

ECC MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

CONSTRUCTIVE VENTURES, INC.

CONCERNING THE DEVELOPMENT OF THE ENERGY CONTROL CENTER

AUSTIN, TEXAS

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- Exhibit A-1 All of Block 24
- Exhibit A-2 Reserve Areas of Block 24
- Exhibit B City Security Instrument
- Exhibit C Declaration
- Exhibit D Deed
- Exhibit E M/WBE Resolution (City Council Resolution No. 20071108-127)
- Exhibit F Prevailing Wage Ordinance (City of Austin Ordinance No. 20030508-031)
- Exhibit G Demonstrative Illustration of the Public Improvements
- Exhibit H Release of Public Utility Easement
- Exhibit I CWSA Holdback Escrow Agreement

ECC MASTER DEVELOPMENT AGREEMENT

This ECC Master Development Agreement (this "**Agreement**") is made to be effective as of the ___ day of _____, 2010 (the "**Effective Date**"), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**") and CONSTRUCTIVE VENTURES, INC., a Texas corporation ("**Developer**").

RECITALS

A. On March 4, 2008, the City issued a Request for Proposal ("**RFP**") to develop the property currently known as the Energy Control Center (as more particularly defined below, the "**Property**") and the Green Water Treatment Plant (the "**GWTP**"), both located in downtown Austin, Texas.

B. On April 30, 2008, a strategic alliance of Trammell Crow Company, Constructive Ventures Inc. and USAA (the "**TCC/CVI Development Group**") submitted a response (the "**RFP Response**") to the RFP for the development of the Property and GWTP.

C. On June 18, 2008, the RFP Response was selected by the City Council of the City of Austin as the winning proposal for the development of the Property and the GWTP in satisfaction of Texas law requiring competitive bidding for certain sales or conveyances of public property.

D. The RFP Response designated TC Austin Development, Inc., a Delaware corporation (a wholly owned subsidiary of Trammell Crow Company) ("**TC Austin**") as the point of contact for the TCC/CVI Development Group. Within the TCC/CVI Development Group, the RFP Response designates the Developer as the lead developer of the Property.

E. The City and TC Austin entered into an Exclusive Negotiating Agreement (as extended, the "**ENA**") dated effective August 11, 2008, concerning certain rights to negotiate the terms of this Agreement for the initial development of the Property and a master development agreement for the initial development of the GWTP.

F. As the parties are currently negotiating certain development issues which are specific to the GWTP, the parties desire to evidence their agreement with respect to the terms and conditions of the purchase, sale and redevelopment of the Property.

G. NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Developer agree as follows:

ARTICLE I DEFINED TERMS

1.1 Defined Terms. As used in this Agreement, terms used, but not defined in the body of this Agreement will have the meanings indicated:

"**Affiliate**" means any Person controlling, controlled by or under common control with any other Person. For the purposes of this definition, the term "control" when used

with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Applicable Bankruptcy Law**” as defined in 8.1(g) hereof.

“**Bankruptcy Event**” means a petition for relief under the applicable bankruptcy law or an involuntary petition for relief is filed against Developer under any applicable bankruptcy law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Developer is entered under any applicable bankruptcy law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Developer. A Bankruptcy Event may exist even if an Event of Default cannot be declared because of a Bankruptcy Event.

“**Business Day**” means any day other than a Saturday, Sunday, federally-mandated bank holiday, or the day after Thanksgiving. If the last day for performance of an act falls upon a day that is not a Business Day, then the last day for performance will automatically be extended until the next-following regular Business Day.

“**Certificate of Occupancy**” means (a) a Certificate of Occupancy of a shell building (or its equivalent), or (b) so long as Developer is diligently pursuing the certificate in (a) above, a temporary Certificate of Occupancy of a shell building (or its equivalent) which permits the occupancy of the Improvements covered thereby, each from all applicable Governmental Authorities.

“**City Security Instrument**” means a deed of trust delivered at the Takedown of the Property which secures payment of certain amounts hereunder in form and content attached hereto as Exhibit B.

“**City’s Actual Knowledge**” and “**Actual Knowledge**”, or similar language, means the actual, current, conscious knowledge of (a) the current or any future Director of the City’s Economic Growth & Redevelopment Services Office as to knowledge of that person while he/she serves as Director, and (b) the current or any future internal legal counsel specifically assigned to the Property as to knowledge of that person while he/she serves as such counsel, without any duty of inquiry or investigation, and does not include constructive, imputed or inquiry knowledge.

“**Claim**” as defined in Section 7.2(a) hereof.

“**Commence Construction**” and “**Commencement of Construction**” mean the commencement of bona-fide excavation on the Property in preparation for the proposed “build out” of the improvements on the Property.

“**Complete Construction**” and “**Completion of Construction**” mean the day on which all of the following have been satisfied:

(a) the Improvements have been substantially completed in accordance with the plans and specifications therefor as evidenced by a certificate of substantial completion from Developer's architect as to the Improvements or engineer as to the Public Improvements, as applicable,

(b) all Governmental Authorities having jurisdiction have issued certificates of completion, certificates of occupancy or their equivalent, as applicable, for the Improvements, and

(c) all bills for such Improvements have been paid, are not yet due and payable or are being contested in good faith through appropriate proceedings.

"Cure Period" as defined in Section 4.4(c) hereof.

"CWMOU" means a Chilled Water Memorandum of Understanding between Developer and Austin Energy concerning the delivery of chilled water to the Property.

"CWSA" means a Chilled Water Service Agreement between Developer and Austin Energy concerning delivery of chilled water to the Property.

"CWSA Holdback Escrow Agreement" means the CWSA Holdback Agreement substantially in the form attached hereto as Exhibit I.

"Declaration" means the Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit C. While the intent of the term of this Agreement is to cover the initial development of the Property, the intent of the term of the Declaration is to cover a much longer period of time to ensure that the Property is maintained, reconstructed (if applicable) and redeveloped (if applicable) in accordance with the intent of this Agreement.

"Deed" means the Special Warranty Deed substantially in the form attached hereto as Exhibit D.

"Disclosure Notice" as defined in Section 2.3 hereof.

"dollars" or **"\$"** means lawful money of the United States of America.

"Environmental Site Assessments" mean final written reports of the environmental condition of the Property and any response action (including removal and remediation) in the City's possession or control and prepared for the City by the City's environmental consultants.

"Event of Default" means any happening or occurrence described in Sections 8.1 or 8.3 hereof following the expiration of any applicable grace, notice or cure period.

"Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government of the United States, the State of Texas, Travis

County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Agreement or other causes not reasonably within the control of the party claiming such inability (except that in no event shall Force Majeure include (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof).

