DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF SAN JOSE,

City,

and

INSIGHT KING WAH, LLC.,

Developer
# ATTACHMENTS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Site Map</td>
</tr>
<tr>
<td>2</td>
<td>Legal Description</td>
</tr>
<tr>
<td>3</td>
<td>Scope of Development</td>
</tr>
<tr>
<td>4</td>
<td>Schedule of Performance</td>
</tr>
<tr>
<td>5</td>
<td>Form of Grant Deed (Tech Expansion Space)</td>
</tr>
<tr>
<td>6</td>
<td>VTMap</td>
</tr>
<tr>
<td>7</td>
<td>Form of Parking Agreement</td>
</tr>
<tr>
<td>8</td>
<td>Form of Completion Guarantee</td>
</tr>
<tr>
<td>9</td>
<td>Form of DDA Memorandum</td>
</tr>
<tr>
<td>10</td>
<td>Form of Grant Deed (Site)</td>
</tr>
<tr>
<td>11</td>
<td>Preliminary Title Report</td>
</tr>
<tr>
<td>12</td>
<td>Insurance Requirements</td>
</tr>
<tr>
<td>13</td>
<td>Form of Certificate of Compliance (Phase)</td>
</tr>
<tr>
<td>14</td>
<td>Form of Certificate of Compliance (Final)</td>
</tr>
<tr>
<td>15</td>
<td>Project Budget</td>
</tr>
</tbody>
</table>
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into this ______ day of _____________ 2017 ("Effective Date"); by and between THE CITY OF SAN JOSE, a municipal corporation ("City") and INSIGHT KING WAH, LLC, a California limited liability company ("Developer"). The City and the Developer covenant and agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT.

A. [§ 101] Purpose of the Agreement.

The purpose of this Agreement is to provide for the disposition and development of the Site (defined in Section 102 below). A portion of the Site is currently the home of Parkside Hall, an approximately 42,550 square foot building located directly adjacent to the Tech Museum of Innovation facility ("The Tech"). The Tech is owned by the City and operated by The Tech Museum of Innovation, a California nonprofit public benefit corporation ("TMI") pursuant to a lease with the City ("Tech Lease"). TMI also has a leasehold interest in Parkside Hall. The Project (defined in Section 103 below), and the fulfillment generally of this Agreement, are in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements under which the Project is being undertaken.

This Agreement is designed to achieve the development of the Site by the City and the Developer in a coordinated and comprehensive manner. The Developer will undertake the development of the Site; subject to the terms and conditions as more set forth in this Agreement.

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

B. [§ 102] The Site.

The Site is that certain real property which is shown on the Site Map which is Attachment No. 1 to this Agreement, and is legally described in Attachment No. 2 to this Agreement. The Site is located on the block bounded by Park Avenue, South Market Street, West San Carlos Street and South
Almaden Boulevard in San Jose. A portion of the Site lying within South Almaden Boulevard, the current public right of way between Park Avenue and San Carlos Street (the "Paseo"), is owned in fee by the Successor Agency to the Redevelopment Agency of the City of San Jose as successor to the former Redevelopment Agency of the City of San Jose (the "Successor Agency") and will need to be transferred to the City by the Successor Agency in order for the City to convey the Paseo hereunder to the Developer as part of the Site. The City shall use good faith efforts to obtain fee title to that portion of the Paseo owned by the Successor Agency (the "SARA Area") by recorded grant deed from the Successor Agency by the date set forth in the Schedule of Performance attached hereto as Attachment No. 4 (the "SARA Transfer Target Date"). Subject to the provisions of the last paragraph of this Section 102, but notwithstanding any other provision herein to the contrary, the term "Effective Date" for all purposes under this Agreement shall be deemed to mean the date that the City obtains fee title to the SARA Area (provided, however, that this Agreement shall nonetheless be effective as of the date set forth in the first paragraph of this Agreement). The City shall provide written notice to the Developer promptly following the date upon which the grant deed from the Successor Agency to the City of the SARA Area is recorded in the official records of Santa Clara County, and such notice shall include a conformed copy of the recorded grant deed. Promptly following such transfer, the Paseo (including all areas below, upon and above the Paseo without limitation) will be vacated by the City and will be transferred by the City to the Developer as part of the Site for the consideration and in accordance with the terms and provisions this Agreement.

Subject to the provisions of the last paragraph of this Section 102, if at any time prior to the SARA Transfer Target Date, it becomes evident that the City will be unable to obtain fee title to the SARA Area by the SARA Transfer Target Date, the parties shall promptly meet and confer in good faith prior to the SARA Transfer Target Date in an effort to determine any mutually acceptable feasible alternative approach to establish appropriate and adequate rights in the Developer prior to Close of Escrow (as defined in Section 202C below) with respect to the SARA Area that would allow the development and use of the SARA Area as part of the Site and the Project (e.g., by means of a mutually acceptable encroachment permit) (the "Meet and Confer Process"). Subject to the provisions of the last paragraph of this Section 102, if the City is unable for any reason to obtain fee title to the SARA Area by the SARA Transfer Target Date, the parties shall continue the Meet and Confer Process during Developer’s Election Period (as defined in the following paragraph).

If the City is unable for any reason to obtain fee title to the SARA Area by the SARA Transfer Target Date, then, at the election of the Developer:

(i) Developer may, upon written notice to the City within the time period following the SARA Transfer Target Date and set forth in the Schedule of Performance (the "Developer’s Election Period"), terminate this
Agreement, whereupon the Deposit (if previously made by the Developer) shall be refunded to the Developer and the parties shall have no further obligations hereunder; or

(ii) Developer may, upon written notice to the City within Developer’s Election Period (Developer’s Continuation Notice), continue with this Agreement, whereupon, notwithstanding any provision herein to the contrary:

(A) the term “Effective Date” for all purposes under this Agreement shall be deemed to mean the date of Developer’s Continuation Notice (provided, however, that this Agreement shall nonetheless be effective as of the date set forth in the first paragraph of this Agreement);

(B) the City shall have no further obligation hereunder to vacate or convey the SARA Area to the Developer;

(B) the parties shall continue the Meet and Confer Process prior to Close of Escrow;

(C) if, prior to Close of Escrow, a mutually acceptable feasible alternative approach is determined as a result of the Meet and Confer Process, the SARA Area shall be excluded from the Site (and the definition thereof) for purposes of the conveyance of the Site by the City to the Developer hereunder, but shall be considered included within the Site and the Project (and the definitions thereof) for all other purposes under this Agreement to the extent applicable by means of such mutually acceptable feasible alternative approach;

(D) if, prior to Close of Escrow, a mutually acceptable feasible alternative approach is not determined as a result of the Meet and Confer Process, the SARA Area shall be excluded from the Site (and the definition thereof) for purposes of the conveyance of the Site by the City to the Developer hereunder, and also shall be excluded from the Site and the Project (and the definitions thereof) for all other purposes under this Agreement; and

(E) the City and the Developer shall proceed to Close of Escrow in accordance with and subject to all other conditions and provisions of this Agreement.

If the Developer does not provide any notice to the City pursuant to either preceding clause (i) or (ii) of this paragraph, the Developer shall be deemed to have provided a Developer’s Continuation Notice to the City pursuant to clause (ii) upon the last day of Developer’s Election Period and the term “Effective Date” for all purposes under this Agreement shall be deemed to mean the last day of Developer’s Election Period (provided, however, that this Agreement shall nonetheless be effective as of the date set forth in the first paragraph of this Agreement).
C. [§ 103] The Project.

Subject to the provisions of this Agreement, Developer shall design, develop and construct on the Site a high density mixed use urban project ("Project"), which shall include: (a) a 24 story building (the "JTower") containing: (i) an expansion of The Tech to be incorporated into the Project in an amount of approximately sixty thousand four hundred seventy-five (60,475) square feet of exhibition, office and retail space in a warm shell condition as more particularly described in the Scope of Development (provided that such square footage may, subject to the prior written consent of TMI, be reduced based upon final design considerations for such space) ("Tech Expansion Space"); (ii) approximately 21,074 square feet of retail space on the ground floor and mezzanine level of the Tower ("Retail Space"), (iii) four (4) stories of large floor-plate, high ceiling, creative technology office space consisting of approximately two hundred sixty-three thousand six hundred seventy-six (263,676) square feet ("Office Space"); (iv) three hundred six (306) residential living units in fourteen (14) stories consisting of approximately four hundred sixty-eight thousand five hundred seventy-seven (468,577) square feet, together with one (1) top floor residential unit ("Residential Space"); (v) a boutique hotel of at least one hundred eighty-four (184) rooms in up to five (5) floors ("Hotel") consisting of approximately two hundred three thousand two hundred thirty-seven (203,237) square feet; (vi) a garage containing parking spaces for not less than five hundred (500) vehicles, provided that the Developer may utilize mechanical equipment and/or valet services to meet that requirement or to provide additional parking, unless more spaces are required under the applicable City regulations ("Project Garage"); and (f) necessary on-site and off-site improvements all of which are more fully described in the Scope of Development attached hereto as Attachment No. 3. Development of the Project shall be done in accordance with this Agreement, including the Schedule of Performance, attached hereto as Attachment No. 4.

The parties acknowledge that the exact scope, size and other aspects of the Project, including the allocation of the Project between Retail Space, Office Space, Residential Space, Hotel and the Project Garage, are subject to Developer’s receipt of entitlements and permits from the City. The parties agree that, notwithstanding the preceding provisions of this Section 103 to the contrary, Developer shall have the right, at any time and without the necessity for further review or approval by the City pursuant to this Agreement, to reallocate, as between any of the Retail Space, Office Space, Residential Space, Hotel and/or the Project Garage, up to forty percent (40%) of the square footage then allocated to such use(s), provided such reallocation does not include any modification to building floor plates within the Project and provided further that any such reallocation does not require any further review by the City acting in its regulatory capacity under any Permits (as defined below) for the Project or under the City’s Municipal Code (the "City Municipal Code"). Subject to the terms and provisions of this Agreement, Developer shall commence construction of the
Project as stated in the Schedule of Performance and shall thereafter diligently prosecute construction of the Project to completion.

The parties further acknowledge that, upon completion of the Project, Developer shall convey to the City by grant deed in the form attached hereto as Attachment No. 5 fee simple title to the Tech Expansion Space by means of a vertical airspace parcel (unless otherwise approved by the City Manager) (Tech Expansion Grant Deed), which shall contain a right of first refusal for the owner of the Office Space to acquire the Tech Expansion Space from the City if the City elects to sell the Tech Expansion Space and, concurrently with recordation of the Tech Expansion Grant Deed, the parties shall, to the extent not otherwise provided on a previously recorded document (which may include the Approved Parcel Map, the REA and/or the Declaration of Covenants, as defined and provided below), record mutually acceptable documentation, which shall provide all necessary easements and rights for the use and occupancy of the Tech Expansion Space within the Project by the City and TMI, together with such easements and rights as necessary for the Project (Tech Expansion Easements).

D. [§ 104] Parties to the Agreement.

1. [§ 105] The City.

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

2. [§ 106] The Developer.

The Developer is Insight King Wah, LLC, a California limited liability company. The principal office of the Developer is 333 West Santa Clara Street, Suite 805, San Jose, California 95113.

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

The Developer agrees and acknowledges that:

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

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

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

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


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

   (a) to prepare, complete and submit to the City for its review and approval a Parcel Map Application (defined in Section 109 below), to execute and/or perform all Parcel Map Obligations (defined in Section 109 below), and to cooperate to record an Approved Parcel Map (defined in Section 109 below);

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

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

   (d) to submit the Financing Commitment and Construction Contract (as defined in Section 402 below);

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

   (f) to operate and maintain the Project in all material respects in accordance with this Agreement and all attachments hereto, including without limitation, the Declaration of Covenants (defined in Section 205 below);

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

   (h) to create a separate air rights parcel or condominium unit for the Tech Expansion Space (Tech Expansion Space Parcel).
(i) to execute and deliver to City the Tech Expansion Space Grant Deed and any Tech Expansion Easements, if necessary, for recordation by Title Company (as described below).

(j) to execute and deliver to the City the documents required to be executed by the Developer under this Agreement, including the Parking Agreement as defined in Section 110 below.

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

(a) to cooperate, process and record an Approved Parcel Map;

(b) to convey the Site to the Developer;

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

(d) to execute and record those documents to be executed by City under this Agreement.

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

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

F. [§ 109] Parcel Map of Site.

Developer acknowledges that the Site will need to be created from various parcels and interests as substantially shown on the Site Map. Prior to
the Effective Date, Developer has submitted to the City a complete application for approval, or City has approved, a Vesting Tentative Map for the Project, a copy of which is attached hereto as Attachment No. 7 (VTMap). Within the time periods set forth in the Schedule of Performance, the City shall, provided that Developer has complied with all requirements for issuance of the VTMap, approve (if it has not already done so prior to the Effective Date) the VTMap (as so approved the Approved VTMap, and Developer shall prepare and submit to City for its approval a parcel or subdivision map application, as applicable, which shall reconfigure the Site into three (3) legal parcels and that will allow up to 306 residential condominium units and up to 244 commercial condominium units on one (1) parcel identified on the VTMap as Parcel 1 in compliance with the VTMap (Parcel Map Application). Following approval of the VTMap and the Parcel Map Application by the City, within the time period set forth in the Schedule of Performance, but in any event on or before the Close of Escrow (as defined in Section 202C below), the approved parcel or subdivision map (Approved Parcel Map) shall be recorded by the City in the Office of the Santa Clara County Recorder. Without limiting the preceding provisions of this Section 109, subsequent to approval of the VTMap and subject to compliance with applicable laws, including the City Municipal Code, the Developer may, at its sole and absolute discretion, submit to the City for processing one or more additional parcel maps or parcel map waivers (which the Developer acknowledges may be subject to the requirement of an additional vesting tentative map or tentative map) to establish one or more separate vertical airspace parcels (as differentiated from condominiums) within Parcel 1 consistent with and to further effectuate the Project.

