closing, the Title Company shall be irrevocably committed to issue the Title Policy that is required to be paid for by City pursuant to Section 205.6 of this Agreement insuring fee title to the City Property as being vested in Developer in the Approved Title Condition.

(b) City shall have tendered possession of the City Property to Developer in the condition required pursuant to Section 206 of this Agreement.

(c) Prior to the expiration of the applicable Due Diligence Period, Developer shall have approved all Due Diligence matters or have waived any objections in writing.

(d) Developer shall have obtained City approval of all of the Development Entitlements, Final Tract/Parcel Map, CEQA documentation satisfactory to Developer and Preliminary Building Plans for all of the improvements comprising the Developer

Project and Developer shall be in a position to obtain issuance of building permits at the Closing for the Developer Project upon the payment of applicable building permit fees and posting of any normally required security.

(e) Developer shall have submitted and obtained the City Manager's review of Developer's evidence of financing commitments, as provided for in Section 205.12(1) of this Agreement;

(f) Escrow Agent holds and will deliver to Developer the instruments and funds accruing to Developer pursuant to this Agreement with respect to the applicable Escrow; and

(g) The Resolution vacating the Street Portions approved by the City of Pomona has been recorded or is to be recorded at the Close of Escrow subject to the reservation of any easements or utilities to serve any structures remaining in use.

(h) Representations and warranties by City in this Agreement shall be true on and as of the applicable Closing as though made at that time. All covenants of City with respect to the Site which are required to be performed prior to the applicable Closing shall have been performed by such date.

(i) Unless otherwise waived by Developer, Developer shall have received written approval for federal New Market Tax Credit financing.

(j) Developer approval of estimated costs of utility relocation caused by alley vacations.

(k) No change in the trade area of the Developer Project that would materially adversely affect the economic viability of the Developer Project has occurred or has been announced.

Sec. 207.2 Failure of Developer's Conditions Precedent; Termination

The failure of any of the Developer's Conditions Precedent set forth in Section 207.1 shall not be a bar to the Closing nor an excuse for Developer's complete performance under this Agreement if the failure of the condition is primarily due to the fault of Developer. Developer shall reasonably cooperate with City and the Escrow Agent to attempt to satisfy each and every one of the Developer's Conditions Precedent. In the event, however, that Developer has fully performed its obligations set forth in this Agreement but any of the Developer's Conditions Precedent is not satisfied or waived in a writing signed by Developer prior to the expiration of the applicable period for satisfaction or waiver, Developer may, in addition to asserting or claiming any other right or remedy Developer may have for City's breach or default hereunder, cancel the applicable Escrow and terminate this Agreement. Such cancellation shall be in writing and delivered to Escrow Agent and City. In the event Developer elects to cancel the Escrow and/or terminate this Agreement, all documents and funds, if any, delivered by one Party to the other Party or to the Escrow Agent with respect to the cancelled Escrow shall be returned to the Party making delivery.

Sec. 207.3 Conditions Precedent to City's Obligations

(1) Notwithstanding any other provision set forth in this Agreement to the contrary, City's obligation to close the Escrow for the City Property, and its obligation to convey the

City Property to Developer shall be subject to satisfaction or City's written and signed waiver of each of the following conditions precedent (collectively, the "**City's Conditions Precedent**"):

(a) Escrow Agent holds and will deliver to City the instruments and funds accruing to City pursuant to this Agreement with respect to the Escrow.

(b) Developer shall have obtained City approval of all of the Development Entitlements and Preliminary Building Plans, CEQA documentation satisfactory to the City of Pomona and Developer for all of the improvements comprising the Developer Project, and Developer shall be in a position to obtain issuance of building permits for the Developer Project at the Closing, upon the payment of applicable building permit fees and posting of any normally required security.

(c) Developer shall have submitted and obtained the City Manager's approval of the insurance required with respect to the Escrow pursuant to Section 304 of this Agreement.

(d) Developer shall have submitted and obtained the City Manager's review of Developer's evidence of financing commitments as provided for in Section 205.12 of this Agreement.

(e) Proof to the satisfaction of City that Developer has obtained recorded fee title to the Developer Property.

(f) The Resolution vacating the Street Vacations approved by the City of Pomona has been recorded or is to be recorded at the Close of Escrow subject to the reservation of any easements or utilities to serve any structure remaining in use.

(g) All representations and warranties by Developer in this Agreement with respect to the Site shall be true on and as of the Closing as though made at that time and all covenants of Developer which are required to be performed prior to the applicable Closing shall have been performed by such date.

(h) Developer shall have received written approval for federal New Market Tax Credit financing, unless waived by Developer.

(i) Developer approval of estimated costs of utility relocation caused by alley vacations.

(j) Release of right of first offer and exclusive right of negotiation affecting the City Property contained in sections 9.1 and 9.2 of that certain agreement entitled Agreement of Purchase and Sale and Joint Escrow instructions between Arts Colony, LLC as seller and the City of Pomona as buyer.

Sec. 207.4 Failure of City's Conditions Precedent; Termination

(1) The failure of any of the City's Conditions set forth in Section 207.3 shall not be a bar to the Closing of the Escrow nor an excuse for City's complete performance under this Agreement if the failure of the condition is primarily due to the fault of City. City shall reasonably

cooperate with Developer and the Escrow Agent to attempt to satisfy each and every one of the City's Conditions Precedent. In the event, however, that City has fully performed its obligations set forth in this Agreement but any of the City's Conditions Precedent is not satisfied or waived in a writing signed by City prior to the expiration of the applicable period for satisfaction or waiver, City, as its sole and exclusive remedy, may cancel the Escrow and terminate this Agreement. Such cancellation shall be in writing and delivered to Escrow Agent and Developer. If the failure of the condition is due primarily to the fault of Developer, then City shall also recover liquidated damages pursuant to Section 203.1 of this Agreement. In the event City elects to cancel the Escrow and/or terminate this Agreement, all documents and funds, if any, delivered by one Party to the other Party or to the Escrow Agent with respect to the cancelled Escrow, shall be returned to the Party making delivery.

Sec. 208 Environmental Compliance

(1) Full and complete California Environmental Quality Act ("CEQA") analysis, noticing, documentation and public review will be undertaken by the appropriate lead agency prior to approval of the Development Entitlements. CEQA compliance is a condition precedent to Close of Escrow and performance of this Agreement. The approval of this Agreement shall not limit the scope of CEQA analysis including project mitigation measures and the consideration of project alternatives, including a no-project alternative. The provisions of this Section 208 shall not in any way limit, hinder or affect the discretion of the lead agency to review CEQA documents and impose mitigation measures, alter the project or deny the project in consideration of adverse environmental impacts. All costs associated with the CEQA process for the Developer Project shall be paid by Developer.

(a) The City shall provide copies of any environmental impact reports which it has, if any, on all parcels within the immediate vicinity of the Developer Project to assist in expediting the full and complete CEQA process. The City shall not be responsible or liable for the contents of any such reports provided to Developer.

(b) Developer reserves the unconditional right to terminate this Agreement prior to the Close of Escrow for the City Property in the event Developer determines in its sole discretion, that the costs required to correct or remediate any adverse condition or conditions described in the approved CEQA documents renders the Developer Project financially infeasible. The exercise of such right will not constitute a default of any term or condition set forth in this Agreement. The provisions for termination without fault by either Party set forth in this Agreement shall apply in such an event.

Sec. 209 Memorandum of DDA

(1) At the time of execution of the DDA the City and Developer shall also sign the **Memorandum of DDA** in the form of **Attachment No. 11**. City may record the Memorandum of DDA immediately after execution of this Agreement or City shall deliver the Memorandum of DDA to Escrow, and it shall be recorded at Close of Escrow.

SEC. 300 DEVELOPMENT OF THE PROPERTY

Sec. 301 Development of Developer Project

(1) The Developer shall construct the Developer Project described in this Section 301 and all of its subsections (the "**Developer Improvements**") at its own cost and expense. The Property and any improvements to be constructed thereon by Developer shall be developed as provided in the site plans, development plans, renderings and zoning entitlements (the "**Development Entitlements**") to be submitted by Developer and approved by City. The Developer Improvements and the Development Entitlements shall substantially comply with the Preliminary Plans in Section 301.1

Sec. 301.1 Scope of Development

Developer shall Develop and construct improvements on the City Property solely in accordance with the Development Entitlements, this Agreement, the Grant Deed and plans and specifications approved by the City of Pomona. Developer shall develop and construct on the City Property and the Developer Property an approximately 56,000 to 66,000 square foot first class 12 to 14 screen theatre with stadium seating in each screen and concessions which may include beer and wine. The Theatre to be developed on the City Property shall be of first quality and have an overall standard of quality equal to or better than surrounding theaters within a 10 miles radius and showing first run movies.

Sec. 301.2 Temporary Parking

(1) In consideration for the use of VPD Lot 6 and City Parcel No. 4, Developer shall pave and stripe VPD Lot 6 and City Parcel No. 4, prior to the issuance of a certificate of occupancy for the Developer Project so that when construction is completed on the Developer Project on VPD Lot 7, temporary parking will be available.

(2) The temporary parking spaces shall be constructed at the sole cost and expense of Developer. If Developer is not the fee owner of VPD Lot 6 and City Parcel No. 4 at the time the temporary parking spaces shall be constructed, then City shall grant to Developer a license or right of entry to construct the temporary parking spaces.

Sec. 301.3 Validated Parking

(1) City shall provide Developer with parking in the Vehicle Parking District parking structure to be constructed on VPD Lot 10 for Developer's theater customers on the same terms and conditions as other similar commercial uses in the Downtown Area for a period of four (4) hours during the first seven years of operation of the theater from the date of issuance of a certificate of occupancy for the theater. After the initial seven year period, the City shall provide parking for theater patrons for two (2) hours on the same terms and conditions as other similar commercial uses in the Downtown Area. In the event the Developer Project obtains a certificate of occupancy prior to the availability of parking spaces in the parking structure, City shall provide replacement spaces in VPD Lot 6 and the Developer improved parking spaces in Parcel 4 for the use of Developer's theater patrons on the same terms and conditions as other similar commercial uses in the Downtown Area. The utilization of such replacement parking shall be under the same terms and conditions as those related to the Theater patrons' utilization of the parking structure as though construction thereof had been completed.

(2) Until such time as Developer purchases lot 6 and the adjoining parcels the City shall make available to Developer parking for theater patrons in VPD Lot 6 for four (4) hours during the first seven years of operation of the theater from the date of issuance of a certificate of occupancy for the theater and thereafter for a minimum of 2 hours on the same terms and conditions as other similar commercial uses in the Downtown Area so long as the theater is in operation, provided that Developer has first met its obligations to pave and stripe VPD Lot 6 in accordance with Section 301.2 of this Agreement.

Sec. 301.4 City Approval of Plans, Drawings and Related Documents

(1) Developer shall prepare and submit to the City the preliminary construction drawings and related documents for development of the Developer Project for architectural review and written approval. City will promptly review the drawings and specifications. Developer shall bear such costs as normally charged for these City services. The Developer shall obtain all required permits and pay development impact fees related to the development of the Developer Project. The Developer shall pay all government processing fees related to the development of the Developer Project. All such fees shall be based on the published or applicable fees as of date of application of the applicable permit.

(2) During the preparation of all drawings and plans, the City and Developer shall hold regular progress meetings or conference calls to coordinate the preparation, submission, and review of drawings, plans and related documents by the City. The City and Developer shall communicate and consult informally and as frequently as necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

(3) If any revisions or corrections of plans approved by the City shall be required by any government official, City, department or bureau having jurisdiction or any lending institution involved in financing, Developer shall coordinate efforts to obtain waiver of such requirements, if reasonably practicable, or develop an alternative mutually acceptable to the City. Costs for planning and constructing Developer improvements shall include, but not be limited to the following: All on-site improvements, costs of acts of mitigating adverse environmental impacts subject to Section 208(1)(b), if necessary, fees (federal, state and local), and other related costs generally necessary for a development of the scope and nature proposed by the Developer.

Sec. 301.5 Cost of Development

(1) All costs for engineering, planning, designing, lot consolidation or parcel maps, permits, entitlements and constructing the Developer Project shall be borne exclusively by the Developer. The Developer shall also bear all costs related to discharging the duties of the Developer set forth in this Agreement.

Sec. 301.6 Public Improvements

(1) As a part of the Developer Project Developer shall construct to City standards, in accordance with plans and specifications approved by the City, the public improvements listed on Attachment No. 14 attached hereto. Developer shall dedicate free of cost such public improvements to the City prior to issuance of a certificate of occupancy for the Developer Project.

(2) The City shall design and complete, at its own cost, any other works of public improvement which the City determines are necessary for the public convenience adjacent to or near the Developer Project. The City shall undertake such improvements as separate public works projects, which shall be designed, constructed and completed prior to commencement of construction of the Developer Project. It is anticipated that the public works of improvement undertaken by the City for the benefit of the public shall include, but not be limited to, those projects listed on Attachment No. 15 attached hereto, but in no event shall the City incur costs exceeding \$800,000 to design and complete works of public improvements.

Sec. 301.7 Developer Project Performance Bond

(1) Developer covenants and guarantees that it will require the construction contractor of the Developer Project to provide a performance bond ("**Performance Bond**") in the amount of the estimated cost of constructing the Developer Project. The Performance Bond shall run in favor of Developer, City and shall insure the performance and completion of the Developer Project as described in this Agreement. The Performance Bond shall be issued by a good and sufficient surety licensed to conduct surety business in the State of California, and the form and issuer of the bond shall be approved in writing by the City.

Sec. 301.8 New Market Tax Credit Financing Not Required

(1) Developer has the option to proceed with the Developer Project whether or not NMTC financing is obtained for the Developer Project. City does not require that Developer obtain NMTC financing for the Developer Project.

Sec. 302 Schedule of Performance

(1) As soon as the City Property is conveyed to Developer and Developer receives Development Entitlements and construction financing, Developer shall begin promptly thereafter to diligently complete the construction of the improvements and the development of the Developer Project. Developer shall begin and complete plans, development and construction of the Developer Project within the time specified in the "**Schedule of Performance,**" as may be amended from time-to-time, attached hereto as **Attachment No. 8** and incorporated herein by reference, or such reasonable extension of said dates as may be granted by the City Manager or City Council, which extension shall not be unreasonably withheld. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the City Manager or City Council.

Sec. 303 Insurance; Indemnity

(1) Prior to the commencement or continuation of any construction hereunder occurring after the City approves this Agreement, the Developer shall obtain a general liability insurance policy and maintain such policy in effect until the completion of all of the Developer Project and the City Project (as reasonably determined by the City) providing coverage for bodily injury and property damage in the minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall name, as additionally assureds, the City of Pomona and their officers and employees in their official capacity and while acting within the scope of their duties, against all claims, suits, or other actions of any nature brought for or on account of any deaths, injuries, damage or loss, arising out of or connected with the work of Developer Improvements under this Agreement.

(2) Insurance coverage furnished by Developer, pursuant to this Section 304, may be submitted as one or more policies or part of a blanket policy, but coverage shall conform to this Section 304 and shall pertain to all activities on the Property and shall require approval by the City.

(3) Developer shall furnish City a certificate of insurance from its insurer evidencing compliance with this Section 304 with the provision that the insurer shall endeavor not to cancel or modify the policy without thirty (30) days written notice to City. Developer shall give City prompt and timely notice of any claim made or suit instituted. City and its officers and employees, in their official capacity and while acting within the scope of their duties, shall also be named as additionally insured in any policies of Developer's contractors covering work under this Agreement; and such policies shall comply with this Section 304. Coverage shall be primary and not contributing with any policy or coverage maintained by or obtained by the City, and shall include an appropriate endorsement and waiver of subrogation.

(4) Developer shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code, and all amendments thereto, and all similar State or Federal acts or laws applicable, and arising thereunder. Developer shall furnish to City a certificate of Worker's Compensation insurance providing that the insurer shall endeavor not to cancel or modify the policy without thirty (30) days prior written notice to City. As an alternative, Developer may show proof of a certificate of consent to self-insure issued by the Director of Industrial Relations, pursuant to California Labor Code §3800.

(5) Developer agrees to and shall indemnify, defend and hold harmless the City from and against all claims, wage claims, demands, liabilities, losses, damages, costs, mechanics' liens, or expenses (including reasonable attorneys' fees and court costs) arising from or relating to the death of any person or any accident, injury, loss, or damage whatsoever to person or property which shall occur on the City Properties or Developer Property and which shall be directly or indirectly caused by any acts, errors or omissions of Developer or its agents, servants, employees, tenants, or contractors. Developer shall not be responsible for, and this indemnity in this subparagraph (5) shall not apply to, such matters to the extent caused by any willful or negligent conduct of the City or their respective agents, servants, employees, or contractors.

(6) Developer shall indemnify, hold harmless and defend the City its agents, officers, and employees from any claim, wage claims, action, proceeding or damages against the City its agents, officers, or employees to attack, set aside, void, or annul the approval by the City of this DDA, any zoning entitlements, CEQA determinations, permits or approvals for the Developer Project.

(7) Developer shall indemnify, hold harmless and defend the City, its agents, officers, and employees from any claim, wage claims, action, proceeding or damages against the City and/or its agents, officers, or employees arising out of the action, inaction or negligence of the Developer, its employees, officers, agents, contractors, subcontractors, successors or assigns in planning, engineering, constructing or in any manner carrying out the City Project or Developer Project or any improvements required for the City Project or Developer Project. Developer shall not be responsible for, and this indemnity in this subparagraph (7) shall not apply to, any of the foregoing matters to the extent caused by any willful or negligent conduct of the City or its respective agents, servants, employees, or contractors.

(8) Further, Developer shall defend at its sole expense any action brought against the City, its agents, officers, or employees, because of the approval of the Developer Project or any zoning entitlement, CEQA determination, permit or other approval, or in the alternative, shall relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees, for any Court costs and attorney's fees which the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of its obligations under this Indemnity Agreement.

(9) In the case of any such defense by Developer, City shall cooperate in the choice of defense counsel, but in the case of disagreement, City shall have the choice of choosing independent defense counsel at the cost of Developer, or in the alternative to defend itself, at the cost of Developer.

(10) In the event City proceeds to construct the City Project separate from this Agreement and without Developer, then Developer is relieved of its indemnity obligations as to the City Project only.

Sec. 304 Environmental Indemnity

Sec. 304.1 Environmental Release

(1) Developer, for itself and its successors and assigns, unconditionally releases City from and against any and all liability to Developer, both known and unknown, present and future, for Environmental Damages to Developer arising out of any violation of Environmental Requirements or the presence of Hazardous Material on, under or about the City Property (the "Environmental Release"), except to the extent of a breach by City of its representations and warranties set forth in Section 105.1 above.

(2) With respect to the Environmental Release, Developer, after consultation with legal counsel and with full knowledge of the consequences of its actions, waives the provisions of California Civil Code Section 1542, which provides:

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

Developer's Initials _____

Sec. 304.2 Environmental Indemnity

(1) Except for a breach of City's representation or warranties under Section 105.1 above, Developer shall indemnify, defend, and hold City harmless from and against all Environmental Damages arising from the presence of any Hazardous Material at, in, on, or under the City Property, or migrating off the City Property (including groundwater), if such Hazardous Material was first introduced to the City Property at any time, including without limitation:

(a) all claims, lawsuits, demands, obligations, investigations, damages, penalties, fines or actions by any federal, state, or local governmental City (collectively, "Government Claims") based upon Developer's or City's failure to remediate the City Property;

(b) all claims, lawsuits, demands, obligations, investigations, damages (including but not limited to diminution in value of property and related stigma damages, lost

profits and consequential damages), penalties, fines or actions by owners and operators of adjacent and nearby properties or any other persons (collectively, “Third-Party Claims”);

(c) all claims, lawsuits, demands, liabilities, damages, losses or judgments for personal injury or for injury to real or personal property;

(d) all claims, lawsuits, demands, obligations, investigations, damages, penalties, fines or actions by subsequent owners and operators of the City Property or any lenders providing financing with respect to the City Property arising from any underlying Government Claims under Section 10.3(a), Third-Party Claims under Section 10.3(b); and/or any other claims under Section 10.3(c); and

(2) Developer’s obligations under this Section 305.2 are collectively referred to in this Agreement as “Developer’s Indemnity Obligations”.

Sec. 304.3 Defense of Claims

(1) Provided that Developer accepts any tender of any reasonable expense or reasonable claim by City without any reservation, Developer shall have the right, in consultation with City, to control on behalf of City any and all negotiations, settlement discussions, investigations, testing, defenses, trials, actions, proceedings, hearings, additional remediation obligations, and other resolutions with all Agencies and third parties arising out of, incidental to, or in connection with Developer’s performance of Developer’s Indemnity Obligations. If Developer does not accept a tender of any reasonable expense or reasonable claim by City without reservation, (except for a breach of City’s representation on warranties under Section 105.1 above), City shall be entitled to engage in all such matters described in the preceding sentence on its own account, and shall be entitled to recover from Developer the costs of engaging in such matters (including consultants’ fees and reasonable attorneys’ fees), provided Developer’s denial of liability is adjudicated to be in violation of the terms hereof. Without limiting Developer’s rights as described above, Developer shall undertake reasonable consultation with City with respect to matters materially involving the City Property or City.

Sec. 304.4 Definitions

(1) For purposes of Section 305 the following terms have the meanings indicated.

(a) “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and disbursements and consultants’ fees, any of which are incurred at any time as a result of the existence of Hazardous Material, prior to the Closing, upon, about, beneath the City Property or migrating or threatening to migrate to or from the City Property, or the existence of a violation of Environmental Requirements pertaining to the City Property, regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the City Property, and including without limitation:

1. Damages for personal injury, or injury to property or natural resources occurring upon or off the City Property, foreseeable or unforeseeable,

including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

2. Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local government City or economic use of the City Property or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this agreement or collecting any sums due hereunder;

3. Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced in subparagraph (ii) herein; and

4. Diminution in the value of the City Property, and damages for the loss of business and restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the City Property.

(b) "Environmental Requirements" means all applicable present and future statutes regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:

1. All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes, whether solid, liquid, or gaseous in nature; and

2. All requirements pertaining to the protection of the health and safety of employees or the public.

(c) "Hazardous Material" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

2. which is or becomes defined as a "hazardous waste," "hazardous substances," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section

9601 *et seq.*); and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*); or

3. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, City, department, commission, board, City or instrumentality of the United States, the State of California or any political subdivision thereof; or

4. the presence of which on the City Property poses or threatens to pose a hazard to the health or safety of persons on or about the City Property; or

5. which contains petroleum, petroleum products or other hydrocarbon substances; or

6. which contains polychlorinated biphenyls (PCB's), asbestos, urea formaldehyde foam insulation or radon gas.

Sec. 305 City and Other Governmental City Permits

(1) Except for City's responsibilities under this Agreement, before commencement of construction or development of any buildings, structures or other work or improvement on any parcel within the City Property (but not necessarily before the conveyance of title, unless such construction or development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any normal permits which may be required by the City or any other governmental agency affected by such construction, development or work. City shall provide appropriate assistance to Developer in securing these permits.

Sec. 306 Rights of Access

(1) For the purposes of assuring compliance with this Agreement, representatives of City shall have the reasonable right of access to the Developer Project without charges or fees, at normal construction hours during the period of construction for the purposes of monitoring Developer's compliance with this Agreement.

(2) Additionally, representatives of the City shall have the reasonable right of access to the Developer Project, without charges or fees, at normal construction hours during the period of construction, for the purposes contained in this Agreement, to inspect the work being performed in constructing the Improvements.

Sec. 307 Local, State and Federal Laws

(1) The Developer shall carry out the construction of all Improvements and the development of the City Property in conformity with all applicable laws, including all applicable federal, state or local laws, rules or standards, provided, however, Developer and its contractors, successors, assigns and transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

(2) Notwithstanding any provision of this Agreement to the contrary, Developer shall not be required to contract with or otherwise do business with any contractor that in its sole discretion seems not responsible and/or incapable of adequately performing the construction improvements.

Sec. 308 Taxes, Assessments, Encumbrances and Liens

(1) Subject to Section 205.11, Developer shall pay when due all real estate taxes and assessments on the City Property and levied subsequent to a conveyance of title to the City Property. Developer shall not place or allow to be placed on the City Properties or any part thereof, any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. Developer shall remove or have removed any lien on any of the City Properties or portion thereof or assure the satisfaction thereof within a reasonable time, but in any event prior to a sale thereunder.

(2) If Developer or a successor, transferee, assignee, or tenant contests the validity or grant of any tax assessment, the Developer, successor, transferee, assignee or tenant shall notify the City that it intends to contest the assessment. The City shall have the right to challenge any contest of a tax assessment of the City Property.

SEC. 400 SECURITY FINANCING; RIGHTS OF HOLDERS

Sec. 401 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases Back or Other Financing for Development

(1) Mortgages, deeds of trust, sales and leases back or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Release of Construction Covenants of the construction of Developer Project, but only for the purpose of securing loans of funds to be used for land and acquisition, fees, permits, consultants and for the construction of Developer Project and any other expenditures necessary and appropriate to develop the Developer Project under this Agreement. Developer shall notify the City in advance of any mortgage, deed of trust, sale or lease back or other form of conveyance for financing, if Developer proposes to enter into the same before issuance of a Release of Construction Covenants of the construction of the Developer Project.

Sec. 402 Intentionally Deleted

Sec. 403 Intentionally Deleted

Sec. 404 Holder Not Obligated to Construct Improvements

(1) The holder of any mortgage, deed of trust or other security interest authorized by this Agreement 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; nor shall any covenant or any other provision in the Grant Deed for the property be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit, or authorize any such holder to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Sec. 405 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

(1) Whenever City shall deliver any notice or demand to Developer, with respect to any breach or default by Developer in completion of construction of the Developer Project, the City shall, at the same time, deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has requested in writing said notices

from the City, a copy of such notice or demand. Each such holder shall (insofar as the rights of City are concerned) have the right, at its option within one hundred twenty (120) days after the later of receipt of the notice or Developer's cure period, if any, to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. The time for Lender to cure shall be extended, if the Lender has undertaken steps to cure, in which case such time will be extended for as long as Lender reasonably needs, providing the Lender is acting diligently. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's remaining obligations to City by written agreement satisfactory to the City. In that event, the holder must agree to complete, in the manner provided in this Agreement, the Developer Project to which the lien or title of such holder relates, and submit satisfactory evidence to City that it possesses the qualifications and financial resources necessary to perform such obligations. Any such holder properly completing such Developer Project shall be entitled, upon written request made to City, to a Release of Construction Covenants from the City.

Sec. 406 Failure of Holder to Complete Improvements

(1) In any case of an uncured one hundred (120) day default by Developer in completion of construction of improvements under this Agreement, if the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the City Properties or any portion thereof has not thereafter timely exercised the option to construct, or if it has exercised the option and has not thereafter proceeded with construction in the manner required by this Agreement, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt. If the ownership of the Site or any part has been vested in the holder, the City, if it so desires, shall be entitled to a conveyance of the Site, or any part of the Site, from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- (a) Unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection by lender and application of rentals and income received during foreclosure proceedings).
- (b) All reasonable expenses with respect to foreclosure.
- (c) The net expenses, if any (exclusive of overhead), incurred by the holder as a direct result of the City approved subsequent management of the property or part thereof.
- (d) The cost or value, whichever is less, of any City approved improvements made by such holder.

Sec. 407 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

(1) In the event of an uncured default by Developer or breach of a mortgage, deed of trust or other security interest, prior to recordation of a Release of Construction Covenants for the improvements on the Developer Project, and the holder of any such security interest has not

exercised its option to complete the development, after another advance written demand to Developer and the holder of such security interest, that the default must be cured within an additional 30 days, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Developer Project as authorized herein.

Sec. 408 Rights of City to Satisfy Other Liens on the Property After Title Passes

(1) After the conveyance of title of the City Property or City Property 2, prior to the recordation of a Release of Construction Covenants for construction and development, and after Developer has had reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, or any part thereof, the City 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 as long as the Developer shall in good faith contest the validity or amount thereof, and provided such delay in payment shall not subject the Site, or part thereof, to forfeiture or sale.

Sec. 409 Estoppel

(1) City shall from time to time, within fifteen (15) business days following the receipt of a request by Developer or the holder of any deed of trust or other security interest affecting the City Property, deliver to Developer or such holder a written statement executed by City in form and substance reasonably satisfactory to Developer and such holder, (i) stating that this Agreement is in full force and effect and has not been modified or amended (or if modified or amended, setting forth all modifications and amendments), (ii) stating whether or not to the best knowledge of City, Developer is in default under this Agreement and if Developer is in default, setting forth the specific nature of all such defaults, and (iii) as to any other matters reasonably requested by Developer or such holder. City acknowledges that any statement delivered pursuant to this Section may be relied upon by any purchaser or owner of all or a portion of the City Property and/or any improvements thereon or by the holder of such deed of trust or security interest or by any assignee of such holder or anyone claiming by, under or through such holder.

SEC. 500 USE OF THE CITY PROPERTY AND COVENANTS

Sec. 501 Uses and Covenants

(1) The Developer covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the City Property or any part thereof, to develop, construct and open for operation a theater as described in the Scope of Development contained in Section 301.1 in accordance with the uses specified in the Grant Deed, the Development Entitlements and the Covenants, Conditions and Restrictions on the Site. The Grant Deed shall provide that Developer shall commence and complete the construction of the improvements required in the Development Entitlements. After issuance of a Release of Construction Covenants for all or a portion of such improvements, Developer may alter, modify, or replace such improvements, provided that such changes are consistent with the City Zoning Ordinance and do not reduce the value of the improvements below the value of the improvements immediately prior to their

alteration, modification or replacement. Any change in use inconsistent with the Zoning Ordinance, the Development Entitlements defined under this Agreement, or the Grant Deed shall not be permitted without the prior written approval of the City of Pomona or any other party or entity requiring approval, which consent shall not be unreasonably withheld or delayed.

Sec. 502 Obligation to Refrain from Discrimination

(1) There shall be no discrimination against or segregation of any person, a group of persons, on account of race, color, religion, marital status, disability, age, national origin or ancestry in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site.