“Governmental Authority” means any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Hazardous Materials” mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Legal Requirements or common law, as “hazardous substance,” “hazardous material,” “hazardous waste,” “acutely hazardous,” “extremely hazardous waste,” infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) or derivatives thereof. **“Hazardous Materials”** also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

“Improvements” means core and shell improvements (as opposed to tenant improvements completed by the end user of a space) of the Property constructed in accordance with this Agreement and the Declaration.

“Infrastructure Payment” means a payment in the amount of \$1,000,000 to partially reimburse the City for the infrastructure costs associated with the sale of the Property to Developer. The Infrastructure Payment shall be paid pursuant to the terms of Section 6.1 hereof.

“Inspection Right” as defined in Section 3.3(g).

“Legal Requirements” mean applicable restrictive covenants (including the Declaration), service extension requests, zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions.

“**M/WBE**” as defined in Section 3.2(c).

“**M/WBE Ordinance**” means Chapter 2-9A, 2-9B, 2-9C, and 2-9D of the Austin City Code.

“**M/WBE Resolution**” means City Council Resolution No. 20071108-127 concerning M/WBE a copy of which is attached hereto as Exhibit E.

“**Objection Period**” as defined in Section 4.4(c) hereof.

“**Outside Takedown Date**” as defined in Section 4.1 hereof.

“**Permitted Encumbrances**” mean (a) general real estate taxes on the Property for the year of Takedown, if any, (b) the Declaration, (c) all exceptions to title coverage set forth in the Title Binder and any update thereto provided that no exception that first appears on any update to the Title Binder will be a Permitted Encumbrance unless it also qualifies under (d) or (e) immediately below, (d) all matters shown on the subdivision plat for the Property approved by Developer, which approval will not be unreasonably withheld, conditioned or delayed, (e) any other encumbrances approved, or caused, by Developer, and (f) any matter which is accepted by Developer or deemed a Permitted Encumbrance under Section 4.4(c) hereof.

“**Person**” means an individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision thereof or other entity, whether acting in an individual, fiduciary or other capacity.

“**Potential Event of Default**” means any condition or event which after notice and/or the lapse of time would constitute an Event of Default.

“**Property**” means certain real property located in the City of Austin, Travis County, Texas, commonly known as the Austin Energy Control Center, as more particularly described on Exhibit A-1 attached hereto. Generally, the Property is the original “Block 24” (described on Exhibit A-1) and includes the areas which are located within Shoal Creek and the Shoal Creek trail system (described on Exhibit A-2).

“**Public Improvements**” means the 3rd Street extension (which may be in the form of a public street or public plaza) from West Avenue east to Shoal Creek (excluding (a) any rail line improvements, and (b) any utility extensions for the general public, but including utility extensions which are intended to, or to the extent they, only serve the Property).

“**Retail Space**” means least 15,000 gross square feet of retail space on the ground level of the Improvements.

“**Subordination Agreement**” means an agreement between the City and each secured lender of Developer which (a) subordinates the City Security Instrument to the security instrument of such secured lender (but consents to the lien and payment rights of

the City Security Instrument such that a foreclosure of the senior security instrument does not terminate the City Security Instrument), and (b) recognizes the City's rights under the City Security Instrument and permits the City's exercise of rights thereunder without causing an independent default under such secured lender's loan documents.

"Survey" means any survey of the Property prepared by a civil engineer for the Developer.

"Takedown" means the transfer by the City of the Property to Developer and Developer's acceptance of such transfer from the City for redevelopment of the Property in accordance with this Agreement.

"Takedown Date" means the Business Day on which the Takedown occurs, but in no event later than the Outside Takedown Date.

"TCEQ" means the Texas Commission on Environmental Quality, including its successors.

"Title Binder" means the Commitment For Title Insurance prepared by Heritage Title Company of Austin, Inc. with an effective date of June 2, 2009 as GF No. 80614 and all exceptions to title coverage set forth therein as provided in Section 4.5.

"Title Company" means Heritage Title Company of Austin, Inc., its successors and assigns, or any other title company approved by the City and Developer.

"Transfer" as defined in Section 9.15(c).

"Transfer Price" means the amount of \$14,500,000.

"VCP" means the Texas Commission on Environmental Quality's (or successor entity) Voluntary Cleanup Program (or successor program).

"VCP Certificate" means one or more unconditional (or its equivalent) VCP "Final Certificates of Completion" (or its equivalent) from the TCEQ stating or indicating (to the extent available) that no further action is required to address environmental conditions on the Property concerning an unrestricted "residential land use" standard for the Property. If the VCP Certificate contains ongoing restrictions which adversely impact the Developer's anticipated use of the Property, then such VCP Certificate will be subject to Developer's approval, which will not be unreasonably withheld, conditioned or delayed.

1.2 Modification of Defined Terms. Unless the context clearly otherwise requires or unless otherwise expressly provided herein, the terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, supplements, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this Section shall be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.

1.3 References and Titles. All references in this Agreement to exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer to the exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. The words “this Agreement”, “herein”, “hereof”, “hereby”, “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases “this paragraph” and “this subparagraph” and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word “or” is not exclusive, and the word “including” (in its various forms) means “including without limitation.” Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context clearly otherwise requires. Except as specifically provided in Sections 3.3(e), 3.3(h) and 3.3(i), references to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any future amendments thereto or successor provisions thereof.

1.4 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the earliest to occur of: (a) the release of the City Security Instrument and (b) the date this Agreement is earlier terminated pursuant to the terms hereof.

1.5 ENA. The ENA is terminated solely as it relates to the Property. During the negotiations under the ENA for the development of the Property and the GWTP, the City and the Developer discovered more detailed issue analysis and negotiations must take place with respect to GWTP, but not the Property. Thus, as the City anticipated that the Property and GWTP would not commence development at the same time, the City and the Developer elected to execute this Agreement to move forward with the development of the Property while the issues concerning GWTP are being analyzed and negotiated. The execution of this Agreement does not modify or amend any terms of the ENA as they relate to GWTP. The parties acknowledge that notwithstanding their agreements under this Agreement, the parties may not be able to reach an agreement under the ENA regarding the development of the GWTP.

ARTICLE II REPRESENTATIONS

2.1 Representations of the City. The City represents to Developer as follows:

(a) Title. The City presently has good and indefeasible title to the Property, subject to the Permitted Encumbrances.

(b) Parties in Possession. As of the Effective Date, there is no party in possession of the Property (other than the City and its departments), and on the Takedown Date, there will not be any party in possession of the Property. As of the Effective Date, no party has a present right or any future right to occupy or acquire any portion of a structure or improvement on the Property (other the City and its departments), and on the Takedown Date, no party will have a then current right or any

future right to occupy any portion of a structure or improvement on the Property. Developer understands and acknowledges that the City may utilize (i.e., occupy or store nonHazardous Materials in) all or any portion of the Property prior to the Takedown Date.