As owner of the Site, the City shall be obligated to cooperate in connection with the preparation of the Parcel Map Application and recording of the Approved Parcel Map and any related street vacation necessary for the Project (whether effectuated by the Approved Parcel Map or any separate street vacation process); further, the City shall cooperate with Developer in connection with the preparation and recording of the Approved Parcel Map, provided that the City shall have no obligation to record the Approved Parcel Map prior to the Close of Escrow (as defined in Section 202C below); provided, however, that if the VTMap would otherwise expire prior to the Close of Escrow, the City shall either record the Approved Parcel Map or grant an extension of the life of the VTMap in order to avoid such expiration. However, the preparation of the Parcel Map Application and the preparation and recording of the Approved Parcel Map shall be at the Developer’s sole cost and expense, and all subdivision agreements, bonds and other obligations associated with the recordation of the Approved Parcel Map (collectively, Parcel Map Obligations) shall be the sole responsibility of Developer.
G. [§ 110] Parking Agreement, Easements and Operating Covenants.

Within the time period set forth in the Schedule of Performance, but in any event prior to the Close of Escrow, Developer shall have entered into a Parking Agreement, Easements and Operating Covenants with the City in substantially the form attached hereto as Attachment No. 8 (“Parking Agreement”). The Parking Agreement shall provide that (i) at least four hundred (400) of the below grade parking spaces located in the Project Garage shall be made available to the public for evening and weekend parking for events at The Tech and other public events at the applicable rates set forth in the Parking Agreement (“Public Parking Spaces”), and (ii) one hundred (100) non-exclusive spaces in the Project Garage, which may be part of the Public Parking Spaces, shall be made available at all times for use by the City or its designee at a fee not to exceed the validation program which will be implemented by the Developer in the Project (collectively, “City Parking Rights”). The Parking Agreement shall also provide for the operation and maintenance of the Project Garage and such rights of access, easements and other rights as necessary for the City to fully utilize the City Parking Rights.

H. [§ 111] Park Requirement.

Developer shall comply with the Parkland Dedication Ordinance set forth in the City Municipal Code (“PDO”). Within the time period set forth in the Schedule of Performance, but in any event prior to the Close of Escrow, Developer shall enter into an agreement with the City through its Department of Parks, Recreation & Neighborhood Services (“PRNS”), to be recorded at the Close of Escrow in such form acceptable to the City Manager and approved by the City Attorney, which shall provide for Developer’s satisfaction of its obligations under the PDO (“Parkland Agreement”).

I. [§ 112] Inclusionary Housing Requirement.

The parties acknowledge that the Project is subject to the City’s Inclusionary Housing Policy (“Inclusionary Policy”), and that the Developer shall comply with the Inclusionary Policy. The Project, including any rental units, may also be subject to the City’s Housing Impact Fee, which is set forth in San Jose City Council Resolution No. 77218, A Resolution of the Council of the City of San Jose Adopting a Housing Impact Fee (“Impact Fee Requirement”). Developer shall comply with the Impact Fee Requirement unless exempt from such fee pursuant to the terms and conditions of the Housing Impact Fee Resolution.
J. [§ 113] Public Art

Developer shall allocate and spend at least Two Hundred Fifty Thousand Dollars ($250,000) for public art within the Project ("Public Art"). Public Art may be incorporated into the overall design of the Project but shall be visible to the general public from the exterior of the Project or may be within the interior of the Project provided that it is accessible to the general public. The Public Art shall consist of high quality materials and be aesthetically pleasing consistent with similar first class projects in major cities throughout the United States. The Public Art shall be acceptable to the City's Office of Cultural Affairs ("OCA") and shall include the consideration of artwork and design elements incorporated into the Project. Within the timeframe set forth on the Schedule of Performance, the Developer shall provide plans or a design for the Public Art for the Project ("Public Art Submittal") to OCA for its review and approval. OCA shall, within thirty (30) days after receipt of Developer's Public Art Submittal, respond to the Developer's Public Art Submittal. If OCA disapproves the Developer's Public Art Submittal or parts thereof, OCA shall provide specific reasons for such disapproval, together with suggestions for changes which OCA would approve.

K. [§ 114] Project Guarantees

Prior to the Close of Escrow, Developer shall provide a completion guarantee for the Phase II Work (as defined in the Scope of Development) ("Completion Guarantee") in substantially the form of Attachment No. 10 and otherwise acceptable to the City in its sole and absolute discretion, executed by an entity with substantial financial resources acceptable to the City and, one of the following to be selected by the Developer: (1) demonstration of available funds in the amount of the remaining costs of construction of the Phase II Work as set forth in the Project Budget (as defined below) to be placed in a blocked escrow account with a financial institution acceptable to the City, such funds which may only be utilized for satisfaction of hard costs expended by Developer in the construction of the Phase II Work, and with a written agreement in a form acceptable to the City that if Developer defaults in the construction of the Phase II Work as hereinafter set forth, said funds will be transferred to the City for utilization in completion of the Phase II Work, or alternatively (2) that Developer will provide either (i) an irrevocable standby letter of credit in the amount of the costs of construction of the Phase II Work as set forth in the Project Budget and in a form acceptable to the City in its sole and absolute discretion, from a financial institution acceptable to Developer and City for the benefit of City to ensure completion of construction of the Phase II Work, to only be drawn by the City in the event of a default under the terms of this Agreement as set forth below, or (ii) a completion bond in a form acceptable to the City and in an amount not less than the costs of construction of the Phase II Work as set forth in the Project Budget for the benefit of the City to guarantee completion of construction.
of the Phase II Work by Developer. The bonding company shall be a California admitted surety subject to the approval of the City.

L. **[§ 115] Memorandum of DDA.**

Within five (5) days of the execution date of this Agreement, the parties shall execute and record a Memorandum of DDA ("DDA Memorandum") in the form attached hereto as Attachment No. 12, which shall provide notice of its conditions, covenants and restrictions which shall run with the Site and shall be binding on Developer, its successors and assigns.

M. **[§ 116] Labor Peace.**

As a condition to approval of this Agreement by the City, Developer has provided assurances to the City that Developer will take reasonable steps to minimize or avoid any labor disputes or unrest which might occur during the construction of the Project or during operation of the Hotel lodging operations after it opens ("Labor Peace Assurances"). Developer shall comply with any obligations entered into by the Developer to obtain the Labor Peace Assurances to City and shall use good faith efforts to maintain the Labor Peace Assurances.

N. **[§ 117] Convention Center Facilities District.**

The Property shall be annexed into the Convention Center Facilities District No. 2008-1, which was established to finance capital improvements to the San Jose Convention Center. Concurrently with application for a building permit for the Project, Developer shall commence the annexation process, which shall be completed within the time period set forth in the Schedule of Performance. The City shall cooperate with Developer to effectuate the annexation in a timely manner, and, Developer shall not be in default hereunder for any inability to effectuate the annexation due to any action or inaction by the City. After annexation into the Facilities District, the Property shall, among other things, be subject to the special taxes imposed by the Facilities District.

O. **[§ 118] Tech Lease Amendment.**

Developer acknowledges that TMI currently has certain rights to the Property pursuant to the Tech Lease. Prior to the Close of Escrow, the City and TMI shall have entered into an amendment of the Tech Lease, which will relinquish TMI's rights so as to allow for the Project and will provide for TMI's use thereunder of the Tech Expansion Space in a manner that does not conflict with the use of the balance of the Project, together with the right to use certain parking spaces in the Project Garage ("Tech Lease Amendment").
P. [§ 119] Use Tax Requirements.

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

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

Q. [§ 120] Employment Program.

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

R. [§ 121] Deposit.

Developer shall, within ten (10) business days after the Effective Date, deliver to the Escrow Agent (defined in Section 202A) a deposit of cash, certified check or electronic transfer of federal funds in the amount of One Million Dollars ($1,000,000) (the “Deposit”). Escrow Agent shall hold the Deposit in an interest bearing account and such interest shall become part of the Deposit.

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


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

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

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

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

B. [§ 202] Escrow.


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

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

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

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

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

2. **§ 202B** **Conditions to Close Escrow.**

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

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

(2) The Approved Parcel Map shall be recorded in the Office of the Santa Clara County Recorder;

(3) Developer shall have executed the Construction Contract necessary to begin the demolition, excavation and foundation work for the Project (defined as “D, E & F Work” in the Scope of Development) by the date set forth in the Schedule of Performance and shall provide evidence of the same to the City;

(4) Developer shall have delivered to City the original executed Completion Guaranty and satisfied the other requirements set forth in Section 114;

(5) Developer shall have obtained all necessary discretionary Permits (as defined in Section 307 below), and shall have complied with the requirements of the California Environmental Quality Act, all as required for the commencement of construction of the Project and the issuance of the construction permits for the D, E & F Work is subject only to the payment of required fees;

(6) Developer shall have satisfied the financial requirements as described in Section 402 and shall deposit with Escrow Agent any funds necessary to pay the closing costs described below;

(7) Developer shall have executed and delivered to the Escrow Agent for recording the following Project documents:

A. The Declaration of Covenants (as defined in and subject to Section 205 below);
B. The DDA Memorandum (if not previously recorded pursuant to Section 115);
C. The REA (as defined in and subject to Section 206 below);
D. The Parkland Agreement; and
E. The Parking Agreement.
(8) TMI and the City shall have entered into the Tech Lease Amendment; and

(9) Developer is not in default of any of Developer’s Material Obligations hereunder.

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

(1) City shall own sole and indefeasible fee title to the Site;

(2) City shall have executed and delivered to the Escrow Agent for recording the following Project documents:
   A. The Grant Deed as described in Section 204;
   B. The Declaration of Covenants (as defined in and subject to Section 205 below);
   C. The DDA Memorandum (if not previously recorded pursuant to Section 115);
   D. The REA (as defined in and subject to Section 206 below);
   E. The Parkland Agreement; and
   F. The Parking Agreement.

(3) TMI and the City shall have entered into the Tech Lease Amendment.

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

(5) The Approved Parcel Map shall be recorded in the Office of the Santa Clara County Recorder.

(6) City is not in default of any of City’s Material Obligations hereunder.
(7) The Title Company (as described below) shall be irrevocably committed to issue to Developer the Title Policy as described in Section 208 upon the Close of Escrow.

(c) Developer shall pay in Escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges, and costs, but not earlier than ten (10) days prior to the scheduled date for the close of Escrow:

(1) The Escrow fee;

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

(3) Any state, county or city documentary transfer tax;

(4) Amounts required to pay any ad valorem taxes due as of the close of Escrow for any period commencing with the date the Grant Deed is recorded.

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

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


Upon satisfaction or waiver of all of the conditions set forth in Section 202B, and no later than the date set forth on the Schedule of Performance for the Close of Escrow, the Escrow Agent is authorized to close the Escrow (Close of Escrow) as follows:

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

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

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

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

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


If the Close of Escrow has not occurred by the time provided in the Schedule of Performance, as such time may be extended by mutual agreement of the City and Developer (such date, as so extended, herein called the "Closing Date"), either party may terminate this Agreement in accordance with Section 606.

C. [§ 203] Conveyance of Title.

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

D. [§ 204] Form of Grant Deed.

City shall convey to Developer the fee interest in the Site, in the condition of title provided in Section 207, by grant deed in the form attached hereto as Attachment No. 13 ("Grant Deed").

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

To the extent not otherwise provided in another document to be recorded at the Close of Escrow, City and Developer shall execute and deliver to Escrow Agent prior to the Close of Escrow a Declaration of Covenants and Restrictions Affecting Real Property in such form reasonably acceptable to the Developer and the City Manager and approved by the City Attorney (the
Declaration of Covenants. The Declaration of Covenants shall be recorded immediately after the Grant Deed is recorded and shall contain covenants and restrictions regarding Developer’s responsibility for maintenance of common areas and other portions of the Project other than the Tech Expansion Space, which shall run with the land for the term provided in the document and shall bind the Developer and its successors and assigns, and shall have priority over any and all subsequently recorded mortgages, liens and encumbrances. For avoidance of doubt, the Declaration of Covenants shall be separate and distinct from any Master CC&R’s that may be prepared and recorded by Developer for the balance of the Project following the Close of Escrow. The Tech Expansion Space shall not be subject to the Master CC&R’s and the Master CC&R’s shall not include any obligation upon the Tech Expansion Space.

F. [§ 206] Reciprocal Easement Agreement.

To the extent not otherwise provided in another document to be recorded at the Close of Escrow, City and Developer shall execute and deliver to Escrow Agent prior to the Close of Escrow a Reciprocal Easement Agreement, to be recorded at the Close of Escrow, in such form reasonably acceptable to Developer and the City Manager and approved by the City Attorney, including the grant therein to the City of easements for access to and use of the Paseo and loading areas for The Tech and Parkside Hall (REA). For avoidance of doubt, the parties acknowledge and agree, and the REA shall reflect, that Developer’s ownership or other rights in the Paseo shall include the right to utilize, control and secure the Paseo, including for the serving of food and beverages, subject to any public access rights provided on the Approved Parcel Map and applicable law. The REA shall run with the land for the term provided in the document and shall bind the Developer and its successors and assigns, and shall have priority over any and all subsequently recorded mortgages, liens and encumbrances.