Sec. 503 Form of Nondiscrimination and Non-segregation Clauses

(1) The Developer covenants by and for itself and any successor in interest that there shall be no discrimination against, or segregation of, any persons, or groups or persons, on account of sex, race, color, creed, marital status, religion, handicap, national origin or ancestry in the enjoyment of the Site, nor shall the Developer itself, or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

(2) The Developer shall refrain from restricting the rental, sale or lease of the Site 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 be subject to and shall contain substantially the following nondiscrimination or non-segregation clauses:

(a) In deeds:

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

(b) In leases:

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

There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of

the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

(c) In contracts:

"There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of land, nor shall the transferee himself or any person claiming under or through him, 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 premises."

Sec. 504 NMTC Operating Covenants

(1) Developer covenants and agrees as follows:

(a) Developer shall cause the completion of the Developer Project and the opening of the Developer Project by the dates set forth therefore in the Schedule of Performance.

(b) The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest or any part thereof, that Developer, or a wholly owned subsidiary of Developer, shall operate and use the City Property in accordance with any and all obligations, limitations or covenants imposed by the agency or agencies issuing the NMTC for the Developer Project. This covenant shall run with the land and be binding on the successors, assigns and transferees of Developer as a covenant running with the land or equitable servitude.

Sec. 505 Release of Construction Covenants

(1) Promptly after issuance of the certificate of occupancy for all of the buildings on the Developer Project or the City Property 2, respectively, City shall furnish Developer with a "**Release of Construction Covenants**" in a form consistent with **Attachment No. 12**, upon written request therefore by Developer. The City shall not unreasonably withhold such Release of Construction Covenants. Such Release of Construction Covenants shall provide that satisfactory completion of the construction required by this Agreement and all other performance required by Developer under this Agreement for the applicable portion of work has been conclusively determined by the City.

(2) The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Recorder's Office of Los Angeles County.

(3) Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not Notice of Completion as referred to in the California Civil Code § 3093.

Sec. 506 Management and Maintenance Covenant.

(1) In order to insure the Developer's continued maintenance of the Developer Project in a safe, sanitary and tenantable condition, a property management covenant ("**Management Covenant**") in the form attached hereto as **Attachment No. 13** shall be recorded against the Property upon the Close of Escrow. The Management Covenant shall provide, among other things, that the Developer must manage and maintain the Property in accordance with the Management Covenant.

Sec. 507 Effect and Duration of Covenants

(1) The covenants established in this Agreement and the deeds shall, without regard to technical classification and designation, be binding upon and inure to the benefit and in favor of the City, its successors and assigns, the City and any heirs, transferees, assignees or successor in interest to the Site. The covenants against discrimination shall also be binding for the benefit and in favor of the State of California and the City. The covenants contained in this Agreement at Section 506 shall remain in effect in accordance with any and all obligations, limitations or covenants imposed by the agency or agencies issuing the NMTC for the Developer Project. The non-discrimination covenants contained in this Agreement at Section 502 and 503 and in the deeds shall remain in effect in perpetuity from the date of execution of this Agreement.

(2) Except as provided in the Power of Termination contained in the Grant Deed, breach of any of the covenants or provisions contained in this Agreement shall not give rise to any right of reverter, to any estate of reverter, nor to any right of reentry or forfeiture of the City Property or any part thereof, or to any successor assignee in interest in the property or any part thereof or any interest therein.

(3) The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the City Property. Except as expressly limited by the terms of this Agreement, the City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other named beneficiaries of this Agreement and covenants may be entitled; provided, however, prior to Close of Escrow City's sole and exclusive right is to terminate this Agreement and receive as liquidated damages the Escrow Deposit. The provisions of this Agreement do not create any rights except in the City.

(4) The covenants in favor of the City shall run with the land without regard to whether the City has been, remains, or is an owner of any land or interest therein in the City Property. The City shall have the right, if this Agreement or any covenants set forth are breached, to commence an action for specific performance of the terms of this Section.

SEC. 600 DEFAULTS AND REMEDIES

Sec. 601 Defaults—General

(1) Subject to the extensions of time set forth in Section 703, unexcused and uncured failure or delay by either party to perform any material term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately cure, correct, or remedy such failure or delay.

(2) 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, and except as otherwise expressly provided in Section 603 of this Agreement, the injured party may not institute proceedings against the party in default until at least sixty (60) days after giving such notice. Delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

(3) Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default, shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

Sec. 601.1 Limitation of Damages

Subject to the liquidated damages provisions set forth in this Agreement damages to Seller or Developer arising out of breach of this Agreement are limited to direct damages and out of pocket costs. Recoverable damages do not include, lost time, lost productivity, delay damages, overhead, lost profits, costs of processing and obtaining zoning, CEQA determinations and building entitlements for the Developer Project or the City Project or any other indirect damages. Due to the complexity of the methodology for procurement of services, the City shall have no liability for failing to properly comply with the provisions of any public works procurement or wage laws, statutes or ordinances, provided the City uses good faith efforts to comply with such laws.

Sec. 602 Legal Actions

Sec. 602.1 Institution of Legal Actions

(1) Any legal actions in connection with the enforcement or interpretation of this Agreement must be instituted in the Superior Court of the County of Los Angeles, State of California, East District, in an appropriate municipal court in that county, or in the Central Federal District Court of California.

Sec. 602.2 Applicable Law

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

Sec. 602.3 Acceptance of Service of Process

(1) In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

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

Sec. 603 Rights and Remedies Are Cumulative

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

Sec. 604 Remedies and Rights of Termination Prior to Conveyance

Sec. 604.1 Termination by Developer

(1) In the event that the City by default does not tender conveyance of title to the City Property, or possession thereof, in the manner and condition, and by the dates provided in this Agreement, and any such failure is not cured within thirty (30) days after the date of written demand by Developer, the Agreement may then, at the option of Developer, be terminated by written notice thereof to the City, and neither the City nor Developer shall have any further rights or remedies against or liability to the other under this Agreement with respect to said City Property, except that the City will return the Developer's Escrow Deposit and Performance Deposit to Developer. Alternatively, Developer shall be entitled to seek specific performance of the obligations of City under this Agreement.

Sec. 604.2 Termination by City

(1) Except as otherwise provided in any automatic termination provision of this Agreement or any Attachments to this Agreement, the City may terminate this Agreement if, after sixty (60) days written notice, any of the following defaults exist prior to the conveyance of title to Developer:

(a) Developer (or any successor in interest) wrongfully assigns or attempts to assign this Agreement or any rights therein, or in the Site or part thereof; or

(b) Developer does not pay the Purchase Price and take title upon tender of conveyance by the City pursuant to this Agreement.

(2) If any default or failure referred to in subdivisions (a) through (b) inclusive of this Section 604.2 shall not be cured within ninety (90) days after the date of written demand by City, or curative measures have not been substantially completed by Maya within 90 days after notice to cure by the City, then this Agreement with respect to any un conveyed portion of the City Properties and any rights of Developer or any assignee or transferee in this Agreement, pertaining thereto or arising therefrom, with respect to City, may, at the option of the City and as its sole and exclusive remedy, be terminated by City, in which event, Developer (or assignee or transferee) shall have no further rights against the City under this Agreement. In the event of termination, pursuant to paragraphs (a) through (c) above, the Developer's Deposit shall be retained by the City as liquidated damages and as its property without deduction, offset, or recoupment whatsoever, and Developer (or assignee or transferee) shall have no further rights under the Agreement with respect to the un conveyed portion of the City Properties, and any

improvements to be developed and constructed thereon, and Developer shall have no other or further liability under this Agreement.

(3) The right of termination and retention of the Developer's Escrow Deposit as liquidated damages shall be City's sole and exclusive remedy against Developer in the event of Developer's default or failure as provided above prior to conveyance of title to the City Property. Developer recognizes that Developer's prompt purchase and development of the City Property, in accordance with this Agreement, is of critical importance to the City's ability to carry out its other activities within the City.

Sec. 605 Remedies of City for Default by Developer After Passage of Title and Prior to Completion of Construction

Sec. 605.1 Termination and Damages

(1) After conveyance of title to the City Property, and after Developer obtains financing for the Developer Project and prior to recordation of a Release of Construction Covenants, if the Developer defaults with regard to any provision of this Agreement, the City shall serve written notice of such default upon the Developer. If the default is not cured, or substantially commenced to be cured, by the Developer within one hundred eighty (180) days after service of the notice thereof by the City, the City shall be entitled to exercise all of its rights and remedies, including legal action in law or equity, including injunction, specific performance and damages.

(2) In the event City exercises the power of termination of title to the City Property in accordance with Section 205.8, City shall reimburse Developer the Purchase Price paid for the City Property as set forth in this Agreement concurrently with the title being returned to the City.

SEC. 700 GENERAL PROVISIONS

Sec. 701 Notices, Demands and Communications Between the Parties

(1) Written notices, demands and communications between the City and the Developer shall be sufficiently given if delivered by hand (and a receipt thereof is obtained or is refused to be given), if dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed to the designated person or persons at the principal offices of the City and the Developer, as set forth at Sections 104.1 and 104.2, respectively, or be given by way nationally recognized overnight delivery service. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 701.

(2) Any written notice, demand or communication shall be deemed received immediately if delivered by hand or messenger; three (3) business days from certification of date received if delivered by registered or certified mail; and the next business day if sent by Federal Express or other nationally recognized overnight delivery service.

Sec. 702 Conflicts of Interest

(1) No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in

any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. No member, official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

Sec. 703 Enforced Delay; Extension of Times of Performance

(1) In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of omissions of the other party; acts or failures to act of the City of Pomona or any other public or governmental City or entity (except acts or failures to act of the City which shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of cessation of the cause, if notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause or if the other party had actual notice of the delay. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Developer.

(2) Notwithstanding the foregoing portion of this Section 703, Developer is not entitled, pursuant to this Section 703, to an extension of time to perform because of past, present, or future difficulty in obtaining suitable temporary or permanent financing for the development of the Site, unless such delay is caused by City's refusal to amend this Agreement or accept the reasonable and customary requests of the Developer's lender.

Sec. 704 Non-Liability of Officials and Employees of the City

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

SEC. 800 EMPLOYMENT OPPORTUNITIES

Sec. 801 Job Opportunities Created by Developer

(1) To the extent permitted by relevant federal, state and local laws, and to the extent qualified applicants apply, Developer will make all reasonable efforts to give Pomona residents first hiring consideration. The Developer agrees and shall require its general contractor and any and all subcontractors to use reasonable efforts to either work with the local Employment Development Department ("EDD") or to hold on-site job fairs for any job employment opportunities. Developer shall use all reasonable efforts to employ Pomona residents to perform

20% of all hours worked on the Developer Project. Developer shall require all of its subcontractors to comply with the above employment goals.

(2) Developer shall use all reasonable efforts to employ 20% of all workers for the operation of the Developer Project after completion of construction.

(3) The Developer shall report quarterly to the Director of Development Services on the progress of the Developer and subcontractors to meet the employment goals in this section 801.Local Hire Program.

(4) The Developer and its subcontractors retain authority in making individual hiring decisions, and may use normal hiring practices, including interviews, to consider all referred applicants. The provisions of this section 801 do not require the Developer or subcontractors to hire any person who does not have the experience and ability to qualify such person for such job.

SEC. 900 SPECIAL PROVISIONS

Sec. 901 Submission of Documents to the City for Approval

(1) Wherever this Agreement requires any party to approve any contract, document, plan, specification, drawing or other matter, such approval shall be given in a prompt and timely manner in writing and shall not be unreasonably withheld. If a disapproval is given, the reasons for such disapproval must also be given in writing.

Sec. 902 Amendments to this Agreement

(1) Developer and City agree to mutually consider reasonable requests for amendments to this Agreement, which may be made by lending institutions or City's bond counsel or financial consultants, provided said requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

Sec. 903 Operating Memoranda

(1) It is recognized that performance under this Agreement will require a considerable degree of cooperation between the City and Developer. It is further realized that subsequent events may demonstrate that revisions will be required in the performance hereunder, and that a certain degree of flexibility will be required. It is to preserve such flexibility that certain provisions may have been delineated in this Agreement in general terms only, with the understanding that more precise details may be set forth in "Operating Memoranda" as may be required from time to time. Operating Memoranda includes only those agreements, modifications or changes which are deemed by the City Manager in consultation with the City Attorney to be non-substantive and non-material modifications of this Agreement. Each operating memorandum shall be approved by the City Attorney and the City Manager and Developer's designated representative and shall be attached hereto as an addendum, and become a part hereof, and may be further changed and amended from time to time as necessary upon approval by the City Attorney, City Manager and Developer.

Sec. 904 Real Estate Commissions

(1) The City and the Developer each agrees to hold harmless the other party from any real estate commissions or fees alleged to be due to any person claiming by or through the indemnitor.

Sec. 905 Survivor Provisions

(1) After issuance of a Release of Construction Covenants, with regard to any parcel or any building, all of the terms, covenants, agreements, or conditions set forth in this Agreement, relating to such parcel or building, shall cease and terminate except as otherwise provided in Sections 501, 502, 503, 504 and 506 of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Developer shall be liable only for breaches of this Agreement (or breaches of the covenants and conditions imposed upon the Property and Developer) that survive close of escrow during the period of Developer's ownership of the Property.

Sec. 906 Reservation of Discretion

(1) The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City's discretion concerning consideration of any submittal by the Developer or any other party. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the City's discretion to consider, negotiate, or undertake the Developer Project or any required approvals necessary by the laws, rules, and regulations governing the development of property.

(2) By its execution of this Agreement, the City is not committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the City, or department thereof. Except as specifically provided in this Agreement, the City shall not be responsible for any costs or expenses incurred by the Developer pursuant to this Agreement, nor shall the City be responsible for any potential lost profits of the Developer.

(3) Developer is aware, understands, and acknowledges that City is by law required to exercise its sole unfettered discretion in approving or denying any land use, development or building permit approvals required for the Developer Project. Neither this Agreement nor any other agreement with Developer obligates City to approve, disapprove or consider the Development Entitlements for the Developer Project in a particular manner.

Sec. 907 Costs and Attorneys' Fees.

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

SEC. 1000 ENTIRE AGREEMENT, WAIVERS

(1) This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire Agreement and the

understanding of the parties. The Attachments shall be a part of this Agreement, but if the Attachments conflict with this Agreement, then the provisions of this Agreement shall prevail.

(2) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

(3) The waivers of the provisions of this Agreement must be in writing and executed by the appropriate authorities of the City and Developer, and all amendments hereto must be in writing, approved by the City Board and executed by the appropriate authorities of the City and Developer.

(4) Developer acknowledges that it has had ample opportunity for review and approval of this document by its attorney, and that any waiver of representation is a result of independent decision. Developer further acknowledges that City Attorney is acting solely on behalf of the City.

SEC. 1100 TIME FOR ACCEPTANCE OF AGREEMENT

(1) This Agreement shall be executed by Developer prior to approval by City.

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the date set forth herein below.

CITY OF POMONA

"DEVELOPER"

By: _____
Linda C. Lowry, City Manager

Maya Cinemas North America, Inc., a Delaware corporation

By: _____

Date: _____

ATTEST

Date: _____

City Clerk

By: _____

APPROVED AS TO FORM:

Date: _____

City Attorney

DEPICTION OF THE CITY PROPERTY AND GIST PROPERTY

CITY AND GIST PROPERTIES



-  City Properties
-  Gist Property (City Owned)

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE CITY PROPERTY AND GIST PROPERTY

Parcel No. 1

APN No.

Parcel No. 2

APN. No.

DEPICTION OF DEVELOPER PROPERTY

DEVELOPER PROPERTY



 Developer Property

ATTACHMENT NO. 4

LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY

ATTACHMENT NO. 5

DEPICTION OF CITY PROPERTY 2



CITY PROPERTY NO. 2

ATTACHMENT NO. 6

LEGAL DESCRIPTION OF CITY PROPERTY 2

City Parcel No. 3

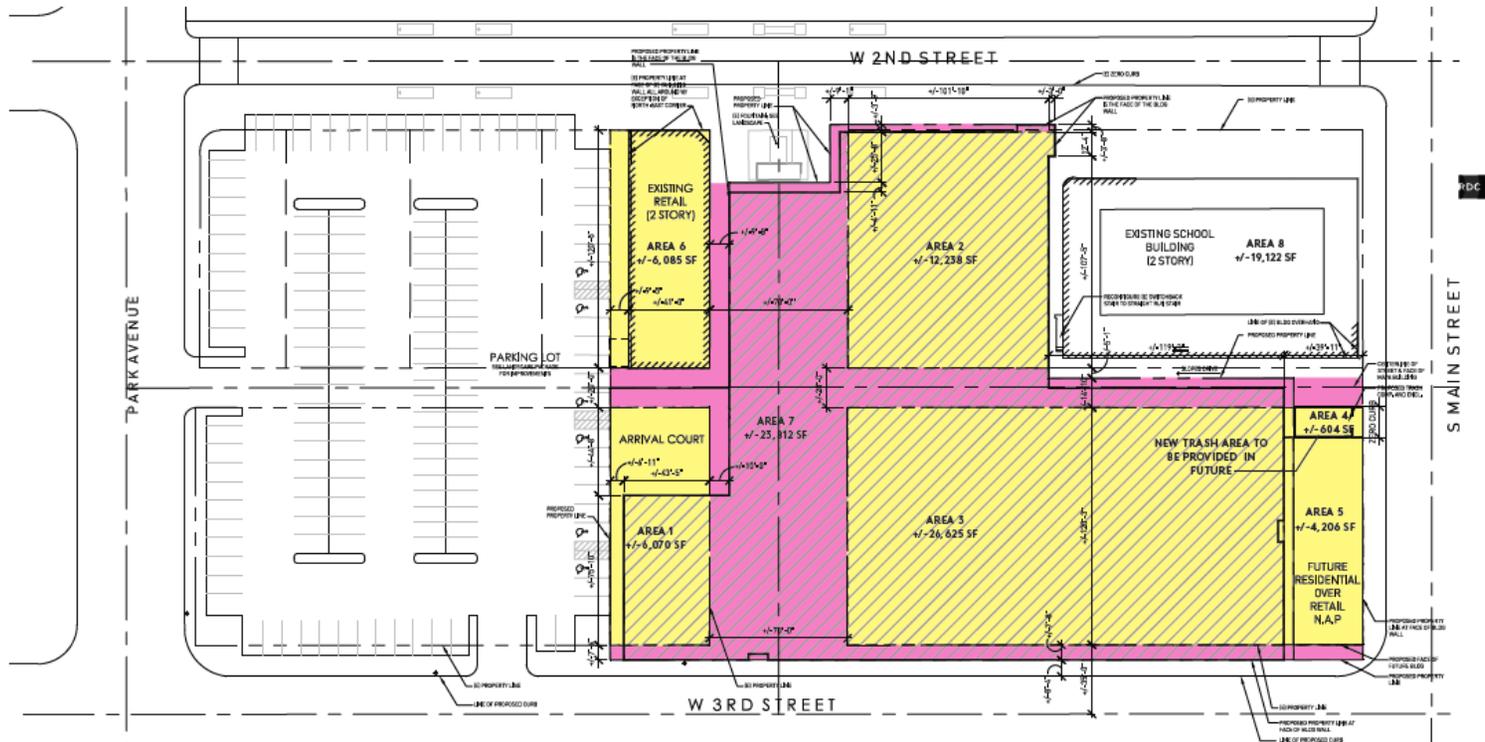
APN No.

City Parcel No.4

APN No.

ATTACHMENT NO. 7

STREET VACATIONS



LEGEND

CITY VACATED PROPERTY PROPERTY MAYA TO PURCHASE

GREY HATCHED AREA REPRESENTS EXTENT OF PROPOSED CINEMA BUILDING

NOTE: DIMENSIONS AND AREAS SHOWN ARE APPROXIMATE

RETAIL DESIGN COLLABORATIVE | ENTERPRISE CENTER - PICHONA 15183 09.06.17

SQUARE FOOTAGE SUMMARY

AREA 1:	6,070sf
AREA 2:	12,238sf
AREA 3:	26,625sf
AREA 4:	604sf
AREA 5:	4,206sf
AREA 6:	6,085sf
AREA 7:	23,812sf
AREA 8:	19,122sf
TOTAL:	98,760sf



ATTACHMENT NO. 8

SCHEDULE OF PERFORMANCE

EVENT	TIME	ACTUAL DATE
Developer obtains financing for development and construction of the Developer Project	Not later than three years from Close of Escrow	
Developer commences construction of the Developer Project	Not later than six months after obtaining financing for construction of the Developer Project	
Developer completes construction and obtains certificate of occupancy for Developer Project	Not later than twenty-four months after commencement of construction	

** All dates in the Schedule of performance may be amended by a mutually signed Operating Memorandum.

Developer initial here: _____ **City initial here:** _____

ATTACHMENT NO. 9
OPTION AGREEMENT

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt
from fee pursuant to Section 27383 of the
California Government Code

OPTION AGREEMENT

THIS OPTION AGREEMENT (“**AGREEMENT**”) is dated for reference purposes only as of _____ and is made and entered into by and between the CITY OF POMONA, a California municipal corporation (“**City**”) and MAYA CINEMAS NORTH AMERICA, INC., a Delaware corporation (“**Maya** or “**Developer**”). City and Maya may hereinafter be referred to collectively as the “**Parties.**”

RECITALS. This AGREEMENT is made with reference to the following facts:

A. City and Maya have entered into a Disposition and Development Agreement dated _____, 2018 (“**Original DDA**”) for the purchase, sale and development of certain properties within the City of Pomona, California.

B. Pursuant to the terms of the Original DDA Maya and City have agreed to enter into this Option Agreement for the purchase by Maya from the City the properties depicted on Exhibit “A” and legally described on Exhibit “B” attached hereto and incorporated by this reference (“**City Property 2**”).

In consideration of the mutual covenants, conditions and promises contained in the Original DDA and this Agreement, City and Maya agree as follows:

1. **Developer Option to Purchase.** City hereby grants to Developer an option to purchase the City Property 2, as set forth herein (“**Option to Purchase**”) for a period of five years commencing on the Close of Escrow pursuant to the Original DDA (“**Option Period**”).

2. **Description of The Property.** The City Property 2 consists of a portion of VPD Lot No.6 constituting approximately _____ square feet (“**City Parcel 3**”) and VPD owned vacant real property located on Second Street constituting approximately 26,050 square feet (**City Parcel No. 4**”). The City Property 2 may include all or portions of certain alleys and streets to be vacated by the City consisting of and the alleys within the boundaries of City Parcels No. 3 and No. 4. The City Property 2, including City Parcels No. 3 and No. 4, are depicted on **Exhibit “A”** and legally described on **Exhibit “B”**, attached hereto and incorporated herein.

3. **Option To Purchase Is Not Assignable.** The Option to Purchase is not assignable by Developer without the prior written consent of City, which consent shall not be unreasonably withheld or delayed.

4. **Exercise of Option To Purchase.** In the event Developer elects to exercise the Option to Purchase the City Property 2, Developer shall provide written notice to City of its intent to exercise said option (the “**Purchase Notice**”) within the Option Period. The Option Agreement may only be exercised not earlier than thirty (30) days after the completion by Developer of the City Project to the reasonable satisfaction of City, and the issuance of a certificate of occupancy for the City Project by the City, but not later than the expiration of the Option Period. Within fourteen (14) days after sending the Purchase Notice, Developer and City shall execute and deliver to each other a Development and Disposition Agreement (“**DDA**”) in the form substantially identical to the DDA attached hereto as **Exhibit “C”** and incorporated herein by reference.

5. **Option Purchase Price.** The purchase price for The City Property 2, including City Parcel No. 3 and City Parcel No. 4 is the per square foot value of \$13.97 times the total combined square footage of City Parcel No. 3 and City Parcel No. 4 excluding any vacated streets or alleys adjacent to or within the boundaries of City Parcel No. 3 and City Parcel No. 4 (“**Purchase Price 2**”). The square footage of the City Property 2 shall be confirmed by an ALTA survey paid for by Maya. The Purchase Price 2 shall be adjusted based on the consumer price index for the Los Angeles County Metropolitan Statistical Area from the date the Option Agreement is signed by Developer and City to the date the Developer and City execute the DDA II attached hereto as Exhibit “C”.

6. **General Terms And Conditions.** This AGREEMENT is subject to the following terms and conditions.

6.1 **Notices.** Notices and other documents to be delivered pursuant to this AGREEMENT shall be delivered by e-mail or facsimile, with the original to be served by U.S. Mail to the PARTIES at the addresses set forth below:

If to City:
City Manager

City of Pomona
505 South Garey Avenue
Pomona, California 91766
Phone: 909-620-2311
Fax: 909-620-
Email: linda_lowry@ci.pomona.ca.us

With a copy to:

Alvarez-Glasman & Colvin
13181 Crossroads Parkway North
Suite 400 - West Tower
City of Industry, CA 91746
Attn: Scott E. Nichols
Phone: 562-699-5500
Fax: 562-692-2244
[E-Mail: snichols@agclawfirm.com](mailto:snichols@agclawfirm.com)

If to Developer

Maya Cinemas North America, Inc.
150 S. Arroyo Parkway, Suite 102
Pasadena, CA 91105
Attn: Moctesuma Esparza, CEO
Phone: (213) 805-5333
Fax: (213) 805-5332

With a copy to:

Joseph S. Avila, Attorney
113 E. Eula Drive
Montebello, CA 90640
Phone: (323) 727-6900
Email: javila@avilaputnam.com

6.2 **Litigation or Arbitration.** In the event of litigation or arbitration arising from this AGREEMENT, or that may be initiated to enforce or interpret the terms of this AGREEMENT, the litigation or arbitration proceedings shall be conducted in the County of Los Angeles, California, and the prevailing party in any such litigation or arbitration proceedings shall be entitled to an award of its attorneys' fees, expert witness fees and costs incurred in the course of any such proceedings.

6.3 **Governing Laws.** This AGREEMENT shall be governed by and construed under the laws of the State of California.

6.4 **No Continuing Waiver.** The PARTIES may not waive any provision of this AGREEMENT except by a written agreement that all PARTIES have signed. A waiver of any provision of this AGREEMENT will not constitute a waiver of any other provision. The PARTIES may modify or amend this AGREEMENT only by a written agreement that all of the PARTIES have signed.

6.5 **Recordation of Agreement.** This AGREEMENT shall be executed in a form that will permit its recordation with the County Recorder.

6.6 **Construction of Agreement.** This AGREEMENT has been negotiated at arms' length, and between persons sophisticated and knowledgeable in matters dealt with in this AGREEMENT. Accordingly, any rule of law, statute, legal decision or common law principle that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable, and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to effect the purpose and intent of this AGREEMENT.

6.7 **Authority to Execute, Counterparts.** Each of the PARTIES warrants and represents that the entity executing this AGREEMENT, and the person executing this AGREEMENT for and on behalf of each entity, is competent to execute this AGREEMENT and has the requisite power and authority to execute this AGREEMENT. This AGREEMENT may be executed in any number of counterparts and each such counterpart shall be deemed an original instrument. The signature of the PARTIES, exchanged via fax or e-mail, shall constitute and be deemed an original signature for all purposes.

6.8 **Integration.** This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

6.9 Developer acknowledges that it has had ample opportunity for review and approval of this document by its attorney, and that any waiver of representation is a result of independent decision. Developer further acknowledges that City Attorney is acting solely on behalf of the City.

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT effective on the day and year below their signatures.