(c) Proceeding by Governmental Authority. There is no pending or, to the City's Actual Knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property or any part thereof (except with respect to this representation made as of the Takedown Date, any condemnation legislation filed in the Legislature of the State of Texas).

(d) Litigation or Administrative Proceeding. To the City's Actual Knowledge, the City has received no service of process or other written notification of any litigation or administrative proceedings which would materially and adversely affect title to the Property or the ability of the City to perform any of its obligations hereunder.

(e) Performance Will Not Result in Breach. Performance of this Agreement, the Declaration and the Deed pursuant to the terms hereof and thereof will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under, any agreement or other instrument to which the City is a party or by which the City or the Property might be bound.

(f) Execution. The execution and delivery of, and the City's performance under, this Agreement, the Declaration and the Deed are within the City's powers and have been duly authorized by all requisite municipal action. The Person executing this Agreement, the Declaration and the Deed on behalf of the City has, or will have when executed, the authority to do so. This Agreement, the Declaration and the Deed constitute the legal, valid and binding obligation of the City enforceable in accordance with their respective terms, subject to the principles of equity.

(g) Not a Foreign Person. The City is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder. City understands that this representation may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment, or both.

(h) Broker. The City has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. To the extent allowed by Legal Requirements, the City agrees to indemnify and hold harmless Developer from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedown and any expiration or termination of this Agreement.

(i) Environmental. To the City's Actual Knowledge, the City has delivered copies, or otherwise made available, to Developer all Environmental Site Assessments in City's possession as of the date hereof.

2.2 Representations of Developer. Developer represents to the City as follows:

(a) Authorization. Developer is duly organized and legally existing under the laws of its state of organization. Developer is duly qualified to do business in the State of Texas.

(b) Performance. Performance of this Agreement, the Deed, the Declaration and the City Security Instrument will not result in any breach of, or constitute any default under, any agreement or other instrument to which Developer is a party or by which Developer might be bound.

(c) Execution. The execution and delivery by Developer of, and Developer's performance under, this Agreement the Deed, the Declaration and the City Security Instrument are within Developer's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement, the Deed, the Declaration and the City Security Instrument on behalf of Developer has, or will have when executed, the authority to do so. This Agreement, the Deed, the Declaration and the City Security Instrument constitute the legal, valid and binding obligation of Developer enforceable in accordance with its terms, subject to the principles of equity.

(d) Broker. Developer has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. Developer agrees to indemnify and hold harmless the City from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedown and any expiration or termination of this Agreement.

(e) Not a Foreign Person. Developer is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), Sections 1445 and 7701 (i.e. Developer is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder). Developer is not subject to backup withholding because: (a) Developer is exempt from backup withholding, (b) Developer has not been notified by the Internal Revenue Service that Developer is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the Internal Revenue Service has notified Developer that Developer is no longer subject to backup withholding. Developer understands that this representation may be disclosed to the Internal Revenue Service by Oblige and that any false statement contained herein could be punished by fine, imprisonment, or both.

(f) Executive Order 13224. Developer and all persons or entities holding any legal or beneficial interest whatsoever in Developer are not included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to or otherwise associated with, any of the persons or entities referred to or described in Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended).

2.3 Change in Representations. If, after the Effective Date and prior to the Takedown, either party obtains actual knowledge of any fact, matter or circumstance which causes any of its representations made in Sections 2.1 or 2.2 to be inaccurate or untrue in any material respect, such party shall submit written notice thereof to the other party (a “**Disclosure Notice**”) specifying in reasonable detail such fact, matter or circumstance. The disclosure of such fact, matter or circumstance by Disclosure Notice will not be an Event of Default under this Agreement. If, in the Disclosure Notice, the sending party agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct, then such party shall be obligated to cause the representation to be true as of the Takedown, and the other party has no right to exercise its remedy set forth in this Section. If the sending party does not advise the other party in the Disclosure Notice that it agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as of the Takedown, then such other party has until the date which is five Business Days after the date of the Disclosure Notice, at its option, to elect, in writing, not to consummate the sale at the Takedown. The failure to elect not to close within the period described in the preceding sentence will be deemed to be a waiver of the fact, matter or circumstance disclosed by the Disclosure Notice, in which case the subject representation will be deemed amended to include the information contained in the Disclosure Notice without an obligation to effect any cure or remedy with respect thereto. The timely and proper election not to close under this section shall terminate this Agreement in which event neither party shall have any right or obligation under this Agreement, except those which expressly survive such termination.

2.4 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER “AS IS” WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN CITY’S SPECIAL WARRANTY OF TITLE CONTAINED IN ANY DEED), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO

OR AFFECTING THE PROPERTY, AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. DEVELOPER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO, IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TAKEDOWN, NOT MERGE WITH THE PROVISIONS OF ANY TAKEDOWN DOCUMENT AND BE INCORPORATED INTO ANY DEED. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO DEVELOPER.

ARTICLE III
COVENANTS AND AGREEMENTS

3.1 Developer's Development Related Covenants and Agreements.

(a) Improvements Design and Performance. Developer shall design and construct the Improvements in accordance with Legal Requirements, the Declaration and this Agreement.

(b) Subdivision Plat. Developer, at its sole cost and expense, shall be responsible for subdividing and platting the Property in accordance with Legal Requirements, except that the City shall execute (solely in its capacity as a landowner) all preliminary plans, subdivision plats and related documents (including applications therefor) reasonably approved by the City in its capacity as a landowner. In furtherance of this subdivision requirement, Developer shall cause its civil engineer to prepare the preliminary plans, the subdivision plats and related documents (including applications therefor) for the Property and all other civil engineering information and/or documentation necessary to finalize such subdivision plats. The City will be the applicant with respect to such subdivision plat(s). Developer acknowledges the City staff will require all subdivision plats to contain utility easements necessary to service the proposed improvements on the Property.

(c) Design and Construction of the Improvements. Subject to Force Majeure, Developer shall Commence Construction of the Improvements in a timely manner following the Takedown. Following Commencement of Construction, Developer shall, subject to Force Majeure, diligently and in good faith continue construction of the

Improvements to Completion of Construction. Developer will cause the design and construction of the Improvements to comply with Section 1 of the Declaration relating to the City's design approval rights. The design, construction and development of the Improvements will be at the sole cost of the Developer, without contribution or reimbursement from the City.

(d) Design and Construction of Public Improvements.

(i) Contemporaneously with Developer's design of the Improvements, Developer shall design the Public Improvements. The design of the Public Improvements shall be subject to the prior written approval of the City both in its regulatory capacity and its landowner capacity. Each request for approval under this paragraph relating to the City's landowner capacity will be made in the same manner a design approval request is made under Section 1 of the Declaration (except that the required "plans" shall mean all the construction drawings of the Public Improvements). Developer shall cause the design of the Public Improvements to comply with the Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines), Great Streets, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof. A demonstrative illustration of a cross section of a portion of the Public Improvements is attached hereto as Exhibit G.