G. [§ 207] Condition of Title to the Site.

Developer agrees that the fee simple title shall be subject to:

1. The Declaration of Covenants (as applicable);
2. The REA (as applicable);
3. The Parking Agreement;
4. The Parkland Agreement;
5. The DDA Memorandum; and
6. Any other exceptions to title reflected in the Preliminary Title Report prepared by the Title Company dated as of July 12, 2017, a copy of which is set forth on Attachment No. 11 ("Preliminary Report"); subject to Section 208 below, and provided that neither the Tech Lease nor the Tech Lease Amendment shall be acceptable exceptions to title and shall be removed prior to Close of Escrow.

The City has made no representations or warranties, express or implied, with respect to title of the Site except as expressly set forth herein or as set forth in the Grant Deed; provided that City shall be responsible, prior to Close of Escrow, to remove from title to the Site any monetary liens other than those specified in this Section 207 above (excepting any such liens or encumbrances arising from any actions by Developer or agreed to in writing by Developer prior to Close of Escrow).

H. [§ 208] Title Insurance.

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

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


Ad valorem taxes and assessments levied, assessed or imposed on the Site for any period prior to the conveyance of the Site to Developer shall be borne by the City. All ad valorem taxes and assessments levied, assessed or imposed on the Site for any period subsequent to the conveyance of the Site to Developer shall be paid by Developer.
J. **[§ 210] Failure to Close Escrow.**

If neither the City nor the Developer shall have fully performed the acts to be performed in order to close Escrow at the time established in the Schedule of Performance, as may be extended hereunder, or if a condition precedent to a party’s obligations to close Escrow shall fail to occur, either party may request the Escrow Agent to notify the other party at the address provided herein that a demand for termination of the Escrow has been received. If the party receiving notification from the Escrow Agent objects to terminating the Escrow within ten (10) days of receipt of the notice, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by both the City and the Developer or in the absence of such instruction by the order of a court of competent jurisdiction. If no such demands are made or if the parties otherwise so agree, the Escrow shall be closed on the Closing Date.

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

As partial consideration for this Agreement, the Developer shall transfer the Tech Expansion Space to the City pursuant to the Tech Expansion Grant Deed, together with the Tech Expansion Easements, as provided in Section 103.

Prior to or concurrently with recordation of the first Certificate of Compliance, Developer shall have:

(a) created the Tech Expansion Space Parcel as a separate legal parcel or condominium unit, which shall be free of any and all liens or encumbrances except for any matters approved in writing by the City, which approval shall not be unreasonably withheld, delayed or conditioned; and

(b) transferred the Tech Expansion Space to City pursuant to the Tech Expansion Grant Deed.

Concurrently with the recordation of the Tech Expansion Grant Deed, Title Company shall provide and deliver to City an A.L.T.A. owner’s policy of title insurance issued by the Title Company insuring that title in the Tech Expansion Space is vested in City in the condition required above, and with such policy limits and endorsements as reasonably determined by City (Tech Expansion Title Policy). Developer shall pay for any closing-related fees, charges and costs arising out of the transfer of the Tech Expansion Space to the City, including the cost of the Tech Expansion Title Policy.
III. [§ 300] DEVELOPMENT OF SITE

A. [§ 301] Scope of Development.

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

B. [§ 302] Condition of the Site.

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

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

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

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

C. [§ 303] Preliminary Work by the Developer.

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

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

D. [§ 304] Cost of Construction.

The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer. The City and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.
E.  [§ 305] Construction Schedule/Progress Meetings.

The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance, subject to extension for any periods of enforced delay as described in Section 705 or as may be mutually agreed upon by the parties. At least once a quarter during construction of the Project, Developer shall organize and schedule an on-site construction progress meeting to discuss and evaluate the progress and status of the construction of the Project, including as applicable the Tech Expansion Space, and to resolve any issue related to the construction of the Tech Expansion Space. The meeting shall include representatives from the Developer, the general contractor for the Project, the City and, to the extent pertaining to The Tech or the Tech Expansion Space, TMI, and shall be scheduled at such times as are mutually satisfactory for all parties. At least five (5) business days prior to the meeting, the Developer shall submit to the City and, to the extent pertaining to The Tech or the Tech Expansion Space, TMI, a written progress report of the construction. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

Developer acknowledges that the Site is located directly adjacent to the Tech and that construction of the Project may impact the Tech. During construction of the Project, Developer and TMI shall coordinate with each other to the extent reasonably necessary for construction of the Tech Expansion Space and Developer shall use its best efforts to not unreasonably interfere with the operations of the Tech. To the extent construction of the Project shall require the disruption of services to the Tech, Developer shall provide at least fifteen (15) days notice to TMI (which notice may be by e-mail) prior to any such disruption of service and shall coordinate directly with TMI representatives regarding any such disruption of service.


Without limiting the force and effect of any other indemnity provisions in this Agreement, to the fullest extent permitted by law, Developer agrees to, and shall, indemnify, defend and hold the City and its officers, employees and agents harmless from and against any and all Claims arising after the conveyance of the Site to Developer from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person (i) which shall occur on the Site, or (ii) which shall occur adjacent to the Site, including to the Tech, which arises out of the construction, development, management and/or operation of the Project, or (iii) which in any way arises out of the construction, development, management and/or operation of the Project, including, but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after the
City issues the final Certificate of Compliance. Notwithstanding the foregoing, Developer’s obligations to indemnify and hold harmless exclude only such claim, loss or liability to the extent it is due to the negligence or willful misconduct of the City, TMI, and/or their respective officers, employees, agents or contractors. These indemnity obligations shall survive the termination of this Agreement.

Developer shall have and maintain the insurance policies set forth in the Insurance Requirements, Attachment No. 18 to this Agreement. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City. All insurance requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

G. [§ 307] City and Other Governmental Agency Permits.

Before commencement of construction or other work of improvement upon the Site, the Developer, at its own expense and in compliance with the requirements of the California Environmental Quality Act (CEQA), shall secure or cause to be secured (to the extent not already secured as of the Effective Date) any and all City and other governmental maps, plans, permits, zoning approvals, or other forms of approval, entitlement, permission, or concurrence, whether discretionary, ministerial or otherwise, incident to, or necessary for, the development of the Project on the Site that are required by applicable law to be secured from the City or any other governmental agency affected by such construction or work (collectively referred to as the “Permits”). Provided such cooperation can be provided without additional cost or expense to the City, City shall reasonably cooperate with the Developer in securing the Permits.

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


For the purposes of assuring compliance with this Agreement, representatives of the City and, to the extent pertaining to The Tech or the Tech Expansion Space, TMI, shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes set forth in this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Project. Such representatives of the City and TMI shall be those who are so identified in
writing to Developer by the City Manager or its designee. The City shall defend, indemnify and hold harmless Developer and its officers, employees and agents against any Claims arising out of or resulting in any way from the entry onto the Site pursuant to this Section, except to the extent the loss, claim or damage is caused by the negligence or willful misconduct of Developer, its officers, employees, agents or contractors. These indemnification obligations shall survive termination of this Agreement.


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

J. [§ 310] Non-discrimination.

1. [§ 310A] Nondiscrimination Covenant.

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

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

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

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

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

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

K. **[§ 311] Prevailing Wages.**

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

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

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

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

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

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

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

Developer shall:

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

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

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

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

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

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

Provide City with documentation relating to compliance with this Section.

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

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

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

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

___________________     __________________
CITY                    DEVELOPER

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

The Developer, at its sole cost, shall provide and install construction site and pedestrian barricade signs, if applicable, that identify the Project (and, at Developer’s election, Developer’s contractors and consultants) and give recognition to the City as prescribed by the City and to TMI as reasonably prescribed by TMI, which signs shall fully comply with all applicable sign ordinances of the City and shall conform to all rules and regulations of the City Departments of Public Works and Transportation. Prior to design and installation, Developer shall submit to the City for its review and approval plans, setting forth the location, size, design, color scheme and written text of the signs. The signs must be installed on the Site prior to commencement of construction on the Site and shall remain installed until issuance of the final Certificate of Compliance as described in Section 314 below.

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

1. Prior to the recordation of a Certificate of Compliance, the Developer shall not assign (or permit assignment of) this Agreement or any right herein, nor shall the Developer make (or permit) any sale, transfer, conveyance or assignment of the whole or any part of the Site or the improvements thereon, without prior written approval of the City, which approval shall be provided or withheld at the City’s sole discretion. This prohibition shall not apply to, and the City’s approval shall not be required for, the sale, lease, transfer, conveyance or assignment of residential or non-residential condominium units which are the
subject of final certificates of occupancy issued by the City. Further, this prohibition shall not be deemed to prevent the granting of easements, licenses, rights of entry or permits to facilitate the development of the Site.

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

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


Upon (i) the completion of each Phase (as defined below) of the Project as required by this Agreement, (ii) the issuance of a final unconditional certificate of occupancy for such Phase by the City, (iii) Developer certifying its compliance with the terms of this Agreement as to such Phase, and (iv) Developer providing certifications from all contractors and subcontractors that each of them complied with the prevailing wage requirements relating to such Phase, the City shall furnish Developer with a Certificate of Compliance, in the form as attached to this Agreement as Attachment No. 19 (each, a "Certificate of Compliance") within ten (10) business days after the written request therefore by Developer. For purposes of this Section, the Tech Expansion Space, the Retail Space, the Office Space, the Residential Space, the Hotel and the Project Garage shall be referred to herein individually as "Phases" and, to the extent Developer completes any such Phase and is able to satisfy the requirements set forth above for a Certificate of Compliance for such Phase, Developer may
request and obtain a separate Certificate of Compliance for such Phase. Upon completion of the final Phase, City shall also furnish Developer with a final Certificate of Compliance, in the form attached hereto as Attachment No. 20, within ten (10) business days after the written request therefore by Developer.

The City shall not unreasonably withhold a Certificate of Compliance. A Certificate of Compliance shall be in such form as to permit it to be recorded in the Recorder’s Office of the County. Issuance by the City of a Certificate of Compliance shall constitute confirmation that Developer has completed the development of such Phase and has complied with all of Developer’s obligations, and other covenants under this Agreement, which relate to the design and construction of such Phase. Issuance of a Certificate of Compliance shall not constitute evidence that Developer has satisfied any of its other covenants under this Agreement. After issuance of a Certificate of Compliance for a Phase, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in such Phase of the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the Grant Deed (or any other deed, lease, mortgage, deed of trust, contract or other instrument of transfer), the Declaration of Covenants, or any other document recorded against the property owned by such party.

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

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

IV. [§ 400] FINANCING OF THE SITE.

A. [§ 401] Project Budget.

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

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

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

1. An updated Project Budget;

2. Evidence of financing, which shall include, if applicable, but is not limited to: an unconditional, firm and enforceable commitment by a recognized institutional lender for the construction loan necessary to complete the Project ("Financing Commitment"). The Financing Commitment shall be consistent with the Project Budget and sufficient to assure the City that adequate funds are available for completion of the Project;

3. Confirmation from Developer of the contracts between the Developer and the general contractor for construction of the Project through completion ("Construction Contract"). Such contract shall provide for the commencement of construction by dates certain, which dates shall be in conformance with this Agreement; and

4. Evidence that Developer has obtained all Permits required to commence construction of the Project.

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

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

Notwithstanding Section 313, mortgages, deeds of trust, sales and leases-back, pledges or any other form of conveyance required for any reasonable method of financing (herein "Permitted Encumbrance") are permitted hereunder without the approval of the City, but only for the purpose of securing funds to be used for financing the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site or the Project under this Agreement, provided that Developer has provided the City with prior written notice of the parties and terms and conditions related to such Permitted Encumbrance. The holder of a Permitted Encumbrance shall sometimes be referred to herein as a "Permitted Mortgagee." Following completion of the Project and the recordation of a final Certificate of Completion, the foregoing limitations on Permitted Encumbrances shall no longer apply.

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

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

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

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

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, the City shall
at the same time deliver a copy of such notice or demand to each Permitted Mortgagee who has previously made a written request to the City therefore. Each such Permitted Mortgagee shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee upon obtaining possession of the Site or any portion thereof and such Permitted Mortgagee promptly commences and diligently prosecutes efforts to obtain possession through a receiver or otherwise, such Permitted Mortgagee shall have until ninety (90) days after obtaining possession to cure or remedy or commence to cure or remedy any such default. Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured within ninety (90) days, such Permitted Mortgagee shall notify the City in writing of its intentions to cure the default with an anticipated timeline for completion and thereafter shall have such additional time as is reasonably necessary to remedy or cure such default with diligence but in no event longer than one (1) year after receipt of notice hereunder.

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

All rights and obligations of a Permitted Mortgagee pursuant to this Agreement shall also accrue to any purchaser, assignee or successor of a Permitted Mortgagee upon acquisition of title to any portion of the Site by such purchaser, assignee or successor pursuant to a judicial or nonjudicial foreclosure or a deed in lieu of foreclosure, or pursuant to a conveyance from a Permitted Mortgagee by deed, subsequent to such Permitted Mortgagee obtaining title. In the event of such conveyance to a purchaser, assignee or successor, then the City agrees that it shall not unreasonably withhold, condition or delay its approval of further extensions of time for performance of the Developer's obligations under
this Agreement as appropriate but in no event for a period of time longer than one (1) year after receipt of notice hereunder to permit such purchaser, assignee or successor to obtain possession of the Site and enter into contracts for the construction of improvements to complete the development of the Project.

