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DEVELOPMENT AGREEMENT DA 2020-__
("5550 Harbor, 5555 Jillson, and 5625 Jillson")

BY AND BETWEEN

THE CITY OF COMMERCE,

and

CITY VENTURES HOMEBUILDING, LLC

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DEVELOPMENT AGREEMENT DA 2020-__
(“5550 Harbor, 5555 Jillson, and 5625 Jillson”)

THIS DEVELOPMENT AGREEMENT DA 2020-__ (this “Agreement”) is entered into as of the __ day of _____, 2020 (the “Reference Date”), by and between the CITY OF COMMERCE, a California municipal corporation and general law city existing under the Constitution of the State of the California (“City”), and CITY VENTURES HOMEBUILDING, LLC, a Delaware limited liability company (“Developer”). The City and Developer are occasionally referred to herein collectively as the “Parties.” This Agreement is entered into with reference to the following:

R E C I T A L S:

A. California Government Code Sections 65864-65869.5 (the “Development Agreement Act”) authorize City to enter into a binding development agreement for the development of real property within its jurisdiction with persons having a legal or equitable interest in such real property.

B. The property that is the subject of this Agreement consists of three parcels consisting of approximately 1.978, 2.43 and 1.326 acres, respectively, all located in the City of Commerce, County of Los Angeles, California, and more particularly described on Exhibit “A” and depicted on Exhibit “A-1” attached hereto and by this reference incorporated herein (each, a “Property and collectively, the “Properties”).

C. The City as seller and Developer as buyer entered into two Purchase and Sale Agreements and Escrow Instructions, one for the Harbor Property and the other for the two Jillson Properties, each dated July 16, 2019 (“Purchase Agreements”), pursuant to which the City agreed to sell and Developer agreed to buy the Properties, respectively, as more particularly described therein.

D. As more particularly detailed in the Tentative Maps attached hereto as Exhibit “B”, the Site Plan attached hereto as Exhibit “C,” and the Development Standards attached hereto as Exhibit “D” the Developer’s proposed project generally involves the development of 37 residential units on the Harbor Property, and 31 and 65 residential units, respectively, on the two Jillson Properties (the “Project”).

E. Developer has submitted to the City applications for the approval of this Agreement, three tentative tract maps, one for each of the three Properties, the Site Plan and a demolition permit.

F. Among other purposes, this Agreement is intended to be, and shall be construed as, a development agreement within the meaning of the Development Agreement Act. This Agreement will eliminate uncertainty and ensure orderly development of the Project, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, and

assure attainment of the maximum effective utilization of resources within City, by achieving the goals and purposes of the Development Agreement Act. In exchange for these benefits to City, Developer desires to receive the assurance that it may proceed with development of the Project in accordance with the terms and conditions of this Agreement and the Development Approvals, all as more particularly set forth herein.

G. All actions taken by City have been duly taken in accordance with all applicable legal requirements, including the California Environmental Quality Act (California Public Resources Code Sections 21000, *et seq.*) (“CEQA”), and all other requirements for notice, public hearings, findings, votes and other procedural matters. The City approved an environmental assessment in accordance with CEQA for the Project on _____, 2020.

H. The City of Commerce Planning Commission held a public hearing on July 20, 2020 and heard all comments concerning the proposed Development Agreement. After reviewing the proposed Development Agreement and considering all public testimony, the Planning Commission recommended approval of the Development Agreement.

I. The City Council of the City of Commerce has found that this Agreement is in the best public interest of the City and its residents. The City Council has determined that the Project and this Agreement are consistent with City’s General Plan, including the goals and objectives thereof. On _____, 2020, the City Council introduced Ordinance No. ___, and on _____, 2020, the City Council adopted Ordinance No. ___ approving this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. DEFINITIONS & DEVELOPER PROVISIONS.

1.1 Definitions.

This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized when used in this Agreement. In addition to the capitalized terms elsewhere in this Agreement, the defined terms include the following:

“*Agreement*” means this Development Agreement.

“*City*” means the City of Commerce, a California general law city and municipal corporation.

“*City Manager*” means the City’s City Manager, or designee as determined by the City City Manager.

“*City Council*” means the City Council of City.

“*Development*” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project, including, but not limited to: demolition of existing structures, rough and fine grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; and the installation of landscaping and improvements. “*Development*” also includes the maintenance and repair, of any building, structure, improvement, landscaping or facility after the construction and completion thereof on the Property.

“*Development Agreement Act*” is defined in Recital A.

“*Development Approvals*” means any and all permits, licenses, consents, rights and privileges, and other actions approved or issued by City in connection with the Development on or before the Effective Date, including but not limited to:

- i) General plans and general plan amendments;
- ii) Specific plans and specific plan amendments
- iii) Zoning, rezoning, change of zone and zoning amendments;
- iv) Approved conceptual site design and architectural plans for the Project, with conditions;
- v) Tentative and final parcel maps;
- vi) Applicable environmental documentation and mitigation measures (if any) pursuant to the California Environmental Quality Act, including the environmental assessment for this Project.
- vii) Demolition, grading and building-related permits.
- viii) The Site Plan.

“*Developer*” means City Ventures Homebuilding, LLC, a Delaware limited liability company.

“*Development Standards*” those certain development standards attached hereto as Exhibit "D", which shall govern over any conflicting standards otherwise applicable to the Property.

“*Effective Date*” means the date that this Agreement shall take effect as defined in Section 2.2 of this Agreement.

“*Environmental Assessment*” means the environmental impact report, mitigated negative declaration, negative declaration, exemption or other environmental document approved for the Project pursuant to the California Environmental Quality Act (“CEQA”).

“Existing Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City, including but not limited to City’s development impact fees, or similar development mitigation fees, and any and all other fees chargeable by City for the Project, adopted and effective on or before the Effective Date governing the Development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, the rate of development of land, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development, including, but not limited to, the Development Approvals.

“Mitigation Measures” mean those requirements imposed on the Project for environmental mitigation identified as part of the Environmental Assessment.

“Mortgagee” means a mortgagee as defined in Section 7.2 of this Agreement.

“Off-Site Improvements” means the Perimeter Improvements and off-site improvements not on the Subject Property, which are required for the Project and directly attributable to the impacts of the Project, such as perimeter roadway, sewer lines, and storm drain improvements, as identified in the Development Approvals and are consistent with the Site Plan.

“Perimeter Improvements” means the design, approval, construction, installation and maintenance of roadways, curbs, gutters, sidewalks, street trees, street lights, landscaping, all approved plant material, irrigation systems and walls located on the perimeter of the Property required as part of the Development Approvals and are consistent with the Site Plan.

“Purchase Agreements” is defined in Recital C.

“Project” means the Development as set forth in the Tentative Maps and Site Plan and described in Recital D and consistent with the Development Approvals, Tentative Maps and Site Plan.

“Property” and *“Subject Property”* are defined in Recital B. The term *“Property”* and *“Subject Property”* shall mean the land, together with (i) all improvements now or hereafter constructed thereon (*“Improvements”*); (ii) all rights, privileges, easements, licenses and interests appurtenant thereto (collectively *“Appurtenances”*); and (iii) all intangible property (*“Intangible Property”*) and tangible personal property (*“Personal Property”*) owned or held in connection with the land or located on the land, including without limitation, development rights, governmental approvals and land entitlements.

“Reservation of Authority” means the rights and authority excepted from the assurances and rights provided to Developer under this Agreement and reserved to City under Section 2.8.

“Schedule of Performance” is defined in Section 4.1 of this Agreement.