(ii) Subject to Force Majeure, Developer shall commence construction of the Public Improvements at the appropriate time following Commencement of Construction of the Improvements (i.e., commencement will begin in sufficient time to allow completion according to the following sentence). Following such commencement, Developer shall, subject to Force Majeure, diligently and in good faith continue construction of the Public Improvements to Completion of Construction on or before Completion of Construction of the Improvements. Developer shall cause the construction of the Public Improvements to comply with all applicable City of Austin ordinances, manuals, and rules relating to street and bridge construction excluding any utility extensions for the general public, but including utility extensions which are intended to, or to the extent they, only serve the Property.

(iii) Contemporaneously with the City's acceptance of the Public Improvements for maintenance Developer shall:

A. assign to the City all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Public Improvements,

B. execute such bills of sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence

the City's ownership of the Public Improvements, without representation or warranty, except an obligation of Developer to cause its contractor to provide a maintenance bond for a period of one year, and

C. provide to the City such other instruments or documentation reasonably requested by the City to evidence the transfer of ownership of the Public Improvements under this Agreement.

(iv) The Public Improvements will be designed and constructed at the sole cost and expense of the Developer, without contribution or reimbursement from the City.

(e) Licensing and Leasing. Developer will not license, lease or otherwise similarly transfer possessory rights to any portion of the Property prior to the Takedown without the prior written consent of the City (which may be withheld in the City's sole and absolute discretion).

(f) Chilled Water Agreement. Contemporaneously with the execution hereof, Developer shall negotiate with Austin Energy to obtain a CWMOU and CWSA.

3.2 Developer's General Covenants and Agreements.

(a) Single Asset Entity. During the term of this Agreement, Developer shall not (i) acquire any real or personal property other than real property within the Property and personal property related to the redevelopment, operation and maintenance of the Property, (ii) operate any business other than the redevelopment, management and operation of the Property, or (iii) maintain its assets in a way that would make them difficult to segregate and identify.

(b) Downtown Austin Alliance. Within 90 days following the Effective Date, Developer shall petition to join the Downtown Austin Public Improvement District and diligently pursue and maintain its membership therein.

(c) Reporting. Developer shall provide monthly reports to allow the City's Department of Small and Minority Business Resources to track (A) the utilization on a percentage basis of minority-owned and women-owned business enterprises ("M/WBE") firms in the design and construction of the Improvements, and (B) a summary of Developer's efforts to implement the M/WBE Resolution. The City shall provide the forms to be used by Developer in submitting such reports.

(d) M/WBE.

(i) Developer shall meet the M/WBE Participation Goals set forth herein. If Developer does not meet each of the M/WBE Participation Goals it must document its good faith efforts to meet the goals that were not met. Good faith efforts are those efforts described in section 21 of the M/WBE Ordinance.

(ii) With respect to the design and construction of the Improvements, Developer, its architect and its general contractor will meet the following, ethnic-specific participation goals or submit documentation demonstrating its good faith efforts to meet the goals:

	Professional Services Participation Goals	Construction Participation Goals
African-American-owned Business Enterprises	2.9%	2.7%
Hispanic-owned Business Enterprises	9.0%	9.7%
Asian-American and Native American-owned Business Enterprises	4.9%	2.3%
Women-owned Business Enterprises	15.8%	13.8%

The City will provide a list of certified firms to Developer from which Developer shall solicit participation in the design and construction of the Improvements. The City will assist Developer to identify potential scopes of work, establish the bid packages available, schedule and host outreach meetings, and assist Developer in soliciting M/WBE firms to provide bids. The foregoing covenant does not require Developer to solicit participation during a period in which Developer is not designing and/or constructing the Improvements, but rather, requires Developer to incorporate the standards and principles of the M/WBE Ordinance including the foregoing M/WBE Participation goals into its development process as and when such process exists. Additionally, the foregoing covenant does not require Developer to modify or amend any contract or agreement that Developer has entered into prior to the Effective Date.

(iii) The Developer shall diligently and in good faith endeavor to sell or lease 25% of the gross square feet of the Retail Space (as defined in the Declaration) to M/WBEs.

(e) Prevailing Wage. Developer shall, or use demonstrated good faith efforts to, require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to pay the prevailing wage as defined in the City of Austin Ordinance No. 20030508-031 a copy of which is attached hereto as Exhibit F.

(f) Local Businesses. The Developer shall use diligent, good faith efforts to sell or lease 100% of the Retail Space to “local businesses”, defined as a Person:

(i) which is controlled and at least 51% owned by a person or entity residing or having its principal place of business in the Austin – San Marcos, Texas Metropolitan Statistical Area (the “MSA”); or

(ii) whose business headquarters or first retail location is located in the MSA.

The term “local businesses” also includes any business that the City agrees, in writing, constitutes a local business even if it does not qualify as a local business under the definitions found in the immediately preceding sentence. The City encourages the Developer to include businesses that reflect the nature and character of Austin in their décor, merchandise, and cuisine.

3.3 City’s Covenants and Agreements.

(a) Litigation. Prior to the Takedown, the City will notify Developer of any administrative proceeding, litigation or written, threatened and reasonably meritorious claim against the City, which if adversely determined, would substantially impair the redevelopment of the Property, each of which the City has Actual Knowledge.

(b) No Further Sales. Prior to the Takedown, the City will not voluntarily sell or otherwise transfer all or any portion of the Property to a party other than Developer, without the prior written consent of Developer which Developer may grant or deny in its sole and absolute discretion.

(c) No Further Leases. Without the prior written consent of Developer (which Developer may grant or deny in its sole and absolute discretion) prior to the Takedown, the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any portion of the Property which (i) cannot be terminated on up to 30 days prior notice (and in any event not later than the Takedown), and (ii) materially and adversely interferes with Developer’s obligation to redevelop the Property under this Agreement.

(d) Dedicated Team. Prior to the date which is 3 years following the Effective Date, the City will dedicate and maintain resources to review public infrastructure and shell building applications.