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

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

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

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

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

b. All expenses with respect to foreclosure;

   c. The net expenses, if any, incurred by the holder as a direct result of the subsequent management of that portion of the Site;
d. The direct and indirect costs of any improvements made by the Permitted Mortgagee; and

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

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

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


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

V. [§500] USE OF THE SITE


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

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

Except as otherwise provided herein, this Agreement, and the
covenants and conditions set forth herein, shall remain in effect until a final
Certificate of Compliance has been recorded for the Project. The Declaration of
Covenants (as applicable), the REA (as applicable), the Parking Agreement, the
Parkland Agreement and any other agreement contemplated by this Agreement
shall remain in effect for the term of such agreement as set forth therein. The
covenants against discrimination contained in the Grant Deed shall remain in
effect in perpetuity. The covenants established in this Agreement and the project
documents contemplated by this Agreement and referenced herein (collectively,
"Project Documents") shall, without regard to technical classification and
designation, be binding for the benefit and in favor of the City and Developer, and
their respective successors and assigns.

The City is deemed the beneficiary of the terms and provisions of
this Agreement and of the covenants running with the land for and in its own
rights and for the purposes of protecting the interests of the community and other
parties, public or private, in whose favor and for whose benefit this Agreement
and the covenants running with the land have been provided. This Agreement
and the covenants shall run in favor of the City without regard to whether the City
has been, remains or is an owner of any interest in the Site. The City shall have
the right, if this Agreement or any other Project Documents are breached, to
exercise all rights and remedies and to maintain any actions or suits at law or in
equity or other proper proceedings to enforce the curing of such breaches to
which it or any other beneficiaries of this Agreement or any other Project
Documents may be entitled.

VI. [§ 600] DEFAULTS; REMEDIES; TERMINATION


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

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

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

B. [§ 602] **Legal Actions.**

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

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

2. [§ 602B] **Applicable Law.**

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

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

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

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

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

D. [§ 604] **Damages.**

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

E.  [§ 605]  **Specific Performance**

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

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

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

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

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

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

   c. City is in breach or default of any other of City’s Material Obligations,

then this Agreement may, at the option of the Developer, be terminated by written notice to the City. Upon such termination, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement, except with respect to any existing defaults which allowed Developer to terminate this Agreement pursuant to this Section, and those rights or liabilities which are expressly provided to survive termination.

2.  [§ 606B]  **Termination by the City**

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

   a. The Developer transfers or assigns (or permits the transfer or assignment of) this Agreement or any rights herein or in the Site or the improvements thereon in violation of this Agreement; or
b. The Developer does not accept and take title to the Site in accordance with this Agreement; or

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

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

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

PRIOR TO THE CLOSE OF ESCROW, IN THE EVENT OF AN UNCURED DEFAULT BY DEVELOPER AS DESCRIBED IN SECTION 606B (a), (b) or (d) ABOVE, AND NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE CITY'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AND TO RETAIN, THE DEPOSIT (TOGETHER WITH INTEREST ACCRUED THEREON) AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS MAKING IT NECESSARY FOR THE CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM; AND THE FAILURE OF THE CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD EXCEED THE AMOUNT OF THE DEPOSIT HELD BY THE CITY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE CITY UPON ANY SUCH OCCURRENCE.
AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

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

______________________  ____________________
CITY      DEVELOPER

G.  [§ 607]  Right of Reverter

The City shall have the additional right, at its option, to reenter and take possession of the Site with all improvements and revest in the City the estate conveyed to the Developer, if after conveyance of title to the Site and prior to issuance of a final Certificate of Compliance, the Developer shall:

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

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

3. Transfer or suffer any involuntary transfer of all or part of the Site or assignment of this Agreement in violation of this Agreement.

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

Notwithstanding the generality of the foregoing, City's rights under this Section to reenter and take possession of the Site shall always be subordinate and subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any Permitted Encumbrance or any rights or remedies thereunder, or (ii) any rights, remedies or interests provided in this Agreement for the protection of any Permitted Mortgagees. Conversely, any encumbrances or liens, other than Permitted Encumbrances or other encumbrances or liens expressly permitted pursuant to this Agreement, shall be subordinate and subject to City's rights under this Section to reenter and take possession of the Site; accordingly, upon exercise of such rights City shall take
title free and clear of all such non-permitted encumbrances and liens which City has not expressly agreed in writing to accept.

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

VII. [§ 700] GENERAL PROVISIONS.

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

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

If to City at:

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

with a copy to:

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

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

Tech Museum of Innovation
201 South Market Street
San José, CA 95113
Attn: Harvard Sung, CFO
and only with respect to notices pertaining to The Tech or the Tech Expansion Space, with a copy to:

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

If to Developer at:

Insight King Wah, LLC  
333 West Santa Clara Street, Suite 805  
San Jose, California 95113  
Attn: Dennis Randall

with a copy to:

Holland & Knight LLP  
50 California Street, Suite 2800  
San Francisco, California 94111  
Attn: David Preiss

with a copy to:

Pahl & McCay  
225 West Santa Clara Street, Suite 1500  
San Jose, California 95113  
Attn: Stephen D. Pahl

B. [§ 702] Conflict of Interests.

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested. Developer shall at all times comply with all applicable state, federal or local laws, rules and regulations regarding conflicts of interest and prohibition of gifts in the performance of this Agreement.
C. **[§ 703]** Warranty Against Payment of Consideration for Agreement.

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

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

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

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

Notwithstanding specific provisions of this Agreement, performance by either party of its respective obligations hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; civil disturbances; strikes; lock-outs; riots; floods; unusually severe rain beyond the anticipated average annual number of rain days over a historic ten (10) year period based on National Weather Service data; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; acts or omissions of the other party (including, with respect to the Developer, any unreasonable delays by the City in the review or granting of any necessary approvals of any submittals hereunder by the Developer), acts or failure to act of any governmental agency (except that acts or failure to act by the City shall not excuse performance by the City), governmental or judicial restrictions enjoining of the performance of the terms of this Agreement. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding the foregoing, the total time period excused under this Section for all causes shall not exceed two (2) years.

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

The City has the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site and/or the Project as pertinent to the purposes of this Agreement.
G. **[§ 707] Severability.**

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

H. **[§ 708] Representations of Authority.**

1. **[§ 708A] City’s Representations.**

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

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

2. **[§ 708B] Developer’s Representations.**

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

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

4. **[§ 708D] Survival of Representations.**

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

5. **[§ 708E] Computation of Time.**

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

VIII. **[§ 800] SPECIAL PROVISIONS.**

A. **[§ 801] Approvals.**

Approvals required of the City (except for approvals expressly identified herein as being in the sole discretion of the City) or Developer shall not be unreasonably withheld or conditioned, and approval or disapproval shall be given within the time set forth in the Schedule of Performance and/or this Agreement or, if no time is given, within a reasonable time. The City Manager of the City, or his designee, shall have the authority to act on behalf of the City with regard to any and all actions required of the City under this Agreement. Such
actions include, but are not limited to the issuance of approvals and disapprovals, extensions of deadlines in the Schedule of Performance and execution of all documents except amendments to this Agreement.

B.  [§ 802] Amendments to this Agreement.

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

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

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


The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

E.  [§805] Estoppel Certificates.

Any party may, at any time during the term of this Agreement, and from time to time, deliver written notice to another party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. The party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof.
F. [§806] Developer intellectual Property.

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


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

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

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

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

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

This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the City, Developer and any Permitted
Mortgagee, and where the terms "Developer," "City," or "Permitted Mortgagee" are used in this Agreement, they mean and include their respective permitted successors and assigns, including, as to any Permitted Mortgagee, any transferee and any successor or assign of such transferee.

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

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

This Agreement is made solely for the benefit of the City and the Developer and their respective successors and permitted assigns, and no other person or entity (including, but not limited to, TMI) shall have or acquire any rights or remedies under this Agreement, provided, however, that nothing in this paragraph shall be deemed to relieve the Developer from any of its obligations hereunder with respect to TMI, The Tech or the Tech Expansion Space.

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

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

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

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

APPROVED AS TO FORM: CITY OF SAN JOSE

Sr. Deputy City Attorney

By: ____________________

[Need Developer Signature Block]
ATTACHMENT NO. 1

SITE MAP
ATTACHMENT NO. 2

LEGAL DESCRIPTION

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

PARCEL 1, AS SAID PARCEL IS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP 180 PARK AVENUE" DATED JUNE, 2017, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

APN: 259-42-023 (portion)

NOTE: The final legal description of the Site to be attached to the Grant Deed at Close of Escrow shall be based upon the Approved Parcel Map, and also may include references to easements that appear on the Approved Parcel Map.
ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

MUSEUM PLACE MIXED USE DEVELOPMENT PROJECT

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

I. GENERAL

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

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

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

The Project shall conform to the provisions, design criteria and property development standards contained in this Scope of Development and shall be developed in accordance with the Permits described in Section 307 of this Agreement. The Project shall also be consistent and conform to the Site Development Plan Set approved by the City Council concurrently with execution and approval of this Agreement. Developer further agrees that any proposed changes to the Project from the Approved Site Plan or any changes inconsistent with the provisions, design criteria and property development standards contained in this Scope of Development or this Agreement shall be approved in advance by the City. The City Manager shall have the authority on behalf of the City to approve any such changes. The parties acknowledge that Developer shall, consistent with the Approved Site Plan, prepare design development drawings, which shall be submitted to and approved by the City prior to preparation of construction drawings for the Project. After City approval of the Design Development Drawings, Developer shall prepare
construction drawings based on the Approved Site Plan and the approved Design Development Drawings ("Construction Drawings"). The Construction Drawings shall be submitted to the City’s Building Department to obtain building permits for the Project. Upon approval of the Construction Drawings for issuance of a building permit ("Final Project Drawings"). Developer shall develop and construct the Project in accordance with the Final Project Drawings. In the event of a conflict between the approved Final Project Drawings and the Design Development Drawings, the Final Project Drawings shall control. In the event of a conflict between the Final Project Drawings and the Scope of Development, the Scope of Development shall control.

II. DEVELOPMENT

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

Notwithstanding anything to the contrary contained in this Agreement, for purposes of this Agreement, the term "Phase I Off-Site Utility Work" shall have the meaning set forth in Subsection II C below and the term "Phase II Work" shall mean, collectively, all of the following: (i) the Phase II Off-Site Work as defined in Subsection II C below, and (ii) the remainder of the work necessary for the development and construction of the Project, comprised of demolition, excavation and foundation and core shell of the Tower. For avoidance of doubt, the Phase II Work (and the term "Phase II Work") shall not include, and shall not be deemed under any circumstances to include, any tenant improvements.

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

1. Remove and relocate or dispose of, if necessary, the solar panel system located on the roof of Parkside Hall. Developer shall also be responsible for the cost of any buy-out or termination fee required to terminate the Power Purchase Agreement between TMI and Solar Star TM Innovation LLC dated March 7, 2008.

2. Demolish and remove all above ground structures, pavement, walks, curbs, gutters, and other above ground improvements located on the Site.
3. Remove and/or relocate (i) overhead utility systems and subsurface utility systems now in service which lie below the Site's surface and which would be located within the perimeter of the Project after construction, and (ii) utilities servicing the Project and now in service, such as storm sewers, sanitary sewers, water systems, underground electrical systems and telephone gas systems.

4. Remove to storage the public art piece located on the Site entitled "Civic Stage Set" by David Bottini and/or relocate such public art piece to a location approved by the City and the artist. If the City and the artist are unable to agree upon a mutually acceptable site to relocate the artwork, Developer shall pay the reasonable cost to acquire the artwork from the artist, store the artwork and relocate the artwork to a site acceptable to the City or otherwise dispose of the artwork in a manner acceptable to the City.

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

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

Prior to the commencement of any site preparation work, Developer shall notify, and coordinate with, the users of the adjacent properties, including TMI and Team San Jose.

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

1. Office Space. Four (4) stories of large floor-plate, high ceiling, creative technology office space consisting of at least two hundred sixty three thousand six hundred seventy six (263,676) square feet.

2. Residential Space. Approximately three hundred six (306) residential units in approximately fourteen (14) stories consisting of approximately four hundred sixty-eight thousand five hundred seventy seven (468,577) square feet, together with one (1) top floor residential unit;

3. Retail Space. Approximately twenty one thousand seventy four (21,074) square feet of ground floor and mezzanine level retail space located along the frontage of Almaden Avenue and developed for a pedestrian-oriented plaza linking Park Avenue and San Carlos Streets as shown on the Final Project Drawings.

4. Hotel. A boutique hotel of at least one hundred eighty four (184) rooms in up to five (5) floors consisting of approximately two hundred three thousand two hundred thirty seven (203,237) square feet;
5. **Project Garage.** A parking garage to serve the Project containing three (3) levels of below grade parking containing parking spaces for not less than five hundred (500) vehicles, provided that Developer may utilize mechanical equipment and/or valet services to meet that requirement or to provide additional parking unless more spaces are required under applicable City regulations; and

6. **Common Area.** Common area improvements associated with the Project including, but not be limited to, landscaped courtyards, exercise areas and community rooms, entry lobbies and portals, and other shared facilities within the interior of the Site.

C. **Off-Site Improvements.** The Developer shall provide, or cause to be provided, all public improvements and off-site improvements necessary and required for the development of the Site in accordance with this Scope of Development and the Permits (collectively the "Off-Site Improvements"). The Developer shall design and construct the Off-Site Improvements in accordance with this Scope of Development and the Permits. The Off-Site Improvements shall be those listed below and any other Off-Site Improvements required under the Permits:

**Phase I Off-Site Utility Work:**

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

**Phase II Off-Site Work:** As used herein, the term "Phase II Off-Site Work" shall mean, collectively, all of the following:

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

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

3. Install fire hydrants in locations within the street rights-of-way which are necessary and sufficient to serve the Project and/or are required by the Fire Marshall of the City of San Jose or other applicable government authority.
4. Provide, or cause to be provided, utility stubs, including, without limitation, water, gas, electricity, sewer, storm, cable television and telephone service, at the edge of the Site in locations as reasonably necessary and sufficient to serve the Project.