“Site Plan” means the site plan depicting the general design, land uses, and overall development of the Project, entitled _____, and dated _____. as set forth in Exhibit “C” and incorporated herein by this reference.

“Subsequent Development Approvals” means all Development Approvals issued subsequent to the Effective Date in connection with the Development.

“Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date governing development and use of the Property.

1.2 Developer Provisions; Rights and Obligations Apportioned; No Cross-Default.

Developer's rights and obligations as the “Developer” under this Agreement apply only to each Property. Any failure to perform, default, or breach of this Agreement solely with respect to the Harbor Property shall not be a failure to perform or default or breach of this Agreement with respect to the Jillson Properties, and City’s recourse under this Agreement shall be limited solely against Developer with respect to the Harbor Property; similarly, any failure to perform, default, or breach of this Agreement solely with respect to the Jillson Properties shall not be a failure to perform or default or breach of this Agreement with respect to the Harbor Property, and City’s recourse under this Agreement shall be limited solely against Developer with respect to the Harbor Property. There shall be no cross-defaults or joint and several liability between the Harbor Property and the Jillson Properties because this Agreement uses the term “Developer” to apply to those rights and obligations it has over the Harbor Property and over the Jillson Properties. This provisions in this Section 1.2 shall survive the termination of this Agreement.

2. GENERAL TERMS AND DEVELOPMENT STANDARDS AND LIMITATIONS.

2.1 Term.

The term of this Agreement shall commence on the Effective Date and shall continue for 15 years (the “Term”), unless said term is otherwise terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto after the satisfaction of all applicable public hearing and related procedural requirements under the Development Agreement Act.

2.2 Effective Date.

This Agreement shall be effective, and the obligations of the Parties hereunder shall be effective, on the date that is the day after the expiration date to subject the ordinance approving this Agreement to referendum pursuant to Government Code Section 65867.5(a) (“Effective Date”). The Effective Date shall be memorialized in writing between the parties, and City shall record or cause to be recorded this Agreement on the Properties in the County Recorder of Los Angeles County.

2.3 Binding Effect of Agreement.

From and following the Effective Date, the Development, and City actions on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement.

2.4 Ownership of Property.

City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Properties and thus Developer is qualified to enter into and be parties to this

Agreement under the Development Agreement Law. Developer has an agreement to purchase the Properties. If Developer only purchases either the Harbor or Jillson Properties, this Agreement shall only apply to such Property(ies) so purchased.

2.5 Amendment or Cancellation.

Except as expressly stated to the contrary herein, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties and in the manner provided for in the Development Agreement Act.

2.6 Termination.

Unless terminated earlier, pursuant to the terms hereof, this Agreement shall automatically terminate and be of no further effect upon the expiration of the Term. Termination of this Agreement, for any reason, shall not, by itself, affect any right or duty arising from entitlements or approvals set forth under the Development Approvals.

2.7 Intent.

City acknowledges that Developer has reasonably entered into this Agreement and will proceed with the Project on the assumption that City has adequately provided for the public health, safety and welfare through the Land Use Regulations. In the event that any future, unforeseen public health or safety emergency arises, City agrees that it shall attempt to address such emergency in such a way as not to impact the Development in accordance with this Agreement and/or the Development Approvals, and if that is not possible, to select that option for addressing the emergency which has the least adverse impact on the Development in accordance with this Agreement and/or the Development Approvals.

2.8 Reservation of Authority by City.

Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

- (a) Processing fees and charges existing on the Effective Date. Processing fees and charges adopted by ordinance or resolution by the City Council after the Effective Date to cover the estimated actual costs, supported by a duly prepared and adopted cost/nexus report that supports those estimated actual costs, in effect at the time of submittal for an application of a permit or entitlement pursuant to the Development Approvals. For purposes of this subdivision and Agreement, "processing fees and charges" includes "fees" as defined in Sections 66013 and 66014 of the Government Code (as that section existed on the date of the Effective Date). "Processing fees and charges" shall also include any development impact fees or similar development mitigation fees of any kind whatsoever (including but not limited to "fees" as described or defined in: Chapter 4.7 (commencing with Section 65970), Chapter 4.9, (commencing with Section 65995), and Chapter 5 (commencing with Sections 66000) of Division 1 of Title 7 of the Government Code; Section 66377 of the Government Code; and Article 5 (commencing with Section 66483) of Chapter 4 of Division 2 of Title 7 of the Government Code, as those sections may be amended or renumbered from time to time) that the City may currently have or may adopt on or after the Effective Date of this Agreement.

Notwithstanding any other provision of this subparagraph (a), impact fees or charges required by the environmental assessment document for this Project, and any fees, charges, impact or mitigation fees or charges imposed by a third party other than the City, shall be paid by Developer.

- (b) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals.
- (c) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matters of procedure.
- (d) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by City as Subsequent Land Use Regulations.
- (e) Regulations in conflict with the Development Approvals, but which are reasonably necessary to protect the public health, safety, and welfare, subsequent to the Development Approval(s). In such instance the City must adopt written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.
- (f) Regulations that are not in conflict with the Development Approvals and this Agreement.
- (g) Regulations that are in conflict with the Development Approvals provided Developer has given written consent to the application of such regulations to the Development.
- (h) Federal or State, County, and multi-jurisdictional laws and regulations specifically required to be enforced as against the Property or the Development pursuant to Government Code Section 65869.5.

2.9 Future Discretion of City.

This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with this Agreement and/or the Development Approvals, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with this Agreement and/or the Development Approvals.

2.10 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.

In the event that Federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date or as decided by binding case law, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal,

State, County, or multi-jurisdictional laws or regulations, and, subject to the next sentence, this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing sentence, either Party may pursue early termination of this Agreement pursuant to the Development Agreement Act if any Federal, State, County, or multi-jurisdictional laws or regulations render the Project and/or the Development financially infeasible as determined in that Party's reasonable discretion.

2.11 Regulation by Other Public Agencies.

It is acknowledged by the Parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development, and this Agreement does not limit the authority of such other public agencies.

2.12 Additional Applicable Codes and Regulations.

City reserves the right to apply the Uniform California building, electrical, mechanical, fire and other building codes as may be adopted in, or incorporated by reference into, the City of Commerce Municipal Code, as existing on the Effective Date or as may be enacted or amended thereafter, applied to the Project in a nondiscriminatory manner.

2.13 Amendment to Applicable Ordinances.

In the event the City Zoning Code is amended by the City in a manner which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of its desire to be subject to the new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Subject property. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Subject Property, but Developer may notify City and City may agree by resolution to apply such amended new standards to the Property.

2.14 Processing Fees.

This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements, when due and payable during the Development of the Project at the rates which are in force and effect on a City-wide basis at the time application is made for the applicable permit or entitlement. Any City development impact fees or similar development mitigation fees shall be imposed, if any, at the rate in effect at Effective Date of this Agreement.

3. DEVELOPER'S RIGHTS AND LIMITATIONS REGARDING DEVELOPMENT OF THE PROJECT.

3.1 Project.

The Project consists generally of the development and construction described in Recital D of this Agreement. The Project is defined and described in the Tentative Maps, Site Plan and Development Standards which specify all of the following aspects of the Project: (i) proposed uses of the Subject Property; (ii) height and size of buildings to be constructed on the

Subject Property; (iii) density and intensity of use of the Subject Property; and (iv) other development and construction standards set forth therein. The project is also defined and described, and shall be consistent with, the project description set forth in the City-approved Environmental Assessment.

3.2 Right to Develop.

Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Tentative Maps, Site Plan, Development Approvals, Development Standards and this Agreement. The Developer shall have the right to develop the Project in phases and in re-ordered phases in its sole and absolute discretion.