CITY OF POMONA

By: _____ MAYA CINEMAS NORTH AMERICA, INC., a
Linda C. Lowry, City Manager _____ corporation

Date: _____ By: _____

ATTEST

Date: _____

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit "A" to Option
Depiction of City Parcels 3 & 4



CITY PROPERTY NO. 2

Exhibit "B" to Option
Legal Description of City Parcels 3 & 4

Exhibit "C" to Option
DDA II

SECOND DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF POMONA

And

MAYA CINEMAS NORTH AMERICA, INC

Date: -----

TABLE OF CONTENTS

		<u>Page</u>
SEC. 100	SUBJECT OF AGREEMENT	59
Sec. 101	Purpose of Agreement.....	59
Sec. 102	The Property.....	59
	Sec. 102.1 Street Vacation.....	59
Sec. 103	Intentionally Deleted.....	60
Sec. 104	Parties to the Agreement.....	60
	Sec. 104.1 The City	60
	Sec. 104.2 The Developer.....	61
	Sec. 104.3 Prohibition Against Transfer, Change in Ownership, Management and Control of Developer.....	61
Sec. 105	Representations and Warranties.....	62
	Sec. 105.1 City's Representations.....	63
	Sec. 105.2 Developer's Representations	63
SEC. 200	DISPOSITION OF THE PROPERTY.....	64
Sec. 201	Sale, Purchase, Deposit for City Property 2	64
Sec. 202	Escrow.....	66
	Sec. 202.1 Opening of Escrow	66
	Sec. 202.2 Close of Escrow	66
	Sec. 202.3 Developer's Deposits in Escrow.....	66
	Sec. 202.4 City's Deposits in Escrow.....	67
	Sec. 202.5 Escrow Instructions.....	67
	Sec. 202.6 Condition of Title and Title Insurance.....	68
	Sec. 202.7 Conveyance of Title and Delivery of Possession	69
	Sec. 202.8 Form of Deed	69
	Sec. 202.9 Time and Place for Delivery of Deeds.....	69
	Sec. 202.10 Recordation of Deeds.....	69
	Sec. 202.11 Taxes, Assessments and Prorations	70
	Sec. 202.12 Evidence of Financing	70
Sec. 203	Condition of the City Property 2.....	71
	Sec. 203.1 Developer Due Diligence.....	72
Sec. 204	Conditions Precedent to Close of Escrow.....	73
	Sec. 204.1 Developer's Conditions Precedent	73
	Sec. 204.2 Failure of Developer's Conditions Precedent; Termination	74
	Sec. 204.3 Conditions Precedent to City's Obligations.....	74
	Sec. 204.4 Failure of City's Conditions Precedent; Termination.....	75
Sec. 205	Environmental Compliance	75
Sec. 206	Memorandum of DDA.....	76
SEC. 300	DEVELOPMENT OF THE PROPERTY.....	76

Sec. 301	Development of City Property 2	76
Sec. 301.1	Scope of Development	76
Sec. 301.2	City Approval of Plans, Drawings and Related Documents	76
Sec. 301.3	Cost of Development	77
Sec. 302	Schedule of Performance	77
Sec. 303	Insurance; Indemnity	77
Sec. 304	Environmental Indemnity	79
Sec. 304.1	Environmental Release	79
Sec. 304.2	Environmental Indemnity	79
Sec. 304.3	Defense of Claims	80
Sec. 304.4	Definitions	80
Sec. 305	City and Other Governmental City Permits	82
Sec. 306	Rights of Access	82
Sec. 307	Local, State and Federal Laws	82
Sec. 308	Taxes, Assessments, Encumbrances and Liens	83
SEC. 400	SECURITY FINANCING; RIGHTS OF HOLDERS	83
Sec. 401	No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases Back or Other Financing for Development	83
Sec. 402	Construction Financing	83
Sec. 403	INTENTIONALLY DELETED	83
Sec. 404	Holder Not Obligated to Construct Improvements	83
Sec. 405	Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure	84
Sec. 406	Failure of Holder to Complete Improvements	84
Sec. 407	Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default	85
Sec. 408	Rights of City to Satisfy Other Liens on the Property After Title Passes	85
Sec. 409	Estoppel	85
SEC. 500	USE OF THE CITY PROPERTY 2 AND COVENANTS	85
Sec. 501	Uses and Covenants	85
Sec. 502	Obligation to Refrain from Discrimination	86
Sec. 503	Form of Nondiscrimination and Non-segregation Clauses	86
Sec. 504	Operating Covenants	87
Sec. 505	Release of Construction Covenants	87
Sec. 506	Operation and Maintenance Covenant	88
Sec. 507	Effect and Duration of Covenants	88
SEC. 600	DEFAULTS AND REMEDIES	89
Sec. 601	Defaults—General	89
Sec. 601.1	Limitation of Damages	89
Sec. 602	Legal Actions	89
Sec. 602.1	Institution of Legal Actions	89
Sec. 602.2	Applicable Law	89
Sec. 602.3	Acceptance of Service of Process	89
Sec. 603	Rights and Remedies Are Cumulative	90

Sec. 604	Remedies and Rights of Termination Prior to Conveyance.....	90
Sec. 604.1	Termination by Developer	90
Sec. 604.2	Termination by City	90
Sec. 605	Remedies of City for Default by Developer After Passage of Title and Prior to Completion of Construction.....	91
Sec. 605.1	Termination and Damages	91
SEC. 700	GENERAL PROVISIONS	91
Sec. 701	Notices, Demands and Communications Between the Parties	91
Sec. 702	Conflicts of Interest.....	91
Sec. 703	Enforced Delay; Extension of Times of Performance	92
Sec. 704	Non-Liability of Officials and Employees of the City.....	92
SEC. 800	EMPLOYMENT OPPORTUNITIES.....	92
Sec. 801	Job Opportunities Created by Developer	92
SEC. 900	SPECIAL PROVISIONS.....	93
Sec. 901	Submission of Documents to the City for Approval.....	93
Sec. 902	Amendments to this Agreement.....	93
Sec. 903	Operating Memoranda	93
Sec. 904	Real Estate Commissions.....	93
Sec. 905	Survivor Provisions.....	93
Sec. 906	Reservation of Discretion	93
Sec. 907	Costs and Attorneys' Fees.	94
SEC. 1000	ENTIRE AGREEMENT, WAIVERS	94
SEC. 1100	TIME FOR ACCEPTANCE OF AGREEMENT	94

LIST OF ATTACHMENTS

	Page	
ATTACHMENT NO. 1	DEPICTION OF CITY PROPERTY 2	96
ATTACHMENT NO. 2	LEGAL DESCRIPTION OF CITY PROPERTY 2	97
ATTACHMENT NO. 3	STREET VACATIONS	98
ATTACHMENT NO. 4	SCHEDULE OF PERFORMANCE.....	99
ATTACHMENT NO. 5	GRANT DEED.....	102
ATTACHMENT NO. 6	MEMORANDUM OF DDA	110
ATTACHMENT NO. 7	RELEASE OF CONSTRUCTION COVENANTS	114
ATTACHMENT NO. 8	OPERATION AND MAINTENANCE COVENANT.....	118

SECOND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS SECOND DISPOSITION AND DEVELOPMENT AGREEMENT (hereinafter the "DDA II" or "Agreement") dated for reference purposes only _____, 2016 is entered into by and between the CITY OF POMONA ("City") and MAYA CINEMAS NORTH AMERICA, INC., a _____ corporation ("Maya" or "Developer"). City and Developer are sometimes hereinafter collectively referred to herein as the Parties. The City and Developer hereby agree as follows:

SEC. 100 SUBJECT OF AGREEMENT

Sec. 101 Purpose of Agreement

(1) It is the purpose of this Agreement to effectuate the Option to Purchase the City Property 2 which was entered into by City and Maya on _____. It is the further purpose of this Agreement to provide a means for the future development of retail/commercial/restaurant uses on the VPD owned vacant land on Second Street (approximately 26,050 square feet) between Park Avenue and South Gordon Street and on VPD Lot No. 6 (together "Project 2").

(3) The sale of the City Property 2 by City to Developer and Developer's completion and operation of the Project 2 in accordance with this Agreement is in the vital and best interest of the City, and in accord with the public purposes and provisions of the General Plan and Downtown Specific Plan and applicable state and local laws and requirements. The Project 2 will be a benefit to the City. This Agreement is entered into for the purpose of development and not for speculation in land holding.

Sec. 102 The Property

(1) The City Property 2 consists of a portion of VPD Lot No.6 constituting approximately _____ square feet ("City Parcel No. 3") and VPD owned vacant real property located on Second Street constituting approximately 26,050 square feet ("City Parcel No. 4"). The City Property 2, including City Parcels No. 3 and No. 4, are depicted on Attachment No. 1 and legally described on Attachment No. 2, attached hereto and incorporated herein.

Sec. 102.1 Street Vacation

(1) The City Property 2 may include all or portions of certain alleys and streets to be vacated by the City consisting of and the alleys within the boundaries of City Parcels No. 3 and No. 4.

as shown on Attachment No. 3 ("Street Portions"). City shall cooperate with Developer to accomplish the foregoing.

(2) The vacation of the Street Portions is a discretionary action of the City Council of the City of Pomona that cannot be required by this Agreement. The City shall determine in its sole and absolute discretion whether or not the Street Portions shall be vacated. Therefore the Close of Escrow for City Parcels No. 3 and No.4 is contingent on the vacation of

..... and the alleys within the boundaries of City Parcels No. 3 and No. 4 by the City of Pomona.

(2) The vacation of the alleys within or abutting City Parcels No. 3 and No. 4 are contingent upon the purchase of City Parcels No. 3 and No. 4 by Developer and the close of escrow for such purchase.

(3) To the extent that the Street Portions contain public utilities, pipes, conduits, other public facilities or are subject to easements, licenses or other property interests, Developer shall relocate or otherwise satisfy the owners or holders of such public utilities, easements or other property rights, all at the expense of Developer. Developer shall allow City and the public utility companies affected by the vacation of the Street Portions to maintain and use the existing utilities and easements located on the City Property until such utilities are abandoned pursuant to the terms of a separate agreement to be entered by and between Developer and the utility companies affected thereby. Developer shall use good faith efforts to accomplish the foregoing prior to Close of Escrow. City shall cooperate with Developer to accomplish the foregoing. If the City vacates the Street Portions within its sole discretion, it shall adopt a City Resolution vacating the Street Portions which is only effective upon Close of Escrow. The city shall deposit the Resolution in Escrow at least three days before the Close of Escrow and the Resolution shall not be effective until it is recorded.

(4) No street vacation proceedings shall be commenced until after Developer has obtained recorded fee title to the Developer Property. Street vacation proceedings shall be accomplished by a Final Tract Map/Parcel Map. City shall cooperate with Developer to accomplish the foregoing.

(5) Developer shall deliver into escrow fully executed and notarized Irrevocable Offers of Dedication for any street or alley which is to be vacated at the close of escrow for City Parcels No. 3 and No. 4. The escrow agent shall record the Irrevocable Offers of Dedication immediately subsequent to the Resolution which implements the vacation of the street or alley. At such time as a certificate of occupancy is issued by the City for the completed development of City Parcels No. 3 and No. 4 the City shall sign, notarize and record a Release of the Irrevocable Offer of Dedication for the applicable street or alley.

Sec. 103 Intentionally Deleted

Sec. 104 Parties to the Agreement

Sec. 104.1 The City

(1) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing as a charter city under California Constitution. The City's address for purposes of this Agreement is:

To City:

City Manager
City of Pomona
505 South Garey Avenue
Pomona, California 91766

Phone:
Fax:
Email:

Copy to:

Alvarez-Glasman & Colvin
13181 Crossroads Parkway North, Ste 400
City of Industry, CA 91746
Phone: 562-699-5500
Fax: 562-692-2244

Sec. 104.2 The Developer

(1) The Developer, as used herein, refers to Maya Cinemas North America, Inc., a California Corporation. The principal office and address for Developer for the purposes of this Agreement is:

To Developer:

Maya Cinemas North America, Inc.
150 S. Arroyo Parkway, Suite 102
Pasadena, CA 91105
Attn: Moctesuma Esparza, CEO
Phone: (213) 805-5333
Fax: (213) 805-5332

With a copy to:

Joseph S. Avila, Attorney
113 E. Eula Drive
Montebello, CA 90640
Phone: (323) 727-6900
Email: javila@avilaputnam.com

(2) Whenever the term Developer is used herein, such term shall include any nominee, assignee or successor in interest, individually and collectively as herein provided, subject to the prohibitions set forth in Section 104.3 below.

Sec. 104.3 Prohibition Against Transfer, Change in Ownership, Management and Control of Developer

(1) The qualifications and identity of Developer and its managing members are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with Developer. No voluntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(2) The Developer shall promptly notify the City of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. City must approve any such changes in writing and shall not unreasonably withhold or delay such approval. If Developer allows any significant change (voluntary or involuntary) in membership, management, or control of Developer, prior to issuance of a Release of Construction Covenants for the Property without such approval of City, then this Agreement may be terminated by the City.

(3) The Developer may not assign all or any part of this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed. If Developer seeks an assignment, Developer shall promptly notify City in writing of the proposed assignment. Any such proposed assignment shall be subject to the terms of section 104.3(5) of this Agreement.

(4) Prior to recordation by the City of a Release of Construction Covenants for construction of the Property, Developer shall not, except as may be required by a tenant for the development of the Improvements and as permitted by this Agreement, make any total or partial sale, transfer, conveyance, or assign the whole or any part of the Property or the buildings or structures or any Parcel in the Property, excluding necessary financing transactions as permitted in this agreement, without the prior written approval of the City which shall not be unreasonably withheld or delayed. This prohibition shall not be deemed to prevent the granting of temporary easements or permits to facilitate development of the Property or leasing in the ordinary course of business.

(5) Except as expressly hereinafter provided, any such proposed transferee, for which the City's consent is required hereunder, shall have the qualifications and necessary financial resources, as may be reasonably determined by City, to fulfill the obligations undertaken by Developer in this Agreement. Any such proposed transferee, for which consent City approval is needed shall expressly assume all obligations of Developer under this Agreement, including the loan obligation, and agree to be subject to all conditions and restrictions under this Agreement to which Developer is subject. Any such transfer shall be made by an instrument in writing satisfactory to City. All instruments and other legal documents proposed to effect any such transfer, shall be submitted to City for review. If approved by the City, its approval shall be indicated to Developer in writing.

(6) In the absence of a specific written agreement by the City, no such transfer, assignment or approval by the City shall be deemed to relieve Developer or any other party from any obligations under this Agreement until completion of construction and resale of the particular Property.

(7) Such prohibition shall not apply to the transfer, conveyance, or assignment by way of a deed of trust or other security instrument, or by way of a foreclosure of such deed of trust or other security instrument, or a sale or transfer pursuant thereto, or a deed in lieu of foreclosure, in connection with the financing of the Property and development thereon.

Sec. 105 Representations and Warranties

1. The City and Developer acknowledge that neither the City nor Developer is relying upon any representations or warranties other than those set out in this Agreement, and

that the representations and warranties set out in this Agreement constitute all of the representations and warranties of the City and Developer in regard to this transaction.

Sec. 105.1 City's Representations

The City represents and warrants as follows:

(1) There are no physical or legal facts, circumstances, problems or governmental actions known to City with respect to the City Property 2 which, if disclosed to Developer, would materially or adversely impact decisions regarding acquisition and development of the Property; and

(2) The City has no knowledge of any violations of governmental codes, ordinances, regulations or orders with respect to the Property.

(3) City has duly authorized, executed and delivered this Agreement and City has or will authorize, execute and deliver, within the times set forth therefore in the Schedule of Performance (Attachment No. 4), any and all other agreements and documents required to be authorized, executed and delivered by City in order to carry out, give effect to and consummate the transaction contemplated by this Agreement.

(4) City has performed all acts necessary to validly enter into this Agreement.

(5) City is the fee title owner of the City Property 2.

Each of the foregoing items (1) through (5) shall be deemed to be an on-going representation and warranty and shall survive in perpetuity. The City shall advise Developer in writing, if there is any change pertaining to any matters set forth or referenced in the foregoing items (1) through (5).

Sec. 105.2 Developer's Representations

Developer represents and warrants to the City that:

(1) Immediately following the approval of this DDA by City and subject to Section 200 below, Developer will commence work on the Project 2 entitlement application process and will diligently pursue completion of the Project 2 in accordance with the "**Schedule of Performance**" set forth in **Attachment No. 4**, attached hereto.

(2) Developer has duly authorized, executed and delivered this Agreement and Developer has or will authorize, execute and deliver, within the times set forth therefore in the Schedule of Performance, any and all other agreements and documents required to be authorized, executed and delivered by Developer in order to carry out, give effect to and consummate the transaction contemplated by this Agreement.

(3) Neither this Agreement nor anything provided to be done hereunder by Developer violates or shall violate any contract, agreement, or instrument to which Developer is a party.

(4) Maya Cinemas North America, Inc. is a _____ corporation duly organized and validly existing under the laws of the State of _____ and is registered and authorized to conduct business in the State of California. Maya Cinemas North America, Inc. has full power and authority to own property and conduct its business as provided for in this Agreement, and has full power and authority to enter into this Agreement.

(5) This Agreement is a valid and binding agreement enforceable against Developer in accordance with its terms, subject to laws relating to bankruptcy and creditor's rights and generally applicable equitable principles.

(6) Developer is not relying upon any representations or warranties by City other than those expressly set forth in this Agreement and the representations and warranties of City set forth herein constitute all of the representations and warranties of City in regard to this transaction.

(7) Developer has not entered into any agreements which will adversely affect the title to the City Property 2 or Developer's right to construct the Developer Project, as provided in this Agreement.

(8) Developer represents and warrants to the City that there is no suit, legal action, administrative arbitration or other proceeding or governmental investigation process which has been served upon Developer or, which to Developer's best knowledge, is otherwise pending or threatened against Developer in which any party is making or has made a claim or defense that, if sustained, would materially and adversely affect the performance of Developer under this Agreement or materially and adversely interfere with the ability of Developer to consummate the transactions contemplated herein.

(9) Developer possesses adequate financial resources and has the skill and experience to develop and operate the Project 2.

(10) Developer is entering into this Agreement for the purpose of redeveloping the City Property 2 and not for speculation in land holding or land banking. In this regard, Developer recognizes the importance of the development of the Project 2 on the City Property 2 to the general welfare of the residents of the City, the substantial public aids that have been made available by law and by government for the purpose of making such development possible, and the fact that the qualifications and identity of Developer are of particular concern to City and that it is because of such qualifications and identity that City is entering into this Agreement with Developer;

Each of the foregoing items (1) through (10) shall be deemed to be an on-going representation and warranty. Developer shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (1) through (10).

SEC. 200 DISPOSITION OF THE PROPERTY

Sec. 201 Sale, Purchase, Deposit for City Property 2

(1) The City agrees to sell the City Property 2 to the Developer and the Developer agrees to purchase the City Property 2 from the City. Prior to the transfer of the City Property 2 from City to Developer, Developer shall prove to the reasonable satisfaction of City that it has sufficient funds (such as a commitment letter for funding from a recognized lending institution), to reasonably accomplish the development of the City Property 2 in accordance with this Agreement. Developer shall accept such transfer of the City Property 2 from City, and as consideration for such transfers, shall pay to City the purchase price for City Parcel No. 3 and City Parcel No. 4 based on the per square foot value of \$13.97 times the total combined square footage of City Parcel No. 3 and City Parcel No. 4 ("**Purchase Price 2**"). The actual square footage of the City Property 2 shall be confirmed by an ALTA survey to be paid for by

Developer. The ALTA survey shall be completed at least ten (10) business days before the Closing. The square footage of the City Property shall exclude any Street Portions. The Purchase Price 2 shall be adjusted based on the consumer price index for the Los Angeles Metropolitan Statistical Area from the date the Developer and City sign the Option Agreement pursuant to the terms of the Original DDA to the date Developer exercises the Purchase Option. The Purchase Price shall be paid as follows:

(a) Upon the Opening of Escrow Developer shall deposit in Escrow the sum of Seventy Five Thousand and no Dollars (\$75,000) as a good faith deposit for the purchase of the City Property 2 ("**Developer's Escrow Deposit 2**"). If the Escrow closes successfully the Developer's Escrow Deposit 2 shall be credited toward the Purchase Price 2. If the Escrow fails to close successfully due to the primary default of the Developer, the Developer's Escrow Deposit 2 shall be transferred to City as liquidated damages pursuant to Section 201.1 of this Agreement. If the Escrow fails to close due to the primary default of City, and Developer elects to terminate this Agreement in accordance with Section 604.1, then the Escrow Deposit 2 shall be refunded to the Developer in accordance with Section 604.1. If the Escrow fails to close without fault of any party, or the Developer timely elects not to purchase the City Property 2, then the Developer's Escrow Deposit 2 shall be returned to Developer.

(b) Developer shall deposit into Escrow the balance of the Purchase Price two business days prior to Close of Escrow.

Sec. 201.1 Liquidated Damages

If through a continuing default after notice and opportunity to cure as provided in this Agreement, Developer fails or refuses to complete the transfer of title to the City Property 2, to which City is prepared to deliver insurable title in accordance with the terms and conditions of this Agreement, the City, as its sole and exclusive remedy, may terminate this Agreement, and the parties agree that City shall draw down Developer's Escrow Deposit 2 as liquidated damages in an amount of \$75,000 which sum the Parties agree is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Upon payment of the liquidated damages, the Parties shall have no further obligation one to the other hereunder. In placing their initials at the place provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained the consequences of this liquidated damages provision at the time this Agreement was made. This paragraph shall not be construed to grant Developer the option to purchase the City Property 2 or in the alternative to pay the liquidated damages.

Developer initial here: _____ City initial here: _____

Sec. 202 Escrow

Sec. 202.1 Opening of Escrow

(1) The City and Developer agree to open an escrow (the “**Escrow**”) with _____ (“**Escrow Agent**”) within fifteen (15) business days after the execution of this Agreement.

(2) If the Escrow is not opened within such fifteen (15) business days, this Agreement shall automatically terminate, unless the time is extended in writing by mutual agreement of City and Developer.

(3) This Agreement shall constitute the joint escrow instructions between the City and Developer, and a duplicate original to this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow (the "**Opening of Escrow**"). The City and Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent is hereby empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section 202 in writing delivered to City and to Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder. In the event of any inconsistency between any escrow instructions and this Agreement, this Agreement shall control, notwithstanding that either party may have intentionally or inadvertently executed such inconsistent instructions.

Sec. 202.2 Close of Escrow

(1) The "**Close of Escrow**" or the "**Closing**" shall be within thirty (30) days after satisfaction of all Conditions Precedent by City and Developer, but not later than _____. The Escrow may be extended for any periods of time with the mutual written agreement of the City and Developer, delivered to Escrow. The city Manager shall have the reasonable discretion to approve extensions of the Close of Escrow, but cumulatively not to exceed a total of ninety (90) days. The City and Developer agree to deliver all documents necessary for the conveyance of title in conformity with this Agreement.

Sec. 202.3 Developer’s Deposits in Escrow

(1) Developer shall pay/deliver into escrow, to the Escrow Agent, the following fees, charges and costs and documents at the time they are required to place the Escrow in a condition to close:

- (a) One half (½) of the escrow fee;
- (b) One half (½) of the recording fees;
- (c) One half (½) of the notary fees;
- (d) Any State, County or City documentary stamps or transfer tax.
- (e) The Developer's Escrow Deposit 2.
- (f) The balance of the Purchase Price 2.

Sec. 202.4 City's Deposits in Escrow

(1) The City shall pay/deliver into escrow, to the Escrow Agent, the following fees, charges and costs and documents at the time they are required to place the Escrow in a condition to close:

- (a) One half (1/2) of the escrow fee;
- (b) One half (1/2) of the recording fees;
- (c) One half (1/2) of the notary fees;
- (d) Ad Valorem taxes, if any, upon the City Property 2, pursuant to Section 202.11 of this Agreement;
- (e) The premium for the ALTA Standard Title Insurance Policy on the City Property. Developer may obtain extended coverage title insurance, ALTA coverage, or surveys at the cost of Developer;
- (f) Costs necessary to place the title in condition for conveyance required by the provisions of this Agreement;
- (g) Grant Deed for the City Property 2 and the costs of drawing the deeds;

Sec. 202.5 Escrow Instructions

- (1) The Escrow Agent is authorized to:
- (a) Pay and charge Developer and City for any fees, charges and costs payable under Sections 202.3 and 202.4 of this Agreement. Before such payments are made, the Escrow Agent shall notify City and Developer of such fees, charges and costs. City and Developer will close escrow in accordance with Section 202.2 unless a sooner or later date or termination of this Agreement is mutually agreed upon by each of the Parties to this Agreement.
 - (b) Disburse funds and deliver the deeds, and other documents to the Parties entitled thereto, when the conditions of the escrow have been fulfilled by City and Developer. The Purchase Price shall not be disbursed by the Escrow Agent unless and until it has recorded the Grant Deed and has delivered to the appropriate party a title insurance policy insuring title, acceptable to Developer and the lender, and conforming to the requirements of Section 202.6 of this Agreement.
 - (c) Record the Grant Deed and any instrument delivered through this escrow, if necessary or proper to vest title in Developer, in accordance with the terms and provisions of this Agreement.
 - (d) Cause to be prepared on behalf of City and delivered to Developer such disclosure documents and reports concerning flood hazards, earthquake, fire and wildlands as may be required by California Government Code Sections 8589.3, 8589.4 and 51183.5 and California Public Resources Code Sections 2621.9, 2694 and 4136.

(2) All funds received into escrow shall be deposited in an interest bearing account by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made on the basis of a 30-day month.

(3) The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both City and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

(4) Any amendment of these escrow instructions shall be in writing and signed by both City and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

(5) All communication from the Escrow Agent to the City or Developer shall be directed to the addressees in the manner established in Sections 104.1 and 104.2 of this Agreement. Nothing in this Section 202.5 shall be construed to impair or affect the rights or obligations of the City or Developer as to specific performance.

Sec. 202.6 Condition of Title and Title Insurance

(1) The conveyances of the City Property 2 shall be by fee simple, merchantable and insurable title free and clear of all recorded liens, encumbrances, covenants, assessments, easements, leases and taxes except as are consistent with this Agreement and approved by the Developer ("**Approved Title Condition**").

(2) Within ten days (10) of the opening of the escrow, City shall deliver to the Developer a preliminary title report for a CLTA Standard Owner's Title Insurance Policy ("**Report**") covering the City Property 2 and issued by _____ (the "**Title Company**"), together with all readable and legible copies of all instruments, if any, referred to in the Report as exceptions to title. Developer shall, in addition to all other approvals, have the right to review and accept the assessments, and any liens or other matters affecting title, whether or not of record, including all matters affecting title that are incorporated in this Agreement by reference. Within 30 days after receipt of the Title Report, and exception documents, Developer shall give written notice to City of any defects in or objections to the title as so evidenced. The City shall, within thirty (30) days after written notice from Developer of any defects in title, or such reasonable time as may be extended by Developer, exert its best efforts to clear the title of the defects and objections so specified. If City is unable to clear such defects or objections within such 30 day period, it shall give written notice to Developer within 15 days following the 30 day period that City elects to terminate this DDA. Developer shall then have 15 days to give written notice to City that Developer will accept the defects or objections which City was unable to clear. If Developer does not give City such notice of acceptance of defects or objections within 15 days, then this DDA and the Escrow shall be terminated. Upon such automatic termination, Developer shall be entitled to the return of all of its deposits, whereupon the Parties shall have no further obligations one to the other hereunder.

(3) City shall pay the cost of Title Insurance. Developer may obtain extended coverage title insurance, ALTA coverage, or surveys at the cost of Developer

(4) Concurrent with the recording of the Grant Deed conveying title to the City Property 2 to Developer, the Title Company shall, if requested by Developer, provide

Developer with an endorsement to insure the amount of Developer's estimated construction costs for improvements to be constructed upon the Property. Developer shall pay the entire premium for any such additional title insurance coverage.

Sec. 202.7 Conveyance of Title and Delivery of Possession

(1) Subject to any mutually agreed upon extensions of time, conveyance of title and delivery of exclusive possession of the City Property 2 to Developer shall be completed on or prior to the date for close of escrow. City and Developer agree to perform all acts necessary to convey title in sufficient time for title to be conveyed in accordance with the foregoing provisions. If, prior to the Closing, all of the Property, or any portion thereof which, in the reasonable judgment of Developer, would materially and adversely affect the development of the Property consistent with the terms of this Agreement, is condemned, or a notice is received by City or Developer of any such threatened condemnation, then Developer shall have the right to terminate this Agreement at any time prior to close of escrow upon written notice to City.

Sec. 202.8 Form of Deed

(1) Subject to Section 202.7, the City shall convey the title to Developer as follows:

- (a) In the condition provided in Section 202.6 of this Agreement.
- (b) By **“Grant Deed”** in the form as set forth in **Attachment No. 5**.
- (c) After review and approval of the title report submitted to Escrow, consistent with the terms of this Agreement, which is mutually satisfactory to the Title Company, the Developer, the Developer’s Lender and the City.
- (d) After the Title Company agrees to insure the title herein.

Sec. 202.9 Time and Place for Delivery of Deeds

1. The City shall timely and properly execute, acknowledge and deliver to Escrow a Grant Deed(s) to the City Property 2 with the requirements set forth in Section 202.8 of this Agreement, which is substantially in the form of the Grant Deed attached hereto as Attachment No. 10 and incorporated herein by reference. Subject to any mutually agreed upon extension of time, the City shall deposit the Grant Deed with the Escrow Agent at least two days before close of Escrow.

Sec. 202.10 Recordation of Deeds

(1) Title shall be transferred to Developer by Grant Deed upon or prior to the date for conveyance thereof, provided that the Escrow Agent shall have notified the parties in writing that the deed, properly executed and acknowledged, has been delivered to the Escrow Agent, and that title is in the condition to be conveyed in conformity with the provisions of Section 202.9 of this Agreement and that the parties have complied with all of their obligations and fulfilled all of their responsibilities to be performed by them prior to the conveyance of title. The Escrow Agent shall file the deed for recordation among the land records in the office of the County Recorder for Los Angeles County.

Sec. 202.11 Taxes, Assessments and Prorations

(1) Any ad valorem taxes and/or assessments on the City Property 2 or taxes imposed upon this Agreement, or any rights thereunder levied, assessed or imposed for any period occurring prior to Close of Escrow, shall be borne by City. All ad valorem taxes and assessments levied or imposed on the City Property 2 for any period occurring after Close of Escrow shall be paid by Developer.

(2) Any taxes, assessments, fees or charges which cover a period before and after the Close of Escrow shall be prorated. Prorations shall be made as of the Close of Escrow. All prorations shall be made on the basis of a thirty (30) day month and shall be credited to City if it is entitled thereto, or shall be credited against the cash portion of the Purchase Price if Developer is entitled thereto. Such prorations shall be made by Escrow Agent on the basis of a statement(s) approved by Developer and City and deposited into the Escrow prior to the Close of Escrow.

(3) Supplemental taxes, fees or charges assessed or imposed on the City Property 2 after the Close of Escrow, but which are imposed for a period prior to Close of Escrow shall be prorated between City and Developer as provided in subparagraphs (1) and (2) of this section 202.11.

(4) Expenses of operating the City Property 2 which were prepaid by City for a period beyond the Close of Escrow shall be credited to City.

(5) Developer shall be responsible for obtaining and paying for utility services from and after Close of Escrow.

Sec. 202.12 Evidence of Financing

(1) Within the time set forth in the Schedule of Performance, Developer shall exercise commercially reasonable efforts to obtain sufficient equity capital, and debt financing on terms satisfactory to Developer in its sole discretion as necessary to undertake and complete acquisition of the City Property 2 and development of the Project 2 thereon. Contingent upon its ability to obtain such equity and debt financing within the time set forth in the Schedule of Performance, Developer shall submit such evidence of financing to City's City Manager for approval. Such evidence of financing shall include, as applicable, the following: (i) a signed letter of financing commitment from a financing institution; or (ii) a copy of the loan documents (in substantially their final form) to be obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to acquire the Site and develop the Project 2; or (iii) written documentation and evidence, from the chief financial officer of Developer (or such other person serving in the most comparable capacity for Developer), reasonably satisfactory to City that Developer has sufficient funds for such acquisition and construction and that such funds have been committed to the Project 2; or (iv) such other documentation reasonably satisfactory to City Manager as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total acquisition and development cost for the Project 2 less financing authorized by those loans referred to in clauses (i and ii) hereinabove. Notwithstanding the foregoing, evidence of equity and debt financing may be evidenced by an executed letter of intent to provide financing and equity, respectively. Loan documents (in substantially their final form) shall be submitted to the City Manager at least five (5) business days prior to Close of Escrow.