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

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

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

D. Tech Expansion Space: As part of the Project, Developer shall construct the Tech Expansion Space, which shall consist of approximately sixty thousand four hundred seventy-five (60,475) square feet of museum quality exhibition, office and retail space in a warm shell condition as described below (provided that such square footage may, subject to the prior written consent of TMI, be reduced based upon final design considerations for such space), all as more particularly shown on the Approved Site Plan and as shown in the Final Project Drawings (Warm Shell).

The parties acknowledge that, except for the proviso in the parenthetical above with respect to the Tech Expansion Space, the square footages set forth above in this Attachment No. 3 and in the DDA with respect to each aspect of the Project are the gross square footages for each such aspect of the Project as set forth in the SEIR (as defined in Section IV below).

1. GENERAL DESCRIPTION OF WARM SHELL
   a. Shell and core will comply with all codes and regulations, including fire, building, Title 24 and ADA.
   b. Shell exterior façade along Park Avenue at the Tech Expansion Space frontage shall maximize transparency and promote connectivity for the public to the interior space.
   c. Core shall include a conveyance (elevator) between the two Tech Expansion Space Levels.
d. Provide core building systems, such as common building corridors, wall and flooring construction finishes, exposed structure and slab, code/exit signage, fire/life safety provisions, fire sprinklers, doors to building corridors, switchgear, telephone conduit to telecom room, water and drain lines stubbed into space.

e. All new Tech Expansion Space systems shall be separately metered, unless otherwise directed by code or agreed to by TMI, and TMI shall maintain exclusive access and control of these facilities. Developer shall supply sub meters in coordination with TMI plans.

f. Shafts, structural openings, sleeves, etc. shall be provided where TMI has indicated prior to construction, in coordination with TMI design documents.

g. Exposed surfaces of concrete structure to be natural as-is in appearance without extra cost or protection.

h. TMI shall review all plans to coordinate exposed conduits prior to construction.

2. CONCRETE FLOORS

a. Floor flatness/levelness consistent with ASTM E1155/E. Floors will be sealed and maintain a 1/4" per 10 ft. tolerance.

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

3. ELEVATORS

a. Developer shall provide one 4,000 lb.-capacity Otis (or similar manufacturer) hydraulic or low speed traction elevator. Doors configuration shall conform with TMI design documents. Cab shall be 9630 high AFF if possible. Elevator shall service the two main Tech Expansion Space levels.

b. Cab floors shall be finished with sealed concrete.

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

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

a. TMI shall design its restrooms and janitor closets as part of its design documents.

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

c. Developer shall provide two restroom cores (one men's, one women's) per floor with no less than six (6) stalls per restroom.
5. WASTE WATER, DOMESTIC WATER, VENT SYSTEM AND NATURAL GAS (PLUMBING)
   a. TMI shall review and comment on waste water, domestic water, venting and gas lines prior to construction to assure conformance with TMI design documents.
   b. Water and gas meters to be separate from building meters if possible, as defined by applicable codes or through coordination with TMI design documents. If not possible, then Developer shall provide sub meter.
   c. Sewer for expansion space shall be sized according to applicable code
   d. TMI shall coordinate its design documents with Developer and review all wet services and future Electrical, Server, MDF rooms.

6. ELECTRICAL AND POWER SYSTEM
   a. Dedicated 2000A -480V VPI Dry-type transformer. One sub transformer per floor.
   b. Emergency lighting on each floor as required to obtain Certificate of Occupancy for unfinished space.
   c. Electrical meter to be separate from other building meters if possible. Otherwise, Developer will sub meter, as defined by applicable codes or through coordination with TMI design documents

7. HVAC SYSTEM
   a. Core HVAC units and main HVAC distribution Loop to each floor.
   b. Core DDC system (with control wiring, sensors, thermostats, and control panels for common are core areas only). System will be expandable for the addition of DDC controls for future tenant improvements.
   c. 1 AHU per level.
   d. Building designed for open return air plenum.
   e. Developer shall provide required systems for up to six (6) zones.

8. FIRE AND LIFE SAFETY SYSTEMS
   a. Fire mains shall be mounted tight to structure wherever possible, as defined by applicable codes or through coordination with TMI design documents. Sprinklers shall be dropped to accommodate the main being mounted tight to structure.
   b. FLS monitoring system per Fire Code. TMI shall review plans prior to construction for conformance with TMI design documents.
   c. Connection and synchronization of Fire Alarm Systems to existing Tech Museum.
   d. Developer shall provide required systems for up to six (6) zones.
9. ADDITIONAL WORK

As requested and only if paid for in advance by TMI, Developer shall provide additional systems, such as toilets and fire zones, at the per unit cost of those warm shell items identified in this Attachment No. 3.

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

1. Utility Installations: All utility installations (including, but not limited to, transformers, gas valves and meters, water backflow preventers and meters, irrigation controllers and post indicator valves) are to be located within the building envelope to the extent reasonably possible. Developer shall work with City agencies, PG&E, San Jose Water Company, and other utility providers as necessary for a building of this scale and technological quality to incorporate utilities within building envelope wherever possible.

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

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

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

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

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

7. Driveways: Driveways shall provide aprons to curb returns so that the sidewalk maintains an even grade without curbs or ramps. This same standard shall apply to loading ramps and other points of vehicle and pedestrian access. All slopes must meet minimum ADA standards.
8. **Parking Guidance System**: All publicly accessible parking structures and parking lots must be linked to the City’s Parking Guidance System.

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

**F. Signs**

The Developer shall require a sign program that illustrates the size, types and locations of the signage for the retail tenants’ use as part of the Final Project Drawings. All signs on the exteriors of buildings and structures developed as a part of the Developer’s improvements are of special concern and must conform to City of San Jose sign regulations and the Site Development Permit.

**III. EASEMENTS**

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

**IV. ENVIRONMENTAL MITIGATION RESPONSIBILITIES**

Prior to execution of this Agreement, the City Council adopted a resolution certifying the Supplemental Environmental Impact Report for the Museum Place Mixed-Use Project ("SEIR"). The SEIR set forth certain mitigation measures applicable to the design, construction, operation and use of the Project and Developer shall comply with the SEIR and any and all mitigation measures therein in connection with the development and construction of the Project.

**V. MISCELLANEOUS**

**Plans and Data**

The Developer shall make available to the City upon request copies of all plans, drawings, surveys, tests, data and other information obtained or available to the Developer for the Project or the Site.
ATTACHMENT NO. 4

SCHEDULE OF PERFORMANCE

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

A. Delivery of DDA

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<tr>
<td>1.</td>
<td>City delivery of executed DDA to Developer.</td>
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<tr>
<td>2.</td>
<td>Developer to deliver the Deposit to Escrow Agent</td>
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B. Obligations Relating to Site Acquisition and Document Preparation

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<tbody>
<tr>
<td>1.</td>
<td>City shall have obtained fee title to the SARA Area.</td>
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<tr>
<td>2.</td>
<td>Substantially final forms of the Parkland Agreement, the Declaration of Covenants (as applicable), the REA (as applicable) and the Lease Amendment shall be negotiated and prepared by the applicable parties.</td>
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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
### C. Obligations Relating to Design and Construction of Phase I Off-Site Utility Work of the Project

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Timeframe</th>
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<tr>
<td><strong>Developer’s Election Period</strong></td>
<td>Within one hundred twenty (120) days after the SARA Transfer Target Date</td>
</tr>
<tr>
<td><strong>1. Developer submittal of evidence of financing for Phase I Off-Site Utility Work</strong></td>
<td>Within sixty (60) days after the Effective Date but in no event earlier than November 1, 2017.</td>
</tr>
<tr>
<td><strong>2. Developer shall submit to City construction documents for the Phase I Off-Site Utility Work.</strong></td>
<td>Within nine (9) months after the Effective Date.</td>
</tr>
<tr>
<td><strong>3. City to provide list and plans and specifications for all City controlled work with Developer which shall include Public Art, Tech solar system relocation (if applicable), and Automatic Public Toilet.</strong></td>
<td>Within nine (9) months after the Effective Date.</td>
</tr>
<tr>
<td><strong>4. Developer shall provide evidence of financing for the Phase II Work.</strong></td>
<td>Within ten (10) months after the Effective Date.</td>
</tr>
<tr>
<td><strong>5. City shall review and comment on Phase I Off-Site Utility Work in coordination with TMI.</strong></td>
<td><strong>City Review Target Date:</strong> forty-five (45) days after Developer submittal Developer shall have thirty (30) days to respond to any City comments.</td>
</tr>
<tr>
<td><strong>6. Developer submittal of executed construction contract for the Phase I Off-Site Utility Work.</strong></td>
<td>Within twelve (12) months of the Effective Date.</td>
</tr>
<tr>
<td><strong>7. Developer submittal of Construction Impact Mitigation Plan for Phase I Off-Site Utility Work.</strong></td>
<td>Prior to or with application for construction permits for Phase I Off-Site Utility Work.</td>
</tr>
<tr>
<td><strong>8. Commencement of the Phase I Off-Site Utility Work.</strong></td>
<td>Upon issuance of construction permits for the Phase I Off-Site Utility Work, but in no event more than twelve (12) months after the Effective Date.</td>
</tr>
<tr>
<td><strong>9. Substantial completion of Phase I Off-Site Utility Work.</strong></td>
<td>Within six (6) months after commencement of the Phase I Off-Site Utility Work.</td>
</tr>
</tbody>
</table>

### D. Obligations Relating to Design and Construction of the Phase II Work

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. City shall provide design comments and design objectives for Tech Expansion Space Warm Shell to Developer</strong></td>
<td>Within nine (9) months after the Effective Date.</td>
</tr>
<tr>
<td><strong>2. Developer to submit construction documents for all demolition, excavation and foundation work (fD, E &amp; F Work) work to City.</strong></td>
<td>Within twelve (12) months of the Effective Date.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>3.</strong> City shall provide comments and response to D, E &amp; F Work construction documents in coordination with TMI.</td>
<td><strong>City Review Target Date:</strong> forty-five (45) days after Developer submittal. Developer shall have thirty (30) days to respond to City comments.</td>
</tr>
<tr>
<td><strong>4.</strong> With respect to the Phase II Work, Developer shall submit to the City those items set forth in Section 402 of the DDA.</td>
<td>Prior to the Close of Escrow but in no event more than eighteen (18) months after the Effective Date.</td>
</tr>
<tr>
<td><strong>5.</strong> City approval or disapproval of the items set forth in Section 402 of the DDA.</td>
<td>Within thirty (30) days after receipt.</td>
</tr>
<tr>
<td><strong>6.</strong> Developer to submit design documents to City for coordination with TMI for Phase II Work.</td>
<td>As appropriate to meet the milestone for Developer’s submittal of construction documents described in Section D, No. 8 below.</td>
</tr>
<tr>
<td><strong>7.</strong> City shall provide preliminary design phase documents for the Tech Expansion Space tenant improvements to Developer.</td>
<td>Within eighteen (18) months after the Effective Date but not less than one hundred twenty (120) days prior to the Developer’s submittal of the construction documents described in Section D, 8 below.</td>
</tr>
<tr>
<td><strong>8.</strong> Developer to submit all construction documents for the Phase II Work to City.</td>
<td>Within twenty four (24) months after Effective Date.</td>
</tr>
<tr>
<td><strong>9.</strong> City shall provide comments and response to the Phase II Work construction documents in coordination with TMI</td>
<td><strong>City Review Target Date:</strong> forty-five (45) days after Developer submittal. Developer shall have thirty (30) days to respond to City comments.</td>
</tr>
<tr>
<td><strong>10.</strong> Submittal of Construction Impact Mitigation Plan for the Phase II Work.</td>
<td>Prior to or with application for building permit for the Phase II Work.</td>
</tr>
<tr>
<td><strong>11.</strong> Commence construction of the Phase II Work</td>
<td>Within thirty (30) days after the Close of Escrow.</td>
</tr>
<tr>
<td><strong>12.</strong> Substantial Completion of the Tech Expansion Space Warm Shell.</td>
<td>Within thirty six (36) months after Close of Escrow.</td>
</tr>
<tr>
<td><strong>13.</strong> Substantial Completion of the Phase II Work.</td>
<td>Within forty eight (48) months after Close of Escrow.</td>
</tr>
<tr>
<td><strong>14.</strong> City issuance of Certificate of Compliance (Phase)</td>
<td>Upon completion of each Phase of the Project</td>
</tr>
</tbody>
</table>
### 15. City issuance of Certificate of Compliance (Final)

**Upon completion of the final Phase of the Project**

### E. Obligations Relating to Opening and Close of Escrow

<table>
<thead>
<tr>
<th>1. Parties to Open Escrow.</th>
<th>Within ten (10) days of the Effective Date.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Submittal of Developer certifications per Section <strong>202B</strong>.</td>
<td>At least ten (10) days prior to Close of Escrow</td>
</tr>
<tr>
<td>3. Close of Escrow</td>
<td>Upon satisfaction of all conditions to Closing per Section <strong>202C</strong> but in no event more than eighteen (18) months after the Effective Date.</td>
</tr>
</tbody>
</table>
FORM OF GRANT DEED
(TECH EXPANSION SPACE)

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

[_____] ________
Signature of Declarant

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

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

Mail Tax Statement to: same as above address

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, hereby grants to the City of San Jose, a municipal corporation of the State of California, ("Grantee") all that real property situated in the City of San Jose, County of Santa Clara County, State of California as more particularly described in Exhibit A attached hereto ("Property").
The Property is conveyed pursuant to a Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee dated August ____, 2017.

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

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this _____ day of __________________, 2017.

Grantor

___________________________
By:_____________________________
Its:_____________________________

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
The Grantee hereby accepts this written deed, subject to all of the matters hereinabove set forth.