(e) Controlling Ordinances, Manuals, and Rules. As provided in Section 3 of the Declaration, the Improvements must be constructed in accordance with all “Legal Requirements” (as defined in the Declaration). Solely for the benefit of the Developer (as opposed to any other owner, tenant, licensee or occupant of the Improvements), commencing on the Effective Date and ending on the date of Commencement of Construction, the application of all City of Austin ordinances, manuals, and rules regarding land development, including the Land Development Code, to the development of the Improvements for which a building permit has been issued by such date will be “locked-in” by limiting them to the forms as they exist on the Effective Date; except the following applicable City of Austin ordinances, manuals and rules shall not be “locked-in” and may be enforced as enacted or amended:

(i) except with respect to a prohibition of interlocking, fire-separated stairs in a high-rise building, measures regulating conduct or activity relating to health and safety including City Code Chapter 25-7 (Drainage) and Chapter 25-12 (Technical Codes), in addition to the City's Drainage and Utility Criteria Manuals;

(ii) measures which the City must enact or enforce pursuant to state or federal mandates, or by court order; and

(iii) measures regulating signs, including but not limited to City Code Chapter 25-10 (Sign Regulations).

(f) Environmental.

(i) City shall, at its sole cost and expense, conduct a sampling investigation on the Property (the "**Sampling Investigation**") to determine if soil or groundwater under the Property has been impacted by contaminants at levels greater than the applicable TCEQ standards for residential use and provide full and complete copies of the Sampling Investigation to Developer. In connection with determining the scope of the Sampling Investigation, City shall cause its environmental consultants to meet with the Developer's environmental consultants to determine a mutually agreeable scope of the Sampling Investigation, provided however, in no event may the Developer's environmental consultants request that the City perform work resulting in an increase of more than 10% of the work recommended by the City's environmental consultants (and in the case of drilling samples, rounded up to the next whole drilling sample). City shall use commercially reasonable efforts to cause its environmental consultants to provide reliance letters covering such Sampling Investigation if requested by Developer and City shall consent to same if required by such consultants. The Sampling Investigation will be prepared by environmental consultants who are qualified to conduct and prepare environmental reports and will be designed and conducted in accordance with guidance provided in the TCEQ's Texas Risk Reduction Program ("**TRRP**") (30 TAC 350). Pursuant to Section 3.3(g) below, Developer may perform additional environmental testing at its expense.

(ii) If the Sampling Investigation reveals contaminants on the Property are present at levels above TCEQ residential standards, then the contaminants will be delineated according to TRRP requirements and the City will enter the Property in the Voluntary Cleanup Program to achieve closure to TCEQ residential standards.

(iii) If the Property is entered into the Voluntary Cleanup Program, the City will keep Developer generally informed as to the progress on the City's efforts to seek and obtain VCP Certificates and will make available, or cause its environmental consultants to make available, to Developer all files in its possession related to the environmental condition of, or VCP Certificates for, the

Property (other than attorney/client privileged information). City shall, at its sole cost and expense, diligently perform all remedial work and any other response action required by the TCEQ (including its regulations and staff directives) under any future VCP action commenced by the City as a result of the Sampling Investigation.

(g) Inspection Prior to Takedown Date.

(i) Following the vacation of the Property for regular business operations by the City, Developer may enter upon the Property, and to cause authorized representatives of Developer to enter upon the Property to conduct general or special physical investigations and inspections of the Property on behalf of Developer in furtherance of the purpose of assessing and causing the development of the Property (the “**Inspection Right**”). In no event may Developer conduct general or specialized tours through the Property or hold any event on the Property. All inspections performed by Developer shall be at Developer’s sole expense. Developer shall make such inspections in good faith and with due diligence and in compliance with all Legal Requirements. City reserves the right to have a representative present at the time of making any such inspection. Developer shall notify City not less than two business days in advance of exercising the Inspection Right.

(ii) If, for any reason, this Agreement expires or terminates, Developer shall repair any damage to the Property caused by Developer, or its agents, contractors or employees, arising out of or concerning the Inspection Right, and restore the Property to substantially the same condition it was in prior to the occurrence of damage. If Developer fails to commence to repair such damage within a reasonable time after written notice from the City and diligently pursue the restoration to completion, the City may perform such repair and restoration work, and Developer agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses within 10 days after receipt of an invoice reasonably detailing such work and the cost thereof. Developer shall cause its agents and contractors to execute and deliver to the City waivers of liability as reasonably promulgated by the City concerning the Property as a condition to entry upon the Property. In making any inspection hereunder, Developer will, and will cause any representative of Developer to, use discretion so as not to unreasonably disturb the occupants or personal property of the Property. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

(iii) DEVELOPER ACKNOWLEDGES THAT THE INSPECTION RIGHT IS GRANTED TO THE PROPERTY AS IS, WITH ALL FAULTS, IN ITS EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY, SPECIFICALLY INCLUDING THE PROPERTY’S GENERAL STATE OF SAFETY FOR INDIVIDUALS. DEVELOPER PARTICULARLY

UNDERSTANDS AND IS AWARE THAT THE PROPERTY IS A PART OF A FORMERLY OPERATIONAL UTILITY FACILITY, WITH DANGEROUS MACHINERY, HAZARDOUS CONDITIONS, AND HAZARDOUS OR POTENTIALLY HAZARDOUS CHEMICALS, SUBSTANCES AND OPERATIONS. DEVELOPER UNDERSTANDS SUCH HAZARDS ARE ENCOMPASSED WITHIN THE PROPERTY.

(h) Interlocking Stairs; Area of Refuge.

(i) As used in this subsection (h), the term “interlocking stairs” means a stairway in which two stairwells are run in the same shaft such that the stairwells cross at alternating floors.

(ii) Notwithstanding any City code requirement, policy, or rule, including but not limited to requirements of the Land Development Code, the Building Code, the Fire Code, or any administrative rule or policy, development within the Property may utilize interlocking stairs to satisfy applicable building ingress and egress requirements, subject to the following provisions:

A. The design must demonstrate to the City Building Official and the City Fire Code Official a level of safety for fire access and ingress that is equivalent to, or better than, the level of safety that would be provided by compliance with the minimum requirements of the 2003 International Building Code (IBC) and 2003 International Fire Code (IFC). Subject to these standards, IBC Sections 104.11 (Alternate materials, design and method of construction and equipment) and IFC Section 104.9 (Alternate materials and methods) may be employed with respect to each of the following:

1. remoteness of exits;
2. egress capacity;
3. fire resistance;
4. resistance to compromise by a single accidental or intentional act;
5. smoke management or control;
6. areas of refuge or rescue assistance;
7. emergency communications; and
8. installed fire protection and suppression systems.

(iii) Solely by way of illustration, and without limiting alternate building designs or configurations, the following approved developments are examples of projects that utilize interlocking stairs which satisfy the requirements in subsection 3.3(h)(ii) hereof:

- A. Spring Condominiums
300 Bowie Street
Austin, TX 78703
- B. 7 Rio
615 West Seventh Street
Austin, TX 78701
- C. Tara Condominiums
Sacramento, CA

(iv) Compliance with the area of refuge requirements for development of the Property approved in subsection 3.3(h)(ii) hereof shall be determined in a manner consistent with the area of refuge approved by the City of Austin for the Spring Condominiums at 300 Bowie Street, Austin TX 78703.