3.3 Effect of Agreement on Land Use Regulations.

The rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the rate or timing of development, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Development, shall be those contained in the Development Standards, and if not covered therein, then in the City's Zoning Code, Land Use Regulations and the Development Approvals which were in full force and effect as of the Effective Date, except as follows:

- (a) All development applications which would otherwise have been a variance, conditional use permit, site plan review or administrative review, shall be submitted to, processed and reviewed by the City Manager instead of the Planning Commission. However development applications involving the use, sale, distribution or consumption of alcoholic beverages which are not specifically designated on the Site Plan on the Effective Date shall require the processing and issuance of a conditional use permit in accordance with the rules, regulations, standards and procedures in the City Zoning Code (Title 19 of the City's Municipal Code, or subsequently enacted title or provisions thereof) in effect at the time the development application is submitted.
 - (1) A noticed public hearing shall not be required for review of any development application set forth in subsection 3.3(a) by the City City Manager or designee.
 - (2) The City Manager shall review the development application and determine if the development application is substantially consistent with the Tentative Maps, Site Plan, Development Standards, this Agreement and applicable development regulations of the City. If the City Manager finds such consistency, the City Manager shall approve or conditionally approve the development application.
 - (3) If the City City Manager determines that the development application is not substantially consistent with the Tentative Maps, Site Plan, Development Standards, this Agreement and applicable development regulations of the City, the City City Manager may approve or conditionally approve the development application if the City City Manager determines that the development application is substantially consistent with the zoning, development and design standards in existence on similar properties in the vicinity of the Project.

- (4) If the City City Manager finds that the requirements of subsections (2) or (3) of this subsection 3.3(a) are not met for approval or conditional approval of the development application, the City City Manager may deny the development application or require the applicant to process the development application in accordance with the rules, regulations, standards and procedures in the City Zoning Code ((Title 19 of the City's Municipal Code, or subsequently enacted title or provisions thereof) in effect at the time the development application is submitted.
 - (5) The City City Manager shall make a decision to approve, conditionally approve, or deny the development application within thirty (30) days of receiving a completed development application. For reasonable cause the City City Manager may extend the thirty day processing period for a reasonable time not to exceed an additional four (4) months.
 - (6) The approval, conditional approval or denial of development applications by the City City Manager shall be made in writing supported by substantial findings.
 - (7) The decision of the City City Manager may be appealed directly to the City Council within twenty (20) days of delivery of the written decision to the applicant. Such an appeal must be filed with the City City Manager in writing and contain the specific grounds for the appeal. Appeals may be made by the applicant, a City Council Member, the City Council, or any person who submitted written comments on the development application prior to the decision of the City City Manager.
 - (8) The appeal shall be heard by the City Council within thirty (30) days of the filing of the appeal. The City Council is not required to hold a noticed public hearing. The appeal shall be heard by the City Council at an agendized regular, adjourned or special meeting of the City Council. The appellant and applicant shall receive at least ten days prior written notice of the time and place the appeal will be heard. The appeal shall be based on the record before the City City Manager.
 - (9) The City Council shall render a written decision on the appeal within thirty (30) days of the hearing of the appeal. The decision shall be supported by written findings and shall be mailed or personally delivered to the appellant and applicant. The decision of the City Council is final.
- (b) The Project on the Properties shall be developed substantially in compliance with the layout, siting, design, architecture, density, designated uses, height, setback, parking quantities and layout, ingress, egress aisles, turning radii, and landscaping as provided on the Tentative Maps, Site Plan and Development Standards. Subject to the provisions of Section 3.3(a)(3) of this Agreement, to the extent that any development or development application does not substantially comply with the Tentative Maps, Site Plan, and Development Standards it shall be processed in accordance with the development guidelines and procedures in Title 19 of the City's Municipal Code (or subsequently enacted title or provisions thereof) in effect at the time of the submittal of the application for such land use and/or Subsequent Development Approval.

- (c) To the extent the Tentative Maps, Site Plan and Development Standards clearly specifies the layout, siting, design, architecture, density, designated uses, height, setback, parking quantities and layout, ingress, egress aisles, turning radii, landscaping and other design or zoning criteria for the Project, except signage requirements, the Site Plan shall regulate the design and zoning criteria for the development of the Project. Subject to the provisions of Section 3.3(a)(3) of this Agreement, to the extent that the Site plan does not clearly specify the layout, siting, design, architecture, density, designated uses, height, setback, parking quantities and layout, ingress, egress aisles, turning radii, landscaping and other design or zoning criteria for the Project, the City Zoning Code (Title 19 of the City's Municipal Code, or subsequently enacted title or provisions thereof) shall regulate that aspect of the development of the Project.
- (d) Land uses shown on the Tentative Maps, Site Plan and Development Standards shall be considered allowable or conditionally permitted uses, and shall be processed in accordance with the provisions of Section 3.3 of this Agreement. Land uses not shown on the Tentative Maps, Site Plan and Development Standards as of the Effective Date shall be processed in accordance with the development guidelines and procedures of the City Zoning Code (Title 19 of the City's Municipal Code, or subsequently enacted title or provisions thereof) in effect at the time an application is submitted for the development of such land uses.
- (e) The City is bound with respect to the uses permitted by this Agreement, and as set forth in the Tentative Maps, Site Plan and Development Approvals, insofar as this Agreement, the Tentative Maps, Site Plan and the Development Approvals so provide.

3.4 Zoning of Property

a. The zoning of the Properties is Industrial M-2 with a Housing Opportunity Overlay Zone (HOO), which is hereby activated to the extent not already activated. The Project consists of Dwelling, Multi-family Attached and is thus Permitted by Right. In order to efficiently administer the zoning of the Properties, the City may add an overlay zone designation of Development Agreement 2020-_____ to the Properties.

3.5 Subsequent Development Approvals.

City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed pursuant to this Agreement, and all requisite development application fees shall be calculated based on the rate in effect on the date of submission of the application, and shall be paid at such time as payment for such fees is due and payable for the applicable portion of the Property receiving the permit or entitlement under that application. Development impact or mitigation fees shall be calculated at the rate in effect on the application date. City further agrees that, unless otherwise requested by Developer, it shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Properties after City has granted the same.

3.6 Development In Accordance With Agreement and Applicable Law.

Developer shall commence and complete the Development in accordance with this Agreement (including, without limitation, the Existing Land Use Regulations and the

Development Approvals) and in compliance with all laws, regulations, rules, and requirements of all non-City governing entities with jurisdiction over the Property.

3.7 Changes and Amendments.

The Parties acknowledge and agree that although the Development of the Project will likely require Subsequent Development Approvals, the Development shall be in strict compliance with the Site Plan, Development Standards, Development Approvals and Tentative Maps. Notwithstanding the preceding sentence, Developer may determine that changes are appropriate and desirable in the existing Development Approvals. In the event Developer finds that such a change is appropriate or desirable, Developer may apply in writing for an amendment to prior Development Approvals to effectuate such change. The Parties acknowledge that City shall be permitted to use its sole and absolute discretion in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing sole and absolute discretion, City shall not apply a standard different than used in evaluating requests of other developers. Accordingly, under no circumstances shall City be obligated in any manner to approve any amendment to the Development Approvals. Any change in the Development Approvals made pursuant to Developer's application and deemed a major modification by the City City Manager in his or her reasonable discretion, shall require an amendment to this Agreement, but this Agreement shall be deemed to be in full force and effect subject to the modification of the existing Development Approval.