GRANTEE:

________________________________, a California ________________________

By: _____________________________

Its: _____________________________

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
RIDER TO GRANT DEED (Tech Expansion Space) RIGHT OF FIRST OFFER

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

2. If Grantee, after complying with any and all applicable laws related to the disposition of surplus property, is legally authorized and elects to sell the Property as a separate parcel not in conjunction with the sale of the adjacent property owned by Grantee, Grantee shall first offer the Property to Grantor or, if different from Grantor, to the then record owner of the Office Space within the Project (as those terms are defined in the DDA) ("Grantor’s Successor"), in accordance with the provisions of this Rider. For purposes of the following provisions of this Rider, "Grantor" shall be deemed to mean Grantor or Grantor’s Successor, as applicable. Notwithstanding the above, this Right of First Offer shall not apply if the Property is to be sold in conjunction with a sale of the adjacent property owned by Grantee and shall terminate automatically upon the sale of such properties to a third party, and shall not apply to any lease (other than a long term ground lease in excess of thirty (30) years, including any extension options) or sublease of the Property or any partial transfer which does not constitute a sale of all or substantially all of the Property.

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

4. If Grantor does not indicate its agreement to acquire the Property within such forty-five (45) day period, Grantee shall thereafter have the right to transfer the Property in a bona fide transfer to a third party for at least the same price and on the same other terms set forth in Grantee’s Notice. Upon the transfer of the Property in a bona fide transfer to a third party for at least the same price and on the same other terms set forth in Grantee’s Notice, this Right of First Offer shall terminate. Grantee shall not at any time transfer the Property on terms less favorable to Grantee than the terms set forth in Grantee’s Notice without first re-offering the Property to Grantor on such less favorable terms in accordance with the procedure set forth above. In addition, if Grantee has not consummated the sale of the Property to a third party on the terms set forth in Grantee’s Notice within 270 days after delivery of Grantee’s Notice, Grantee shall not transfer the Property to any third party on any terms without first re-offering the Property to Grantor in accordance with the procedure set forth above.
5. The provisions of this Rider are binding upon and for the benefit of Grantee and Grantee, and their respective successors and assigns, and constitute covenants running with the land comprising the Property and the Office Space (as defined in the DDA) and equitable servitudes thereon.
EXHIBIT A

Legal Description
ATTACHMENT NO. 6

VTMAP

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
ATTACHMENT NO. 7

FORM OF PARKING AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED SEND TO:

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

(Please above reserved for Recorder's Use)

PARKING AGREEMENT,
EASEMENT
AND DECLARATION OF COVENANTS
FOR
MUSEUM PLACE PARKING GARAGE

This Parking Agreement, Easement and Declaration of Covenants (the "Agreement") is made and entered into as of the __ th day of __________, 2017, by and between the CITY OF SAN JOSE (hereinafter "City"), a municipal corporation and INSIGHT KING WAH, LLC, a California limited liability company (hereinafter referred to as "Developer").

RECITALS

A. City and Developer entered into that certain Disposition and Development Agreement dated ______________, 2017, (the Development Agreement), a Memorandum of which was recorded on ____________, as Instrument No. __________, in the Official Records of Santa Clara County, which provides for the development of a high density mixed use urban development located adjacent to the Tech Museum of Innovation facility (the Tech Museum Facility) on the block bounded by Park Avenue, South Market Street, West San Carlos Street and South Almaden Boulevard in San Jose, California as more particularly described on Exhibit A attached hereto (the Property).

B. Pursuant to the Development Agreement, the City transferred the Property to Developer and Developer is to construct a project which will include high rise residential condominium units, a hotel, office space, retail space, a parking garage containing not less than five hundred (500) total parking spaces (provided that the Developer may utilize mechanical equipment and/or valet services to meet that requirement or to provide additional parking) (the Garage) and expansion space for the Tech Museum Facility (the Tech Expansion Space), all as more particularly described in

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
and subject to the Development Agreement (collectively, "Project"). The owners, tenants, occupants and permitted users of the residential condominium units, the hotel, the office space and the retail space shall be collectively referred to herein as the "Private Users".

C. The Tech Museum Facility is owned by the City and operated and managed by The Tech Museum of Innovation, a California nonprofit public benefit corporation ("TMI"), pursuant to a Lease Agreement dated July 11, 1994 as amended, (collectively, "Tech Lease"). Pursuant to the Tech Lease, the Tech Expansion Space will be operated and managed by TMI as part of the Tech Museum Facility. The Tech Museum Facility and the Tech Expansion Space shall be referred to collectively as the "Tech Museum Facility". The parties acknowledge that, as partial consideration for the City's contributions to the Project under the Development Agreement, Developer shall provide the City, among other things, with certain rights to use the Garage for the benefit of the public and the Tech Museum Facility and TMI, as more particularly described below. (City, Developer and TMI may be referred to separately herein as a "Party" or collectively as "Parties".)

D. In partial consideration of the City's contributions to the Project under the Development Agreement and as more particularly set forth in this Agreement, Developer shall make available at least (i) four hundred (400) total non-exclusive parking spaces ("Public Spaces") in the Garage for use by members of the public, including TMI, patrons of the Tech Museum Facility and other members of the public during specified periods of time set forth herein (provided that the Developer may utilize mechanical equipment and/or valet services to meet that requirement), and (ii) one hundred (100) total non-exclusive spaces, out of the 400 total Public Spaces, in the Garage ("Tech Museum Spaces") allocated to the City and to be made available for the City's use (provided that the Developer may utilize mechanical equipment and/or valet services to meet that requirement), which use has been delegated by the City pursuant to the Tech Lease solely to TMI for its use as the operator of the Tech Museum Facility.

E. This Agreement is intended to set forth certain rights and obligations of the City and the Developer regarding the use and operation of the Garage, which rights and obligations are covenants that are intended to run with the land, and which are intended to benefit TMI.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows (capitalized terms not defined herein shall have the meanings specified in the Development Agreement):
AGREEMENT

1. PARKING GARAGE

1.1 Public and City Use of Parking Garage

(a) Public Spaces. Developer shall make the Public Spaces in the Garage available for hourly parking for the general public, including TMI, patrons of the Tech Museum Facility and people who attend Tech Museum Facility events. The portions of the Garage that shall be available for use as Public Spaces shall be designated by the Developer from time to time and those areas necessary for ingress and egress to such parking spaces (the "Public Parking Area"). Developer shall from time to time further designate the parking area within the Parking Garage which shall at all times be for the exclusive use of the Private Users ("Private Parking Area").

(b) Hours of Public Use. Except as otherwise provided in Section 1.1 (d) below, the Public Parking Area shall be open to the general public Monday through Friday from 6:00 p.m. to 12:00 midnight and Saturday, Sunday, and generally recognized holidays from 10:00 a.m. to 12:00 midnight (collectively the "Hours of Public Use"). At all other times, Developer shall have the exclusive control over the entire Garage for the exclusive use of the Private Users.

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

(d) Tech Museum Spaces. Developer shall make available at all hours during the day, seven (7) days a week the Tech Museum Spaces in the Garage. Developer may charge a fee for the use of the Tech Museum Spaces in an amount not to exceed the validation program which will otherwise be implemented by the Developer in the Project and charged to the tenants of the Project; provided that in no event shall such fee exceed the lowest rate charged to any tenant in the Project. The Tech Museum Spaces shall be open and available for use by the City or its designees at all times during the term of this Agreement (but shall not be required to be dedicated exclusively for use by the City or TMI) and shall not be subject to the Hours of Public Use. Developer shall provide Garage access to the City for use of the Tech Museum Spaces.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
(e) **Parking Operations.** From and after the date hereof, Developer shall, at its sole cost and expense, operate the Public Parking Area and the Tech Museum Spaces so as to meet the use and quality standards as are appropriate for the operation of public parking serving a first-class downtown office residential complex (recognizing the need to serve the parking needs of the Private Users), and are consistent with good operating procedures for similar public parking in major cities in the U.S. The parties acknowledge that Developer intends to operate the Garage using a valet system. City hereby approves of the use of a valet system to operate the Garage provided that if the valet system does not work to effectively handle (i) exiting and entering the Garage during major Tech Museum Facility events or during the Hours of Public Use, or (ii) TMI’s use of the Tech Museum Spaces, the Developer, the City and TMI shall meet and agree upon an alternative method of operating the Garage during such peak times and, thereafter, the Developer shall promptly modify its operations accordingly. At least once a year, and at such other times requested by City or Developer upon reasonable written notice, Developer, City and TMI shall meet to discuss and address any concerns, complaints or issues related to (i) the operation and maintenance of the Garage, or (ii) compliance with the terms and conditions of this Agreement.

(f) **Independent Parking Operator.** At the election of Developer, and subject to the prior written approval of City, not to be unreasonably withheld or delayed, Developer may contract with, or grant a concession to, a third-party entity experienced in the management and operation of commercial parking garages to staff and operate the Garage ("Parking Operator"). Developer shall notify City and TMI of the selection of any Parking Operator and provide City and TMI with contact names and information prior to Parking Operator’s commencement of operations of the Garage. Any agreement between Developer and the Parking Operator shall require the Parking Operator to comply with the provisions of this Agreement, including, but not limited to, the standards set forth in Section 2.1 (e) and 2.2 hereof, and shall include provisions that the Parking Operator cooperate and coordinate with the City and TMI regarding the use of the Public Spaces, including the Tech Museum Spaces, of the Garage and the use of the Garage during the Hours of Public Use, including notifying the City and TMI thirty (30) days in advance if access or use of the Garage will be unavailable during the Hours of Public Use or for use of the Tech Museum Spaces, and to respond immediately and take appropriate action in the event notice is provided by the City or TMI that any of the Public Spaces or Tech Museum Spaces are unavailable or inaccessible when otherwise required to be available and accessible under this Agreement.

(g) **Parking Revenue.** As consideration for Developer’s obligations hereunder, Developer shall retain any and all revenue received from the operation of the Public Parking Area.

(h) **Ingress and Egress Easements.** Developer hereby grants to the City and the general public such ingress, egress and other easements as necessary to fully utilize the Public Parking Area, including the Tech Museum Spaces, as more particularly set forth above, including, but not limited to, the following:
(i) Garage ramp and all facilities related to parking;

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

(iii) Access for Tech Museum Facility exhibit delivery vehicles to have direct access to all floors that align with Tech Expansion Space for loading, unloading, or event set up.

(i) Parking Operations Plan. Prior to the date the Garage opens to the Public, the Developer, the City and TMI shall prepare and enter into a Parking Operations Plan ("POP") that describes in more detail how the Public Spaces, including the Tech Museum Spaces will be managed and operated. The POP shall identify any Parking Operator and include specific contact information for ingress, egress or access problems to the Garage, after-hours access, use of access cards, and any other items related to the operation of the Garage as it relates to the Public Spaces, including the Tech Museum Spaces. The POP shall be amended to the extent the operation of the Garage changes as it relates to the Public Spaces and the Tech Museum Spaces.

1.2 Maintenance of the Garage

(a) Generally. During the term of this Agreement, Developer shall, at its sole cost and expense, operate and maintain the Garage as provided herein. Developer shall ensure that the Garage is maintained and operated in a first-class condition. All Garage improvements repaired or replaced under this Section 1.2 shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced. Developer or its Parking Operator shall provide reasonable advance written notice to City and TMI in the event that (i) any maintenance or repair work performed hereunder may disrupt operations of the Tech Museum Facility, or (ii) any such work will prevent access to the Garage during the Hours of Public Use or (iii) prevent the use of the Tech Museum Spaces. Developer's obligation to maintain and operate shall include, but not be limited to, the following:

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

(ii) Sweeping. Removal of all papers, debris, filth and refuse, and washing and sweeping the Garage to the extent necessary to keep the Garage in a first-class, clean and orderly condition, and washing down and/or cleaning all hard surfaces including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required.
(iii) **Doors, Gates and Entry Points to Garage.** Maintaining and keeping in good condition, operation and repair at all times, all interior and exterior doors in and to the Garage, gates and all entry and exit points for the Garage.

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

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

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

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

(viii) **Signs.** Maintaining and repairing all signs in the Public Parking Area.

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

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

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

(b) **Developer’s Failure to Perform.** If Developer fails to perform any of the maintenance obligations set forth in this Section 1.2, City or TMI shall notify Developer of such alleged failure ("City’s Notice") and Developer shall have five (5) business days from receipt of City’s Notice in which to either (i) cure any such alleged failure or (ii) to notify City that it disputes the alleged failure in City’s Notice. If Developer does not cure the failure to perform alleged in City’s Notice within such five (5) business day period, regardless of whether or not Developer disputed such alleged failure, City or, if it so chooses and upon notice to the City, TMI shall have the right to remedy the alleged failure for the account of Developer. All sums actually paid or incurred by City or TMI, together with interest thereon at the Reference Rate of the Bank of America plus two percent (2%) and not to exceed the maximum rate for which parties may lawfully contract, shall be payable to City or, in those instances where TMI acts as provided herein, to TMI within thirty (30) days after written demand therefor; provided, however, that if Developer notifies City or, as appropriate, TMI within such five (5) business day period after receipt of City’s Notice that Developer disputes the failure alleged by City or TMI and includes its reasons therefor, Developer shall not be obligated to make such payment unless and until it has been determined by court order or judgment that such alleged failure was in fact an obligation of Developer hereunder.
(and the Parties agree to file a declaratory relief action in Santa Clara County Superior Court and to pursue such action to completion as promptly as possible). The Parties agree that each Party shall be responsible for its own costs, including, without limitation, attorneys’ fees with regard to any such court proceeding.