(2) City Manager shall approve or disapprove Developer's evidence of financial capability and commitments within five (5) business days after receipt of a complete submittal of loan documents in substantially their final form. The City Manager in his/her sole discretion may accept a letter of intent to provide financing and equity in lieu of the loan documents in substantially their final form. The approval of the City shall be limited to determining that the financing entity is a responsible and sound financial source of adequate financial capability to provide the necessary loan proposed, that the amount of the loan, along with all other loans and equity funds available to Developer, is equal to or greater than the cost of acquiring the Property and the cost of construction and development of the Project 2, and that the amount of the funds by the terms of the loan documents in substantially their final form or the signed letter of intent will be available at the time required consistent with the other provisions of this Agreement. Approval shall not be unreasonably withheld, delayed, or conditioned. If City's City Manager shall disapprove any such evidence of financing, he or she shall do so by delivery of written notice to Developer stating the reasons for such disapproval. Upon receipt of the City's City Manager's disapproval of Developer's proposed financing, Developer shall exercise commercially reasonable efforts to promptly obtain and submit new evidence of financing or terminate this Agreement as provided in Section 604.1, and in the event Developer elects to seek new financing the time for Developer to do so and all provisions of the Schedule of Performance related to the applicable Closing automatically shall be extended until Developer obtains the City Manager's approval of Developer's evidence of financing or by one hundred twenty (120) days, whichever occurs first. The City's City Manager shall approve or disapprove any such new evidence of financing in the same manner and within the same times established in this Section 202.12 for Developer's initial submittal.

If any portion of Developer's financing consists of secured third party loans, Developer shall close the approved financing at the Closing. The mortgage, deed of trust, or other form of conveyance for financing required for Developer's acquisition of the Site and its development of the Project 2, including any extension, modification, renewal, or refinancing of any such mortgage, deed of trust, or other form of conveyance for financing, is referred to herein as a "**Developer Deed of Trust.**"

Sec. 203 Condition of the City Property 2

(1) Except as provided in this Agreement, the City Property 2 shall be conveyed and delivered to Developer in an "as-is" physical condition. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS SELLING AND BUYER IS PURCHASING THE CITY PROPERTY 2 ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT, EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 105.1, BUYER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS OR BROKER AS TO ANY MATTERS CONCERNING THE CITY PROPERTY 2, INCLUDING WITHOUT LIMITATION:

(a) The quality, nature, adequacy and physical condition and aspects of the City Property 2, including, but not limited to, sewage, and utility systems, the square footage within the City Property 2.

(b) The quality, nature, adequacy, and physical condition of soils, geology and any groundwater.

(c) The existence, quality, nature, adequacy and physical condition of utilities serving the City Property 2.

(d) The development potential of the City Property 2, and the City Property 2's use, habitability, merchantability, or fitness, or the suitability, value or adequacy of the City Property 2 for any particular purpose.

(e) The zoning or other legal status of the City Property 2 or any other public or private restrictions on use of the City Property 2.

(f) The compliance of the City Property 2 with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental, entity or of any other person or entity (including, without limitation, the Americans with Disabilities Act).

(g) The presence of hazardous materials on, under or about the City Property 2 or the adjoining or neighboring City Property 2.

(h) The quality of any labor and materials used in any Improvements.

(i) The economics of the operation of the City Property 2.

(2) City is not in any way responsible for any demolition or physical site clearance of said City Property 2. Developer is solely responsible for the relocation of utilities and easements as necessary on any parcel within the City Property 2; however, City agrees to fully cooperate with Developer to relocate same.

Sec. 203.1 Developer Due Diligence

(1) Developer will have the later of (a) ninety (90) days after the opening of escrow or (b) the final approval by the City of CEQA documentation for the Project 2 and expiration of the appeal period for same (the "**Due Diligence Period**") to conduct any investigation of the City Property 2.

(2) During the Due Diligence Period Developer is invited, urged, and cautioned to conduct, at Developer's expense, such investigations, inspections, surveys, plans, and tests of the City Property 2, including, without implied limitation, soils, groundwater, wells, percolation, geology, environmental, drainage, engineering and utilities investigations, inspections, surveys, plans, and tests (collectively, "**Investigations**"), as Developer determines, in Developer's sole discretion, are required to determine the suitability of the City Property 2 for Developer's intended use and development. Such Investigations shall be conducted at the sole cost and expense of Developer. Developer shall hold harmless, indemnify and defend City against all costs, damages, liabilities or expenses, including mechanics lien claims arising out of Developer's activities on the City Property 2.

(3) City hereby grants to Developer, its employees, representatives, agents and independent contractors, a license to enter the City Property 2 for purposes of conducting such Investigations during normal business hours. Developer shall provide City twenty-four (24) hours notice prior to entering the City Property 2.

(4) In the event that Developer exercises this right of entry, Developer shall comply with all applicable laws and obtain all permits which may be required with respect to its investigations and testing. Developer further agrees to indemnify, defend, and hold harmless City

and the City Property 2 from and against any and all claims, damages, liabilities, and losses arising from such activities of Developer or its employees or agents, and from and against all mechanics', materialmen's, and other liens resulting from any such conduct. Developer shall restore the City Property 2 as nearly as possible to its condition existing immediately prior to any such entry by or on behalf of Developer. Prior to entry upon the Site Developer shall obtain insurance covering Developer's indemnity, hold harmless, and defense obligations to City pursuant to this paragraph. Prior to entry upon the City Property 2 for such Investigations Developer shall furnish to City duplicates of appropriate certificates of commercial general liability insurance in the amount of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage and Two Million Dollars (\$2,000,000) general aggregate limit, naming City as an additional insured, insuring Developer's obligations and responsibilities under this paragraph (4). Developer shall maintain each such policy in effect until the Close of Escrow.

(5) Developer shall notify City in writing of any objections as to the condition of the City Property 2, by delivering such written objection to escrow within the Due Diligence Period. City shall then have fifteen (15) days to either correct the objection or shall have substantially initiated corrective measures to the reasonable satisfaction of Developer, or give written notice to Developer through escrow that City elects to terminate the DDA. If City elects to terminate the DDA, Developer shall have ten (10) days to give written notice to City through escrow that Developer waives the objection or terminates the DDA.

Sec. 204 Conditions Precedent to Close of Escrow

Sec. 204.1 Developer's Conditions Precedent

(1) Notwithstanding any other provision set forth in this Agreement to the contrary, Developer's obligation to close the Escrow for the City Property 2 and its obligation to accept conveyance of the City Property 2 from City shall be subject to satisfaction or Developer's written and signed waiver of each of the following conditions precedent (collectively, the "**Developer's Conditions Precedent**"):

(a) At the Closing, the Title Company shall be irrevocably committed to issue the Title Policy that is required to be paid for by City pursuant to Section 202.6 of this Agreement insuring fee title to the City Property 2 as being vested in Developer in the Approved Title Condition.

(b) City shall have tendered possession of the City Property 2 to Developer in the condition required pursuant to Section 203 of this Agreement.

(c) Prior to the expiration of the applicable Due Diligence Period, Developer shall have approved all Due Diligence matters or have waived any objections in writing.

(d) Developer shall have obtained City approval of all of the Development Entitlements, Final Tract/Parcel Map, CEQA documentation satisfactory to Developer and Final Building Plans for all of the improvements comprising the Project 2, and Developer shall be in a position to obtain issuance of building permits at the Closing for the Project 2 upon the payment of applicable building permit fees and posting of any normally required security.

(e) Developer shall have been able to obtain and City's City Manager shall have approved Developer's evidence of financing commitments, as provided for in Section 202.12 of this Agreement, and Developer's lender and equity sources for the financing and equity are prepared and willing to close and fund such financing and equity at the Close of Escrow;

(f) Escrow Agent holds and will deliver to Developer the instruments and funds accruing to Developer pursuant to this Agreement with respect to the applicable Escrow; and

(g) A Resolution vacating the Street Portions approved by the City of Pomona has been recorded or is to be recorded at the Close of Escrow subject to the reservation of any easements or utilities to serve any structures remaining in use.

(h) All representations and warranties by City in this Agreement shall be true on and as of the applicable Closing as though made at that time. All covenants of City with respect to the Site which are required to be performed prior to the applicable Closing shall have been performed by such date.

Sec. 204.2 Failure of Developer's Conditions Precedent; Termination

The failure of any of the Developer's Conditions Precedent set forth in Section 204.1 shall not be a bar to the Closing nor an excuse for Developer's complete performance under this Agreement if the failure of the condition is primarily due to the fault of Developer. Developer shall reasonably cooperate with City and the Escrow Agent to attempt to satisfy each and every one of the Developer's Conditions Precedent. In the event, however, that Developer has fully performed its obligations set forth in this Agreement but any of the Developer's Conditions Precedent is not satisfied or waived in a writing signed by Developer prior to the expiration of the applicable period for satisfaction or waiver, Developer may, in addition to asserting or claiming any other right or remedy Developer may have for City's breach or default hereunder, cancel the applicable Escrow and terminate this Agreement. Such cancellation shall be in writing and delivered to Escrow Agent and City. In the event Developer elects to cancel the Escrow and/or terminate this Agreement, all documents and funds, if any, delivered by one Party to the other Party or to the Escrow Agent with respect to the cancelled Escrow shall be returned to the Party making delivery.

Sec. 204.3 Conditions Precedent to City's Obligations

(1) Notwithstanding any other provision set forth in this Agreement to the contrary, City's obligation to close the Escrow for the Site, and its obligation to convey the Site to Developer shall be subject to satisfaction or City's written and signed waiver of each of the following conditions precedent (collectively, the "**City's Conditions Precedent**"):

(a) Escrow Agent holds and will deliver to City the instruments and funds accruing to City pursuant to this Agreement with respect to the Escrow.

(b) Developer shall have obtained City approval of all of the Development Entitlements and Final Building Plans, CEQA documentation satisfactory to the City of Pomona for all of the improvements comprising the Project 2, and Developer shall be in a position to obtain issuance of building permits for the Project 2 at the Closing, upon the payment of applicable building permit fees and posting of any normally required security.

(c) Developer shall have submitted and obtained the City Manager's approval of the insurance required with respect to the Escrow pursuant to Section 303 of this Agreement.

(d) Developer shall have submitted and obtained the City Manager's approval of Developer's evidence of financing commitments with respect to the applicable Escrow as provided for in Section 202.12 of this Agreement.

(e) A Resolution vacating the Street Vacations approved by the City of Pomona has been recorded or is to be recorded at the Close of Escrow subject to the reservation of any easements or utilities to serve any structure remaining in use.

(f) All representations and warranties by Developer in this Agreement with respect to the Site shall be true on and as of the Closing as though made at that time and all covenants of Developer which are required to be performed prior to the applicable Closing shall have been performed by such date.

Sec. 204.4 Failure of City's Conditions Precedent; Termination

(1) The failure of any of the City's Conditions set forth in Section 204.3 shall not be a bar to the Closing of the Escrow nor an excuse for City's complete performance under this Agreement if the failure of the condition is primarily due to the fault of City. City shall reasonably cooperate with Developer and the Escrow Agent to attempt to satisfy each and every one of the City's Conditions Precedent. In the event, however, that City has fully performed its obligations set forth in this Agreement but any of the City's Conditions Precedent is not satisfied or waived in a writing signed by City prior to the expiration of the applicable period for satisfaction or waiver, City, as its sole and exclusive remedy, may cancel the Escrow and terminate this Agreement. Such cancellation shall be in writing and delivered to Escrow Agent and Developer. If the failure of the condition is due primarily to the fault of Developer, then City shall also recover liquidated damages pursuant to Section 201.1 of this Agreement. In the event City elects to cancel the Escrow and/or terminate this Agreement, all documents and funds, if any, delivered by one Party to the other Party or to the Escrow Agent with respect to the cancelled Escrow, shall be returned to the Party making delivery.

Sec. 205 Environmental Compliance

(1) Full and complete California Environmental Quality Act ("CEQA") analysis, noticing, documentation and public review will be undertaken by the appropriate lead agency prior to approval of the Development Entitlements. CEQA compliance is a condition precedent to Close of Escrow and performance of this Agreement. The approval of this Agreement shall not limit the scope of CEQA analysis including project mitigation measures and the consideration of project alternatives, including a no-project alternative. The provisions of this Section 205 shall not in any way limit, hinder or affect the discretion of the lead agency to review CEQA documents and impose mitigation measures, alter the Project 2 or deny the Project 2 in consideration of adverse environmental impacts. All costs associated with the CEQA process shall be paid by Developer.

(a) The City shall provide copies of any environmental impact reports which it has, if any, on all parcels within the immediate vicinity of the Developer Project to

assist in expediting the full and complete CEQA process. The City shall not be responsible or liable for the contents of any such reports provided to Developer.

(b) Developer reserves the unconditional right to terminate this Agreement prior to the Close of Escrow for the City Property in the event Developer determines in its sole discretion, that the costs required to correct or remediate any adverse condition or conditions described in the approved CEQA documents renders the Developer Project financially infeasible. The exercise of such right will not constitute a default of any term or condition set forth in this Agreement. The provisions for termination without fault by either Party set forth in this Agreement shall apply in such an event.

Sec. 206 Memorandum of DDA

(1) At the time of execution of the DDA the City and Developer shall also sign the **Memorandum of DDA** in the form of **Attachment No. 6**. City may record the Memorandum of DDA immediately after execution of this Agreement or City shall deliver the Memorandum of DDA to Escrow, and it shall be recorded at Close of Escrow.

SEC. 300 DEVELOPMENT OF THE PROPERTY

Sec. 301 Development of City Property 2

(1) The Developer shall construct the improvements to the City Property 2 described in this Section 301 and all of its subsections (the "**Developer Improvements**") at its own cost and expense. The Property and any improvements to be constructed thereon by Developer shall be developed as provided in the site plans, development plans, renderings and zoning entitlements (the "**Development Entitlements**") to be submitted by Developer and approved by City. The Developer Improvements and the Development Entitlements shall substantially comply with the Scope of Development in Section 301.1

Sec. 301.1 Scope of Development

(1) Developer shall design, develop and construct on the City Property 2 approximately 25,000 square feet of commercial/retail/restaurant uses and necessary on-site parking of not less than _____ parking spaces. Such uses developed on the City Property 2 shall be first quality regionally recognizable and reputable retailers or restaurants of the nature and quality customarily included in retail/restaurant centers meeting the requirements and restrictions of development in the region.

Sec. 301.2 City Approval of Plans, Drawings and Related Documents

(1) Developer shall prepare and submit to the City the construction drawings and related documents for development of the Project 2 and the development of the City Property 2 for architectural review and written approval. City will promptly review the drawings and specifications. Developer shall bear such costs as normally charged for these City services. The Developer shall obtain all required permits and pay development impact fees related to the development of the Project 2 and the development of the City Property 2 (provided such fees are levied pursuant to a citywide ordinance and are not specially assessed against the Property). The Developer shall pay all government processing fees related to the development (provided such

fees are levied pursuant to a citywide ordinance and are not specially assessed against the Property). All such fees shall be based on the published or applicable fees as of date of application of the applicable permit.

(2) During the preparation of all drawings and plans, the City and Developer shall hold regular progress meetings or conference calls to coordinate the preparation, submission, and review of drawings, plans and related documents by the City. The City and Developer shall communicate and consult informally and as frequently as necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

(3) If any revisions or corrections of plans approved by the City shall be required by any government official, City, department or bureau having jurisdiction or any lending institution involved in financing, Developer shall coordinate efforts to obtain waiver of such requirements, if reasonably practicable, or develop an alternative mutually acceptable to the City. Costs for planning and constructing Developer improvements shall include, but not be limited to the following: All on-site improvements, costs of acts of mitigating adverse environmental impacts, if necessary, fees (federal, state and local), and other related costs generally necessary for a development of the scope and nature proposed by the Developer.

Sec. 301.3 Cost of Development

(1) All costs for engineering, planning, designing, lot consolidation or parcel maps, permits, entitlements and constructing the Project 2 and the development of the City Property 2 shall be borne exclusively by the Developer. The Developer shall also bear all costs related to discharging the duties of the Developer set forth in this Agreement.

Sec. 302 Schedule of Performance

(1) As soon as the City Property 2 is conveyed to Developer and Developer receives Development Entitlements, Developer shall begin promptly thereafter to diligently complete the construction of the improvements and the development of the Project 2. Developer shall begin and complete plans, development and construction of the Project 2 within the time specified in the "**Schedule of Performance**" attached hereto as **Attachment No. 4** and incorporated herein by reference, or such reasonable extension of said dates as may be granted by the City Manager or City Council, which extension shall not be unreasonably withheld. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the City Manager or City Council.

Sec. 303 Insurance; Indemnity

(1) Prior to the commencement or continuation of any construction hereunder occurring after the City approves this Agreement, the Developer shall obtain a general liability insurance policy and maintain such policy in effect until the completion of all of the Developer Improvements (as reasonably determined by the City) providing coverage for bodily injury and property damage in the minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence. The policy shall name, as additionally assureds, the City of Pomona and their officers and employees in their official capacity and while acting within the scope of their duties, against all claims, suits, or other actions of any nature brought for or on account of any deaths, injuries, damage or loss, arising out of or connected with the work of Developer Improvements under this Agreement.

(2) Insurance coverage furnished by Developer, pursuant to this Section 303, may be submitted as one or more policies or part of a blanket policy, but coverage shall conform to this Section 303 and shall pertain to all activities on the Property and shall require approval by the City.

(3) Developer shall furnish City a certificate of insurance from its insurer evidencing compliance with this Section 303 with the provision that the insurer shall endeavor not to cancel or modify the policy without thirty (30) days written notice to City. Developer shall give City prompt and timely notice of any claim made or suit instituted. City and its officers and employees, in their official capacity and while acting within the scope of their duties, shall also be named as additionally insured in any policies of Developer's contractors covering work under this Agreement; and such policies shall comply with this Section 303. Coverage shall be primary and not contributing with any policy or coverage maintained by or obtained by the City, and shall include an appropriate endorsement and waiver of subrogation.

(4) Developer shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code, and all amendments thereto, and all similar State or Federal acts or laws applicable, and arising thereunder. Developer shall furnish to City a certificate of Worker's Compensation insurance providing that the insurer shall endeavor not to cancel or modify the policy without thirty (30) days prior written notice to City. As an alternative, Developer may show proof of a certificate of consent to self-insure issued by the Director of Industrial Relations, pursuant to California Labor Code §3800.

(5) Developer agrees to and shall indemnify, defend and hold harmless the City from and against all claims, demands, liabilities, losses, damages, costs, mechanics' liens, or expenses (including reasonable attorneys' fees and court costs) arising from or relating to the death of any person or any accident, injury, loss, or damage whatsoever to person or property which shall occur on the Property and which shall be directly or indirectly caused by any acts, errors or omissions of Developer or its agents, servants, employees, tenants, or contractors. Developer shall not be responsible for, and this indemnity shall not apply to, such matters to the extent caused by any willful or negligent conduct of the City or their respective agents, servants, employees, or contractors.

(6) Developer shall indemnify, hold harmless and defend the City its agents, officers, and employees from any claim, action, proceeding or damages against the City its agents, officers, or employees to attack, set aside, void, or annul the approval by the City of this DDA, any zoning entitlements, permits or approvals for the Project 2. Further, the Developer shall indemnify, hold harmless and defend the City, its agents, officers, and employees from any claim, action, proceeding or damages against the City and/or its agents, officers, or employees arising out of the action, inaction or negligence of the Developer, its employees, officers, agents, contractors, subcontractors, successors or assigns in planning, engineering, constructing or in any manner carrying out the Project 2 or any improvements required for the Project 2. Developer shall not be responsible for, and this indemnity shall not apply to, any of the foregoing matters to the extent caused by any willful or negligent conduct of the City or its respective agents, servants, employees, or contractors.

(7) Further, Developer shall defend at its sole expense any action brought against the City, its agents, officers, or employees, because of the approval of the Project 2 or any zoning entitlement, permit or other approval, or in the alternative, shall relinquish such approval. The

applicant shall reimburse the City, its agents, officers, or employees, for any Court costs and attorney's fees which the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of its obligations under this Indemnity Agreement. Developer shall not be responsible for, and this indemnity shall not apply to, such matters to the extent caused by any willful or negligent conduct of the City or their respective agents, servants, employees, or contractors

(8) In the case of any such defense by Developer, City shall cooperate in the choice of defense counsel, but in the case of disagreement, City shall have the choice of choosing independent defense counsel at the cost of Developer, or in the alternative to defend itself, at the cost of Developer.

Sec. 304 Environmental Indemnity

Sec. 304.1 Environmental Release

(1) Developer, for itself and its successors and assigns, unconditionally releases City from and against any and all liability to Developer, both known and unknown, present and future, for Environmental Damages to Developer arising out of any violation of Environmental Requirements or the presence of Hazardous Material on, under or about the Property (the "Environmental Release"), except to the extent of a breach by City of its representations and warranties set forth in Section 105.1 above.

(2) With respect to the Environmental Release, Developer, after consultation with legal counsel and with full knowledge of the consequences of its actions, waives the provisions of California Civil Code Section 1542, which provides:

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

Developer's Initials _____

Sec. 304.2 Environmental Indemnity

(1) Except for a breach of City's representation or warranties under Section 105.1 above, Developer shall indemnify, defend, and hold City harmless from and against all Environmental Damages arising from the presence of any Hazardous Material at, in, on, or under the Property, or migrating off the Property (including groundwater), if such Hazardous Material was first introduced to the Property at any time, including without limitation:

(a) all claims, lawsuits, demands, obligations, investigations, damages, penalties, fines or actions by any federal, state, or local governmental City (collectively, "Government Claims") based upon Developer's or City's failure to remediate the Property;

(b) all claims, lawsuits, demands, obligations, investigations, damages (including but not limited to diminution in value of property and related stigma damages, lost profits and consequential damages), penalties, fines or actions by owners and operators of adjacent and nearby properties or any other persons (collectively, "Third-Party Claims");

(c) all claims, lawsuits, demands, liabilities, damages, losses or judgments for personal injury or for injury to real or personal property;

(d) all claims, lawsuits, demands, obligations, investigations, damages, penalties, fines or actions by subsequent owners and operators of the Property or any lenders providing financing with respect to the Property arising from any underlying Government Claims under Section 10.3(a), Third-Party Claims under Section 10.3(b); and/or any other claims under Section 10.3(c); and

(2) Developer's obligations under this Section 304.2 are collectively referred to in this Agreement as "Developer's Indemnity Obligations".

Sec. 304.3 Defense of Claims

(1) Provided that Developer accepts any tender of any reasonable expense or reasonable claim by City without any reservation, Developer shall have the right, in consultation with City, to control on behalf of City any and all negotiations, settlement discussions, investigations, testing, defenses, trials, actions, proceedings, hearings, additional remediation obligations, and other resolutions with all Agencies and third parties arising out of, incidental to, or in connection with Developer's performance of Developer's Indemnity Obligations. If Developer does not accept a tender of any reasonable expense or reasonable claim by City without reservation, (except for a breach of City's representation on warranties under Section 105.1 above), City shall be entitled to engage in all such matters described in the preceding sentence on its own account, and shall be entitled to recover from Developer the costs of engaging in such matters (including consultants' fees and reasonable attorneys' fees), provided Developer's denial of liability is adjudicated to be in violation of the terms hereof. Without limiting Developer's rights as described above, Developer shall undertake reasonable consultation with City with respect to matters materially involving the Property or City.

Sec. 304.4 Definitions

(1) For purposes of Section 304 the following terms have the meanings indicated.

(a) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement of judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time as a result of the existence of Hazardous Material, prior to the Closing, upon, about, beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property, regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property, and including without limitation:

1. Damages for personal injury, or injury to property or natural resources occurring upon or off the Property, foreseeable or unforeseeable, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

2. Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local government City or economic use of the Property or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this agreement or collecting any sums due hereunder;

3. Liability to any third person or governmental City to indemnify such person or City for costs expended in connection with the items referenced in subparagraph (ii) herein; and

4. Diminution in the value of the Property, and damages for the loss of business and restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Property.

(b) "Environmental Requirements" means all applicable present and future statutes regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation:

1. All requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes, whether solid, liquid, or gaseous in nature; and

2. All requirements pertaining to the protection of the health and safety of employees or the public.

(c) "Hazardous Material" means any substance:

1. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

2. which is or becomes defined as a "hazardous waste," "hazardous substances," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 *et seq.*); and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*); or

3. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, City, department, commission, board, City or instrumentality of the United States, the State of California or any political subdivision thereof; or

4. the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or

5. which contains petroleum, petroleum products or other hydrocarbon substances; or

6. which contains polychlorinated biphenyls (PCB's), asbestos, urea formaldehyde foam insulation or radon gas.

Sec. 305 City and Other Governmental City Permits

(1) Except for City's responsibilities under this Agreement, before commencement of construction or development of any buildings, structures or other work or improvement on any parcel within the Property (but not necessarily before the conveyance of title, unless such construction or development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any normal permits which may be required by the City or any other governmental agency affected by such construction, development or work. City shall provide appropriate assistance to Developer in securing these permits.

Sec. 306 Rights of Access

(1) For the purposes of assuring compliance with this Agreement, representatives of City shall have the reasonable right of access to the Project 2 without charges or fees, at normal construction hours during the period of construction for the purposes of monitoring Developer's compliance with this Agreement.

(2) Additionally, representatives of the City shall have the reasonable right of access to the Project 2, without charges or fees, at normal construction hours during the period of construction, for the purposes contained in this Agreement, to inspect the work being performed in constructing the Improvements.

Sec. 307 Local, State and Federal Laws

(1) The Developer shall carry out the construction of all Improvements and the development of the Property in conformity with all applicable laws, including all applicable federal, state or local laws, rules or standards, provided, however, Developer and its contractors, successors, assigns and transferees, and lessees are not waiving their rights to contest any such laws, rules or standards. Developer agrees to indemnify, hold harmless and defend the City, its officers, employees, contractors and agents against any claim, action, proceeding, liability, damages, expenses, attorney fees, expert fees or other costs arising out of Developer's obligations under this Section 307, provided the foregoing indemnity shall not apply to any of the foregoing matters to the extent caused by any willful or negligent conduct of the City or its respective agents, servants, employees or contractors.

(2) Notwithstanding any provision of this Agreement to the contrary, Developer shall not be required to contract with or otherwise do business with any contractor that in its sole

discretion seems not responsible and/or incapable of adequately performing the construction improvements.

Sec. 308 Taxes, Assessments, Encumbrances and Liens

(1) Subject to Section 202.11, Developer shall pay when due all real estate taxes and assessments on the Property and levied subsequent to a conveyance of title to the Property. Developer shall not place or allow to be placed on the City Property 2 or any part thereof, any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. Developer shall remove or have removed any lien on any of the City Property 2 or portion thereof or assure the satisfaction thereof within a reasonable time, but in any event prior to a sale thereunder.

(2) If Developer or a successor, transferee, assignee, or tenant contests the validity or grant of any tax assessment, the Developer, successor, transferee, assignee or tenant shall notify the City that it intends to contest the assessment. The City shall have the right to challenge any contest of a tax assessment of the Project 2.

SEC. 400 SECURITY FINANCING; RIGHTS OF HOLDERS

Sec. 401 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases Back or Other Financing for Development

(1) Mortgages, deeds of trust, sales and leases back or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Release of Construction Covenants of the construction of Project 2, but only for the purpose of securing loans of funds to be used for land and acquisition, fees, permits, consultants and for the construction of Project 2 and any other expenditures necessary and appropriate to develop the Project 2 under this Agreement. Developer shall notify the City in advance of any mortgage, deed of trust, sale or lease back or other form of conveyance for financing, if Developer proposes to enter into the same before issuance of a Release of Construction Covenants of the construction of the Project 2.

Sec. 402 Construction Financing

(1) Developer shall not enter into any such conveyance for financing without the prior written approval of City which approval City agrees to give if any such conveyance for financing is given to a responsible financial or lending institution or other acceptable person or entity. Such lender must be approved in writing by the City, which approval shall not be unreasonably withheld or delayed.

Sec. 403 INTENTIONALLY DELETED

Sec. 404 Holder Not Obligated to Construct Improvements

(1) The holder of any mortgage, deed of trust or other security interest authorized by this Agreement 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; nor shall any covenant or any other provision in the Grant Deed for the property be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit, or authorize any such holder to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Sec. 405 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

(1) Whenever City shall deliver any notice or demand to Developer, with respect to any breach or default by Developer in completion of construction of the Project 2, the City shall, at the same time, deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has requested in writing said notices from the City, a copy of such notice or demand. Each such holder shall (insofar as the rights of City are concerned) have the right, at its option within one hundred twenty (120) days after the later of receipt of the notice or Developer's cure period, if any, to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. The time for Lender to cure shall be extended, if the Lender has undertaken steps to cure, in which case such time will be extended for as long as Lender reasonably needs, providing the Lender is acting diligently. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project 2 (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's remaining obligations to City by written agreement satisfactory to the City. In that event, the holder must agree to complete, in the manner provided in this Agreement, the Project 2 to which the lien or title of such holder relates, and submit satisfactory evidence to City that it possesses the qualifications and financial resources necessary to perform such obligations. Any such holder properly completing such Project 2 shall be entitled, upon written request made to City, to a Release of Construction Covenants from the City.

Sec. 406 Failure of Holder to Complete Improvements

(1) In any case of an uncured one hundred (120) day default by Developer in completion of construction of improvements under this Agreement, if the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the City Property 2 or any portion thereof has not thereafter timely exercised the option to construct, or if it has exercised the option and has not thereafter proceeded with construction in the manner required by this Agreement, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt. If the ownership of the Site or any part has been vested in the holder, the City, if it so desires, shall be entitled to a conveyance of the Site, or any part of the Site, from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

(a) Unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection by lender and application of rentals and income received during foreclosure proceedings).

(b) All reasonable expenses with respect to foreclosure.

(c) The net expenses, if any (exclusive of overhead), incurred by the holder as a direct result of the City approved subsequent management of the property or part thereof.

(d) The cost or value, whichever is less, of any City approved improvements made by such holder.