4. DEVELOPER'S OBLIGATIONS.

4.1 Plan, Design, Construct and Operate the Project.

Developer shall plan, design, construct and operate the Project in a timely manner, generally in accordance with the "Schedule of Performance" attached hereto as Exhibit "E." The Parties acknowledge and agree that the Schedule of Performance is a general sequencing of the phases of Development, and such sequencing may be modified by Developer to effectuate construction and end-use efficiencies. If Developer, in its reasonable discretion, anticipates or decides a phase of the Development may need to be removed or an additional phase of Development should be added, the Schedule of Performance may be amended by mutual written agreement of the Parties. The City Administrator is authorized to sign such amendments.

4.2 Development Costs

Developer shall pay all costs of developing the Project. Development costs shall include, but not be limited to design, architecture, engineering, zoning entitlement fees, building permit fees, construction costs for the Project, costs of California Environmental Quality Act ("CEQA) compliance, dedications of real property interests or construction of Off-Site Improvements or Perimeter Improvements required by the Development Approvals. Nothing in this Agreement shall be construed as requiring City to pay for any part of the development of the Project.

4.3 Cooperation By Developer.

Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder, and cause

Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.

4.4 Other Governmental Permits.

Developer shall use its and take best efforts to apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Subject Property as may be required for the development of, or provision of services to, the Project.

4.5 Reimbursement for City's Efforts on Behalf of Developer.

If Developer delivers a written request to City to enter into an agreement pursuant to this section, City, on behalf of Developer, may enter into a binding agreement with third parties in order to assure the availability of certain permits and approvals or specialized services or expertise necessary for development of the Project. Prior to City executing or otherwise entering into such agreement, City and Developer shall mutually agree in writing on the choice of the third party contractor and the cost allocation between City and Developer for the contracted services. If such mutual agreement is not reached between City and Developer, neither City nor Developer is obligated to enter into such contract or provide such permits, approvals, specialized services or expertise. Developer shall defend City in any challenge by any party to any such mutually approved agreement except when the challenge is alleged and/or raised because of City's failure to perform under such agreement or because of City's willful misconduct or negligence. Developer shall reimburse City for any costs and expenses incurred by City in enforcing any such Developer-approved agreement except when the enforcement of such agreement is allegedly or actually caused by City's failure to perform under such agreement and Developer engaged in no act or omission that cause the City's failure to perform, or is allegedly or actually caused by City's willful misconduct or negligence.

4.6 Conditions of Approval.

- (a) The Developer shall comply with the Mitigation Measures, if any, required by the Environmental Assessment all at Developer's cost.
- (b) Developer shall offer dedications to City or other applicable public agency and complete Off-Site Improvements and Perimeter Improvements required in connection with the Project, all at Developer's cost, and as specified in the Development Approvals.

4.7 Indemnification.

a. Developer agrees to and shall, at its own cost and expense, indemnify, hold harmless, and defend, City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement except for those acts, errors, and/or omissions caused or alleged to be caused by the negligence or willful misconduct of the City (or its officers, officials, members, agents, employees, or representatives). The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this section, regardless of whether or

not City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, City agrees, at no cost to City, to cooperate with Developer.

b. In the event of any court action or proceeding challenging the validity of this Agreement, any of the Development Approvals or the Environmental Assessment prepared and adopted for the Project, Developer shall defend, indemnify and hold harmless, at its own expense, the City and its officers, officials, members, agents, employees, consultants and representatives from and against the action or proceeding, except for those acts, errors, and/or omissions caused or alleged to be caused by the negligence or willful misconduct of the City (or its officers, officials, members, agents, employees, or representatives). In such instance, City shall have the right to choose the defense counsel to represent the City subject to the reasonable approval of the Developer, which approval shall not be unreasonably withheld or delayed. For purposes of the preceding sentence, Developer reasonably withholds or delays consent when either Developer experienced in a prior matter or, after consultation with Developer's legal counsel or its consultants, Developer learns that the City-selected defense counsel may lack the experience, expertise, reputation, client-relations, or other factors typically used when selecting legal counsel for a litigation matter. In the event of such court action or proceeding described in this Section 4.7(b), if Developer is not named as a party or real party in interest Developer may petition the court to intervene in the action as a named party in such court action or proceeding, in which case Developer shall have the right to defend, at its own expense, itself and the challenged actions in accordance with this section. To the extent a joint defense is not inconsistent with either Party's claims or defenses in any such court action or proceeding, Developer and City shall cooperate with each other in any such defense as either Developer or City may reasonably request. Neither Party may resolve such challenge without the written agreement of the other Party to the extent the Parties have agreed in writing to a joint defense on an asserted claim or cause of action or to jointly bring a claim or cause of action. In the event Developer fails or refuses to be a party in any challenge to this Agreement, the Development Approvals or the Environmental Assessment, City shall have the right not to defend such challenge, and to resolve such challenge in any manner it chooses in its sole discretion, including termination of this Agreement, all without incurring any obligation or liability to Developer. If the cost of defending any challenge, claim, court action or proceeding against the City challenging the validity of this Agreement, any of the Development Approvals or the Environmental Assessment prepared and adopted for the Project is covered by insurance payable to the City, the costs of defense shall be born by the City, but only to the extent of such insurance coverage.

c. The indemnification provided in this section, and any other indemnification provided under this Agreement by "Developer" are subject to the definition of "Developer" and Section 1.2 of this Agreement. This paragraph is for clarification and does not limit the provisions as to the application of the definition of "Developer" and Section 1.2 to all other terms and conditions in this Agreement.

4.8 Nexus/Reasonable Relationship Challenges.

The Developer consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Regulations or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal

protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

4.9 Designation of Affordable Housing.

City may, in City's sole discretion, elect to require that up to three homes in each phase of the Project (no more than nine total) shall be designated as affordable homes, which shall be sold by Developer to persons and families of moderate income (as defined in Health and Safety Code Section 50093) at an affordable housing cost (as defined in Health and Safety Code Section 50052.5). City shall provide written notice to Developer of its election to require affordable homes within 30 days after issuance of the 1st building permit for a phase. As a condition of Developer's obligation to sell an affordable home to a moderate income household at an affordable housing cost, City shall provide a loan to the purchaser of the affordable home, with the loan amount equal to the difference between the market sales price of the home, less the affordable sales price of the home, and less the buyer's down payment. The loan shall be a "silent second" loan, which shall be due in full upon the resale of the home, with no payments required while the buyer is the owner of the home and residing in the home as the buyer's principal residence. City shall provide draft documentation for the affordable housing program and loan to Developer within 10 days after the date of City's notice to Developer of its election to require affordable homes. Developer shall cooperate with City in the implementation of the loan program. In the event that the City does not provide such a loan to a purchaser of a home which has been designated as affordable, Developer shall not be required to sell such home to a person and family of moderate income at an affordable housing cost.

5. CITY'S OBLIGATIONS.

5.1 Processing.

Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees (if any) at the rates consistent with this Agreement, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project in accordance with this Agreement and the Tentative Maps, Site Plan, Development standards and Development Approvals, including, but not limited to, the following:

- (a) the holding of all required public hearings; and
- (b) the processing and approval of all ministerial approvals and related matters as necessary for the completion of the development of the Project. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by law and shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore.

5.2 Scope of Subsequent Review/Confirmation of Compliance Process.

Nothing set forth herein impairs or interferes with the right of City to require the processing of building permits in compliance with applicable provisions of State Fire Codes,

Health and Safety Codes, and Building, Electrical, Mechanical, and similar State building codes, and any applicable City ordinances implementing those State building codes.