(i) Managed Growth Agreement – Site Plan Expiration. Because of the anticipated timing of the Takedown and the significant planning challenges associated with the Improvements, Developer does not anticipate filing a site plan application for the construction of the Improvements for several years. Chapter 25-5-81 of the City Code provides that an approved site plan expires three years from the date of its approval. As a result of the significant challenges and delicate market conditions associated with marketing, developing, and financing the Improvements, the Developer has requested an extension of the site plan expiration date for the Improvements’ approved site plan. Thus, the expiration date of the approved site plan for the Improvements under Chapter 25-5-81 of the City Code will be five years from the date of its approval, subject to the exceptions set forth in Chapter 25-5-81 of the City Code. All other terms of Chapter 25 of the City Code will remain in effect as provided therein, subject to Section 3.3(e) hereof. This section is deemed a “managed growth agreement” pursuant to Chapter 25-1-540 of the City Code.

ARTICLE IV PROPERTY TAKEDOWN AGREEMENTS

4.1 Takedown Agreement and Timing.

(a) Takedown Date. The Takedown of the Property will occur in one closing at the offices of the Title Company on the date which is 30 days following the latter of (i) issuance of a VCP for the Property (or the date of determination by the City’s environmental consultant that a VCP is not necessary) (the parties anticipate that a VCP will be issued for the Property in March 2014) and (ii) the date the City vacates the Property;

(i) provided however, if:

(A) the unsold inventory of new, completed for-sale high rise condominium units in the City of Austin Central Business District

represents 10% of the total number of high rise condominium units in the City of Austin Central Business District as evidenced by a mutually acceptable research publication or commissioned study; or

(B) a loan for the construction of the Improvements is not available to Developer in the then current debt market, based on the following terms (and such other terms as are customary for similar projects):

- (1) loan amount not greater than 80% “loan to cost”;
- (2) guaranteed (by a guarantor of appropriate financial strength) to the extent required by then applicable debt markets;
- (3) an interest rate of not more than 8%; and
- (4) a commitment fee not more than 75 basis points,

then the Takedown Date will be extended for so long as one or both of the conditions in Section 4.1(a)(i)(A)-(B) exist, and

(ii) provided further however, if no Event of Default or any condition or event which after notice and/or the lapse of time would constitute an Event of Default exists, the Takedown Date may be extended by Developer on a month to month basis (for up to 6 total months) upon written notice from the Developer to the City if the Developer has not obtained a CWMOU on or before the Takedown Date (or extended Takedown Date, as applicable).

(b) Outside Takedown Date. Notwithstanding the foregoing, in no event will the Takedown occur later than:

(i) if the Property IS NOT entered into the VCP, 36 months following the date on which the Sampling Investigation commences on the Property, or

(ii) if the Property IS entered into the VCP, 24 months following the issuance of a VCP Certificate

(such date, the “**Outside Takedown Date**”) and if such Outside Takedown Date occurs prior to the Takedown, this Agreement will automatically terminate in which event neither party shall have any obligations hereunder, except for those obligations which expressly survive a termination hereof. Even though the Outside Takedown Date exists, Developer must close the Takedown prior to the Outside Takedown Date if the conditions in Section 4.1(a)(i)(A)-(B) do not exist.

(c) Outside Takedown Date Extension. The Outside Takedown Date may be extended on a one-time basis for a period of up to 12 months, subject to the following conditions:

(i) Developer has given City not less than 30 days' prior written notice of Developer's intention to extend the Outside Takedown Date;

(ii) no Event of Default or any condition or event which after notice and/or the lapse of time would constitute an Event of Default exists as of the date of City's receipt of notice of Developer's intention to extend the Outside Takedown Date and as of the effective date of such extension; and

(iii) Developer shall pay to City, contemporaneously with the written notice of the extension of the Outside Takedown Date, an extension fee in the amount of \$350,000, which extension fee will be deemed due, payable, earned and nonrefundable, but will apply as a credit against Developer's obligation to pay the Transfer Price at the Takedown.

4.2 Property Condition at Takedown. The condition of the Property at Takedown will be the condition set forth in the RFP, which does not include demolition of the existing ECC structures.

4.3 Takedown Conditions.

(a) The City's Takedown Conditions. The City's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in the City's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of Developer contained herein shall be materially true, accurate and correct as of the Takedown Date and Developer must have performed all the material agreements to be performed by Developer as of the Takedown Date.

(ii) No Event of Default. No Developer Bankruptcy Event, Event of Default or Potential Event of Default exists.

(iii) Subdivision. A subdivision plat acceptable to the City (in its regulatory capacity) has been approved and recorded for the Property. A subdivision plat acceptable to the City (in its landowner capacity, which will not be unreasonably withheld) has been approved and recorded for the Property.

(iv) Declaration. The Declaration must be executed, notarized and recorded in the Real Property Records of Travis County, Texas prior to the execution of the Deed.

(v) Shoal Creek Public Access Easement. Developer shall cause its affiliate to grant to the City a public access easement in a form reasonably acceptable to the City to enable the extension of the Shoal Creek Trail between 4th Street and 5th Street, which easement will be recorded at the Takedown.

(vi) Arts in Public Places. Developer must make the contribution set forth in Section 6.3 hereof.

(b) Developer's Takedown Conditions. Developer's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in Developer's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of the City contained herein shall be materially true, accurate and correct as of the Takedown Date. The City has performed all the material agreements to be performed by the City as of the Takedown Date.

(ii) No Event of Default. No City Event of Default or Potential Event of Default exists.

(iii) Subdivision. A subdivision plat acceptable to Developer has been approved and recorded for the Property.

(iv) TCEQ VCP Certificates. If applicable, the City has obtained VCP Certificate(s) from the TCEQ for the Property and, if required by Legal Requirements, has filed the VCP Certificate(s) in the Official Public Records of Travis County, Texas, and delivered to Developer a copy of the VCP Certificate(s) for the Property.

4.4 Title Binder and Survey.

(a) Title Binder. Developer has received and approved the Title Binder.

(b) Updating Title Binder; Survey. Not less than 30 days' prior to the proposed Takedown Date, Developer may obtain an update of the Survey and an update of the Title Binder covering the Property. Not less than 30 days' prior to the proposed Takedown Date, Developer may obtain a Survey covering the Property.