Sec. 407 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

(1) In the event of an uncured default by Developer or breach of a mortgage, deed of trust or other security interest, prior to recordation of a Release of Construction Covenants for the improvements on the Project 2, and the holder of any such security interest has not exercised its option to complete the development, after another advance written demand to Developer and the holder of such security interest, that the default must be cured within an additional 30 days, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Project 2 as authorized herein.

Sec. 408 Rights of City to Satisfy Other Liens on the Property After Title Passes

(1) After the conveyance of title of the City Property 2, prior to the recordation of a Release of Construction Covenants for construction and development, and after Developer has had reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, or any part thereof, the City 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 as long as the Developer shall in good faith contest the validity or amount thereof, and provided such delay in payment shall not subject the Site, or part thereof, to forfeiture or sale.

Sec. 409 Estoppel

(1) City shall from time to time, within fifteen (15) business days following the receipt of a request by Developer or the holder of any deed of trust or other security interest affecting the Property, deliver to Developer or such holder a written statement executed by City in form and substance reasonably satisfactory to Developer and such holder, (i) stating that this Agreement is in full force and effect and has not been modified or amended (or if modified or amended, setting forth all modifications and amendments), (ii) stating whether or not to the best knowledge of City, Developer is in default under this Agreement and if Developer is in default, setting forth the specific nature of all such defaults, and (iii) as to any other matters reasonably requested by Developer or such holder. City acknowledges that any statement delivered pursuant to this Section may be relied upon by any purchaser or owner of all or a portion of the Property and/or any improvements thereon or by the holder of such deed of trust or security interest or by any assignee of such holder or anyone claiming by, under or through such holder.

SEC. 500 USE OF THE CITY PROPERTY 2 AND COVENANTS

Sec. 501 Uses and Covenants

(1) The Developer covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the City Property 2 or any part thereof, that during construction and thereafter, the Developer, such successors and such assignees, shall devote the City Property 2 to the uses specified in the Grant Deed, the Development Entitlements and the Covenants, Conditions and Restrictions on the property. The Grant Deed shall provide that Developer shall

commence and complete the construction of the improvements required in the Development Entitlements. After issuance of a Release of Construction Covenants for all or a portion of such improvements, Developer may alter, modify, or replace such improvements, provided that such changes are consistent with the City Zoning Ordinance and do not reduce the value of the improvements below the value of the improvements immediately prior to their alteration, modification or replacement. Any change in use inconsistent with the Zoning Ordinance, the Development Entitlements defined under this Agreement, or the Grant Deed shall not be permitted without the prior written approval of the City of Pomona or any other party or entity requiring approval.

Sec. 502 Obligation to Refrain from Discrimination

(1) There shall be no discrimination against or segregation of any person, a group of persons, on account of race, color, religion, marital status, disability, age, national origin or ancestry in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site.

Sec. 503 Form of Nondiscrimination and Non-segregation Clauses

(1) The Developer covenants by and for itself and any successor in interest that there shall be no discrimination against, or segregation of, any persons, or groups or persons, on account of sex, race, color, creed, marital status, religion, handicap, national origin or ancestry in the enjoyment of the Site, nor shall the Developer itself, or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site or any portion thereof. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

(2) The Developer shall refrain from restricting the rental, sale or lease of the Site 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 be subject to and shall contain substantially the following nondiscrimination or non-segregation clauses:

(a) In deeds:

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

(b) In leases:

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

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

(c) In contracts:

"There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin, in the sale, lease, transfer, use, occupancy, tenure or enjoyment of land, nor shall the transferee himself or any person claiming under or through him, 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 premises."

Sec. 504 Operating Covenants

(1) Developer covenants and agrees as follows:

(a) Developer shall cause the completion of the Project 2 and the opening of the Project 2 by the dates set forth therefore in the Schedule of Performance.

(b) The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest or any part thereof, that Developer, or a wholly owned subsidiary of Developer, shall devote the City Property 2 to the uses specified in the Zoning Ordinance, and for purposes specified in the Development Entitlements and Scope of Development as authorized by this Agreement or the City for a period of ten (10) years after issuance of a certificate of occupancy for the City Property 2. For the ten year period following such initial ten year period Developer may alter, change, transfer or assign the ownership, management or control of the City Property 2, but only with the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. This covenant shall run with the land and be binding on the successors, assigns and transferees of Developer as a covenant running with the land or equitable servitude.

Sec. 505 Release of Construction Covenants

(1) Promptly after issuance of the certificate of occupancy for all of the buildings on the City Property 2, City shall furnish Developer with a "**Release of Construction Covenants**" in a form consistent with **Attachment No. 7**, upon written request therefore by Developer. The City shall not unreasonably withhold such Release of Construction Covenants. Such Release of Construction Covenants shall provide that satisfactory completion of the construction required by this Agreement and all other performance required by Developer under this Agreement for the applicable portion of work has been conclusively determined by the City.

(2) The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Recorder's Office of Los Angeles County.

(3) Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not Notice of Completion as referred to in the California Civil Code § 3093.

Sec. 506 Operation and Maintenance Covenant.

(1) In order to insure the Developer's continued operation and maintenance of the Project 2 in a safe, sanitary and tenantable condition, a property management covenant ("**Operation and Maintenance Covenant**") in the form attached hereto as **Attachment No. 8** shall be recorded against the Property upon the Close of Escrow. The Management Covenant shall provide, among other things, that the Developer must use and maintain the Property for the uses described in the Scope of Development and the Development Entitlements.

Sec. 507 Effect and Duration of Covenants

(1) The covenants established in this Agreement and the deeds shall, without regard to technical classification and designation, be binding upon and inure to the benefit and in favor of the City, its successors and assigns, the City and any heirs, transferees, assignees or successor in interest to the Site. The covenants against discrimination shall also be binding for the benefit and in favor of the State of California and the City. The covenants contained in this Agreement at Sections 501,504 and 506 shall remain in effect for a period of not less than twenty (20) years from the issuance of the Release of Construction Covenants. The non-discrimination covenants contained in this Agreement at Section 502 and 503 and in the deeds shall remain in effect in perpetuity from the date of execution of this Agreement.

(2) Breach of any of the covenants or provisions contained in this Agreement shall not give rise to any right of reverter, to any estate of reverter, nor to any right of reentry or forfeiture of the City Property 2 or any part thereof, or to any successor assignee in interest in the property or any part thereof or any interest therein.

(3) The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the City Property 2. Except as expressly limited by the terms of this Agreement, the City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other named beneficiaries of this Agreement and covenants may be entitled; provided, however, prior to Close of Escrow City's sole and exclusive right is to terminate this Agreement and receive as liquidated damages the Escrow Deposit. The provisions of this Agreement do not create any rights except in the City.

(4) The covenants in favor of the City shall run with the land without regard to whether the City has been, remains, or is an owner of any land or interest therein in the City Property 2. The City shall have the right, if this Agreement or any covenants set forth are breached, to commence an action for specific performance of the terms of this Section.

SEC. 600 DEFAULTS AND REMEDIES

Sec. 601 Defaults—General

(1) Subject to the extensions of time set forth in Section 703, unexcused and uncured failure or delay by either party to perform any material term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately cure, correct, or remedy such failure or delay.

(2) 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, and except as otherwise expressly provided in Section 603 of this Agreement, the injured party may not institute proceedings against the party in default until at least sixty (60) days after giving such notice. Delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

(3) Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default, shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

Sec. 601.1 Limitation of Damages

Damages to Seller or Developer arising out of breach of this Agreement are limited to direct damages and out of pocket costs. Recoverable damages do not include, lost time, lost productivity, delay damages, overhead, lost profits or any other indirect damages. Due to the complexity and interrelationship of the various components of the Project and the methodology for procurement of services, the City shall have no liability for failing to properly comply with the provisions of any public works procurement laws, statutes or ordinances, provided the City uses good faith efforts to comply with such laws.

Sec. 602 Legal Actions

Sec. 602.1 Institution of Legal Actions

(1) Any legal actions in connection with the enforcement or interpretation of this Agreement must be instituted in the Superior Court of the County of Los Angeles, State of California, East District, in an appropriate municipal court in that county, or in the Central Federal District Court of California.

Sec. 602.2 Applicable Law

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

Sec. 602.3 Acceptance of Service of Process

(1) In the event that any legal action is commenced by Developer against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

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

Sec. 603 Rights and Remedies Are Cumulative

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

Sec. 604 Remedies and Rights of Termination Prior to Conveyance

Sec. 604.1 Termination by Developer

(1) In the event that the City by default does not tender conveyance of title to the City Property 2, or possession thereof, in the manner and condition, and by the dates provided in this Agreement, and any such failure is not cured within the later of sixty (60) days after the date of written demand by Developer, or written notice by the Developer of the expiration of the time within which to complete curative measures by City. The Agreement may then, at the option of Developer, be terminated by written notice thereof to the City, and neither the City nor Developer shall have any further rights or remedies against or liability to the other under this Agreement with respect to said City Property 2, except that the City will return the Developer's Escrow Deposit and Performance Deposit to Developer. Alternatively, Developer shall be entitled to seek specific performance of the obligations of City under this Agreement.

Sec. 604.2 Termination by City

(1) Except as otherwise provided in any automatic termination provision of this Agreement or any Attachments to this Agreement, the City may terminate this Agreement if, after sixty (60) days written notice, any of the following defaults exist prior to the conveyance of title to Developer:

- (a) Developer (or any successor in interest) wrongfully assigns or attempts to assign this Agreement or any rights therein, or in the Site or part thereof;
- (b) Developer fails to perform in accordance with the Schedule of Performance; or
- (c) Developer does not pay the Purchase Price and take title upon tender of conveyance by the City pursuant to this Agreement.

(2) If any default or failure referred to in subdivisions (a) through (c) inclusive of this Section 604.2 shall not be cured within sixty (60) days after the date of written demand by City, or written notice by the City of the expiration of the time within which to complete curative measures by Developer, then this Agreement with respect to unconveyed portion of the City Property 2 and any rights of Developer or any assignee or transferee in this Agreement, pertaining thereto or arising therefrom, with respect to City, may, at the option of the City and as its sole and exclusive remedy, be terminated by City, in which event, Developer (or assignee or transferee) shall have no further rights against the City under this Agreement. In the event of termination, pursuant to paragraphs (a) through (c) above, the Developer's Deposit shall be

retained by the City as liquidated damages and as its property without deduction, offset, or recoupment whatsoever, and Developer (or assignee or transferee) shall have no further rights under the Agreement with respect to the unconveyed portion of the City Property 2, and any improvements to be developed and constructed thereon, and Developer shall have no other or further liability under this Agreement.

(3) The right of termination and retention of the Developer's Escrow Deposit as liquidated damages shall be City's sole and exclusive remedy against Developer in the event of Developer's default or failure as provided above prior to conveyance of title to the City Property 2. Developer recognizes that Developer's prompt purchase and development of the City Property 2, in accordance with this Agreement, is of critical importance to the City's ability to carry out its other activities within the City.

Sec. 605 Remedies of City for Default by Developer After Passage of Title and Prior to Completion of Construction

Sec. 605.1 Termination and Damages

(1) After conveyance of title to the City Property 2 and prior to recordation of a Release of Construction Covenants, if the Developer defaults with regard to any provision of this Agreement, the City shall serve written notice of such default upon the Developer. If the default is not cured, or substantially commenced to be cured, by the Developer within one hundred eighty (180) days after service of the notice thereof by the City, the Developer shall be liable to the City for the liquidated damages set forth in the Schedule of Performance.

SEC. 700 GENERAL PROVISIONS

Sec. 701 Notices, Demands and Communications Between the Parties

(1) Written notices, demands and communications between the City and the Developer shall be sufficiently given if delivered by hand (and a receipt thereof is obtained or is refused to be given), if dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed to the designated person or persons at the principal offices of the City and the Developer, as set forth at Sections 104.1 and 104.2, respectively, or be given by way nationally recognized overnight delivery service. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 701.

(2) Any written notice, demand or communication shall be deemed received immediately if delivered by hand or messenger; three (3) business days from certification of date received if delivered by registered or certified mail; and the next business day if sent by Federal Express or other nationally recognized overnight delivery service.

Sec. 702 Conflicts of Interest

(1) No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. No member, official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City, or for any amount which

may become due to the Developer or successor or on any obligations under the terms of this Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

Sec. 703 Enforced Delay; Extension of Times of Performance

(1) In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of omissions of the other party; acts or failures to act of the City of Pomona or any other public or governmental City or entity (except acts or failures to act of the City which shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of cessation of the cause, if notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause or if the other party had actual notice of the delay. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Developer.

(2) Notwithstanding the foregoing portion of this Section 703, Developer is not entitled, pursuant to this Section 703, to an extension of time to perform because of past, present, or future difficulty in obtaining suitable temporary or permanent financing for the development of the Site, unless such delay is caused by City's refusal to amend this Agreement or accept the reasonable and customary requests of the Developer's lender.

Sec. 704 Non-Liability of Officials and Employees of the City

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

SEC. 800 EMPLOYMENT OPPORTUNITIES

Sec. 801 Job Opportunities Created by Developer

(1) To the extent permitted by relevant federal, state and local laws, and to the extent qualified applicants apply, Developer will make all reasonable efforts to give Pomona residents first hiring consideration. The Developer agrees and shall require its general contractor and any and all subcontractors to use reasonable efforts to either work with the local Employment Development Department ("EDD") or to hold on-site job fairs for any job employment opportunities.

SEC. 900 SPECIAL PROVISIONS

Sec. 901 Submission of Documents to the City for Approval

(1) Wherever this Agreement requires any party to approve any contract, document, plan, specification, drawing or other matter, such approval shall be given in a prompt and timely manner in writing and shall not be unreasonably withheld. If a disapproval is given, the reasons for such disapproval must also be given in writing.

Sec. 902 Amendments to this Agreement

(1) Developer and City agree to mutually consider reasonable requests for amendments to this Agreement, which may be made by lending institutions or City's bond counsel or financial consultants, provided said requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

Sec. 903 Operating Memoranda

(1) It is recognized that performance under this Agreement will require a considerable degree of cooperation between the City and Developer. It is further realized that subsequent events may demonstrate that revisions will be required in the performance hereunder, and that a certain degree of flexibility will be required. It is to preserve such flexibility that certain provisions may have been delineated in this Agreement in general terms only, with the understanding that more precise details may be sent forth in "Operating Memoranda" as may be required from time to time. Operating Memoranda includes only those agreements, modifications or changes which are deemed by the City Manager in consultation with the City Attorney to be non-substantive and non-material modifications of this Agreement. Each operating memorandum shall be approved by the City Attorney, City Manager and Developer's designated representative and shall be attached hereto as an addendum, and become a part hereof, and may be further changed and amended from time to time as necessary upon approval by the City Attorney, City Manager and Developer.

Sec. 904 Real Estate Commissions

(1) The City and the Developer each agrees to hold harmless the other party from any real estate commissions or fees alleged to be due to any person claiming by or through the indemnitor.

Sec. 905 Survivor Provisions

(1) After issuance of a Release of Construction Covenants, with regard to any parcel or any building, all of the terms, covenants, agreements, or conditions set forth in this Agreement, relating to such parcel or building, shall cease and terminate except as otherwise provided in Sections 501, 502, 503, 504 and 506 of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Developer shall be liable only for breaches of this Agreement (or breaches of the covenants and conditions imposed upon the Property and Developer) that survive close of escrow during the period of Developer's ownership of the Property.

Sec. 906 Reservation of Discretion

(1) The Parties agree and acknowledge that nothing in this Agreement in any respect

does or shall be construed to affect or prejudice the exercise of the City's discretion concerning consideration of any submittal by the Developer or any other party. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the City's discretion to consider, negotiate, or undertake the Project 2 or any required approvals necessary by the laws, rules, and regulations governing the development of property.

(2) By its execution of this Agreement, the City is not committing itself to or agreeing to undertake any other acts or activities requiring the subsequent independent exercise of discretion by the City, the City or any City or department thereof. Except as specifically provided in this Agreement, the City and/or the City shall not be responsible for any costs or expenses incurred by the Developer pursuant to this Agreement, nor shall the City be responsible for any potential lost profits of the Developer.

(3) Participant is aware, understands, and acknowledges that City and City are by law required to exercise their sole unfettered discretion in approving or denying any land use, development or building permit approvals required for the Project 2. Neither this Agreement nor any other agreement with Developer obligates City or City to approve, disapprove or consider the Development Entitlements for the Project 2 in a particular manner.

Sec. 907 Costs and Attorneys' Fees.

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

SEC. 1000 ENTIRE AGREEMENT, WAIVERS

(1) This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire Agreement and the understanding of the parties. The Attachments shall be a part of this Agreement, but if the Attachments conflict with this Agreement, then the provisions of this Agreement shall prevail.

(2) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

(3) The waivers of the provisions of this Agreement must be in writing and executed by the appropriate authorities of the City and Developer, and all amendments hereto must be in writing, approved by the City Board and executed by the appropriate authorities of the City and Developer.

(4) Developer acknowledges that it has had ample opportunity for review and approval of this document by its attorney, and that any waiver of representation is a result of independent decision. Developer further acknowledges that City Counsel is acting solely on behalf of the City.

SEC. 1100 TIME FOR ACCEPTANCE OF AGREEMENT

(1) This Agreement shall be executed by Developer prior to approval by City.

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement on the date set forth herein below.

REDEVELOPMENT CITY OF THE CITY OF
CITY OF POMONA

"DEVELOPER"

Maya Cinemas North America, Inc., a
_____ corporation

By: _____
Linda C. Lowry, City Manager

By: _____

Date: _____

Date: _____

ATTEST

City Clerk

APPROVED AS TO FORM:

City Attorney

(DDAII)

ATTACHMENT NO. 1

DEPICTION OF CITY PROPERTY 2



CITY PROPERTY NO. 2

(DDAII)

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF CITY PROPERTY 2

City Parcel No. 3

APN No.

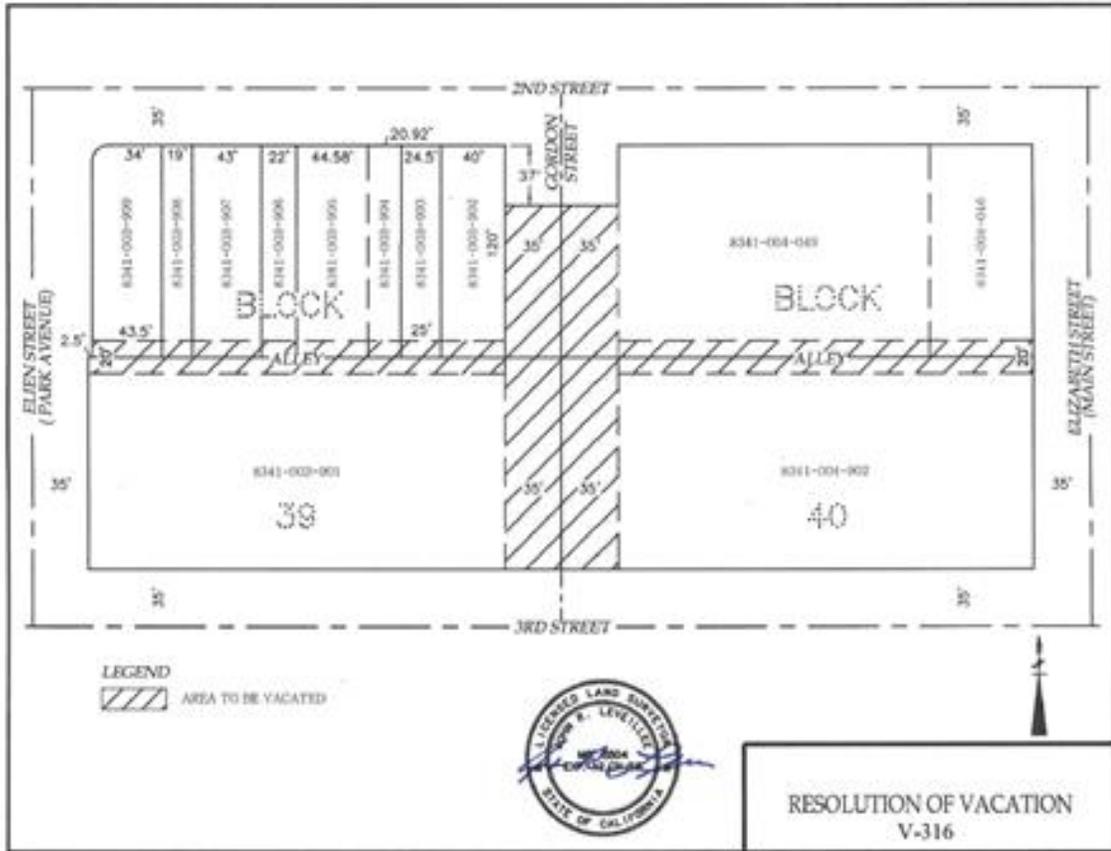
City Parcel No.4

APN No.

(DDAII)

ATTACHMENT NO. 3

STREET VACATIONS



(DDAII)

ATTACHMENT NO. 4

SCHEDULE OF PERFORMANCE

EVENT	TIME	ACTUAL DATE
Developer signs DDA**	At least five (5) days prior to public hearing before Council and City	
City approves DDA	Not later than _____	
Open Escrow**	Within 15 business days of approval of DDA by City	
Developer obtains building permits for construction of City Property 2 ***	Not later than	
Close Escrow**	Not later than	

EVENT	TIME	ACTUAL DATE
Developer completes construction of City Property 2 ***	Not later than	
Developer obtains Certificate of Occupancy for City Property 2***	Not later than	

EVENT	TIME	ACTUAL DATE

** If the specified performance is not completed by the indicated date, this Agreement shall automatically terminate, unless the parties agree in a separate writing to extend the time of performance.

***** If the specified performance is not performed by the indicated date, then the Developer shall pay to City as liquidated damages the sum of \$250 per calendar day as damages for delay, which sum the Parties agree is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the place provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party was represented by counsel who explained the consequences of this liquidated damages provision at the time this Agreement was made.**

Developer initial here: _____ City initial here: _____

(DDAII)

ATTACHMENT NO. 5

GRANT DEED

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt from fee pursuant to Section 6103 of the California Government Code

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged.

THE CITY OF POMONA, a public body, corporate and politic ("Grantor"), hereby grants to MAYA CINEMAS NORTH AMERICA, INC. a _____ corporation, ("Grantee"), that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property").

1. The Grantee covenants and agrees to use, occupy and maintain the Property and related on- and off-site improvements, only for the construction and operation of uses permitted by the applicable zoning of the City of Pomona, the Development Entitlements, and the Scope of Development as set forth in that certain Disposition and Development Agreement, dated _____, (the "DDA") between Grantor and Grantee.

2.

(a) Grantee shall cause the completion of the Project 2 and the opening of the Project 2 by the dates set forth therefore in the Schedule of Performance.

(b) The Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest or any part thereof, that Grantee, its successors, assigns or transferees, agrees to use, operate and maintain the Property only for uses permitted by the DDA and for purposes specified in the Development Entitlements as authorized by this Agreement or the City for a period of ten (10) years after issuance of a certificate of occupancy for the Project 2. After such initial ten year period Grantee may alter, change, transfer or assign the ownership,

management or control of the Project 2 , but only with the prior written consent of the City, which consent shall not be reasonably withheld or delayed.

3. Developer covenants and agrees to comply with all of the covenants contained in the DDA, and specifically those covenants contained in sections 501,502, 503, 504 and 506 of the DDA.

4. This Grant Deed is subject to a Management Covenant for the maintenance and operation of the property subject to this Grant Deed. Such Management Covenant is recorded separately from this Grant Deed.

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

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

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

b. In leases: “The Lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease 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 of occupancy, tenure or enjoyments of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices if discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.”

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status,

national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land.”

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitation 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.

7. The covenants contained in Paragraphs 1, 2, 3 and 4 of this Grant Deed shall remain in effect until the expiration of twenty (20) years from the issuance of a Release of Construction Covenants for the Property. The covenants contained in Paragraph 5 and 6 of this Grant Deed shall remain in effect in perpetuity or, if the state law requiring such covenants changes such that those covenants are not required to remain in effect in perpetuity, those covenants shall terminate at such earlier date as may be permitted by state law.

8. The covenants in Paragraphs 1, 2, 3, 4 and 5 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Pomona and any successor in interest to said parties. Such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

9. In the event of any express conflict between this Grant Deed and the DDA, the provisions of this Grant Deed shall control.

10. The Covenants and Conditions of this Grant Deed shall be deemed to be covenants running with the land and shall bind future purchasers, encumbrances and transferees. Notwithstanding anything to the contrary contained herein, Grantee shall be liable only for breaches of the Covenants and Conditions of this Grant Deed that occur during Grantee’s ownership of the Property.

Executed on _____, in _____, California.

THE CITY OF POMONA

By:

Linda C. Lowry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

GRANTEE'S ACCEPTANCE OF CONDITIONS, COVENANTS AND RESTRICTIONS

The provisions of this Grant Deed are hereby approved and accepted.

“DEVELOPER”

MAYA CINEMAS NORTH AMERICA,
INC., a _____ corporation

By:

Date:

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of _____)

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "A" to Grant Deed

LEGAL DESCRIPTION

(DDAII)

ATTACHMENT NO. 6

MEMORANDUM OF DDA

WHEN RECORDED RETURN TO

City of Pomona
ATTN: City Manager
505 South Garey Avenue
Pomona, CA 91766

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document
exempt from fee pursuant to Section 6103 of
the California Government Code

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement is recorded to give notice of that certain Disposition and Development Agreement (“DDA”) dated _____, 2016, and any subsequent amendments, by and between the CITY OF POMONA (“City”) and MAYA CINEMAS NORTH AMERICA, INC., a _____ corporation (“Maya” or “Developer”).

All of the terms and conditions of the DDA are incorporated into this Memorandum of Disposition and Development Agreement.

The DDA, and any subsequent amendments, contain provisions that may affect the development, operation and management of the Property described in Exhibit “A” attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum on the same date as that of the Agreement first written above.

“DEVELOPER”

“CITY”

MAYA CINEMAS NORTH AMERICA, INC., a _____ corporation

CITY OF POMONA, a California municipal corporation

By: _____

By: _____

Linda Lowry, City Manager

Date: _____

Date: _____

Attest:

City Clerk

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
to Memorandum of DDA
(Legal Description of Property)

(DDAII)

ATTACHMENT NO. 7

RELEASE OF CONSTRUCTION COVENANTS

WHEN RECORDED RETURN TO

--	--

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt from fee pursuant to Section 6103 of the California Government Code

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, on or about _____, the City of Pomona, a public body corporate and politic, hereinafter referred to as "City," and _____, hereinafter referred to as "Developer," entered into that certain Disposition and Development Agreement (the "Agreement"), dated _____, providing for the development of certain real property (the "Property") situated in the City of Pomona, California, described on Exhibit "A" attached hereto;

WHEREAS, the Agreement requires that the City furnish Developer with a Release of Construction Covenants upon completion of construction, and that said Release be in such form as to permit recordation in the Los Angeles County Recorder's Office;

WHEREAS, such Release shall be conclusive determination of satisfactory completion of the construction of the Improvements on the Site, as required by the Agreement; and

WHEREAS, the City has conclusively determined that construction of the Improvements has been satisfactorily completed.

NOW THEREFORE,

1. As provided in the Agreement, the City does hereby certify that construction of the Improvements has been fully performed and satisfactorily completed.
2. The conditions and all rights and obligations under the Agreement are terminated with respect to the Improvements constructed on the Project Site, except as set forth in Sections 501, 502, 503, 504, and 506 of the Agreement.

3. After recordation of this Release of Construction Covenants, any person or entity then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Site will not (because of such ownership, purchase lease, or acquisition) incur any obligation or liability under the Agreement, except that such party shall be bound by any and all of the covenants, conditions, and restrictions, provisions or limitations in the Agreement regarding use, operation, maintenance or financing of the Property and any and all of the covenants, conditions, and restrictions, provisions or limitations set forth in the Grant Deed, dated _____.
4. This Release of Construction Covenants shall not constitute evidence with or satisfaction of any obligation of the Owner to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance Improvements to the Site, nor any part thereof. This Release of Construction Covenants is not a notice of completion as referenced in California Civil Code § 3093.
5. The Recitals above are incorporated in full as part of the substantive text of this Release of Construction Covenants.

IN WITNESS WHEREOF, the City has executed this release this ____ day of _____, 200__.

CITY OF POMONA, a public body corporate and politic

By: _____
Linda Lowry, City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A" TO RELEASE OF CONSTRUCTION COVENANTS
Legal Description of Property

(DDAII)

ATTACHMENT NO. 8

OPERATION AND MAINTENANCE COVENANT

RECORDING REQUESTED BY:
AND WHEN RECORDED, MAIL TO:

City of Pomona
505. S. Garey Ave.
Pomona, CA 91766
Attn: City Manager

(Space above this line for Recorder's use)

OPERATION AND MAINTENANCE COVENANT

THIS OPERATION AND MAINTENANCE COVENANT (the "**Covenant**") dated for reference purposes only _____, is entered into by and among the CITY OF POMONA ("**City**") and MAYA CINEMAS NORTH AMERICA, INC, a Delaware corporation ("**Maya**" or "**Developer**") City and Developer are sometimes hereinafter collectively referred to herein as the Parties. The City and Developer hereby agree as follows:

RECITALS

A. City and Developer have entered into a Disposition and Development Agreement ("**DDAII**") providing for the assemblage by the City and Developer of approximately _____ square feet of real property owned by the City of Pomona to be developed by Developer for an approximately 25,000 square foot commercial/retail/restaurant use, and associated on-site parking and including the Gist Building ("**Developer Project 2**" or "**Property**"). The Property is legally described in Exhibit "A" attached hereto and incorporated herein.

B. The Project 2 encompasses approximately two city blocks in the City of Pomona, California bounded by South Park Avenue on the west, West Second Street on the north, South Gordon Street on the east and West Third Street on the south.

C. City and Developer desire to insure the continued operation and maintenance of the Developer Project 2 in a secure and high quality manner acceptable to City and Developer.