5.3 Project Approvals Independent.

All approvals required for the Project which may be or have been granted, and all land use entitlements or approvals generally which have been issued or will be issued by City with respect to the Project, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement terminates for any reason, then such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any such Project approvals or other land use approvals and entitlements. In such cases, such approvals and entitlements will remain in effect pursuant to their own terms, provisions, and the Conditions of Approval. It is understood by the Parties to this Agreement that pursuant to existing law, if this Agreement terminates or is held invalid or unenforceable as described above, such approvals and entitlements shall not remain valid for the Term, but shall remain valid for the term(s) of such approvals and entitlements.

5.4 Standard of Review.

The rules, regulations and policies that apply to any ministerial approvals which must be secured prior to the construction of any portion of the Project shall be the Existing Land Use Regulations, except as otherwise provided in this Agreement. Any ministerial approval, including without limitation a building permit, shall be approved by the City within a reasonable period of time after application is made therefore.

5.5 Contract Services.

If requested by Developer, at Developer's expense, City shall obtain outside contractual services as necessary to ensure prompt processing of any development application (permit or entitlement) that may be required or related to the Project.

5.6 Review for Compliance.

City shall review this Agreement at least once during every twelve (12) months following the Effective Date during the Term of this Agreement, in accordance with City's procedures and standards for such review. During such periodic review by City, Developer, upon written request from City, shall be required to demonstrate, and hereby agrees to furnish, evidence of good faith compliance with the terms hereof; provided, however, that Developer will not be required to disclose confidential or trade secret business information for such review. The failure of City to conduct or complete the annual review as provided herein or in accordance with the Development Agreement Act shall not impact the validity of this Agreement.

6. DEFAULT; REMEDIES; DISPUTE RESOLUTION.

6.1 Events of Default.

Subject to any extensions of time by mutual consent in writing, and subject to the provisions of force majeure (below) in this Agreement, the failure or unreasonable delay by

either Party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

6.2 Notice of Default.

Any Notice of Default given hereunder shall be in writing and specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

6.3 Cure Period.

During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.

6.4 General Default Remedies.

After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.

6.5 Remedies Cumulative.

Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

6.6 Legal Action.

Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

6.7 Limitation of Damages Relief Against City.

The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach of

this Agreement. Damages as used in this Section 6.7 shall include damages of any and all types including, but not limited to, actual out-of-pocket expenses, overhead, lost profits, court costs, attorney's fees, witness fees, expert witness fees, consultant's fees and any other loss suffered by Developer of any kind or nature.

6.8 Developer Default & Permitting.

No building permit shall be issued or building permit application accepted for any structure on the Subject Property if, after City has delivered written notice of default and Developer has not timely cured the identified default pursuant to this Agreement, Developer is in default of the terms and conditions of this Agreement, and City may suspend permit issuance and application acceptance as provided in this section until such default is cured by the Developer or is waived by City.

6.9 Developer Default; Clarification.

The default provisions in this Article 6 (Sections 6.1-6.7) and any other default provisions under this Agreement by "Developer" are subject to the definition of "Developer" and Section 1.2 of this Agreement. This paragraph is for clarification and does not limit the provisions as to the application of the definition of "Developer" and Section 1.2 to all other terms and conditions in this Agreement.

7. MORTGAGEE PROTECTION; CERTAIN RIGHTS TO CURE.

7.1 Encumbrances on the Project.

This Agreement shall not prevent or limit Developer from encumbering the Property or any portion thereof or any improvements thereon with any mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance ("Mortgage") in which the Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and fair value in order to secure financing with respect to the ownership, acquisition, construction, development, use or operation of the Project and/or the Property.

7.2 Mortgage Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a holder of a beneficial interest under a Mortgage, or any successor or assignee to said holder ("Mortgagee"), whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise, shall be subject to all of the terms and conditions of this Agreement.

7.3 Mortgagee Not Obligated.

No Mortgagee will have any obligation or duty under this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance. In addition, the Mortgagee may but shall not be required to develop or operate the Property, and to the extent that any covenant to be performed by Developer is a

condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder.

7.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

City shall, upon written request to City, deliver to each Mortgagee a copy of any notice of default given to Developer under the terms of this Agreement, at the same time such notice of default is provided to Developer. The Mortgagee shall have the right, but not the obligation, to cure, correct, or remedy the default, within ten (10) days after the receipt of such notice from City for monetary defaults, or within thirty (30) days for non-monetary defaults, or, for such defaults that cannot reasonably be cured, corrected, or remedied within such period, the Mortgagee may cure, correct, or remedy the default if the Mortgagee commences to cure, correct, or remedy such default within such ten (10) day or thirty (30) day period, and continuously and diligently prosecutes such cure to completion. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall be permitted thereafter to remedy or cure the default within such time as is reasonably necessary to cure or remedy said default but in no event more than thirty (30) days after obtaining possession. If any such default cannot, with diligence, be remedied or cured within such thirty (30) day period, then such period shall be extended to permit the Mortgagee to effect a cure or remedy so long as Mortgagee commences said cure or remedy during such thirty (30) day period, and thereafter diligently pursues such cure to completion.

8. TRANSFERS OF INTEREST IN PROPERTY OR AGREEMENT.

8.1 City's Intent.

Developer has demonstrated, and the City finds that Developer possesses, the experience, reputation and financial resources to develop and maintain the Subject Property in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Subject Property to a high quality standard contemplated by the General Plan that the City is entering into this Agreement. Accordingly, restrictions on the right of Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's anticipated General Plan and this Agreement.

8.2 Developer's Right to Assign or Transfer.

Developer may assign or transfer any of its rights or interests under this Agreement and the Property, or any portion thereof, subject to written consent of City, which shall not be unreasonably withheld or delayed. City consent is not required for the following assignments or transfers:

- (a) To an affiliate of Developer, where Developer has control or a majority ownership interest in such affiliate;
- (b) To any national or regional homebuilder;
- (c) To any Mortgagee (as described above);

(d) Any transfer or assignment resulting from any proceeding in bankruptcy receivership, or order relating thereto.

8.3 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation.

Developer agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable developer.

8.4 Request Procedure.

City shall administer the provisions of this section through its Director of Public Works and Development Services or their designee. Developer shall notify the Director and the City City Manager in writing of its request for City's consent to an assignment or transfer under this section, together with a statement that if the Director does not notify Developer within thirty (30) days of receipt of the request, the request will be deemed approved.

8.5 30-Day Period.

If, within such 30-day period the Director does not so notify Developer, the request for consent shall automatically be deemed approved and no further action by Developer or the City shall be necessary. If, within such 30-day period, the Director notifies Developer that the request will be considered and acted upon by City, Developer shall furnish such additional information as the Director may reasonably request at the time of such notice, and City shall proceed to consider and act upon the Developer's request for City's consent to the proposed assignment or transfer. Failure by the City to act within thirty (30) days of giving such notice or of receiving the additional requested information shall automatically be deemed an approval of the request.

8.6 City Council Approval.

In the event the Director determines that the assignment or transfer should be acted upon by the City Council, and the Director so notifies Developer within fifteen (15) days of giving the notice or receiving the information described herein, the matter shall be referred to the City Council. The City Council shall have thirty (30) days from the date of such notice to approve or deny the requested transfer or assignment. Failure of City to act within the thirty (30) day period shall automatically be deemed an approval of the request.