(c) Review of Updated Title Binder and Survey. If such (i) Survey shows any easement, right-of-way, or other encumbrance that was not created by, through or under Developer affecting the Property, other than the Permitted Encumbrances, or (ii) updated Title Binder shows any additional exceptions to title coverage that were not created by, through or under Developer, other than the Permitted Encumbrances and the standard printed exceptions, and such new easement, right-of-way, other encumbrance or additional exceptions has an adverse effect on the title to the Property, Developer shall, within 10 days after receipt of both the updated Title Binder and the Survey, notify the City in writing of such fact and the objections thereto (each such period, an "**Objection Period**"), in which event the City will have 10 days after the expiration of such Objection Period to cure such objections (the "**Cure Period**"). Upon the expiration of the Objection Period, Developer shall be deemed to have accepted the updated Title Binder and the Survey and all matters shown or listed thereon (except for the matters which are the subject of a notification permitted under the preceding sentence), and such matters will be included in the term "**Permitted Encumbrances**" as used herein.

Notwithstanding anything to the contrary contained herein, the City shall have no obligation to bring any action or proceeding or otherwise to incur any expense to eliminate or modify such unacceptable exceptions except monetary liens, security interests and other collateral financing interests granted by the City against the Property, mechanic's liens arising out of any work performed by or under a contract with the City; judgment liens against the City and any exceptions and encumbrances created by the City after the Effective Date without Developer's consent. If the City is unable or unwilling to eliminate or modify such objectionable matters to the reasonable satisfaction of Developer within the Cure Period, Developer may, on or before the date which is 10 days following the expiration of the Cure Period (as its sole and exclusive remedies), either (y) terminate this Agreement by delivering written notice of termination to the City, in which event neither party shall have any right or obligation under this Agreement, except those which expressly survive such termination, or (z) accept such title to the Property as the City can deliver and such objectionable matters will be deemed approved by Developer as Permitted Encumbrances.

(d) Developer's Option to Waive Updating Title Binder and Survey. Developer may waive its right to obtain the Title Binder and the Survey with respect to the Property. If Developer waives its right to obtain the updated Title Binder and the Survey, the "Permitted Encumbrances" for the Property will be "subject to general real estate taxes on the Property for the current year, zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property and any and all valid restrictions, easements and other encumbrances, affecting the Property as the same appear of record, and all matters that would be disclosed in a current, accurate ALTA/ACSM Land Title Survey of the Property."

4.5 Condemnation.

(a) Knowledge. Prior to the Takedown, upon the City obtaining written knowledge of the institution of any actual or threatened proceedings for the stated purchase or condemnation of the Property or any portion thereof, the City will send Developer written notice of the pendency or threat of such proceedings; provided, however, the City's obligations to deliver such notice with respect to threatened legislation will not apply to threatened legislation which the City does not deem (in its reasonable discretion) a threat which could realistically result in the condemnation of the Property or a portion thereof.

(b) Developer's Role. Provided no Developer Event of Default exists, Developer may intervene in good faith by appropriate proceedings in any such proceedings for the sole purpose of protecting its interests under this Agreement, and, upon request from Developer, the City shall from time to time deliver to Developer written consent to such intervention. In any such condemnation event, this Agreement will remain in full force and effect until completion of such proceedings or as otherwise provided in this Section 4.5.

(c) Legal Requirements. The parties have the rights and duties set forth in this Section rather than as prescribed by the Uniform Vendor and Purchaser Risk Act (Texas Property Code, Section 5.007).

ARTICLE V
PROPERTY TAKEDOWN AND TRANSFER PRICE PAYMENT

5.1 The Takedown. The Takedown will take place at the offices of the Title Company on or before the Outside Takedown Date or such other time and place mutually agreed upon by the parties. At the Takedown the following will occur, each of which will be a concurrent condition to the Takedown:

- (a) The City's Takedown Obligations. At the Takedown, the City shall:
- (i) Deliver to the Title Company a duly executed and acknowledged Deed in favor of Developer covering the Property, subject to the Permitted Encumbrances.
 - (ii) Deliver to the Title Company a duly executed and acknowledged Subordination Agreement.
 - (iii) Deliver possession of the Property to Developer, subject to the Permitted Encumbrances.
 - (iv) Deliver to the Title Company a duly executed and acknowledged Release of Public Utility Easement in the form attached hereto as Exhibit H.
 - (v) Deliver to the Title Company a duly executed CWSA Holdback Escrow Agreement.
 - (vi) Deliver such other documentation or instruments as reasonably required by the Title Company for the Takedown to occur in accordance with this Agreement.
- (b) Developer's Takedown Obligations. At the Takedown, Developer shall:
- (i) Pay to the City the Transfer Price.
 - (ii) Deliver to the Title Company a duly executed and acknowledged counterpart of the Deed.
 - (iii) Deliver to the Title Company a duly executed and acknowledged City Security Instrument.
 - (iv) Deliver to the City the contribution set forth in Section 6.3 hereof.
 - (v) Deliver to the Title Company a duly executed CWSA Holdback Escrow Agreement.

(vi) Deliver such other documentation or instruments as reasonably required by the Title Company for the Takedown to occur in accordance with this Agreement.

(vii) Cause any secured lender of Developer to deliver to the Title Company a duly executed and acknowledged Subordination Agreement.

(c) Taxes and Assessments. Real estate taxes and assessments, if any, concerning the Property for the calendar year of Takedown, to the extent the City is obligated to pay such items, will be apportioned between the City and Developer at the Takedown as of midnight of the day preceding the Takedown Date.

(d) Closing Costs. Developer will pay all closing costs (e.g., title insurance, survey, inspection fees, Developer's attorney fees, financing fees, recording fees and escrow fees) in connection with the Takedown, except the City's legal fees and financial obligations of any lien the City granted on the Takedown Property, security interests and other collateral financing interests for which the City is responsible under Section 4.4(c) and any encumbrances created by the City after the Effective Date without Developer's consent. Section 3.1(b) of the ENA provides that Developer will receive a credit against the Transfer Price for certain Developer deposits. As the Improvements are approximately 25% of the overall improvements contemplated in the RFP response and the ENA, at the Takedown, Developer will receive a credit against the Transfer Price for 25% of the deposits referenced in Section 3.1 of the ENA (i.e., 25% of \$50,000 + 3% interest accruing from April 30, 2008 [RFP response submission date] plus 25% of \$100,000 + 3% interest accruing from August 11, 2008 [ENA effective date]).

(e) CWSA Holdback.

(i) The parties anticipate that a CWMOU will be executed prior to the Takedown. During the development of the Property, Developer and Austin Energy will work together to execute a CWSA.

(ii) At the Takedown, \$100,000 (the "CWSA Holdback") of the Transfer Price will be deposited by the Title Company into an interest-bearing escrow account (which interest-bearing component will be applicable to the extent allowable to obtain FDIC insurance on the entire CWSA Holdback) with a federally insured financial institution reasonably approved by the City. Any interest earned on the CWSA Holdback will accrue to the CWSA Holdback and be utilized in the same manner. The Title Company shall not commingle the CWSA Holdback with other funds held by it. If at any time the financial institution that actually holds the CWSA Holdback or its parent entity (A) is the subject of a bankruptcy, insolvency, conservatorship, receivership, custodianship or similar proceeding; (B) is otherwise adjudicated as, or determined by any governmental authority to be, insolvent or bankrupt; (C) is the subject of a cease and desist order by any governmental authority and such cease and desist order is not resolved within 20 days after the issuance of such order, or (D) admits in any filing that it is not able to continue as a going concern, Title Company shall

promptly move the CWSA Holdback to another financial institution reasonably approved by the City.