AGREEMENT

In consideration of the approval of the DDA and other valuable consideration, the receipt of which is hereby acknowledged, the Parties agree and covenant as follows:

Section 1. Maintenance of Property.

(a) Developer agrees for itself and its successors in interest to all or any portion of the Property, during the term of this Covenant, to maintain the improvements on the Property in conformity with the City Municipal Code and the conditions set forth in this Covenant. Developer shall maintain, repair and operate the Property and all improvements constructed or to be constructed thereon (including landscaping, lighting and signage), or cause the Property and all such improvements to be maintained, in a first quality condition, free of debris, waste and graffiti, and in compliance with the terms of the Development Entitlements, this Covenant and the City of Pomona Municipal Code.

(b) All improvements on the Property shall be maintained in good condition in accordance with the custom and practice generally applicable to comparable first quality commercial, restaurants or retail stores, as applicable, in Los Angeles County, and in conformance and compliance with all plans, drawings and related documents approved by the City pursuant to this Covenant, all conditions of approval of land use entitlements adopted by the City, VPD and the Planning Commission.

(c) Developer shall keep the Property free from any accumulation of debris or waste materials. The Developer shall maintain or cause to be maintained the interior and exterior of the Property in a decent, safe and sanitary manner, in accordance with the standard of maintenance of similar commercial, retail and restaurants within Los Angeles County, California. Developer shall maintain the Property in good, sanitary and tenantable condition. Heating, ventilation, air conditioning, water, electric, gas, sanitary, sewage and disposal facilities shall be maintained and repaired in good and tenantable condition in a timely manner.

(d) During such period, the Developer shall also maintain the landscaping planted on the Property in a healthy condition. Graffiti on the Property shall be removed by the Developer from any exterior surface of a structure or improvement on the Property by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Property and such graffiti is not removed within 7 business days following the time of its application; then in such event and without notice to the Developer, the City shall have the right to enter the property and remove the graffiti. Notwithstanding any provision of Section 1 to the contrary, any sum expended by the City for the removal of graffiti from the Site as authorized by this Section 1, shall be immediately payable by Developer upon demand by the City.

(e) Without limiting the generality of the foregoing, Developer, in the maintenance of the improvements, shall observe the following standards:

(1) Maintain the surface of all automobile and pedestrian areas level, smooth and evenly covered with the type of surfacing materials originally installed thereon or such substitute thereof as shall be in all respects equal thereto or better in quality, appearance and durability.

(2) Maintain such appropriate entrance, exit and directional signs; markers and lights as shall be reasonably required and in accordance with the practices prevailing in the operation of similar developments.

(3) Clean lighting fixtures and relamp and/or reballast as needed.

(4) Repaint striping, markers, directional signs, etc., as necessary to maintain in first-class condition.

(5) Provide reasonable amounts of security personnel and security measures. Developer shall seek the advice of the police department in planning appropriate security measures.

(6) Maintain public right-of-way items between the property and the street, including sidewalks, curbs, gutters, driveways, signs and poles, curb painting and markings.

(7) Maintain all surface and storm lateral drainage systems.

(8) Maintain all sanitary sewer lateral connections.

(9) Pay when due all real estate taxes and the special taxes or assessments assessed and levied on the Property or any portion thereof or any improvements thereon or any interest therein.

(f) If at any time Developer fails to maintain the Property or the Development in accordance with this Covenant and such condition is not corrected within sixty (60) days after written notice from the City or City with respect to graffiti, debris, waste material, and general maintenance, or ninety (90) days after written notice from City with respect to landscaping and building improvements, then City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to charge Developer the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Developer to City upon demand. The parties hereto further mutually understand and agree that the rights conferred upon the City under this Section 1 expressly include the amount reasonably necessary to restore the Property to the maintenance standard required under Section 1, including reasonable attorneys fees and costs of the City associated with the abatement of the problem or

removal of graffiti and the collection of the costs of the City in connection with such action. The provisions of this Section 1 shall be a covenant running with the land for the Term of this Agreement and shall be enforceable by the City, and its successors and assigns. Nothing in the foregoing provisions of this Section 1 shall be deemed to preclude the Developer from making any alternations, additions, or other changes to any structure or improvement or landscaping on the Property, provided that such changes comply with applicable law.

(g) If the City incurs costs to cure maintenance deficiencies as set forth in Section 1(f), and such costs are not paid to City within 60 days after written demand for payment, then such costs shall become a lien upon the Property. Such costs may be collected as a lien on the property or as an assessment collected on the property tax roll pursuant to City of Pomona Municipal Code Sections 18-44 to 18.45.

Section 2. Property Management

(a) The Developer shall be responsible for management of the Developer Project 2, including, without limitation, the operation, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility for the management or operation of the Property or the Developer Project.

(b) For a period of ten (10) years from the issuance of a certificate of occupancy for the Property, the Developer Project 2 shall at all times be managed by an experienced subsidiary of Developer controlled by developer (the "**Management Agent**") reasonably acceptable to the City, with demonstrated ability to operate commercial/retail/restaurant facilities similar to the Developer Project 2 in a manner that will provide decent, safe, and sanitary commercial, retail and restaurant operations. After the initial ten year period, the Management Agent may be an entity or person other than the Developer, its employees or an entity owned or controlled by the Developer. The Developer shall submit for the City's approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent as reasonably requested by the City. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. In any event such approval shall not be unreasonably withheld. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 3. Any person, whether an individual, corporation, association or otherwise, who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property and/or Project shall be deemed to have consented and agreed to the provisions of this Covenant and to be subject to the provisions hereof, whether or not any reference to this Covenant is contained in the instrument by which such person acquired an interest in the Property and/or Developer Project.

Section 4. Except as provided herein, the provisions of this Covenant shall not supersede or in any way reduce the security or affect the validity of any mortgage or deed of trust now existing or hereafter executed affecting all or any portion of the Property and/or Project, made in good faith and for value. The holder of any mortgage or the beneficiary of any deed of trust

affecting all or any portion of the Property and/or Developer Project shall have one hundred twenty (120) days from the receipt of written notice from the City of Developer's non-compliance with the provisions of this Covenant to commence to cure such non-compliance within said one hundred twenty (120) day period and to diligently pursue such cure thereafter to completion. If any portion of the Property and/or Developer Project is sold or transferred under a foreclosure of any mortgage or under the provisions of any deed of trust, any owner whose title is derived through foreclosure, trustee's sale or deed in lieu thereof shall hold all of the Property and/or Project so acquired subject to the provisions of this Covenant and shall be entitled to notice of non-compliance as set forth in Section 4 hereof.

Section 5. This Covenant can only be amended with the written mutual consent of both City and Developer. No waiver of any term or condition shall be a continuing waiver thereof.

Section 6. This Covenant shall be construed according to the laws of the State of California. If any portion of the Covenant is for any reason held to be unenforceable, such determination shall not affect the validity of the remaining portions.

Section 7. In the event of any litigation for the enforcement of this Covenant, the prevailing party in such litigation shall be entitled to recover attorney's fees and costs from the other party in such reasonable amount as shall be determined by the Court.

Section 8. The provisions of this Covenant shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns in interest. The provisions of this Covenant shall be deemed to be a covenant running with and affecting the title to the Property pursuant to California Civil Code Sections 1460, et seq., or an equitable servitude, for the benefit of the City, irrespective of whether or not the provisions of this Covenant comply with all of the technical requirements of said sections of the Civil Code. This Covenant shall be recorded by City against the Property after approval by the City and execution of the Covenant by the City Manager. Nothing in this Covenant shall be construed to vest in any third party any right to enforce its terms; enforcement shall be undertaken, if at all, by City.

Section 9. All notices given under this Covenant shall be deemed given when deposited in the mail, postage prepaid Certified Mail, Return Receipt Requested, addressed as follows, or upon personal delivery or fax confirmation of receipt mortgage holder.

Developer:

Fax:

Copy to:

City:

City Manager
City of Pomona
505 South Garey Avenue
Pomona, California 91766
Phone:
Fax:

Section 10. Each of the parties hereto covenants and agrees that it has the legal capacity to make the agreements herein contained, that each agreement is binding upon that party and that this Covenant is executed by a duly authorized official acting in his official capacity.

Section 11. The term of this Covenant shall be for a period of twenty years from the issuance of the certificate of occupancy for the commercial/retail/restaurant uses as provided in the DDA.

Section 12. This Covenant may be signed by the parties in one or more counterparts, which, together, shall form but a single agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the date below their signatures.

CITY OF POMONA

"DEVELOPER"

MAYA CINEMAS NORTH AMERICA, INC., a
_____ corporation

By: _____
Linda Lowry, City Manager

By: _____

Date: _____

Date: _____

ATTEST

Secretary

APPROVED AS TO FORM:

City Attorney

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

State of California)

County of _____)
_____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
_____)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT NO. 9A

GIST OPTION AGREEMENT

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt from fee pursuant to Section 27383 of the California Government Code

GIST OPTION AGREEMENT

THIS GIST OPTION AGREEMENT (“**AGREEMENT**”) is dated for reference purposes only as of _____ and is made and entered into by and between the CITY OF POMONA, a California municipal corporation (“**City**”) and MAYA CINEMAS NORTH AMERICA, INC., a Delaware corporation (“**Maya or Developer**”). City and Maya may hereinafter be referred to collectively as the “**Parties.**”

RECITALS. This AGREEMENT is made with reference to the following facts:

A. City and Maya have entered into a Disposition and Development Agreement dated _____, 2018 (“**Original DDA**”) for the purchase, sale and development of certain properties within the City of Pomona, California.

B. Pursuant to the terms of the Original DDA Maya and City have agreed to enter into this Gist Option Agreement for the purchase by Maya from the City the properties depicted on Exhibit “A” and legally described on Exhibit “B” attached hereto and incorporated by this reference (“**Gist Property**”).

In consideration of the mutual covenants, conditions and promises contained in the Original DDA and this Agreement, City and Maya agree as follows:

1. **Developer Option to Purchase.** City hereby grants to Developer an option to purchase the Gist Property, as set forth herein (“**Option to Purchase**”) for a period commencing on the Close of Escrow and continuing until the Developer obtains approval of financing for the

Developer Project, but in no event longer than five (5) years from the Close of Escrow. The Option Agreement may be exercised anytime during its effective term. (“**Option Period**”).

2. **Description of The Property.** The Gist Property consists of the Gist building and property located on Second Street (approximately 26,050 square feet) between Park Avenue and South Gordon Street (“**City Parcel 2**”). The Gist Property may include all or portions of certain alleys and streets to be vacated by the City consisting of The Gist Property is depicted on **Exhibit “A”** and legally described on **Exhibit “B”**, attached hereto and incorporated herein.

3. **Option To Purchase Is Not Assignable.** The Option to Purchase is not assignable by Developer or its related entities without the prior written consent of City, which consent shall not be unreasonably withheld or delayed.

4. **Exercise of Option To Purchase.** In the event Developer elects to exercise the Option to Purchase the Gist Property, Developer shall provide written notice to City of its intent to exercise said option (the “**Purchase Notice**”) within the Option Period. The Option Agreement may only be exercised during the Option Period but not later than the expiration of the Option Period. Within fourteen (14) days after sending the Purchase Notice, Developer and City shall execute and deliver to each other a Purchase and Sale Agreement (“**PSA**”) in the form substantially the same as the PSA attached hereto as **Exhibit “C”** and incorporated herein by reference.

5. **Option Purchase Price.** The purchase price for The Gist Property shall be Seven Hundred Thirty Thousand and No/100 Dollars (\$730,000), (“**Gist Purchase Price**”). The Gist Purchase Price shall be adjusted based on the consumer price index for Los Angeles County Metropolitan Statistical Area from the date the Option Agreement is signed by Developer and City to the date the escrow is opened for the purchase and sale of the Gist Property.

6. **General Terms And Conditions.** This AGREEMENT is subject to the following terms and conditions.

6.1 **Notices.** Notices and other documents to be delivered pursuant to this AGREEMENT shall be delivered by e-mail or facsimile, with the original to be served by U.S. Mail to the PARTIES at the addresses set forth below:

If to City:
City Manager
City of Pomona
505 South Garey Avenue
Pomona, California 91766
Phone:
Fax:
Email:

With a copy to:

Alvarez-Glasman & Colvin
13181 Crossroads Parkway North
Suite 400 - West Tower
City of Industry, CA 91746
Attn: Scott E. Nichols
Fax: 562-692-2244
[E-Mail: snichols@agclawfirm.com](mailto:snichols@agclawfirm.com)

If to Developer:

Maya Cinemas North America, Inc.
150 S. Arroyo Parkway, Suite 102
Pasadena, CA 91105
Attn: Moctesuma Esparza, CEO
Phone: (213) 805-5333
Fax: (213) 805-5332

With a copy to:

Joseph S. Avila, Attorney
113 E. Eula Drive
Montebello, CA 90640
Phone: (323) 727-6900
Email: javila@avilaputnam.com

6.2 **Litigation or Arbitration.** In the event of litigation or arbitration arising from this AGREEMENT, or that may be initiated to enforce or interpret the terms of this AGREEMENT, the litigation or arbitration proceedings shall be conducted in the County of Los Angeles, California, and the prevailing party in any such litigation or arbitration proceedings shall be entitled to an award of its attorneys' fees, expert witness fees and costs incurred in the course of any such proceedings.

6.3 **Governing Laws.** This AGREEMENT shall be governed by and construed under the laws of the State of California.

6.4 **No Continuing Waiver.** The PARTIES may not waive any provision of this AGREEMENT except by a written agreement that all PARTIES have signed. A waiver of any provision of this AGREEMENT will not constitute a waiver of any other provision. The PARTIES may modify or amend this AGREEMENT only by a written agreement that all of the PARTIES have signed.

6.5 **Recordation of Agreement.** This AGREEMENT shall be executed in a form that will permit its recordation with the County Recorder.

6.6 **Construction of Agreement.** This AGREEMENT has been negotiated at arms' length, and between persons sophisticated and knowledgeable in matters dealt with in this AGREEMENT. Accordingly, any rule of law, statute, legal decision or common law principle that would require interpretation of any ambiguities in this AGREEMENT against the party that

has drafted it is not applicable, and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to effect the purpose and intent of this AGREEMENT.

6.7 **Authority to Execute, Counterparts.** Each of the PARTIES warrants and represents that the entity executing this AGREEMENT, and the person executing this AGREEMENT for and on behalf of each entity, is competent to execute this AGREEMENT and has the requisite power and authority to execute this AGREEMENT. This AGREEMENT may be executed in any number of counterparts and each such counterpart shall be deemed an original instrument. The signature of the PARTIES, exchanged via fax or e-mail, shall constitute and be deemed an original signature for all purposes.

6.8 **Integration.** This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

6.9 Developer acknowledges that it has had ample opportunity for review and approval of this document by its attorney, and that any waiver of representation is a result of independent decision. Developer further acknowledges that City Attorney is acting solely on behalf of the City.

(Signatures on next page)

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT effective on the day and year below their signatures.

CITY OF POMONA

By: _____ MAYA CINEMAS NORTH AMERICA, INC., a
Linda C. Lowry, City Manager _____ corporation

Date: _____ By: _____

ATTEST

Date: _____

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit "A" to Option
Depiction of Gist Property Parcel 2

Exhibit "B" to Option
Legal Description of Gist Property Parcel 2

Exhibit "C" to Option
Purchase and Sale Agreement

AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS

SELLER:

BUYER:

TABLE OF CONTENTS

RECITALS	136
1. PURCHASE AND SALE.....	136
2. PURCHASE PRICE.....	136
3. CONDITION OF TITLE TO PROPERTY.....	136
3.1 Title transfer at close of escrow.....	137
3.2 title exceptions.....	137
3.3 Review of Title.....	137
3.3 title insurance.....	137
3.4 bill of sale.....	137
4. CONTINGENCIES.....	138
4.1 Buyers Contingencies.....	138
5. EXCHANGE.....	139
6. REPRESENTATIONS AND WARRANTIES.....	139
6.1 Seller's Warranties.....	139
6.1.1 Leases.....	141
6.1.2 Other Contracts.....	142
6.1.3 Continued Operation.....	143
6.1.4 Brokers.....	143
6.1.5 No Alterations.....	143
6.1.6 Changed Conditions.....	143
6.1.7 Books and Records.....	143
6.2. REPRESENTATIONS AND WARRANTIES BY BUYER.....	144
7. INDEMNIFICATION.....	144
8. ASSUMPTION OF LIABILITIES.....	145
9. LIQUIDATED DAMAGES.....	145
10. BUYER'S WAIVER OF RIGHT TO COMPEL SPECIFIC PERFORMANCE.....	146
11. ESCROW AND CLOSING.....	146
11.1 Opening of Escrow.....	146
11.2 Close of Escrow.....	147
11.3 Seller Deliveries to Escrow.....	147
11.4 Buyer's Deliveries to Escrow.....	147

11.5	Completion of Escrow	147
11.7	Costs of Escrow	148
12.	PRORATIONS.	148
13.	DAMAGE OR DESTRUCTION PRIOR TO CLOSE OF ESCROW	149
14.	EMINENT DOMAIN.	149
15.	SURVIVAL OF CLOSE OF ESCROW	150
16.	NOTICES.....	150
17.	ENTIRE AGREEMENT.....	151
18.	BINDING EFFECT.	151
19.	WAIVER.....	151
20.	CAPTIONS AND HEADINGS.....	151
21.	COUNTERPARTS.	151
22.	GOVERNING LAW.....	151
23.	ATTORNEYS FEES.	152
24.	TIME OF ESSENCE.	152
25.	DATE OF AGREEMENT.	152
26.	INVALIDITY OF ANY PROVISION.	152
27.	NO RECORDATION.	152
28.	DRAFTING OF AGREEMENT.....	152
29.	NO THIRD PARTY BENEFICIARY RIGHTS.	152
30.	JOINT AND SEVERAL LIABILITY.	152
31.	INCORPORATION OF EXHIBITS.	152
32.	NO JOINT VENTURE, PARTNERSHIP OR OTHER RELATIONSHIP CREATED.	152

SCHEDULE OF EXHIBITS

EXHIBIT "A"	LEGAL DESCRIPTION OF PROPERTY.....	154
EXHIBIT "B"	PERSONAL PROPERTY LIST	155
EXHIBIT "C"	ASSIGNMENT OF INTANGIBLE PROPERTY	156
EXHIBIT "D"	BILL OF SALE	157
EXHIBIT "E"	RENT ROLL.....	158
EXHIBIT "F"	ESTOPPEL CERTIFICATE	159
EXHIBIT "G"	LIST OF OTHER CONTRACTS.....	161
EXHIBIT "H"	ASSIGNMENT OF LEASES.....	162

AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS

This AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made as of _____, _____, by and between _____, a _____ ("**Seller**"), and _____, a _____ ("**Buyer**").

RECITALS

A. WHEREAS, Seller is the owner of certain land located in the City of _____, County of Los Angeles, State of California, commonly known as _____ and legally described on Exhibit "A," attached hereto (the "**Land**"), together with all improvements thereon and appurtenances thereto ("**Improvements**"). (The Land and Improvements are hereinafter collectively referred to as the "**Real Property**.")

B. WHEREAS, Seller is the owner of certain personal property located in, on and about the Real Property, as more specifically described on Exhibit "B," attached hereto ("**Personal Property**"). Seller is also the owner of certain intangible property relating to the Real Property and more particularly described in the Assignment attached hereto as Exhibit "C" ("**Intangible Property**"). (The Real Property, Personal Property and Intangible Property are hereinafter collectively referred to as the "**Property**").

C. WHEREAS, Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, all on the terms and conditions of this Agreement.

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

1. PURCHASE AND SALE.

Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, on the terms and conditions hereinafter set forth in this Agreement.

2. PURCHASE PRICE.

The total purchase price ("Purchase Price") for the Property shall be _____ Dollars (\$_____), payable by Buyer to Seller as follows:

(a) The cash sum of _____ Dollars (\$_____) shall be deposited in Escrow upon the opening thereof, to be held in an interest-bearing passbook account at a lending institution which is FDIC insured with interest accruing to the credit of Buyer (the "**Deposit**").

(b) The balance of the Purchase Price, _____ Dollars (\$_____), shall be deposited in Escrow by Buyer prior to Close of Escrow for delivery to Seller upon Close of Escrow.

3. CONDITION OF TITLE TO PROPERTY.

3.1 TITLE TRANSFER AT CLOSE OF ESCROW

Title to the Property shall be conveyed to Buyer upon the Close of Escrow.

3.2 TITLE EXCEPTIONS

Title to the Property shall be conveyed to Buyer by Grant Deed (on the Title Company's standard form Grant Deed), free and clear of all liens except for:

(a) Liens securing real property taxes and assessments (which constitute liens not yet due and payable);

(b) Such other exceptions and reservations shown on a Preliminary Title Report ("Preliminary Report") issued by _____ Title Company ("Title Company") which are approved by Buyer. (All exceptions to title permitted pursuant to this Paragraph 3.2(b) are referred to in this Agreement as "Permitted Exceptions.").

3.3 REVIEW OF TITLE

(a) Seller agrees to furnish Buyer with a copy of the Preliminary Report, together with a copy of all recorded exceptions to title, by _____, ____.

(b) Buyer shall have _____ (_____) days after receipt of the Preliminary Report and the recorded exceptions to title within which to notify Seller in writing of Buyer's disapproval of any exceptions set forth in the Preliminary Report.

(c) In the event of Buyer's disapproval of the Preliminary Report, Seller, at its sole election (to be exercised by written notice to Buyer within _____ (_____) days after receipt of Buyer's said notice of disapproval), shall have _____ (_____) days after Buyer's said disapproval within which to remove or otherwise remedy the disapproved exceptions.

(d) If Seller cannot eliminate or otherwise remedy the disapproved exceptions within said _____ day time period, this Agreement shall thereupon terminate and all sums and documents deposited in Escrow shall be returned to the parties who respectively deposited the same, and Buyer and Seller shall each pay one-half (1/2) of the Escrow costs. Failure of Buyer to provide written disapproval of the Preliminary Report within the above time period shall be deemed approval.

3.3 TITLE INSURANCE

Title to the Real Property shall be evidenced by the commitment of the Title Company to issue a standard California Land Title Association [or, if applicable, an American Land Title Association] policy of title insurance with liability in the amount of the Purchase Price showing title to the Real Property vested in (or as designated by) Buyer [and, if applicable, insuring Seller's purchase-money lien as evidenced by the purchase-money Deed of Trust] subject only to the Permitted Exceptions.

3.4 BILL OF SALE

Title to the Personal Property shall be evidenced by the Bill of Sale, attached hereto as Exhibit "D." Title to the Intangible Property shall be evidenced by the Assignment attached hereto as Exhibit "C." Title to the Personal Property and Intangible Property shall be conveyed free and clear from all liens, encumbrances and claims of any third parties.

4. CONTINGENCIES.

4.1 BUYERS CONTINGENCIES

4.1.1 Buyer's obligation to purchase the Property is subject to the following contingencies described in subparagraphs (a) through (j), below in this Paragraph 4.1.1 ("Contingencies"). Each and all of the following Contingencies are for the sole benefit of Buyer and may be waived or deemed satisfied by Buyer in Buyer's sole and absolute discretion.

(a) Buyer's obtaining a loan, by _____, ____ (secured by a first Deed of Trust encumbering the Property) of not less than _____ Dollars (\$_____), for a term of not less than _____ (_____) years, at an interest rate not to exceed _____ (_____) percent per annum, with customary loan fees and costs.

(b) Buyer's review and approval of the Preliminary Report and all recorded exceptions to title within _____ (_____) days after receipt thereof. [If buyer is obtaining ALTA title insurance coverage, or if the Buyer otherwise requires a survey, approval of a survey by Buyer should also be a Contingency. Additionally, if ALTA coverage is contemplated, a provision should be added designating which party will procure the survey and which party will pay for the survey.]

(c) Buyer's inspection and examination of the physical condition of the Property. Buyer shall have access to the property at reasonable times and shall have the right to conduct, at Buyer's expense, soil tests, engineering feasibility studies, environmental investigations and such other studies with respect to the physical condition of the Property as Buyer may desire. Buyer shall have until _____, ____, to conduct such tests and studies, and to give written notice to Seller of any conditions unacceptable to Buyer. Buyer shall hold and save Seller harmless from and against any and all loss, cost, damage, liability, injury or expense, arising out of or in any way related to damage to property, injury to or death of persons, or the assertion of lien claims caused by such entry, inspection and implementation of soil tests, environmental investigations and other studies with respect to the physical condition of the Property. If Buyer elects to terminate this Agreement by reason of failure of the Contingency set forth in this subparagraph (c), Buyer shall promptly upon such election deliver to Seller all written reports, studies and information prepared by third parties for Buyer which pertain to the physical condition of the Property.

(d) Buyer's determination that zoning and other governmental regulations affecting the use of the Property are satisfactory for Buyer's intended use. Buyer shall have until _____, ____ to make such determination and to give written notice to Seller of any zoning or governmental regulations which are unacceptable to Buyer.

(e) Buyer's satisfaction, by _____, ____, that it can secure the right, under applicable zoning and land use laws, regulations, and ordinances to change the present zoning of the Real Property from _____ to _____.

(f) Buyer's ability to obtain, by _____, ____ the following licenses or permits: _____.

(g) Buyer's approval of the Leases and Other Contracts within _____ (_____) days after Seller's delivery thereof to Buyer.

(h) Buyer's approval of the Updated Rent Roll within _____ (_____) days after Seller's delivery thereof to Buyer.

(i) Buyer's approval of the architectural drawings, plans and specifications (including final as-built drawings) for the Improvements, within _____ (_____) days after Seller's delivery thereof to Buyer.

(j) Buyer's review and approval of the Income and Expense Records for the Property by _____, _____.

4.1.2. If Buyer disapproves of the satisfaction of any Contingency within the applicable time period provided above, Buyer's sole remedy shall be to terminate this Agreement and Seller shall have no obligation to remedy any Contingency which Buyer disapproves. If this Agreement terminates as a result of the failure of the satisfaction of any of the Contingencies, all sums and documents deposited in Escrow shall be returned to the parties who respectively deposited the same, and Buyer and Seller shall each pay one-half (1/2) of the Escrow costs.

4.1.3. If Buyer fails to give written notice to Seller of its disapproval of any Contingency within the respective applicable time limit set forth above in Paragraph 4.1, it shall conclusively be deemed that Buyer has waived such Contingency and such Contingency shall conclusively be deemed satisfied.

5. EXCHANGE.

5.1 Buyer and Seller acknowledge that Seller shall have the right to cause this Agreement to be modified so that Seller may exchange the Property for other property ("Other Property") of a like kind and have the transaction qualify as an exchange under the Internal Revenue Code of 1954, and the California Revenue and Taxation Code. Seller shall exercise its right to modify this Agreement by giving Buyer written notice by _____, _____, setting forth in such notice all of the conditions relating to such exchange. Buyer agrees to fully cooperate with Seller to modify this Agreement accordingly and to enter into such agreement with the owner of the Other Property as is necessary to consummate the purchase of the Other Property by Buyer. Buyer shall bear no additional cost, expense or liability (whether actual or contingent) as a result of the exchange transaction. If the parties to this Agreement are unable to agree as to the terms of the modification of this Agreement to allow Seller to exchange the Property by _____, _____, the Close of Escrow shall take place as if the Seller had not exercised its right to exchange the property for Other Property.

6. REPRESENTATIONS AND WARRANTIES

6.1 SELLER'S WARRANTIES

Seller makes the representations and warranties in this Paragraph 6, each and all of which shall survive any and all inquiries and investigations made by Buyer and shall survive the Close of Escrow and recordation of the Grant Deed.

(a) _____ is a [corporation, partnership, etc.] duly organized, validly existing and good standing under the laws of the State of California, and has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Seller, and the specific individual parties signing this Agreement on behalf of Seller represent and warrant that the parties signing this Agreement on behalf of the Seller have the full legal power, authority and right to execute and deliver this Agreement.

(b) Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.

(c) To the best of Seller's knowledge, the Real Property is zoned to permit the operation of a [describe type of project; e.g. office building, shopping center, apartment project, etc]. Seller has not actually received any formal, written notice of any pending change in zoning from any governmental or quasi-governmental authority, which change would materially affect the present zoning of the Land or the present use of the Real Property. The term "formal written notice" as used in this Agreement shall mean that kind and method of notice which must legally be given to the owner of the Real Property, but shall not mean notice by publication.

(d) Seller has not actually received any formal written notice of any pending widening, modification or realignment of any street or highway contiguous to the Real Property or any existing or proposed eminent domain proceeding which would result in a taking of all or any part of the Real Property.

(e) Seller has not actually received any formal written notice that any of the easements, covenants, conditions, restrictions or agreements to which the Real Property is subject interferes with or is breached by the use or operation of the Real Property as presently used and operated as a [describe type of project].

(f) Seller has not been served (by means of formal, legal service of process as required by law) with any litigation, and no arbitration proceedings have been commenced, which do or will affect any aspect of the Property or Seller's ability to perform its obligations under this Agreement. In addition, within the last _____ (_____) [years or months], Seller has not been threatened in writing with any litigation (or arbitration) by a third party which would affect any aspect of the Property or Seller's ability to perform its obligations under this Agreement.

(g) Seller has not actually received any formal written notice of any presently uncured violation of any law, ordinance, rule or regulation (including, but not limited to, those relating to zoning, building, fire, health and safety) of any governmental, quasi-governmental authority bearing on the construction, operation, ownership or use of the Property.

(h) There are not any written commitments to, or written agreements with, any governmental or quasi-governmental authority or agency materially affecting the Property which have not been heretofore disclosed by Seller to Buyer in writing.

(i) Seller has not been served (by means of formal, legal service of process as required by law) or formally notified in writing by any governmental or quasi-governmental authority (i) that the Real Property or any adjoining property, contains or may contain any "Hazardous Materials" in violation of any "Environmental Regulations" (as those terms are defined in Paragraph 6.1.10, below); or (ii) that the Seller has stored, used or maintained

Hazardous Materials or suffered, permitted, allowed or acquiesced in any storage, use or maintenance of Hazardous Materials on, in or under the Real Property in violation of any Environmental Regulations. In addition, to the best of Seller's knowledge, but without any specific investigation therefore, there are no Hazardous Materials in any way relating to all or any portion of the Real Property or the area surrounding the Real Property.