8.7 Ownership Changes.

The management control and responsibility of Developer and the expertise, competence, and financial strength of Developer are integral components of the consideration for City entering into this Agreement. In order to preserve such consideration for City and for City to receive full value, the parties hereto agree that the occurrence of any of the following events constitute, for purposes of this provision, an assignment:

(i) A change in the composition of ownership interests in and control of Developer, the result of which diminishes the ownership interests and control of the persons and entities currently in control of Developer on the Effective Date to less than twenty percent (20%)

(ii) A change in the composition of ownership interests in and control of the Subject Property such that Developer's equity in the Subject Property is reduced to less than fifty-one percent (51%).

8.8 Minor Assignments.

The following transfers shall be considered minor assignments which shall not be subject to this section:

- (a) Transfer of the Property after completion of the Project.
- (b) All transfers and assignments listed in Section 8.2 in which City grants its consent.

8.9 Notice of Proposed Assignment.

If City's further consent for an assignment or transfer is required under this Agreement, Developer must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.

8.10 Conditions and Standards.

The conditions and standards referred to above are as follows:

- (a) Such assignee or transferee possesses the experience, reputation and financial resources to cause the Subject Property to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;
- (b) Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;
- (c) Such assignment or transfer will not impair the ability of City to achieve the objectives of its general Plan and this Agreement;

8.11 Financing Exemption.

Mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Subject Property are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and Developer retains a legal or equitable interest in the Subject Property and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

8.12 Notice of Assignment.

Upon receiving approval of an assignment, Developer shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the

assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.

8.13 Unapproved Assignments.

If City reasonably makes the determination not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and Developer conveys the Subject Property to a third party, in whole or in part, Developer shall remain liable and responsible for all of the duties and obligations of this Agreement.

9. RELATIONSHIP OF PARTIES.

9.1 Project as a Private Undertaking.

It is specifically understood and agreed by and between the parties hereto that the development of the Project Site is a separately undertaken private development.

9.2 Independent Contractors.

The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.

9.3 No Joint Venture or Partnership.

City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

10. MISCELLANEOUS.

10.1 Notices.

All notices permitted or required hereunder must be in writing and shall be effected by: (i) personal delivery; (ii) first class mail, registered or certified, postage fully prepaid; or (iii) reputable same-day or overnight delivery service that provides a receipt showing date and time of delivery, addressed to the following Parties, or to such other address as any party may from time to time designate in writing in the manner as provided herein:

To City: City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: City City Manager

With a copy to: Alvarez-Glasman & Colvin
13181 Industry Parkway North, Ste. 400
Industry, CA 91746
Attn: Commerce City Attorney

To Developer::

City Ventures Homebuilding, LLC
3121 Michelson Drive, Suite 150
Irvine, CA 92612
Attn: Ryan Aeh and Kim Prijatel

Any written notice, demand or communication shall be deemed received immediately if personally delivered or delivered by delivery service, and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

10.2 Force Majeure.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or failures to perform are due to the elements, fire, earthquakes or other acts of God, strikes, labor disputes, lockouts, acts of the public enemy, riots, insurrections, or governmental restrictions imposed or mandated by other governmental entities ("Permitted Delay"). City and Developer may also extend times of performance under this Agreement in writing. Notwithstanding the foregoing, Developer is not entitled pursuant to this section to an extension of time to perform because of past, present, or future difficulty in obtaining suitable construction financing or permanent financing for the Development, or because of economic or market conditions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not Developer is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this section.

10.3 Binding Effect.

This Agreement, and all of the terms and conditions hereof, shall be binding upon and inure to the benefit of the Parties, any subsequent owner of all or any portion of the Project or the Property, and their respective assigns, heirs or successors in interest, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

10.4 Independent Entity.

The Parties acknowledge that, in entering into and performing this Agreement, each of Developer and City is acting as an independent entity and not as an agent of the other in any respect.

10.5 Agreement Not to Benefit Third Parties.

This Agreement is made for the sole benefit of the Parties, and no other person shall be deemed to have any privity of contract under this Agreement nor any right to rely on this Agreement to any extent for any purpose whatsoever, nor have any right of action of any kind on this Agreement nor be deemed to be a third party beneficiary under this Agreement, other than as expressly provided in this Agreement.

10.6 Covenants.

The provisions of this Agreement shall constitute mutual covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto for the term of this Agreement.

10.7 Nonliability of City Officers and Employees.

No official, officer, employee, agent or representative of City, acting in his/her official capacity, shall be personally liable to Developer, or any successor or assign, for any loss, costs, damage, claim, liability, or judgment, arising out of or connection with this Agreement, or for any act or omission on the part of City.

10.8 Covenant Against Discrimination.

Developer and City covenant and agree, for themselves and their respective successors and assigns, that there shall be no discrimination against, or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, or any other impermissible classification, in the performance of this Agreement. Developer shall comply with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sections 12101, et seq.).

10.9 Amendment of Agreement.

This Agreement may be amended from time to time by mutual consent of the Parties in accordance with the provisions of the Development Agreement Act.

10.10 No Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Agreement. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof, except as expressly provided herein. No waiver by either party of any of the covenants or conditions to be performed by the other party shall be construed or deemed a waiver of any succeeding breach or nonperformance of the same or other covenants and conditions hereof.

10.11 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the Parties.

10.12 Cooperation in Carrying Out Agreement; City City Manager Authority.

Each party shall take such actions and execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order

to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder. The City City Manager or designee (or other City official identified in this Agreement, shall have the authority to negotiate and execute such further instruments and documents on behalf of the City.

10.13 Estoppel Certificate.

Any party hereunder may, at any time, deliver written notice to any other party requesting such party to certify in writing that, to the best knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature and amount of any such defaults; and (iv) any other reasonable information requested. A party receiving a request hereunder shall execute and return such certificate within ten (10) days following approval of the proposed estoppel certificate by the City Attorney, which approval shall not be unreasonably withheld or delayed. The City Manager or his or her designee is authorized to sign and deliver an estoppel certificate on behalf of City. City acknowledges that transferees, successors and assigns, and Mortgagees may rely upon an estoppel certificate hereunder.

10.14 Construction.

This terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

10.15 Recordation.

This Agreement shall be recorded with the County Recorder of Los Angeles County at Developer's cost, if any, within the period required by California Government Code Section 65868.5. Amendments approved by the Parties, and any cancellation or termination of this Agreement, shall be similarly recorded.

10.16 Captions and References.

The captions of the sections of this Agreement are solely for convenience of reference, and shall be disregarded in the construction and interpretation of this Agreement. Reference herein to a section or exhibit are the sections and exhibits of this Agreement.

10.17 Time.

Time is of the essence in the performance of this Agreement and for each and every term and condition hereof as to which time is an element.

10.18 Recitals & Exhibits Incorporated; Entire Agreement.

The Recitals to this Agreement and all of the exhibits attached to this Agreement are, by this reference, incorporated into this Agreement and made a part hereof. This Agreement, including all exhibits attached hereto, constitutes the entire agreement between the Parties with

respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions and agreements between the Parties, and no parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

10.19 Counterpart Signature Pages.

For convenience the Parties may execute and acknowledge this Agreement in counterparts and when the separate signature pages are attached hereto, shall constitute one and the same complete Agreement.

10.20 Authority to Execute.

Developer warrants and represents that: (i) it is duly organized and existing; (ii) it is duly authorized to execute and deliver this Agreement; (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement; (iv) Developer's entering into and performance of its obligations set forth in this Agreement do not violate any provision of any other agreement to which Developer is bound; and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware which could prevent Developer from entering into or performing its obligations set forth in this Agreement.