2. INSURANCE

During the term of this Agreement, Developer shall maintain Commercial General Liability Insurance (including Garage Keepers Legal Liability coverage) with a combined single limit of at least $5,000,000, and statutory coverage for Workers Compensation Insurance. Developer shall furnish the City with certificates of insurance naming the City as an additional insured on the Commercial General Liability policy. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

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

3. MISCELLANEOUS

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

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

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

3.4 Notices. If at any time after the execution of this Agreement it shall become necessary or convenient for one of the Parties hereto to serve any notice, demand or communication upon the other Party, such notice, demand or communication shall be in writing and shall be deemed received by the Party to be notified as follows: upon personal delivery; upon sending via facsimile so long as written confirmation of delivery is obtained and a copy of such notice also is sent same day via U.S. Mail, first class, postage prepaid; next business day upon sending via overnight express mail or courier service so long as written confirmation of delivery is obtained; and three (3) business days following sending via U.S. Mail, first class postage prepaid, and (a) if intended for City shall be addressed to:
City of San José
Office of City Manager
200 East Santa Clara Street, 17th Floor
San José, CA 95113-1905
Attn: Office of Economic Development
Fax No. _________________________

With a copy to:

City of San José
Office of City Attorney
200 East Santa Clara Street, 16th Floor
San José, CA 95113-1905
Attn: City Attorney
Fax No. _________________________

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

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

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

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

If to Developer at:

Insight King Wah, LLC
333 West Santa Clara Street, Suite 805
San Jose, California 95113
Attn: Dennis Randall

with a copy to:

Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, California 94111
Attn: David Preiss
With a copy to:

Pahl & McCay
225 West Santa Clara Street, Suite 1500
San Jose, California 95113
Attn: Stephen D. Pahl

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

3.5 Effect of Breach

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

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

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

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

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

3.9 Approvals. Any approvals required of any Party hereunder (excepting approvals specified to be in the discretion or sole discretion of a Party, or words of like import) shall not be unreasonably withheld and, where a time period therefor is not specified, shall not be unreasonably delayed.
3.10 **Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Agreement shall be, in all cases, construed according to its fair meaning and not strictly for or against either Party.

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

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

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

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

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

APPROVED AS TO FORM: CITY OF SAN JOSE

_________________________   By:_______________________

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
Sr. Deputy City Attorney

________________________
________________________

DEVELOPER

INSIGHT KING WAH, LLC.,
A California limited liability company

BY: ____________________________

Its: ____________________________

BY: ____________________________

Its: ____________________________

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
Exhibit A

PROPERTY DESCRIPTION

[To Be Attached]
ATTACHMENT NO. 8

COMPLETION GUARANTY
(Museum Place)

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

RECITALS

A. Insight King Wah, LLC, a California limited liability company ("Developer"), and City have entered into a Disposition and Development Agreement dated ______________, 2017 ("DDA"). The DDA provides for the development of a high density mixed use urban development located adjacent to the Tech Museum of Innovation facility (the "Tech") on the block bounded by Park Avenue, South Market Street, West San Carlos Street and South Almaden Boulevard in the City of San Jose, California and more particularly described on EXHIBIT A attached hereto (the "Site"). The development of the Site is to include high rise residential condominium units, a hotel, office space, retail space and expansion space for the Tech ("Tech Expansion Space"), all as more particularly described in the DDA (collectively, "Project").

B. In exchange for the Site and other consideration set forth in the DDA, Developer is required to develop the Phase I Off-Site Utility Work and Phase II Work (both as defined in the DDA) for the Project as set forth in the DDA, including the Scope of Development, Attachment No. 3 to the DDA, and to commence and complete construction of the Phase I Off-Site Utility Work and Phase II Work for the Project within the time periods set forth in the Schedule of Performance, Attachment No. 4 to the DDA.

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

GUARANTEE AND AGREEMENT

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

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
1. Guaranty. Guarantor unconditionally and irrevocably guarantees that the Developer will perform, and the Guarantor covenants and agrees that the Guarantor will be primarily liable for, the full and timely performance of all of the Developer's obligations under the DDA to construct and complete the Phase II Work for the Project to be constructed by the Developer pursuant to the DDA in accordance with the DDA and free and clear of all mechanics liens and claims therefor, except as the Guarantor's liability is expressly limited in Section 3 hereof.

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

In the event that the Guarantor should fail to perform as herein above provided, the City shall, in addition to other remedies expressly provided herein, have the following remedies:

(a) From time to time and without first requiring performance on the part of the Developer or any other person except as provided above, and without being required to exhaust any or all security held by the City, to require performance by the Guarantor of any obligation to be performed on the part of the Guarantor pursuant to the terms hereof, by action at law or in equity or both, and further to collect in any such action compensation for all loss, costs, damage, injury and expense sustained or incurred by the City, including any losses, costs, damages, injuries or expenses sustained or incurred by City in its capacity as the owner of the Tech Museum of Innovation, as a consequence of the nonperformance of the Guarantor hereunder. Nothing herein shall be construed to prohibit the City from pursuing any remedies under any other agreement, against any person other than the Guarantor.

(b) If Guarantor does not timely perform its obligations under this Guaranty, the City, at City's option, shall have the right to perform any obligation required to be performed by Guarantor under this Guaranty, which City reasonably deems necessary, and expend such sums as City reasonably deems proper in order so to complete such obligation. The amount of any and all reasonable expenditures made by City shall be immediately due and payable by Guarantor to City, notwithstanding City's pursuit of any other rights or remedies.
3. **Limitations on Guarantor’s Liability.** The Guarantor’s liability pursuant to this Guaranty shall be limited in accordance with the following:

(a) **Pre-Construction Period.** Until the time that the Site has been conveyed to Developer under the DDA and construction commences on the Phase II Work for the Project, the Guarantor shall have no liability hereunder. It being expressly understood by the parties the Guarantor’s liability hereunder shall commence immediately upon commencement of any Phase II Work performed by Developer at the Site.

(b) **Post-Construction Period.** The Guarantor shall have no further liability under this Guaranty upon the completion of the Phase II Work and the issuance of the final Certificate of Compliance for the Project (as described in Section 314 of the DDA).

(c) **Termination of DDA.** If Developer terminates the DDA in accordance with the DDA or the City terminates the DDA prior to conveyance of the Site to Developer, this Guaranty shall automatically terminate and the Guarantor shall have no further liability under this Guaranty.

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

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

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

7. **Covenants of Guarantor.**

The Guarantor shall promptly advise the City in writing of any material adverse change in the business or financial condition of the Guarantor.
8. **Guaranty Independent; Waiver of Exoneration.**

Subject to the limitations set forth in Section 3:

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

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

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

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

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

9. Does Not Supersede Other Guaranties. The obligations of the Guarantor hereunder shall be in addition to any obligations of the Guarantor under any other guarantees of any other persons or entities heretofore given or hereafter to be given to the City, and this Guaranty shall not affect or invalidate any such other guarantees. The liability of the Guarantor to the City shall at all times be deemed to be the aggregate liability of the Guarantor under the terms of this Guaranty and of any other guarantee heretofore or hereafter given by the Guarantor.

10. Continued Existence; No Transfer or Assignment.

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

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

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

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

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

(c) Time is of the essence hereof.

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

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

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

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

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

"Guarantor"

________________________________________
________________________________________
By: ____________________________________

Name: __________________________________

Title: ________________________________
EXHIBIT A

Legal Description

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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

MEMORANDUM OF DISPOSITION
AND
DEVELOPMENT AGREEMENT

This Memorandum of Disposition and Development Agreement shall provide notice that CITY OF SAN JOSE, a municipal corporation of the State of California (City), and ________________________ (Developer) have entered into that certain unrecorded Disposition and Development Agreement dated as of August ____, 2017 (the DDA). Said DDA contains terms and covenants affecting the title to and right to possession of that certain real property situated in the City of San Jose, County of Santa Clara, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (Property).

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

This Memorandum of DDA is being recorded for notice purposes only. Nothing herein shall be deemed to amend, change or modify the terms, covenants and conditions of the DDA referred to herein. Reference should be made to the DDA for all of its terms, covenants and conditions. This Memorandum of DDA as it relates to all
other provisions of the DDA shall automatically terminate upon recordation of a Final Certificate of Compliance pursuant to the DDA.

DEVELOPER

________________________________
CITY OF SAN JOSE

By ____________________________
Print Name ______________________
Title ____________________________

By ____________________________
Norberto Duenas
Executive Director

Approved as to form:

________________________________
Tom Murtha
Senior Deputy City Attorney
ACKNOWLEDGEMENT

State of California
County of _______________________

On _____________________ before me, _________________________ _______________, (insert name and title of 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)
ACKNOWLEDGEMENT

State of California
County of _______________________)

On _____________________ before me, _________________________ _______________
(insert name and title of officer)

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

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

WITNESS my hand and official seal

Signature____________________________     (Seal)
EXHIBIT A

Legal Description
ATTACHMENT NO. 10

FORM OF GRANT DEED
(SITE)

When recorded mail to:
____________________________________
____________________________________
____________________________________
____________________________________

APN: _______________

GRANT DEED

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

[_____] _________________
Signature of Declarant

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

________________________________________________________________

__________________________________________________________
Declarant’s signature (must be signed if no transfer tax is being paid)

Mail Tax Statement to: same as above address

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
the City of San Jose (Grantor) hereby grants to ______________________, a
California ___________________ ("Grantee") all that real property situated in the City
of San Jose, County of Santa Clara County, State of California as more particularly
described in Exhibit A attached hereto (Property).

(1) The Property is conveyed pursuant to a Disposition and Development Agreement
(the "DDA") entered into by and between the Grantor and the Grantee dated August
(2) Grantee covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

(3) The covenants against discrimination set forth in paragraph (2) of this Grant Deed shall remain in perpetuity and shall not be subject to release.

(4) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Grantor shall be deemed a beneficiary of the covenants provided in Section (2) above both for and in its own right and also for the purposes of protecting the interests of the community. All such covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such covenants, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of such covenant.

(5) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in the Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest recorded against the Property; provided, however, that any subsequent owner of the Property or portion thereof shall, from and after its acquisition of title to the Property, unless or to the extent otherwise released, be bound by such covenants, conditions, restrictions, limitations, and provisions, whether such owner’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise.

(6) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property shall be deemed to be merged with this Grant Deed.

(7) Except as otherwise expressly provided, the covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title and in no event shall a violation or breach of the covenants, conditions, restrictions, terms, and provisions contained in this Grant Deed result in a forfeiture of title.
(8) As expressly set forth in, and subject to, Section 607 of the DDA, Grantor shall have the right, at its option, to reenter and take possession of the Property with all improvements thereon and revest in the Grantor the estate previously conveyed to the Grantee, if after conveyance of title to such the Property and prior to issuance of the Certificate of Compliance therefor, the Grantee shall:

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

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

   (c) Transfer or suffer any involuntary transfer of the Property or any part thereof in violation of the DDA.

Such right to reenter, repossess and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

   (a) Any mortgage, deed of trust or other security instrument permitted by the DDA; or

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

   IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this ______ day of __________________, 2017.

   ❇️Grantor❇️

   Approved as to form:

   ___________________________    By: ___________________________
   Senior Deputy City Attorney Norberto Duenas
   City Manager

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
The Grantee hereby accepts this written deed, subject to all of the matters hereinabove set forth.

GRANTEE:

________________________________,  
a California ________________________

By: ______________________________  

Its: ______________________________
EXHIBIT A

Legal Description
ATTACHMENT NO. 11

PRELIMINARY TITLE REPORT

First American Title Insurance Company
National Commercial Services
1737 North First Street, Suite 500
San Jose, CA 95112

Matt Love
Insight Realty Company
333 W Santa Clara St Ste 805
San Jose , CA 95113
Phone: (408)359-4555

Escrow Officer: Linda Tugade
Phone: (408)579-8340
Email: ltugade@firstam.com
Owner: City of San Jose
Property: San Carlos Street, San Jose, CA

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner’s Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of titles and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

First American Title Insurance Company
Dated as of July 12, 2017 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

To Be Determined

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

City of San Jose; and

Redevelopment Agency of the City of San Jose

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee as toParcel One; easements as to Parcels Two, Three and Four

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2017-2018, a lien not yet due or payable.

2. General and special taxes and assessments for the fiscal year 2016-2017 are exempt. If the exempt status is terminated an additional tax may be levied. A.P. No.: 259-42-023, portion.

3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

   In Favor of: City of San Jose
   Affects: as described therein

5. This item has been intentionally deleted.

   In Favor of: the Pacific Telephone and Telegraph Company
   Affects: as described therein

First American Title Insurance Company
   In Favor of: the Pacific Telephone and Telegraph Company
   Affects: as described therein

8. This item has been intentionally deleted.

9. This item has been intentionally deleted.

10. Terms and provisions of an unrecorded lease dated June 29, 1988, by and between City of San Jose, a municipal corporation as lessor and The Technology Center of Silicon Valley, a California not-for-profit corporation as lessee, as disclosed by a Memorandum of Lease recorded August 01, 1988 in Book K624, Page 2149 of Official Records.

    Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

11. This item has been intentionally deleted.

12. This item has been intentionally deleted.

13. This item has been intentionally deleted.

14. Terms and provisions of an unrecorded lease dated November 14, 2008, by and between The Tech Museum of Innovation, a California nonprofit public benefit corporation as lessor and Solar Star TM Innovation, LLC, a Delaware limited liability company as lessee, as disclosed by a Memorandum of Lease recorded November 18, 2011 as Instrument No. 21426985 of Official Records.

    Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

15. The rights, if any, of a city, public utility or special district to preserve a public easement in Almaden Avenue as the same may be vacated by the City of San Jose.