(j) As used in this Agreement, the terms "Environmental Regulations" (Publication page references are not available for this document.) and "Hazardous Materials" shall have the following meanings:

(1) "Environmental Regulations" shall mean all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: (i) all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, whether solid, liquid or gaseous in nature; and (ii) all requirements pertaining to the protection of the health and safety of employees or the public.

(2) "Hazardous Materials" shall mean (i) any flammables, explosive or radioactive materials, hazardous wastes, toxic substances or related materials including, without limitation, substances defined as "hazardous substances," "hazardous materials", "toxic substances" or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; the hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws; (ii) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (iii) those substances defined as "hazardous wastes," "hazardous substances" or "toxic substances" in any similar federal, state or local laws or in the regulations adopted and publications promulgated pursuant to any of the foregoing laws or which otherwise are regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States of America, the State of California or any political subdivision thereof, (iv) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended; (v) petroleum or any by-products thereof; (vi) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sections 2011 et seq., as amended, and in the regulations adopted and publications promulgated pursuant to said law; (vii) asbestos in any form or condition; and (viii) polychlorinated biphenyls.

6.1.1 Leases

(a) The term "Leases" means all written agreements between Seller and all parties having rights to occupy or possess the Property.

(b) By _____ (_____), Seller shall deliver to Buyer true and complete copies of all the Leases. A schedule of all Leases as of _____, _____, is attached hereto as Exhibit "E"; listing all Leases, the duration of each, the then current rental payable under each, and certain other information respecting each such Lease ("Rent Roll"). Except as set forth in the Rent Roll, there are no other Leases in force as of the date of this Agreement, and no person, other than (i) the tenants named in the Leases; and (ii) those parties who have rights under any Permitted Exception, have any right to use, occupy or possess the Property or any portion thereof. Except as set forth in the Rent Roll, no rent concessions are due any tenant; no rent has been paid more than one (1) month in advance by any tenant; no security or other deposit or advance payments of any kind have been made by any tenant; no tenant has any claim against Seller for any security deposit or other deposits (except for the return of the unused portion of their security deposit at the termination of the tenant's lease); no breach exists on the part of any tenant, whether in the payment of rent (or other sum), or the performance of any obligations or covenant under their respective Lease; and no tenant has any defense or off-set to rent or any other obligation accruing after the Close of Escrow.

(c) Each of the Leases described in the Rent Roll is in full force and effect. Seller has not received any written notice of any breach on the part of Seller under any Lease. After the execution of this Agreement, no Lease will be modified or amended and there will be no new Leases. There are no oral agreements for the use, occupancy or possession of the Property or any portion thereof. There are no oral agreements with any tenant which materially change the terms of any of the Leases or which would make the information on the Rent Roll materially inaccurate. If, by _____, _____, any of the information in the Rent Roll and/or any of the representations and warranties of Seller in this Paragraph 6.1.2 have become untrue, Seller shall provide Buyer with an updated rent roll ("Updated Rent Roll") and the representations and warranties made by Seller in this Paragraph 6.1.2 shall be deemed to be made with respect to the Updated Rent Roll.

(d) Five days prior to Close of Escrow Seller shall deliver to Buyer estoppel certificates signed by each tenant in the form attached hereto as Exhibit "F". If a tenant refuses to sign the estoppel certificate, then Seller shall sign the estoppel certificate, warranting, to its actual knowledge with no obligation for further investigation, that the facts in the estoppel certificate are true.

6.1.2 Other Contracts

(a) As used herein, the term "Other Contracts" means all agreements, written and oral, to which Seller is a party and which directly affect the ownership or operation of the Property (other than the Leases).

(b) As of the date of this Agreement, there are no Other Contracts except those listed in Exhibit "G", attached hereto. By _____, _____, Seller shall deliver to Buyer true and complete copies of all Other Contracts. All of the Other Contracts may be terminated without penalty upon the giving of not more than thirty (30) days notice by Seller (or Seller's successor-in-interest to the Property).

(c) There is no material default or breach by Seller, or any other party, to any Other Contract. Prior to the Close of Escrow, no Other Contract will be modified or amended without the written consent of Buyer, and there will be no additional Other Contracts without the prior written consent of Buyer.

6.1.3 Continued Operation

Until the Close of Escrow, the Property will continue to be operated in substantially the same manner as operated as of the date of this Agreement. Seller will not do or cause anything to be done that would change, alter or modify the operation of the Property as a [describe type of project] in the manner in which it is operated as of the date of this (Publication page references are not available for this document.) Agreement, without the prior written consent of Buyer.

6.1.4 Brokers

Seller has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement except for _____ ("_____"). Seller shall pay, and shall hold Buyer harmless from and against, any commission or finder's fee payable to _____ or any other party who represents or claims to represent Seller.

6.1.5 No Alterations

Seller will not alter the physical condition of the Property from and after the date of this Agreement, reasonable wear and tear excepted. If, through no fault of Seller, the physical condition of the Property is different on the date scheduled for the Close of Escrow as of the date of this Agreement, the terms and conditions of Paragraph 6.2, below shall apply.

6.1.6 Changed Conditions

If, prior to the Close of Escrow, new events have occurred which were beyond the control of Seller and which render any previously true representation or warranty untrue, Seller shall, within three (3) days thereafter, disclose those matters by written notice to Buyer. Buyer shall have ten (10) days after the earlier of (i) such disclosure; or (ii) Buyer's independent discovery that such representation or warranty has become untrue, to elect, in its sole and absolute discretion, and as its sole remedy, by written notice to Seller within said ten (10) day period, whether (i) to purchase the Property or (ii) terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this Paragraph 6.2, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and all sums and documents deposited in Escrow shall be returned to the parties who deposited the same and Seller and Buyer shall each pay one-half (1/2) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within said ten (10) day time period provided above, Buyer shall be deemed to have accepted the modified representations and warranties and elected to purchase the Property.

6.1.7 Books and Records

The books and records pertaining to operating income and expenses of the Property for the three (3) most recent years of operation ("Income and Expense Records") thereto shall be open to inspection by Buyer or Buyer's agents during regular business hours upon reasonable notice after the date hereof, and Seller shall cooperate with Buyer or Buyer's agents during regular business hours upon reasonable notice after the date hereof.

6.1.8 Other than those express representations and warranties contained in this Agreement, Seller makes no warranty or representation, express or implied, including but not limited to, implied warranties of merchantability (Publication page references are not available for this document.) and fitness for a particular purpose.

6.1.9 Except to the extent Seller has made a specific representation and warranty with respect thereto, no document or information provided by Seller to Buyer shall constitute a representation as to the completeness or accuracy of such documents or information.

6.2. REPRESENTATIONS AND WARRANTIES BY BUYER.

Buyer makes the following representations and warranties in this Paragraph 7, each and all of which shall survive any and all inquiries and investigations made by Seller and shall survive the Close of Escrow and recordation of the Grant Deed.

(a) Each and all of the information and any financial statement delivered by Buyer to Seller is true and correct.

(b) Buyer has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement except for _____ ("_____"). Buyer shall pay, and hold Seller harmless from and against, any commission or finder's fee payable to _____, _____, or any other party who represents or claims to represent Buyer.

(c) _____ is a [corporation, partnership, etc.] duly organized, validly existing and good standing under the laws of the State of California which has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The Buyer, and the specific, individual parties signing this Agreement on behalf of Buyer represent and warrant that the parties signing this Agreement on behalf of the Buyer have the full legal power, authority and right to execute and deliver this Agreement.

(d) Buyer has or will make its own investigation concerning the physical condition of the Property, condition of title or any other matter pertaining to the Property, and, other than the specific representations and warranties made by Seller pursuant to this Agreement, Buyer is not relying on any representations, warranties or inducements of Seller or Seller's broker with respect to the physical condition of the Property, condition of title to the Property, or any other matter pertaining to the Property. Accordingly, except for those specific representations and warranties of Seller set forth in this Agreement, Buyer is purchasing the Property and each and every aspect thereof in an "as-is" condition, and Seller makes no express or implied representation concerning (i) the status of title to the Property; (ii) any Leases; (iii) the current or future real estate tax liability, assessment or valuation of the Property; (iv) the compliance of the Property in its current or future state with applicable laws or any violations thereof, including without limitation, those relating to access for the handicapped, environmental or zoning matters, or the ability to obtain a change in the zoning of the Property; (v) the nature and extent of any right-of-way, lease, lien, encumbrance, license or reservation; (vi) the availability of any financing for the purchase, alteration or operation of the Property from any source, including, without limitation, any governmental authority or lender; (vii) the current or future use of the Property; (viii) the viability or financial condition of any tenant; and (ix) the actual or projected income or operation expenses of the Property.

7. INDEMNIFICATION.

7.1 Subject to any other provisions of this Agreement to the contrary, each party agrees to indemnify ("Indemnitor") and hold the other party ("Indemnitee") harmless from and against any claim, loss, damage or expense, including any reasonable attorneys fees (including attorneys fees on appeal), asserted against or suffered by the Indemnitee resulting from:

- (a) Any breach by the Indemnitor of this Agreement;
- (b) Any liability of the Indemnitor with respect to the Property, under the Leases or Other Contracts, or otherwise, as provided in Paragraph 9, below; or
- (c) The inaccuracy or breach of any of the representations, warranties or covenants made by the Indemnitor.

7.2 Indemnitee shall submit any claim for indemnification under this Agreement to the Indemnitor in writing within a reasonable time after Indemnitee determines that an event has occurred which has given rise to a right of indemnification under this Paragraph 7 and shall give Indemnitor a reasonable opportunity to investigate and cure any default of Indemnitor under this Agreement and eliminate or remove any claim by a third party. Notwithstanding the foregoing, if the nature of Indemnitor's default or the third party claim is such that it would be impractical or unreasonable to give Indemnitor an opportunity to investigate and cure such default and remove such claim, Indemnitee need not give Indemnitor such opportunity.

7.3 If such claim for indemnification relates to a claim or demand presented in writing by a third party against Indemnitee, Indemnitor shall have the right to employ counsel reasonably acceptable to Indemnitee to defend any such claim or demand, and Indemnitee shall make available to Indemnitor, or its representatives, all records and other materials in its possession or under its control reasonably required by Indemnitor for its use in contesting such liability. If Indemnitor does not elect to defend any such claim or demand, Indemnitee may do so at its option, but shall not have any obligation to do so.

8. ASSUMPTION OF LIABILITIES.

8.1 Effective as of the Close of Escrow, Buyer shall be deemed to have assumed all obligations and liabilities of Seller pertaining to the Property, under the Leases, or under the Other Contracts, except all obligations and liabilities with respect thereto which arise prior to the Close of Escrow or which arise as a result of events which occur prior to the Close of Escrow. Except for the foregoing assumption of obligations and liabilities by Buyer, Buyer does not assume and shall not be liable for any of the obligations or liabilities of Seller of any kind or nature affecting or otherwise relating to Seller, the Property, the Leases, the Other Contracts, or otherwise.

8.2 Seller shall, prior to the Close of Escrow, timely perform and discharge all obligations and liabilities of every kind whatsoever to be discharged prior to the Close of Escrow and arising from or relating to (i) the Property, including, but not limited to, the use and ownership of the Property; (ii) the operation of the Property; (iii) the Leases; and (iv) the Other Contracts.

9. LIQUIDATED DAMAGES.

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF BUYER, IT IS AGREED THAT THE DEPOSITS ACTUALLY MADE PURSUANT TO PARAGRAPHS 2(i) AND 2(ii) OF THIS AGREEMENT SHALL BE NON- REFUNDABLE AND SELLER SHALL BE

ENTITLED TO SUCH DEPOSITS, WHICH AMOUNTS SHALL BE ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR IMPOSSIBLE TO PRESENTLY PREDICT WHAT MONETARY DAMAGES SELLER WOULD SUFFER UPON BUYER'S FAILURE TO COMPLETE ITS PURCHASE OF THE PROPERTY. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. IF FURTHER INSTRUCTIONS ARE REQUIRED BY ESCROW HOLDER TO EFFECTUATE THE TERMS OF THIS PARAGRAPH 9, BUYER AND SELLER AGREE TO EXECUTE THE SAME. THE PARTIES ACKNOWLEDGE THIS PROVISION BY PLACING THEIR INITIALS BELOW:

BUYER: _____ SELLER: _____

10. BUYER'S WAIVER OF RIGHT TO COMPEL SPECIFIC PERFORMANCE.

As an inducement to Seller to enter into this Agreement, Buyer specifically agrees that it shall not have, and hereby forever relinquishes and waives, any right to compel Seller to specifically perform this agreement or otherwise compel Seller to sell the Property to Buyer. Buyer further acknowledges and agrees that the Property is not unique; that the Property is being purchased for speculative, investment purposes; that Buyer will not suffer irreparable harm if Seller fails to convey title; and that money damages will be an adequate remedy to compensate Buyer for Seller's failure to sell the Property to Buyer. Buyer hereby agrees that it will not, and waives any right to, file any lis pendens against the Property (or any portion thereof) and Buyer further waives any right to seek specific performance under California Civil Code Sections 3384, et seq.

11. ESCROW AND CLOSING.

11.1 OPENING OF ESCROW

As soon as possible after the full execution of this Agreement, Buyer and Seller shall open an escrow for the purpose of consummating the purchase and sale contemplated by this Agreement ("Escrow") by depositing an executed copy of this Agreement with _____ Company, at _____, _____, California ("Escrow Holder"). This Agreement shall constitute escrow instructions to Escrow Holder. Seller and Buyer shall, promptly upon request by Escrow Holder, execute such additional escrow instructions as may be reasonably required by Escrow Holder, including Escrow Holder's standard printed conditions and stipulations with respect to escrows concerning the purchase and sale of real property; provided, however, that if there is any conflict between the provisions of this Agreement and the provisions of any such additional instructions, the provisions of this Agreement shall prevail. Upon delivery to Escrow of a fully executed copy of this Agreement by both parties, Escrow shall be deemed opened on the terms and conditions set forth in this Agreement.

11.2 CLOSE OF ESCROW

Escrow shall close, and the Grant Deed shall be recorded in the Office of the County Recorder of _____ County, California on or before _____, ____ ("Close of Escrow").

11.3 SELLER DELIVERIES TO ESCROW

Within the time set forth below, or if none is specified, prior to the Close of Escrow, Seller shall deliver to Escrow Holder, or if so indicated, to Buyer, the following documents and items:

- (a) At least one (1) day prior to the Close of Escrow, the duly executed and acknowledged Grant Deed.
- (b) At least one (1) day prior to the Close of Escrow, a duly executed Bill of Sale in the form of Exhibit "D," evidencing the transfer to Buyer of all of Seller's right, title and interest in and to the Personal Property.
- (c) At least one (1) day prior to the Close of Escrow, an executed and acknowledged Assignment of Leases in the form of Exhibit "H," evidencing the assignment to Buyer of all of Seller's right, title and interest in and to the Leases.
- (d) At least one (1) day prior to the Close of Escrow, an executed and notarially acknowledged Assignment in the form of Exhibit "C", evidencing the assignment to Buyer of all of Seller's right, title and interest in and to the Intangible Property.
- (e) At least one (1) day prior to Close of Escrow, Seller shall deliver such certifications, declarations or other documents as may be required under Internal Revenue Code Sec. 1445 and California Revenue and Tax Code Sec. 18662, together with any and all other documents required by law pertaining to foreign or out-of-state sellers.
- (f) To Buyer at the location of the Property, at Close of Escrow, all original executed counterparts of each Lease, Other Contracts, Permits (as that term is defined in the Agreement) and Warranty (as that term is defined in the Assignment).
- (g) To Buyer and Escrow Holder, by no later than _____, _____, the Updated Rent Roll.
- (h) To Buyer, upon Close of Escrow, one (1) executed letter addressed to all the tenants of the Property advising them of the consummation of the purchase and sale of the Property and directing the tenants to pay the rent and other charges due under the Leases to Buyer.
- (i) To Buyer, at the location of the Property, at Close of Escrow, all keys to the Property, adequately and properly labeled.
- (j) To Buyer, at the location of the Property at Close of Escrow, all books, records, booklets, catalogs, advertising material and manuals regularly maintained by Seller at the Property relating to the use or operation of the Property, but excepting from the foregoing Seller's standard operational manuals.

11.4 BUYER'S DELIVERIES TO ESCROW

Buyer shall deliver to Escrow Holder prior to the Close of Escrow the balance of the cash portion of the Purchase Price set forth in Paragraph 2, as adjusted pursuant to this Agreement, together with an additional sum sufficient to cover Buyer's closing costs as set forth in Paragraph 13.7.2, below.

11.5 COMPLETION OF ESCROW

On the Close of Escrow, the Escrow Holder shall record the Grant Deed and shall deliver the monies and instruments to which each party is entitled pursuant to this Agreement, only when the Title Company is in a position to issue its CLTA [or, if applicable, ALTA] policy of title insurance subject only (i) to the Permitted Exceptions; and (ii) Title Company's standard pre-printed exceptions, with liability in the amount of the purchase price, showing title to the Real Property vested in Buyer (or as designated by Buyer) ("Title Policy").

(b) Upon Close of Escrow, possession of the Property shall be delivered to Buyer subject to the Permitted Exceptions and all rights of tenants under the Leases, and the following items, documents and monies shall be delivered to the parties by Escrow Holder as set forth below:

(1) To Seller: the cash portion of the Purchase Price as set forth in Paragraph 2 as adjusted pursuant to this Agreement and reduced by the amount of Seller's closing costs as set forth in Paragraph 13.7.1, below.

(2) To Buyer: the Title Policy.

11.7 COSTS OF ESCROW

Upon Close of Escrow, Escrow and title charges shall be paid in the manner provided below.

11.7.1 Seller shall pay:

- (a) The cost of the Title Policy.
- (b) The cost of any and all documentary transfer tax or stamps or other sales tax.
- (c) One-half (1/2) of the Escrow fees.

11.7.2 Buyer shall pay:

- (a) All recording fees.
- (b) One-half (1/2) of the Escrow fees.

11.7.3 Escrow Holder is authorized and instructed to debit Seller and Buyer for closing costs as set forth in Paragraphs 11.7.1 and 11.7.2 above.

11.7.4 If Escrow fails to close as a result of the default of this Agreement by a party, the defaulting party shall pay all title and escrow charges; provided, however, that nothing in this Paragraph 11 shall be deemed to limit, and the provisions of this Paragraph 11 shall be in addition to, all other rights and remedies of the non-defaulting party.

12. PRORATIONS.

12.1 Prorations shall be made as of the Close of Escrow. All prorations shall be made on the basis of a thirty (30) day month and shall be paid in cash to Seller if it is entitled thereto, or shall be credited against the cash portion of the Purchase Price if Buyer is entitled thereto. Such prorations shall be made by Escrow Holder on the basis of a statement(s) approved by Buyer and Seller and deposited into the Escrow prior to the Close of Escrow. The date used for prorations is hereinafter referred to as the "Proration Date."

(a) All real estate taxes and all personal property taxes due and owing as of the Proration Date, and all penalties and interest thereon, shall be paid by Seller. Current real estate taxes, special assessments and personal property taxes which are not yet due and owing shall be prorated based upon the most recent tax bill, so that the portion of current taxes allocable to the period from the beginning of such tax year through the Proration Date shall be charged to and

paid by Seller and the portion of the current taxes allocable to the portion of such tax year from the Proration Date to the end of such tax year shall be charged to and paid by Buyer.

(b) Expenses of operating the Property (other than insurance premiums, taxes and utility charges) which were prepaid by Seller for a period beyond the Proration Date shall be credited to Seller.

(c) Unpaid rent under the Leases for the period in which the Proration Date occurs shall be prorated as if the same had been collected by Seller. Buyer shall receive a credit against the cash portion of the Purchase Price payable by Buyer in an amount equal to all prepaid rent under the Leases which is applicable to the period after the Proration Date, and all unused security or other deposits under the Leases. To the extent rent applicable to the period prior to the Proration Date is collected by Buyer subsequent to the Proration Date, Buyer shall remit to Seller that portion of such rent applicable to the period prior to the Proration Date, less Buyer's cost of collection of same which Buyer has paid to third parties. Any rent recovered by Buyer subsequent to the Proration Date pertaining to a particular tenant shall first be applied to any delinquency of said tenant after the Proration Date. Nothing contained herein shall require buyer to endeavor to collect any rent which was delinquent as of the Proration Date.

12.2 Buyer shall be responsible for obtaining and paying for utility services from and after Close of Escrow.

13. DAMAGE OR DESTRUCTION PRIOR TO CLOSE OF ESCROW.

If the Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, including but not limited to, fire, flood, accident or other casualty which, according to the Buyer's and Seller's best estimate, would cost more than _____ Thousand Dollars (\$_____) to repair, Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Property, Buyer shall be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction and, in addition, Seller shall pay Buyer the amount of any deductible (which can be paid by Seller by means of a credit against the Purchase Price). In the event that Buyer's and Seller's best estimate of the cost of repair is _____ Thousand Dollars (\$_____) or less, Buyer shall purchase the Property and be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price. Should any damage or destruction occur prior to the Close of Escrow, the date scheduled for the Close of Escrow shall be extended for a period of time not to exceed thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this Paragraph 13, Buyer shall be deemed to have elected to purchase the Property.

14. EMINENT DOMAIN.

14.1 The words "condemnation" or "condemned" as used in this Paragraph 14 shall mean the exercise of, or intent to exercise, the power of eminent domain expressed in writing, as

well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the "condemning authority").

14.2 If Seller receives written notice from a condemning authority advising of a condemnation of all or any portion of the Property ("Condemnation Notice"), Seller shall immediately advise Buyer of same in writing and deliver therewith a copy of the Condemnation Notice. Within ten (10) days after Buyer's receipt of the Condemnation Notice, Buyer shall notify Seller of its election to either (i) terminate this Agreement and the Escrow or (ii) purchase the Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Property, Seller shall transfer to Buyer at the Close of Escrow all proceeds from condemnation or Seller's right to receive all such proceeds. If Buyer fails to notify Seller of its election under this Paragraph 14, Buyer shall be deemed to have elected to purchase the Property.

15. SURVIVAL OF CLOSE OF ESCROW.

All representations, warranties, covenants, conditions, agreements and obligations contained in or relating to this Agreement shall survive the Close of Escrow and the recordation of the Grant Deed and shall not merge therein unless specifically stated otherwise in this Agreement.

16. NOTICES.

All notices to be given pursuant to this Agreement shall be either (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) overnight courier (such as Federal Express, DHL, etc.); or (iv) by telecopy transmittal. If sent via certified or registered mail, receipt shall be deemed effective forty-eight (48) hours after being deposited in the United States mail. If sent via telecopy transmission, a confirming copy shall be sent to the sender, and receipt of the telecopy transmittal shall be deemed made twenty-four (24) hours after the sending thereof. If sent via overnight courier, receipt shall be deemed effective twenty-four (24) hours after the sending thereof. All notices to be given pursuant to this Agreement shall be given to the parties at the following respective address.

to Buyer: _____

Telecopier No.: _____

with a copy to _____

Telecopier No.: _____

to Seller: _____

Telecopier No.: _____

with a copy to _____

Telecopier No.: _____

to Escrow Holder: _____

Telecopier No.: _____

17. ENTIRE AGREEMENT.

This Agreement, and the Exhibits attached hereto, represent the entire Agreement between the parties in connection with the transactions contemplated hereby and the subject matter hereof and this Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the parties relating to this transaction which are not expressly set forth herein. This Agreement may not be modified except by a written agreement signed by both Buyer and Seller. Without limiting the foregoing, Buyer and Seller expressly acknowledge and agree that they have not relied on any written or oral statements made by the other party's real estate broker in entering into this Agreement.

18. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, administrators, successors in interest and assigns.

19. WAIVER.

No waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

20. CAPTIONS AND HEADINGS.

The captions and paragraphs numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement.

21. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

22. GOVERNING LAW.

This Agreement has been prepared, negotiated and executed in, and shall be construed in accordance with, the laws of the State of California. Any action or proceeding relating to or arising out of this Agreement shall be filed, if a State action, in the Superior Court of the State of

California for the County of Los Angeles, or if a Federal action, in the United States District Court for the Central District of California.

23. ATTORNEYS FEES.

If either party named herein brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action (or proceeding), on trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the Court (or if applicable, the arbitrator).

24. TIME OF ESSENCE.

Time is of the essence with respect to all matters contained in this Agreement.

25. DATE OF AGREEMENT.

All references in this Agreement to "the date of this Agreement" or "the date hereof" shall be deemed to refer to the date set forth in the first paragraph of this Agreement.

26. INVALIDITY OF ANY PROVISION.

If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

27. NO RECORDATION.

Buyer shall not record this Agreement, any memorandum of this Agreement, any assignment of this Agreement, or any other document which would cause a cloud on the title to the Property.

28. DRAFTING OF AGREEMENT.

Buyer and Seller acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsman.

29. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of Buyer and Seller and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

30. JOINT AND SEVERAL LIABILITY.

If either the Buyer or the Seller (separately) is comprised of more than one party, each party constituting the Seller or Buyer, respectively, is jointly and severally liable for the performance of this Agreement.

31. INCORPORATION OF EXHIBITS.

Each and all of the exhibits attached to this Agreement are incorporated herein as if set forth in full in this Agreement.

32. NO JOINT VENTURE, PARTNERSHIP OR OTHER RELATIONSHIP CREATED.

The relationship between Buyer and Seller is that solely of a seller and buyer and no joint venture, partnership or other relationship is created or implied by this Agreement.

33. ASSIGNMENT

This Agreement may not be assigned by either party without the express written consent of the other party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

"SELLER"

By: _____

Its: _____

"BUYER"

By: _____

Its: _____

Exhibit "A"

Legal Description of Property

To be inserted upon receipt of the preliminary title report.

Exhibit "B"
Personal Property List

Exhibit "C"

Assignment of Intangible Property

EXHIBIT "D"

BILL OF SALE

Bill of Sale with Warranty of Title

_____ ("Seller") does hereby grant, sell, transfer and deliver unto the Redevelopment Agency of the City of Pomona the personal property described on Exhibit "B" attached hereto.

Seller hereby covenants with the Redevelopment Agency of the City of Pomona that it is the lawful owner of said personal property; that it is free from all encumbrances; that it has good right to sell the same as aforesaid; and that it will warrant and defend the same against the lawful claims and demands of all persons.

Seller

Date: _____

By: _____

Name: _____

Date: _____

By: _____

Name: _____

Exhibit "E"

Rent Roll

Complete and sign a separate sheet for each tenant, lessee or party with a possessory interest.

Tenants' Names and Mailing Addresses:

Pomona, CA _____

Telephone _____ (Home)

Telephone _____ (Work)

Agreement is Written _____ Oral _____ Other _____

Commencement date _____ Expiration Date _____

Term Monthly _____ Yearly _____ Other _____

Rent Amount \$ _____ per Month _____ Year _____ Other _____

Rent Amount in arrears \$ _____ Security Deposits \$ _____

We declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct as of _____, 2008.

Landlord ("Seller") _____

Landlord ("Seller") _____

Tenant _____

Tenant _____

Exhibit "F"

Estoppel Certificate

ESTOPPEL CERTIFICATE

To: City of Pomona

The undersigned hereby certifies that:

1. I am the tenant and present occupant of the residential unit located at _____ Pomona, California ("premises").

2. The premises are leased under a written lease or rental agreement dated _____, 200__, as amended by documents dated _____, 200_ and _____, 200_. A copy of the lease and all amendments (collectively called "the lease") are attached. The lease contains all of the agreements between me and the landlord. Check here _____ if the lease or rental agreement is not written.

3. Rent of \$_____ per month has been paid through _____, 200_.

4. The lease provides option(s) to extend or renew the lease term for _____ each. (If no option exists insert "None.")

5. I have no option or right of first refusal to purchase the premises or the building. My only interest in the premises or the building is my lease.

6. The sum of \$_____ was paid to the landlord as a security deposit and the sum of \$_____ was paid for the last month's rent. (If none paid insert "None.")

7. All work required of the landlord by the lease has been completed in accordance with the terms of the lease, and I have accepted, and I am now in possession of, the premises.

8. No person or firm other than myself is in possession and to the best of my knowledge no other person or firm other than the landlord has a future right to the premises. (If anyone else has such rights, state name, address, and explain such rights.)_____

9. I have not assigned or entered into any subleases of the lease, except as follows:_____

10. I claim no offset against the landlord, and the landlord is not in default under the lease or in connection with the premises or the building. (If there is any claim, offset, or default, please explain.)_____

11. The statements in this letter may be relied on by the landlord, the purchaser of the building.

12. I have been advised that the landlord is selling the building to the Redevelopment Agency of the City of Pomona. After receipt of notice from the landlord that the sale has been completed, I will honor the assignment of the landlord's interest in the lease.

This certificate was executed on _____, 200__.

Tenant

Tenant

Tenant

Exhibit "G"

List of Other Contracts

Complete and sign a separate sheet for each separate contract.

Parties Names and Mailing Addresses:

Telephone _____ (Home)

Telephone _____ (Work)

Agreement is Written _____ Oral _____ Other _____

Commencement date _____ Expiration Date _____

Term Monthly _____ Yearly _____ Other _____

Nature of Contract _____

We declare under penalty of the laws of the State of California that the foregoing is true and correct as of _____, 2008.

Landlord ("Seller") _____

Landlord ("Seller") _____

Exhibit "H"

Assignment of Leases

LEASE ASSIGNMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, _____ ("Assignor"), hereby assigns, sells, transfers, sets over and delivers to _____ ("Assignee") all of Assignor's estate, right, title and interest in and to the following:

(a) all leases, licenses, tenancy agreements or occupancy agreements relative to the real property ("Real Property") described in Exhibit A attached hereto, together with all rents, issues and profits thereunder (collectively, "Leases"); and

(b) all security deposits, prepaid rentals, cleaning fees and other deposits, plus any interest accrued thereon, paid by tenants of the Property to Assignor or any other person ("Deposits"), which Leases and Deposits are set forth on Exhibit B attached hereto.

Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor under the Leases accruing or arising on or after the date of delivery of this Assignment.

This Lease Assignment may be executed in one or more counterparts, each of which shall be deemed an original, and all of such counterparts, taken together, shall constitute one and the same instrument.

ASSIGNOR:

By: _____

Position _____

Date: _____

ASSIGNEE:

CITY OF POMONA

By: _____
Linda Lowry, City Manager

Date: _____

Exhibit "A" to Lease Assignment
(Property Legal Description)

Exhibit "B" to Lease Assignment
(List of Leases and Deposits)

GRANT DEED

WHEN RECORDED RETURN TO

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt from fee pursuant to Section 27383 of the California Government Code

GRANT DEED

Note: This Grant Deed contains a Power of Termination which may revert fee title in the City of Pomona upon the occurrence of specified conditions subsequent.

For a valuable consideration, receipt of which is hereby acknowledged.

THE CITY OF POMONA, a public body, corporate and politic ("Grantor" or "City"), hereby grants to MAYA CINEMAS NORTH AMERICA, INC. a Delaware corporation, ("Grantee" or "Developer"), that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property").

1. Grantee covenants and agrees, for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, to develop, construct and open for operation a theater as described in the Scope of Development contained in Section 302.1 in accordance with the uses specified in the Grant Deed, the Development Entitlements and the Covenants, Conditions and Restrictions on the Site as provided in the Disposition and Development Agreement dated _____, 2018 by and between Grantor and Grantee ("DDA"). After issuance of a Release of Construction Covenants for all or a portion of such improvements, Grantee may alter, modify, or replace such improvements, provided that such changes are consistent with the City Zoning Ordinance and do not reduce the value of the improvements below the value of the improvements immediately prior to their alteration, modification or replacement. Any change in use inconsistent with the Zoning Ordinance, the Development Entitlements defined under this Agreement, or the Grant Deed shall not be permitted without the prior written approval of the City of Pomona or any other party or entity requiring approval, which approval shall not be unreasonably withheld or delayed.

2. Grantee covenants and agrees as follows:

(a) Grantee shall cause the completion of the Developer Project and the opening of the Developer Project by the dates set forth therefore in the Schedule of Performance.

(b) Pursuant to the DDA the Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest or any part thereof, that Grantee, or a wholly owned subsidiary of Grantee, shall operate and use the Property in accordance with any and all obligations, limitations or covenants imposed by the agency or agencies issuing the NMTC for the Developer Project. This covenant shall run with the land and be binding on the successors, assigns and transferees of Developer as a covenant running with the land or equitable servitude.

3. Developer covenants and agrees to comply with all of the covenants contained in the DDA, and specifically those covenants contained in sections 501,502, 503, 504 and 506 of the DDA.

4. This Grant Deed is subject to a Management and Maintenance Covenant for the management and maintenance of the Property subject to this Grant Deed. Such Management and Maintenance Covenant is recorded separately from this Grant Deed.

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

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

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

b. In leases: "The Lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease 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 of occupancy, tenure or enjoyments of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices if discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

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

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitation 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.

7. The covenants contained in Paragraphs 1, 2, 3, 4 and 9 of this Grant Deed shall remain in effect until the expiration of seven (7) years from the issuance of a Release of Construction Covenants for the Property. The covenants contained in Paragraph 5 and 6 of this Grant Deed shall remain in effect in perpetuity or, if the state law requiring such covenants changes such that those covenants are not required to remain in effect in perpetuity, those covenants shall terminate at such earlier date as may be permitted by state law.

8. Power of Termination and Covenant.

(a) Pursuant to the term of the DDA (Sections 301-309) Grantee is obligated to design, construct and operate on the City Property and the Developer Property an approximately 62,500 square foot first class 12 to 14 screen theatre with stadium seating in each screen, concessions which may include beer and wine. The Theatre to be developed on the City Property shall be of first quality and have an overall standard of quality equal to or better than surrounding theaters within a 10 miles radius and showing first run movies. Grantee is required to obtain a Certificate of Occupancy for the theater in accordance with the Schedule of Performance attached as an Attachment to the DDA.

(b) In the event that Grantee fails to obtain approved financing for construction of the Developer Project as described in subparagraph 8(a) above within three (3) years after the Close of Escrow for the City Property subject to this Grant Deed, then upon at least 30 days' written notice to Grantee of City's intention to exercise its Power of Termination, City will have the absolute right and power:

(1) to terminate all of Grantee's (and anyone claiming by or through Grantee) rights, title, estate and interest in the City Property described in Exhibit "A" attached hereto;

(2) to reenter and repossess the City Property (including all improvements and alterations to the City Property made by or for Grantee);

(3) to revoke this Grant Deed;

(4) to revest the City with the fee title interest conveyed by this Grant Deed.

(c) Grantee specifically covenants and agrees that City shall have the right to enforce this Covenant and Power of Termination free and clear of any and all security interests, liens, encumbrances, and deeds of trust related to or affecting the City Property arising after Close of Escrow Grantee further covenants and agrees to remove any liens, mechanic's liens, stop notices, assignments, monetary encumbrances, deeds of trust or other encumbrances on the City Property which attached to the City Property after the Close of Escrow for the transfer of the City Property to Grantee

(d) City's rights and power of termination, repossession, removal, revocation and enforcement under this Covenant and Power of Termination will be to the fullest extent permitted by law and in equity, including, but not limited to, California Civil Code sections 885.010 through 885.070.

(e) If City exercises the Power of Termination Grantee shall deliver title to the Property to City upon the payment by City to Grantee of the Purchase Price paid by Grantee to City for the City Property pursuant to the DDA.

9. The covenants in Paragraphs 1, 2, 3, 4, 5, 8 and 9 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Pomona and any successor in interest to said parties. Such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed and the DDA, the provisions of this Grant Deed shall control.

11. The Covenants and Conditions of this Grant Deed shall be deemed to be covenants running with the land or equitable servitudes and shall bind future purchasers, encumbrances and transferees. Notwithstanding anything to the contrary contained herein, Grantee shall be liable only for breaches of the Covenants and Conditions of this Grant Deed that occur during Grantee's ownership of the Property.

Executed on _____, 2018, in _____, California.

THE CITY OF POMONA

By:

Linda C. Lowry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

GRANTEE'S ACCEPTANCE OF CONDITIONS, COVENANTS AND RESTRICTIONS

The provisions of this Grant Deed are hereby approved and accepted.

“DEVELOPER”

MAYA CINEMAS NORTH AMERICA, INC, a Delaware corporation

By: _____

Date: _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
County of _____)

On _____ before me, _____ (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized

capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "A" to Grant Deed

LEGAL DESCRIPTION OF CITY PROPERTY

ATTACHMENT NO. 11
MEMORANDUM OF DDA

WHEN RECORDED RETURN TO

City of Pomona
ATTN: City Manager
505 South Garey Avenue
Pomona, CA 91766

MAIL TAX STATEMENTS TO:

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document
exempt from fee pursuant to Section 6103 of
the California Government Code

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement is recorded to give notice of that certain Disposition and Development Agreement ("DDA") dated _____, 2018, and any subsequent amendments, by and between the CITY OF POMONA ("City") and MAYA CINEMAS NORTH AMERICA, INC., a Delaware corporation ("**Maya**" or "**Developer**").

All of the terms and conditions of the DDA are incorporated into this Memorandum of Disposition and Development Agreement.

The DDA, and any subsequent amendments, contain provisions that may affect the development, operation and management of the Property described in Exhibit "A" attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum on the same date as that of the Agreement first written above.

“DEVELOPER”

MAYA CINEMAS NORTH AMERICA,
INC., a _____ corporation

By: _____

Date: _____

“CITY”

CITY OF POMONA, a California municipal
corporation

By: _____

Linda Lowry, City Manager

Date: _____

Attest:

City Clerk

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"
to Memorandum of DDA
(Legal Description of Property)

RELEASE OF CONSTRUCTION COVENANTS

WHEN RECORDED RETURN TO



THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

No recording fee required; this document exempt from fee pursuant to Section 6103 of the California Government Code

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, on or about _____, the City of Pomona, a public body corporate and politic, hereinafter referred to as "City," and _____, hereinafter referred to as "Developer," entered into that certain Disposition and Development Agreement (the "Agreement"), dated _____, providing for the development of certain real property (the "Property") situated in the City of Pomona, California, described on Exhibit "A" attached hereto;

WHEREAS, the Agreement requires that the City furnish Developer with a Release of Construction Covenants upon completion of construction, and that said Release be in such form as to permit recordation in the Los Angeles County Recorder's Office;

WHEREAS, such Release shall be conclusive determination of satisfactory completion of the construction of the Improvements on the Site, as required by the Agreement; and

WHEREAS, the City has conclusively determined that construction of the Improvements has been satisfactorily completed.

NOW THEREFORE,

- 1. As provided in the **Agreement**, the City does hereby certify that construction of the Improvements has been fully performed and satisfactorily completed.
- 2. The conditions and all rights and obligations under the Agreement are terminated with respect to the **Improvements** constructed on the Project Site, except as set forth in Sections 501, 502, 503, 504, and 506 of the Agreement.
- 3. After **recordation** of this Release of Construction Covenants, any person or entity then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Site will

not (because of such ownership, purchase lease, or acquisition) incur any obligation or liability under the Agreement, except that such party shall be bound by any and all of the covenants, conditions, and restrictions, provisions or limitations in the Agreement regarding use, operation, maintenance or financing of the Property and any and all of the covenants, conditions, and restrictions, provisions or limitations set forth in the Grant Deed, dated _____.

- 4. This Release of Construction Covenants shall not constitute evidence with or satisfaction of any obligation of the Owner to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance Improvements to the Site, nor any part thereof. This Release of Construction Covenants is not a notice of completion as referenced in California Civil Code § 3093.
- 5. The Recitals above are incorporated in full as part of the substantive text of this Release of Construction Covenants.

IN WITNESS WHEREOF, the City has executed this release this _____ day of _____, 200__.

CITY OF POMONA, a public body corporate and politic

By: _____
Linda Lowry, City Manager

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

State of California)
County of Los Angeles)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A" TO RELEASE OF CONSTRUCTION COVENANTS
Legal Description of Property

MANAGEMENT AND MAINTENANCE COVENANT

RECORDING REQUESTED BY:
AND WHEN RECORDED, MAIL TO:

City of Pomona
505. S. Garey Ave.
Pomona, CA 91766
Attn: City Manager

(Space above this line for Recorder's use)

MANAGEMENT AND MAINTENANCE COVENANT

THIS MANAGEMENT AND MAINTENANCE COVENANT (the "**Covenant**") dated for reference purposes only _____, 2018 is entered into by and among the CITY OF POMONA ("**City**") and MAYA CINEMAS NORTH AMERICA, INC, a _____ corporation ("**Maya**" or "**Developer**") City and Developer are sometimes hereinafter collectively referred to herein as the Parties. The City and Developer hereby agree as follows:

RECITALS

- A. City and Developer have entered into a Disposition and Development Agreement ("**DDA**") providing for the assemblage by the City and Developer of approximately _____ square feet of real property owned by the City of Pomona and third parties to be developed by Developer for an approximately 60,000 square foot 15 screen theater, a 25,000 square foot freestanding restaurant and associated temporary parking ("**Developer Project**" or "**Property**"). The Property is legally described in Exhibit "A" attached hereto and incorporated herein.
- B. The Developer Project encompasses approximately four city blocks in the City of Pomona, California bounded by South Park Avenue on the west, West Second Street on the north, South Main Street on the east and West Third Street on the south.
- C. City and Developer desire to insure the continued management and maintenance of the Developer Project in a secure and high quality manner acceptable to City and Developer.

AGREEMENT

In consideration of the approval of the DDA and other valuable consideration, the receipt of which is hereby acknowledged, the Parties agree and covenant as follows:

Section 1. Maintenance of Property.

(a) Developer agrees for itself and its successors in interest to all or any portion of the Property, during the term of this Covenant, to maintain the improvements on the Property in conformity with the City Municipal Code and the conditions set forth in this Covenant. Developer shall maintain, repair and operate the Property and all improvements constructed or to be constructed thereon (including landscaping, lighting and signage), or cause the Property and all such improvements to be maintained, in a first quality condition, free of debris, waste and graffiti, and in compliance with the terms of the Development Entitlements, this Covenant and the City of Pomona Municipal Code.

(b) All improvements on the Property shall be maintained in good condition in accordance with the custom and practice generally applicable to comparable first quality theaters, restaurants or retail stores, as applicable, in Los Angeles County, and in conformance and compliance with all plans, drawings and related documents approved by the City pursuant to this Covenant, all conditions of approval of land use entitlements adopted by the City, VPD and the Planning Commission.

(c) Developer shall keep the Property free from any accumulation of debris or waste materials. The Developer shall maintain or cause to be maintained the interior and exterior of the Property in a decent, safe and sanitary manner, in accordance with the standard of maintenance of similar theaters and restaurants within Los Angeles County, California. Developer shall maintain the Property in good, sanitary and tenantable condition. Heating, ventilation, air conditioning, water, electric, gas, sanitary, sewage and disposal facilities shall be maintained and repaired in good and tenantable condition in a timely manner.

(d) During such period, the Developer shall also maintain the landscaping planted on the Property in a healthy condition. Graffiti on the Property shall be removed by the Developer from any exterior surface of a structure or improvement on the Property by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Property and such graffiti is not removed within 7 business days following the time of its application; then in such event and without notice to the Developer, the City shall have the right to enter the property and remove the graffiti. Notwithstanding any provision of Section 1 to the contrary, any sum expended by the City for the removal of graffiti from the Site as authorized by this Section 1, shall be immediately payable by Developer upon demand by the City.

(e) Without limiting the generality of the foregoing, Developer, in the maintenance of the improvements, shall observe the following standards:

(1) Maintain the surface of all automobile and pedestrian areas level, smooth and evenly covered with the type of surfacing materials originally installed thereon or such substitute thereof as shall be in all respects equal thereto or better in quality, appearance and durability.

(2) Maintain such appropriate entrance, exit and directional signs; markers and lights as shall be reasonably required and in accordance with the practices prevailing in the operation of similar developments.

(3) Clean lighting fixtures and relamp and/or reballast as needed.

(4) Repaint striping, markers, directional signs, etc., as necessary to maintain in first-class condition.

(5) Provide reasonable amounts of security personnel and security measures. Developer shall seek the advice of the police department in planning appropriate security measures.

(6) Maintain public right-of-way items between the property and the street, including sidewalks, curbs, gutters, driveways, signs and poles, curb painting and markings.

(7) Maintain all surface and storm lateral drainage systems.

(8) Maintain all sanitary sewer lateral connections.

(f) If at any time Developer fails to maintain the Property or the Development in accordance with this Covenant and such condition is not corrected within sixty (60) days after written notice from the City or City with respect to graffiti, debris, waste material, and general maintenance, or ninety (90) days after written notice from City with respect to landscaping and building improvements, then City, in addition to whatever remedy it may have at law or at equity, shall have the right to enter upon the applicable portion of the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to charge Developer the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Developer to City upon demand. The parties hereto further mutually understand and agree that the rights conferred upon the City under this Section expressly include the amount reasonably necessary to restore the Property to the maintenance standard required under Section 1, including reasonable attorneys fees and costs of the City associated with the abatement of the problem or removal of graffiti and the collection of the costs of the City in connection with such action. The provisions of this Section 1 shall be a covenant running with the land for the Term of this Agreement and shall be enforceable by the City, and its successors and assigns. Nothing in the

foregoing provisions of this Section 1 shall be deemed to preclude the Developer from making any alternations, additions, or other changes to any structure or improvement or landscaping on the Property, provided that such changes comply with applicable law.

(g) If the City incurs costs to cure maintenance deficiencies as set forth in Section 1(f), and such costs are not paid to City within 60 days after written demand for payment, then such costs shall become a lien upon the Property. Such costs may be collected as a lien on the property or as an assessment collected on the property tax roll pursuant to City of Pomona Municipal Code Sections 18-44 to 18.45.

Section 2. Property Management

(a) The Developer shall be responsible for management of the Developer Project, including, without limitation, the operation, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility for the management or operation of the Property or the Developer Project.

(b) Commencing on the issuance of a certificate of occupancy for the theater and continuing for the period of any and all obligations, limitations or covenants imposed by the agency or agencies issuing the New Market Tax Credits (“NMTC”) for the Developer Project the Developer Project shall at all times be managed by an experienced subsidiary of Developer controlled by developer (the "**Management Agent**") reasonably acceptable to the City, with demonstrated ability to operate theater facilities similar to the Developer Project in a manner that will provide decent, safe, and sanitary theater and restaurant operations. After the initial period, the Management Agent may be an entity or person other than the Developer, its employees or an entity owned or controlled by the Developer. The Developer shall submit for the City's approval the identity of any proposed Management Agent, together with additional information relevant to the background, experience and financial condition of any proposed Management Agent as reasonably requested by the City. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Developer in writing. In any event such approval shall not be unreasonably withheld or delayed. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 3. Any person, whether an individual, corporation, association or otherwise, who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property and/or Developer Project shall be deemed to have consented and agreed to the provisions of this Covenant and to be subject to the provisions hereof, whether or not any reference to this Covenant is contained in the instrument by which such person acquired an interest in the Property and/or Developer Project.

Section 4. Except as provided herein, the provisions of this Covenant shall not supersede or in any way reduce the security or affect the validity of any mortgage or deed of trust now existing or hereafter executed affecting all or any portion of the Property and/or Developer Project, made in good faith and for value. The holder of any mortgage or the beneficiary of any deed of trust affecting all or any portion of the Property and/or Developer Project shall have one hundred twenty (120) days from the receipt of written notice from the City of Developer's non-

compliance with the provisions of this Covenant to commence to cure such non-compliance within said one hundred twenty (120) day period and to diligently pursue such cure thereafter to completion. If any portion of the Property and/or Developer Project is sold or transferred under a foreclosure of any mortgage or under the provisions of any deed of trust, any owner whose title is derived through foreclosure, trustee's sale or deed in lieu thereof shall hold all of the Property and/or Developer Project so acquired subject to the provisions of this Covenant and shall be entitled to notice of non-compliance as set forth in Section 4 hereof.

Section 5. This Covenant can only be amended with the mutual consent of both City and Developer. No waiver of any term or condition shall be a continuing waiver thereof.

Section 6. This Covenant shall be construed according to the laws of the State of California. If any portion of the Covenant is for any reason held to be unenforceable, such determination shall not affect the validity of the remaining portions.

Section 7. In the event of any litigation for the enforcement of this Covenant, the prevailing party in such litigation shall be entitled to recover attorney's fees and costs from the other party in such reasonable amount as shall be determined by the Court.

Section 8. The provisions of this Covenant shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns in interest. The provisions of this Covenant shall be deemed to be a covenant running with and affecting the title to the Property pursuant to California Civil Code Sections 1460, et seq., or an equitable servitude, for the benefit of the City, irrespective of whether or not the provisions of this Covenant comply with all of the technical requirements of said sections of the Civil Code. This Covenant shall be recorded by City against the Property after approval by the City and execution of the Covenant by the City Manager. Nothing in this Covenant shall be construed to vest in any third party any right to enforce its terms; enforcement shall be undertaken, if at all, by City.

Section 9. All notices given under this Covenant shall be deemed given when deposited in the mail, postage prepaid Certified Mail, Return Receipt Requested, addressed as follows, or upon personal delivery or fax confirmation of receipt mortgage holder.

Developer:

Fax:

Copy to:

City:

City Manager

City of Pomona
505 South Garey Avenue
Pomona, California 91766
Phone:
Fax:

Section 10. Each of the parties hereto covenants and agrees that it has the legal capacity to make the agreements herein contained, that each agreement is binding upon that party and that this Covenant is executed by a duly authorized official acting in his official capacity.

Section 11. The term of this Covenant shall be for a period of seven years from the issuance of the certificate of occupancy for the theater as provided in the DDA.

Section 12. This Covenant may be signed by the parties in one or more counterparts, which, together, shall form but a single agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the date below their signatures.

CITY OF POMONA

"DEVELOPER"

MAYA CINEMAS NORTH AMERICA, INC., a
_____ corporation

By: _____
Linda Lowry, City Manager

By: _____

Date: _____

Date: _____

ATTEST

Secretary

APPROVED AS TO FORM:

City Attorney

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

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "A" to Management Covenant
(legal description of Property)

ATTACHMENT NO. 14

DEVELOPER PUBLIC IMPROVEMENTS LIST

ATTACHMENT NO. 14

DEVELOPER PUBLIC IMPROVEMENTS LIST

ITEM NO.	V. MAYA - PREVAILING WAGE - THIRD STREET REALIGNMENT	UNIT MEAS	QUAN	UNIT PRICE	AMOUNT
48.	Mobilization - Assume Street Contractor or Non-Wet Utility Contractor would Construct Realignment	LS	1	4,000.00	4,000.00
49.	Demo, Remove and Dispose of Sidewalk - Assume 600 LF x 10' Wide (Average)	SF	6,000	9.00	54,000.00
50.	Demo, Remove and Dispose of Curb & Gutter	LF	600	5.00	3,000.00
51.	Sawcut, Demo, Remove and Dispose of Pavement (6' Wide) - Assume 600 LF x 6' Wide	SF	3,600	6.00	21,600.00
52.	Construct Sidewalk	SF	6,000	8.00	48,000.00
53.	Construct Curb and Gutter	LF	600	28.00	16,800.00
54.	Furnish and Install AC/AB Slot Patch Paving - Assume 6" Full Depth AC	SF	600	13.00	7,800.00
55.	Dirt Balance, Subgrade Preparation and Fine Grade for Sidewalk	SF	6,000	0.50	3,000.00
56.	Dirt Balance, Subgrade Preparation and Fine Grade for Curb and Gutter	LF	600	16.00	9,600.00
57.	Dirt Balance, Subgrade Preparation and Fine Grade for Slot Patch	SF	600	2.00	1,200.00
58.	Signaling and Striping	ALLOW	1	10,000.00	10,000.00
59.	Traffic Control	ALLOW	1	5,500.00	5,500.00
60.	Remove and Relocate Street Light - Assume no major conduit runs	EA	4	7,300.00	29,200.00
61.	Remove and Dispose of Existing Catch Basin & 18" RCP to New CB Location	EA	1	2,500.00	2,500.00
62.	Construct Catch Basin, W=7'	EA	1	5,000.00	5,000.00
63.	Remove Handicap Ramp	EA	2	630.00	1,260.00
64.	Construct Handicap Ramp	EA	2	3,000.00	6,000.00
65.	Design and Plan Costs	LS	1	7,500.00	7,500.00
66.	Tree Wells - Assume 1 EA every 40 LF including Tree - Assume 48" Box Tree or Similar	EA	15	4,500.00	67,500.00
SUB-TOTAL					\$ 303,460.00

NOTE: * Unit Price per City of Pomona

ITEM NO.	VI. MAYA - DRY UTILITIES - PER MORROW MANAGEMENT	UNIT MEAS	QUAN	UNIT PRICE	AMOUNT
TRENCHING & BACKFILL					
67.	Sole Trench (Elec)	LF	35	10.00	350.00
68.	Sole Trench (Comm.)	LF	10	8.00	80.00
69.	Sand Base(3")	LF	45	2.25	101.25
70.	Sand Shade (12" Elec./Comm.)	LF	45	2.95	132.75
ELECTRIC					
71.	Furnish and Install 5" Conduit (Primary)	LF	40	5.00	200.00
72.	Furnish and Install Slab Box - 8'x10'	EA	1	9,500.00	9,500.00
COMMUNICATION					
73.	TV - Furnish and Install 3" Conduit	LF	35	3.25	113.75
SUB-TOTAL					\$ 10,477.75

ITEM NO.	III. MAYA - NON-PREVAILING WAGE - SANITARY SEWER	UNIT MEAS	QUAN	UNIT PRICE	AMOUNT
REMOVALS / DEMOLITION					
38.	Mobilization	LS	1	4,000.00	4,000.00
39.	Remove and Dispose of Existing 8" VCP Sewer Main - Assumes +/- 8' Depth	LF	628	125.00	78,500.00
40.	Remove and Dispose of Existing Sewer Manhole	EA	1	2,500.00	2,500.00
41.	Cap Existing 8" VCP Sewer Line at Western Property Line	EA	1	500.00	500.00
42.	Temporary Sewer Bypass for School at North East Portion of Property - Allowance	ALLOW	1	5,000.00	5,000.00
43.	Sawcut, Remove, Dispose and Replace Existing Concrete Sidewalk	SF	132	17.00	2,244.00
44.	Sawcut, Remove, Dispose and Replace Existing Pavement (Trench) - Assume 4" AC over 8" AB	SF	95	8.00	760.00
45.	Temporary Sewer Bypass for Sewer Connection at Main Street and Alley Intersection	ALLOW	1	10,000.00	10,000.00
SUB-TOTAL					\$ 103,504.00

NOTE: * Unit Price per City of Pomona

ITEM NO.	IV. MAYA - NON-PREVAILING WAGE - DOMESTIC WATER	UNIT MEAS	QUAN	UNIT PRICE	AMOUNT
REMOVALS / DEMOLITION					
46.	Remove and Dispose of Existing 2" Domestic Water Lateral	LF	110	36.00	3,960.00
47.	Cap Existing 2" Domestic Water Lateral at South Property Line	EA	2	900.00	1,800.00
SUB-TOTAL					\$ 5,760.00

NOTE: * Unit Price per City of Pomona

ATTACHMENT NO. 15
CITY PUBLIC IMPROVEMENTS LIST

ATTACHMENT NO. 15
CITY PUBLIC IMPROVEMENTS LIST

ITEM NO.	II. CITY - PREVAILING WAGE - DRY UTILITIES - PER MORROW MANAGEMENT	UNIT MEAS	QUAN	UNIT PRICE	AMOUNT
TRENCHING & BACKFILL					
13.	Mobilization	LS	1	1,500.00	1,500.00
14.	Joint Trench (2 Party; Elec./Comm.)	LF	850	17.00	14,450.00
15.	Sole Trench (Elec.)	LF	300	17.00	5,100.00
16.	Sole Trench (Comm.)	LF	130	12.00	1,560.00
17.	Sand Base (1")	LF	920	1.10	1,012.00
18.	Sand Base(3")	LF	1,150	2.25	2,587.50
19.	Sand Shade (12" Elec./Comm.)	LF	1,150	2.95	3,392.50
20.	Concrete encasement	LF	920	27.00	24,840.00
ELECTRIC					
21.	Furnish and Install 5" Conduit (Primary)	LF	3,660	5.25	19,215.00
22.	Furnish and Install 4" Conduit (Primary)	LF	260	4.50	1,170.00
23.	Furnish and Install Vault - 7' x 14' x 11'	EA	1	28,000.00	28,000.00
24.	Furnish and Install Intercept Pull-Box 2 1/2' x 4'	EA	1	4,000.00	4,000.00
COMMUNICATION					
25.	TV - Furnish and Install 3" Conduit	LF	2,980	3.50	10,430.00
26.	TV - Furnish and Install Pull-Box 2' x 3'	LF	3	2,100.00	6,300.00
27.	Telco - Install false curb & gutter at MH location	LS	1	3,000.00	3,000.00
MISCELLANEOUS					
28.	Approved Contractor for Vault connection	LS	3	2,500.00	7,500.00
29.	Sawcut Asphalt and Repair	LF	680	140.00	95,200.00
30.	Saw-cut remove sidewalk	LF	560	75.00	42,000.00
31.	Traffic Control	LS	1	25,000.00	25,000.00
32.	Protective Barriers	LS	1	1,200.00	1,200.00
SOUTHERN CALIFORNIA EDISON - RELOCATION					
33.	Cables and connectors	LS	1	130,700.00	130,700.00
34.	Switch and Transformer	LS	1	51,000.00	51,000.00
35.	Idle Facility Removal	LS	1	18,000.00	18,000.00
COMMUNICATION - RELOCATION					
36.	TV - Cables and connectors	LF	1	85,000.00	85,000.00
37.	Telco - Adjust MH necking as required	LS	3	3,000.00	3,000.00
SUB-TOTAL.....					\$ 149,157

delete 88,000
del 1st col

ITEM NO.	I. CITY - PREVAILING WAGE - SANITARY SEWER	UNIT MEAS	QUAN	UNIT PRICE	AMOUNT
OFFSITE RELOCATION					
1.	Mobilization	EA	1	4,000.00	4,000.00
2.	Pothole for Existing Utilities - 10 Locations	EA	10	1,000.00	10,000.00
3.	Traffic Control	LS	1	5,000.00	5,000.00
4.	Furnish and Install 8" VCP Sewer Main Within Existing Street (Shield) - Assumes +/- 7.5' Deep per City of Pomona Std. B-6-61 Including Slurry Backfill	LF	1,160	90.00	104,400.00
5.	Furnish and Install 6" VCP Sewer Lateral per City of Pomona Std. B-8-61	LF	83	62.00	5,146.00
6.	Utility Crossings Support - New Sewer Line Crossing Existing Utilities	EA	8	1,500.00	12,000.00
7.	Construct Sewer Manhole per City of Pomona Std. B-11-83	EA	3	6,000.00	18,000.00
8.	Construct Manhole per City of Pomona Std. B-11-83 and Join Existing Sewer Main on Main Street and Alley Intersection	EA	1	6,000.00	6,000.00
9.	Construct 6" Standard Terminal Cleanout per City of Pomona B-10-61	EA	2	1,000.00	2,000.00
10.	Join Existing School Sewer Lateral to New 6" Sewer Main	EA	1	1,250.00	1,250.00
11.	Sawcut, Remove, Dispose and Replace Existing Pavement (Trench) - Assume 4" AC over 8" AB	SF	5,000	8.00	40,000.00
12.	Pavement Trench Repair (Grind and Overlay) per City of Pomona Std. A-26-02 - Assume Case 3 - Assume would be Completed by Street or Non-West Utility Contractor	SF	42,708	2.00	85,416.00
SUB-TOTAL.....					\$ 293,213.00

NOTE: * Unit Price per City of Pomona