10.21 Governing Law; Litigation Matters.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement without regard to conflicts of law principles. Any action at law or in equity brought by any party hereto for the purpose of enforcing, construing, or interpreting the validity of this Agreement or any provision hereof shall be brought in the Superior Court of the State of California in and for the County of Los Angeles, or such other appropriate court in said county, and the Parties hereto waive all provisions of law providing for the filing, removal, or change of venue to any other court. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside of California. In the event of any action between the Parties hereto seeking enforcement of any of the terms of this Agreement or otherwise arising out of this Agreement, the prevailing party in such litigation shall be awarded, in addition to such relief to which such party is entitled, its reasonable attorney's fees, expert witness fees, and litigation costs and expenses.

10.22 No Brokers.

Each of City and Developer represents to the other party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of this Agreement, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

[INTENTIONALLY LEFT BLANK; SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the Reference Date.

“DEVELOPER”

CITY VENTURES HOMEBUILDING, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

“CITY”

CITY OF COMMERCE, a California
municipal corporation

By: _____
_____, Mayor

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

EXHIBITS A & A-1
Legal Description & Depiction of the Harbor Property

EXHIBIT "A"
LEGAL DESCRIPTION

SHEET 1 OF 2

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED IN A GRANT DEED TO THE CITY OF COMMERCE RECORDED SEPTEMBER 20, 1985 AS INSTRUMENT NO. 85-1097589 OF OFFICIAL RECORDS OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF THAT CERTAIN PARCEL DESCRIBED IN A GRANT DEED TO THE CITY OF COMMERCE RECORDED JULY 2, 1962 AS INSTRUMENT NO 4178 IN BOOK D1670 PAGE 746 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF HARBOR STREET AS SHOWN ON TRACT NO. 37889 FILED IN BOOK 944, PAGES 90 THROUGH 95, INCLUSIVE OF MAPS AND THE WESTERLY LINE OF A 20-FOOT WIDE EASEMENT IN FAVOR OF THE COUNTY OF LOS ANGELES AS DESCRIBED IN A DEED RECORDED MAY 31, 1928 IN BOOK 7839 PAGE 237 ALL OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 67°42'26" EAST A DISTANCE OF 82.82 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY LINE SOUTH 22°17'48" WEST A DISTANCE OF 314.74 FEET TO A POINT ON SAID WESTERLY LINE OF SAID 20-FOOT WIDE EASEMENT.

THENCE ALONG SAID WESTERLY LINE OF SAID 20-FOOT WIDE EASEMENT NORTH 22°17'48" EAST A DISTANCE OF 325.45 FEET TO THE POINT OF BEGINNING

CONTAINING 1.978 ACRES, MORE OR LESS.

MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO ALL COVENANTS, RIGHTS, RESERVATIONS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD, IF ANY.

PREPARED BY OR UNDER THE DIRECTION OF:

DRAFT

EDWARD L. REYNOLDS L.S. 7725

8/6/19

DATE



EXHIBIT "A"
LEGAL DESCRIPTION

SHEET 1 OF 2

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED IN A GRANT DEED TO THE CITY OF COMMERCE RECORDED SEPTEMBER 20, 1985 AS INSTRUMENT NO. 85-1097589 OF OFFICIAL RECORDS OF SAID COUNTY.

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THENCE ALONG SAID WESTERLY LINE OF SAID 20-FOOT WIDE EASEMENT NORTH 22°17'48" EAST A DISTANCE OF 325.45 FEET TO THE POINT OF BEGINNING

CONTAINING 1.978 ACRES, MORE OR LESS.

MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO ALL COVENANTS, RIGHTS, RESERVATIONS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD, IF ANY.

PREPARED BY OR UNDER THE DIRECTION OF:

DRAFT

EDWARD L. REYNOLDS L.S. 7725

8/6/19

DATE



EXHIBITS A & A-1
Legal Description & Depiction of the Jillson Properties

EXHIBIT "A"
LEGAL DESCRIPTION

SHEET 1 OF 3

PARCEL A

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED IN AN INDIVIDUAL GRANT DEED TO THE CITY OF COMMERCE REDEVELOPMENT AGENCY RECORDED SEPTEMBER 6, 1991 AS INSTRUMENT NO. 91-1399262 OF OFFICIAL RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID PARCEL OF LAND DESCRIBED IN SAID DOCUMENT RECORDED SEPTEMBER 6, 1991 AS INSTRUMENT NO. 91-1399262 OF OFFICIAL RECORDS OF SAID COUNTY LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE MOST WESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN A CORPORATION GRANT DEED TO THE REDEVELOPMENT AGENCY OF THE CITY OF COMMERCE RECORDED AUGUST 14, 1992 AS INSTRUMENT NO. 92-1520643 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF JILLSON STREET, (60 FEET WIDE), SOUTH 67°42'15" EAST A DISTANCE OF 9.00 FEET TO A POINT ON A LINE 9.00 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN SAID DOCUMENT RECORDED AUGUST 14, 1992 AS INSTRUMENT NO. 92-1520643 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID PARALLEL LINE NORTH 22°17'45" EAST A DISTANCE OF 365.56 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN SAID DOCUMENT RECORDED SEPTEMBER 6, 1991 AS INSTRUMENT NO. 91-1399262 OF OFFICIAL RECORDS OF SAID COUNTY, SAID NORTHEASTERLY LINE BEING A CURVE HAVING A RADIUS OF 374.02 FEET.

TOGETHER WITH THE NORTHWESTERLY 9.00 FEET OF SAID PARCEL OF LAND DESCRIBED IN SAID DOCUMENT RECORDED AUGUST 14, 1992 AS INSTRUMENT NO. 92-1520643 OF OFFICIAL RECORDS OF SAID COUNTY;

CONTAINING 2.430 ACRES, MORE OR LESS.

MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO ALL COVENANTS, RIGHTS, RESERVATIONS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD, IF ANY.

PREPARED BY OR UNDER THE DIRECTION OF:

DRAFT

7/24/19

EDWARD L. REYNOLDS L.S. 7725

DATE



EXHIBIT "A"
LEGAL DESCRIPTION

SHEET 2 OF 3

PARCEL B

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COMMERCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA DESCRIBED IN A CORPORATION GRANT DEED TO THE REDEVELOPMENT AGENCY OF THE CITY OF COMMERCE RECORDED AUGUST 14, 1992 AS INSTRUMENT NO. 92-1520643 OF OFFICIAL RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTHWESTERLY 9.00 FEET OF SAID PARCEL OF LAND DESCRIBED IN SAID DOCUMENT RECORDED AUGUST 14, 1992 AS INSTRUMENT NO. 92-1520643 OF OFFICIAL RECORDS OF SAID COUNTY.

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CONTAINING 1.326 ACRES, MORE OR LESS.

MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO ALL COVENANTS, RIGHTS, RESERVATIONS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD, IF ANY.