16. Matters shown or dedicated on the Parcel Map to be recorded.

17. This item has been intentionally deleted.

18. This item has been intentionally deleted.

19. Prior to the issuance of any policy of title insurance, the Company will require:

    One of the following, in accordance with the Subdivision Map Act (Section 66410 et seq. of the California Government Code):
    a. A certificate of compliance recorded in the public records.
    b. Filing of a final map or parcel map.
    c. A waiver of a final map or parcel map.

20. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/NSPS survey.

First American Title Insurance Company
INFORMATIONAL NOTES

1. This is a pro-forma preliminary report. It does not reflect the present status of title and is not intended to be a commitment to insure.

   There are requirements that must be met before a policy of title insurance can be issued. Such requirements may include the recordation of a map or maps and/or a deed or deeds. A commitment to insure setting forth those requirements should be obtained from the Company.

2. According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) commercial building known as (not available) San Carlos Street, San Jose, California.

3. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

   None

4. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

5. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

   A. WITH RESPECT TO A CORPORATION:
      1. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
      2. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
      3. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
      4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

   B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:
      1. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
      2. A full copy of the partnership agreement and any amendments;
      3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
      4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
      5. Requirements which the Company may impose following its review of the above material and

First American Title Insurance Company
other information which the Company may require.

C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:

1. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
2. A full copy of the partnership agreement and any amendment;
3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

D. WITH RESPECT TO A GENERAL PARTNERSHIP:

1. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-1), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
2. A full copy of the partnership agreement and any amendments;
3. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

1. A copy of its operating agreement and any amendments thereto;
2. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
3. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
4. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
   (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
   (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
5. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
6. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

1. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.
2. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
3. Other requirements which the Company may impose following its review of the material require

First American Title Insurance Company
herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

1. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

First American Title Insurance Company
LEGAL DESCRIPTION

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

PARCEL ONE:

PARCEL 1, AS SID PARCEL IS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP 180 PARK AVENUE" DATED APRIL 2017, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR PRIVATE SIDEWALK DESIGNATED AS "PROPOSED PRIVATE SIDEWALK EASEMENT" LYING WITHIN PARCEL 1 AS SHOWN ON THE MAP ABOVE REFERRED TO.

ALSO RESERVING THEREFROM, A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS DESIGNATED AS "PROPOSED 26.00' INGRESS/EGRESS FOR THE BENEFIT OF WCP SAN JOSE, LLC", LYING WITHIN PARCEL 1 AS SHOWN ON THE MAP ABOVE REFERRED TO.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR PRIVATE UTILITY DESIGNATED AS "PROPOSED 26.00' PRIVATE UTILITY EASEMENT FOR THE BENEFIT OF PARCEL 1" LYING WITHIN PARCEL 3, AS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP 180 PARK AVENUE" DATED APRIL 2017, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

PARCEL THREE:

NON-EXCLUSIVE EASEMENTS FOR EMERGENCY VEHICLE ACCESS, PUBLIC UTILITY AND INGRESS AND EGRESS DESIGNATED AS "PROPOSED 26.00' EMERGENCY VEHICLE ACCESS EASEMENT, PUBLIC UTILITY AND INGRESS/EGRESS FOR THE BENEFIT OF LANDS OF WCP SAN JOSE LLC, PARCEL 1 AND PARCEL 2" LYING WITHIN PARCEL 3, AS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP 180 PARK AVENUE" DATED APRIL 2017, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT OVER THAT CERTAIN "PROPOSED EASEMENT AREA FOR THE BENEFIT OF PARCEL 1" LYING WITHIN PARCEL 3, AS SHOWN ON THAT CERTAIN "VESTING TENTATIVE MAP 180 PARK AVENUE" DATED APRIL 2017, PREPARED BY KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. AND DESIGNATED AS JOB NO. A16016.

APN: 259-42-023 (portion)

First American Title Insurance Company
NOTICE I

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier’s checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier’s checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

NOTICE II

As of January 1, 1991, if the transaction which is the subject of this report will be a sale, you as a party to the transaction, may have certain tax reporting and withholding obligations pursuant to the state law referred to below:

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR
2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR
2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR
3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller’s principal residence (as defined in Section 1934 of the Internal Revenue Code).

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney’s, accountant’s, or other tax specialist’s opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.

The Seller May Request a Waiver by Contacting:
Franchise Tax Board
Withhold at Source Unit
P.O. Box 651
Sacramento, CA 95812-0651
(916) 445-4980

First American Title Insurance Company
Privacy Policy

We Are Committed to Safeguarding Customer Information
In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information—particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability
This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at www.firstam.com.

Types of Information
Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:
- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information
We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers
Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security
We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American’s Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

First American Title Insurance Company
CLTA/ALTA HOMEOWNER’S POLICY OF TITLE INSURANCE (02-03-10)

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys’ fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   (a) building;
   (b) zoning;
   (c) land use;
   (d) improvements on the Land;
   (e) land division; and
   (f) environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 6, e., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of your existing structure, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Rates:
   (a) that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   (b) that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   (c) that result in no loss to You; or
   (d) that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, e., 25, 26, 27 or 28.

5. Failure to pay value for Your Title.

6. Lack of a right:
   (a) to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   (b) in streets, alleys, or waterways that touch the Land.

   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors’ rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner’s Coverage Statement as follows: For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

<table>
<thead>
<tr>
<th>Your Deductible Amount</th>
<th>Our Maximum Dollar Limit of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered Risk 16: 1% of Policy Amount or $2,500.00 (whichever is less)</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Covered Risk 18: 1% of Policy Amount or $5,000.00 (whichever is less)</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>Covered Risk 19: 1% of Policy Amount or $5,000.00 (whichever is less)</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>Covered Risk 21: 1% of Policy Amount or $2,500.00 (whichever is less)</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys’ fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   (a) and use
   (b) improvements on the land
   (c) and division
   (d) environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the Land by condemning it, unless:
   (a) a notice of exercising that right appears in the public records on the Policy Date

First American Title Insurance Company
3. Title Risks:
(a) that are created, allowed, or agreed to by you
(b) that are known to you, but not to us, on the Policy Date — unless they appeared in the public records
(c) that result in no loss to you
(d) that first affect your title after the Policy Date — this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a Right:
(a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
(b) in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of:

1. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement erected on the Land;
   iii. the subdivision of land; or
   iv. environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

2. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

3. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
   b. a created, allowed, or agreed to by the Insured Claimant;
   c. not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   d. resulting in no loss or damage to the Insured Claimant;
   e. resulting in no loss or damage to the Insured Claimant;
   f. in violation of the law of the state where the land is situated.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction creating the lien of the Insured Mortgage is
   a. a fraudulent conveyance, fraudulent transfer, or
   b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

5. Any lien on the title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) that arise by reason of:

First American Title Insurance Company
1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an examination of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

5. (a) Unpermitted mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor or material not shown by the public records.

2006 ALTA OWNER’S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement erected on the Land;
   iii. the subdivision of land; or
   iv. environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction creating the lien of the Insured Mortgage, is
   a. a fraudulent conveyance or fraudulent transfer, or
   b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) that arise by reason of:

First American Title Insurance Company
1. (a) Taxes or assessments that are not shown as existing liens in the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be ascertained by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encumbrance, encroachment, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims of right to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor or material not shown by the public records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys’ fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement erected on the Land;
   iii. the subdivision of land; or
   iv. environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion (a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

b. Any governmental police power. This Exclusion (b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

   a. created, suffered, assumed, or agreed to by the Insured Claimant;

   b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

   c. resulting in no loss or damage to the Insured Claimant;

   d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28) or

   e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.

6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vested interest shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.

8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction creating the lien of the Insured Mortgage, is:

   a. a fraudulent conveyance or fraudulent transfer, or

   b. a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

First American Title Insurance Company
ATTACHMENT NO. 12

INSURANCE REQUIREMENTS

Developer shall procure, maintain and cause its contractors and consultants to procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Development hereunder by the Developer, its agents, representative employees or subcontractors.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Commercial General Liability and Insurance Services Office form number GL 0404 covering Broad Form Commercial General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" for CG 0001), including X, C, U (Explosion, Collapse and Underground).

2. Workers' Compensation insurance as required by the Labor code of the State of California and Employers Liability insurance.

3. Course of Construction insurance form providing for "All Risks" of loss.

4. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" or code 2 "owned autos" and endorsement CA 0025. Coverage also to include code 8 "hired autos" and code 9 "nonowned autos.

B. Minimum Limits of Insurance.

Developer shall maintain limits no less than:

1. Commercial General Liability: $10,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Site or the general aggregate limit shall be twice the required occurrence limit.

2. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $100,000 per accident.
3. Course of Construction Insurance in the amount of the completed value of the Project.

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

5. Developer shall cause its consultants as listed below to maintain Design Professionals errors and omissions insurance no less than the following limits: $1,000,000 per occurrence
   - Architect
   - Structural Engineer
   - Civil Engineer
   - Mechanical Engineer
   - Electrical Engineer
   - Any other professional deemed necessary

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the Agency. Such Agency approval of deductibles shall be based on insurance industry standard deductibles, or the ability to prove financial responsibility. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its officials, employees, agents and contractors; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Agency.


The policies are to contain, or be endorsed to contain, the following provisions:

   (i) The Redevelopment Agency of the City of San Jose, their officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the Developer; products and completed operations of the Developer; premises owned, leased or used by the Developer; or automobiles owned, leased, hired or
borrowed by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, the City, their officials, employees, agents and contractors, save for claims arising out of the presence of any Pre-existing Hazardous Substances on the Site if such contamination was not increased, exacerbated or worsened by any negligent acts (active or passive) or willful misconduct of the Developer, its agents, contractors, employees or assigns..

(ii) The Developer’s insurance coverage shall be primary insurance as respects the Agency and City, their officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Agency and the City, their officials, employees, agents or contractors shall be excess of the Developer’s insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency and the City, their officials, employees, agents or contractors.

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

2. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days prior written notice has been given to the Agency and City.

3. Course of construction policies shall contain the following provisions:

(i) The Agency shall be named as loss payee as their interests appear, and as subordinate to the loss payee’s interests of any Permitted Mortgagee.

(ii) The insurer shall waive all rights of subrogation against the Agency and City of San Jose.

E. Acceptability of Insurers.

Insurance is to be placed with insurers that are equal to A-VII from the Best Guide and are acceptable to the City’s Risk Manager.
F. **Verification of Coverage.**

Developer shall furnish the Agency with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

City of San Jose  
c/o Risk Management  
801 North First Street, Room 110  
San Jose, CA 95110
FORM OF CERTIFICATE OF COMPLIANCE
(PHASE)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

CERTIFICATE OF COMPLIANCE (PHASE)

This Certificate of Compliance ("Certificate") is provided pursuant to that certain
Disposition and Development Agreement dated as of August __, 2017 ("DDA") by and
between the City of San Jose ("City") and ____________________ ("Developer"). The
DDA contains terms, covenants and conditions affecting the title to and right to
possession of that certain real property situated in the City of San Jose, County of
Santa Clara, State of California, as more particularly described in Exhibit A attached
hereto and incorporated herein ("Property"). The DDA is evidenced by a Memorandum
of Disposition and Development Agreement dated ______________, 201__ and
recorded against the Property in the Official Records of Santa Clara County as
Instrument No. _______________. All initially capitalized defined terms used in this
Certificate shall have the meanings given them in the DDA. This Certificate is not a
notice of completion pursuant to Section 3093 of the California Civil Code.

This Certificate shall evidence City’s conclusive determination that Developer has
satisfactorily completed construction of the ___________________ [Tech Expansion
Space, Retail Space, Office Space, the Residential Space the Hotel or the Project
Garage] portion of the Project as required by the DDA and that Developer is in full
compliance with the terms of the DDA related to the design, development, and
construction of the ________________ portion of the Project.

Notwithstanding anything to the contrary contained herein, this Certificate shall not
evidence Developer’s compliance of any other phase of the Project except for the
_______________ portion of the Project.
Executed this _____ day of __________________, 20__, at San Jose, California.

APPROVED AS TO FORM: CITY OF SAN JOSE

______________________ By:_________________________
Senior Deputy City Attorney Norberto Duenas
City Manager
CERTIFICATE OF COMPLIANCE (FINAL)

This Final Certificate of Compliance ("Certificate") is provided pursuant to that certain Disposition and Development Agreement dated as of August __, 2017 ("DDA") by and between the City of San Jose ("City") and ____________________ ("Developer"). The DDA contains terms, covenants and conditions affecting the title to and right to possession of that certain real property situated in the City of San Jose, County of Santa Clara, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein ("Property"). The DDA is evidenced by a Memorandum of Disposition and Development Agreement dated ______________, 201__ and recorded against the Property in the Official Records of Santa Clara County as Instrument No. __________________ ("Memorandum"). All initially capitalized defined terms used in this Certificate shall have the meanings given them in the DDA. This Certificate is not a notice of completion pursuant to Section 3093 of the California Civil Code.

This Certificate shall evidence City's conclusive determination that Developer has satisfactorily completed construction of the Project required by the DDA on the Property, and that Developer is in full compliance with the terms of the DDA related to the design, development, and construction of the Project.
The Certificate constitutes a termination and release of the Memorandum and the DDA solely as they relate to the Property more particularly described on Exhibit A attached hereto, except as otherwise provided under Section 314 and Section 502 of the DDA.

Executed this _____ day of ____________________, 20__, at San Jose, California.

APPROVED AS TO FORM: CITY OF SAN JOSE

Senior Deputy City Attorney By: __________________________
Norberto Duenas
City Manager
ATTACHMENT NO. 15

PROJECT BUDGET

(to be attached)