PREPARED BY OR UNDER THE DIRECTION OF:

DRAFT

EDWARD L. REYNOLDS L.S. 7725

7/24/19

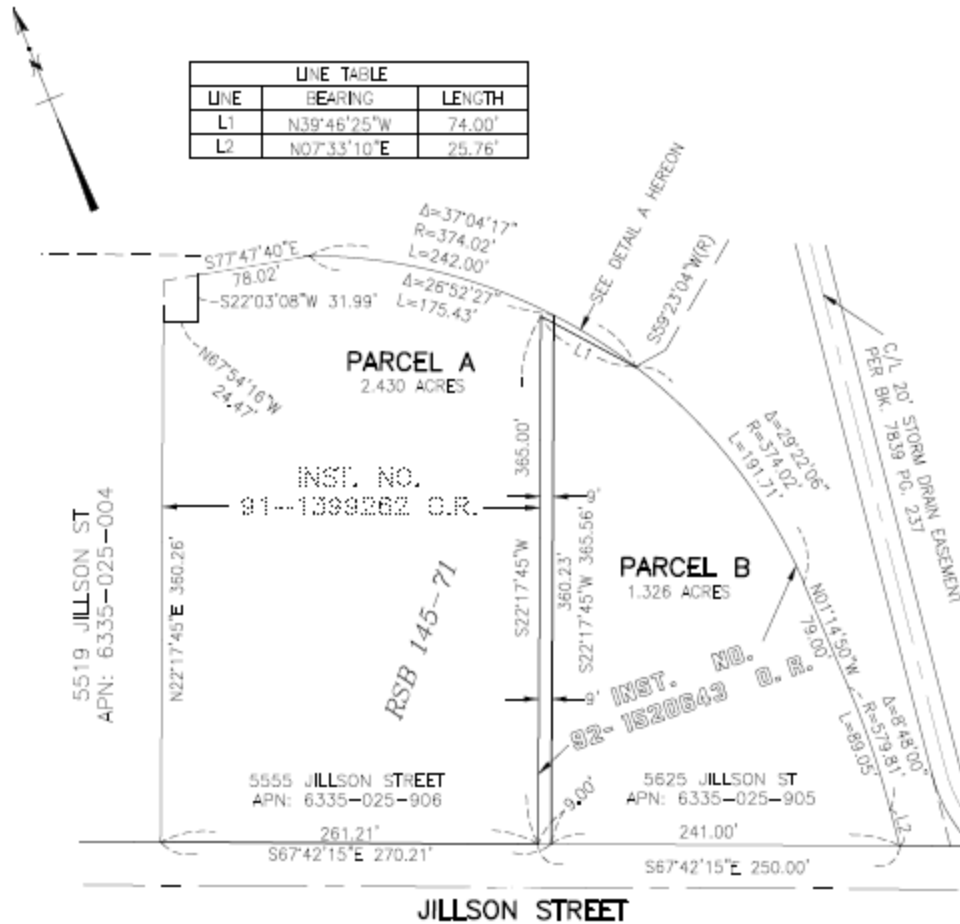
DATE



SCALE: 1" = 100'

EXHIBIT "B"
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION

SHEET 3 OF 3



JILLSON STREET

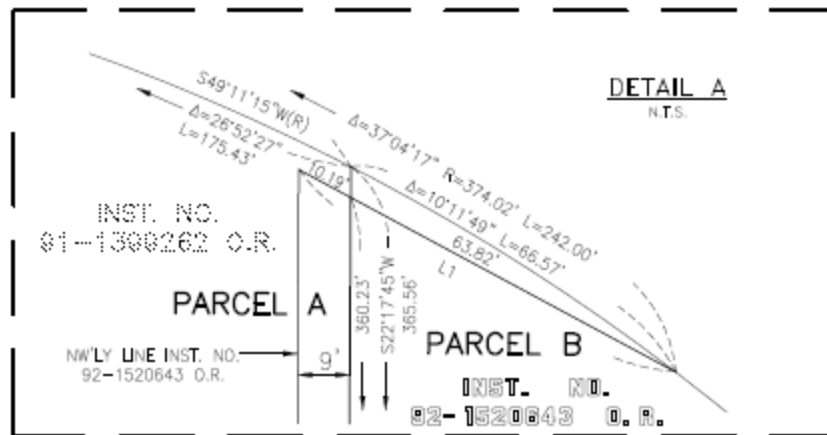


EXHIBIT B
Tentative Maps

DRAFT

EXHIBIT C
Site Plan

DRAFT

EXHIBIT D
Development Standards

City Ventures | WHA
2018392, 2019021 | January 29, 2020

| Development Standard | R-3 | Proposed Developments |
|---|--|---|
| 1. Maximum Density (a) | 21.78 dus/acre (b) | 20.1 du/ac (Harbor Site) 23.3 du/ac (Jillson 1) 26.75 du/ac (Jillson 2) |
| 2. Minimum Lot Area | 2,000 sf/unit and not less than 7,500 sf | 2,165 sf/unit (Harbor Site) 1,863 sf/unit (Jillson 1) 1,628 sf/unit (Jillson 2) |
| 3. Minimum Dwelling Unit Size | 1-bdrm: 700 sf 2-bdrm: 850 sf 3-bdrm: 1,000 sf 4+-bdrm: 1,150 sf | 3-bdrm: 1,394 sf 4+-bdrm: 1,670 sf |
| 4. Maximum Building Height | 35 ft., or three-story, whichever is less | 30 ft. to eaves, 36'-6" to top of parapet |
| 5. Distance Between Buildings (Minimum) | Dwelling to dwelling - 20 ft. Increase of 5 ft. for every 10 ft. of height, or fraction thereof, above 25 ft. | Dwelling to dwelling – 20'-4" |
| 6. Front Yard Setback (Minimum) | 15 ft. from front property line | 10' from front property line (Harbor Site) 5' from front property line (Jillson 1 & 2) |
| 7. Front Yard Setback - Through Lot (Minimum) | N/A | N/A |
| 8. Front Yard Setback - Key Lot (Minimum) | Key lot front yard same as that required for front yard of adjoining interior lot, but not less than 15 ft. | N/A |
| 9. Side Yard Setback | 5 ft. each side | 5' minimum (Harbor Site) 6.8' minimum (Jillson 1) 5'-2" minimum (Jillson 2) |
| 10. Side Yard Setback - Corner Lot (Minimum) | 10 ft. where lot abuts a street | N/A |
| 11. Side Yard Setback - Reverse Corner Lot (Side Yard Adjoining Street) (Minimum) | Not less than required front yard for adjoining interior lot | N/A |

| | | |
|--|---|---|
| 12. Side Yard Setback - If Lot Abuts a Highway (Minimum) | No restriction | N/A |
| 13. Rear Yard Setback (Minimum) | 15 ft. | 8.3' minimum (Harbor Site) 7.1' minimum (Jillson 1) 9.1' minimum (Jillson 2) |
| 14. Minimum Distance of Garage from Street | 20 ft. | N/A (homes do not directly load onto perimeter streets) |
| 15. Floor Area Ratio/Maximum Allowable Floor Area (all structures) | 1 unit=40% of the total area of the lot. This standard does not apply to multiple units. | N/A |
| 16. Maximum Lot Coverage (including all structures, porches, and patios) | 1 unit=45% of the total area of the lot. This standard does not apply to multiple units. (must also be within the allowable floor area) | 35.5% (Harbor Site) 41.3% (Jillson 1) 47.2% (Jillson 2) |
| 17. Off Street Parking Requirements | 2 or more bedrooms: 2 spaces per unit within a garage; plus 0.5 guest space per unit; guest spaces may be uncovered | 2.3 spaces/home (Harbor Site)* 2.23 spaces/home (Jillson 1)* 2.38 spaces/home (Jillson 2)* * Shared parking with city hall lot |

EXHIBIT E
Schedule of Performance

| ACTIVITY | COMPLETION DATE | EXTENDED DATE | COMMENTS |
|--|--------------------|------------------|----------|
| Approval of Development Agreement by City | | | |
| | | | |
| Close of Escrow | | | |
| | | | |
| Submittal of Application for Development Entitlements for Phase | | | |
| | | | |
| Commence construction for Phase | | | |
| | | | |
| Complete Construction for Phase | | | |
| | | | |
| Issuance of Certificate of Occupancy for Phase | | | |
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