(iii) If a CWSA (A) is not executed because of an act or omission of Austin Energy, or (B) is executed but a default occurs thereunder by Austin Energy (following the expiration of all grace, notice and/or cure periods) as a result of Austin Energy's failure to complete the chilled water delivery system and deliver chilled water to the Property in accordance with the CWSA, Developer may, within 60 days following such default, deliver written notice to the Title Company of such event in which case the Title Company shall deliver the CWSA Holdback to Developer. The obligations of Austin Energy as set forth herein are informative only and no expectations should be derived therefrom, it being the intent of the parties that the obligations of Austin Energy with respect to the chilled water delivery to the Property be set forth solely in the CWMOU and CWSA.

(iv) If a CWSA is executed and chilled water is delivered to the Property, Developer or the City shall deliver written notice to the Title Company of such event and the Title Company must immediately disburse the CWSA Holdback to the City.

(v) At the Takedown, City, Developer and the Title Company must execute a CWSA Holdback Escrow Agreement which reflects the agreements of this subsection.

(vi) If Austin Energy incurs reasonable cost to design the chilled water piping and related infrastructure to serve the Property and Developer does not execute a CWSA, then Developer shall be obligated to reimburse Austin Energy for all such reasonable incurred costs at an interest rate equal to Austin Energy's cost of capital, expressly including costs of engineering, but in no event in excess of \$100,000; provided that Developer has no obligation under this subsection (vi) unless and until Takedown occurs. Austin Energy will not install any capital infrastructure unless a CWSA is executed. If a CWSA is executed and the Developer commits a default thereunder, the remedies for such default will be set forth in the CWSA (including the remedy for reimbursement of design costs as set forth in this subsection).

ARTICLE VI DEVELOPER'S PAYMENTS AND CONTRIBUTIONS

6.1 Infrastructure Payment. Developer shall pay to the City the Infrastructure Payment (a) with respect to any part of the Property which is intended to be marketed by the developer of the Property as "for rent" to end users, upon issuance of a Certificate of Occupancy (or its equivalent) for the Improvements, and (b) with respect to any part of the Property which is intended to be marketed by the developer of the Property as "for sale" to end users upon the closing of the sale of 50% of the units in the Improvements. If the Improvements are both "for rent" and "for sale", the Infrastructure Payment shall be prorated between the two product types

and payable as provided above (e.g., if the Improvements are 30% for sale and 70% for rent, 30% of the Infrastructure Payment will be payable when 50% of such portion of the Improvements are sold and the remaining 70% of the Infrastructure Payment will be payable upon issuance of a Certificate of Occupancy [or its equivalent] for such portion of the Improvements).

6.2 Public Art Contribution. Developer shall contribute \$250,000 cash to a City special public art fund or program facilities for public art on, or adjacent to, the Property on or before the earlier of (a) if the public art will be commenced during the construction of the Property, the date of such commencement, or (b) if the public art will be commenced following the construction of the Property, the date on which a certificate of occupancy is issued for any portion of the Property, provided however, this requirement is subject to a dollar for dollar match of City art funds in the area of the Property. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance notice and the opportunity for a representative of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design and use of the Property.

6.3 Arts in Public Places. Contemporaneously with the Takedown of the Property, Developer shall contribute \$100,000 to the Arts In Public Places program. Such contribution will be used to pay for public art, and for the installation of public art, along the screen wall around the Austin Energy substation. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance notice and the opportunity for a representative of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design and use of the Property.

6.4 Affordable Housing – Density Bonus. Developer shall pay to a City of Austin sponsored affordable housing fund designated by the City a one-time payment equal to \$5 per net square foot (sellable or leasable, as the case may be) in the Improvements (excluding common and parking areas) (a) with respect to any part of the Property which is intended to be marketed by the developer of the Property as “for rent” to end users, upon issuance of a Certificate of Occupancy (or its equivalent allowing the occupancy of such premises) therefor, and (b) with respect to any part of the Property which is intended to be marketed by the developer of the Property as “for sale” to end users, upon the sale of each such portion of the Property (the amount of which is calculated upon the portion of the Property sold). It is the intent of the City and the Developer that the payment(s) described herein will be paid on a one time basis with respect to each portion of the Property and the obligation to deliver such payments shall automatically expire upon the payment (in the aggregate) of such amount on the entire Property.

ARTICLE VII
INSURANCE AND INDEMNITY

7.1 Insurance.

(a) General. Developer shall carry and maintain throughout the term of this Agreement (except as specifically noted below) the following insurance policies:

(i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer, or its agents or contractors on Developer's behalf, will utilize with respect to the Property in a minimum amount of \$1,000,000, combined single limit.

(iii) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations with a minimum aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.

(iv) Intentionally Omitted.

(v) For contractors/subcontractors providing professional services under this Agreement, Engineers' Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(vi) For work that involves asbestos or any Hazardous Materials or pollution, the following will be in addition to the other insurance required hereunder:

A. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any Hazardous Materials or pollution and shall provide "occurrence" coverage without a sunset clause.

B. Pollution coverage in accordance with Title 49 CFR 171.8 requiring an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the transportation of asbestos or other Hazardous Materials. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

The insurance required under this subsection will only be required concerning the entity which is actually performing such work. For example, if Developer's contractor (instead of Developer) is performing such work, the contractor, not Developer, will be required to carry such insurance. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(b) Special Requirements. Developer will not cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. With respect to Sections 7.1(a)(i), (ii) and (iii), insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of AVII or better or otherwise acceptable to the City. Additionally with respect to Sections 7.1(a)(i), (ii) and (v), all policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Legal Requirements, and will be endorsed to provide the City with a 30-day notice of cancellation. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Developer will submit a certificate of insurance to the City providing evidence of insurance coverage required by this Agreement. Developer will be responsible for (i) overseeing its contractors with respect to such contractors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates evidencing the insurance coverages required hereunder.

(c) Additional Insured. All endorsements, waivers, and notices of cancellation as well as the certificate of insurance shall indicate the City as an additional insured and be delivered to: City of Austin, Economic Growth and Redevelopment Services Office, Attn: Director, P.O. Box 1088, Austin, Texas 78767, or such other address as the City may notify Developer in writing.

(d) Cost. Developer shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Developer (not by its contractors and any subcontractors). All deductibles or self-insured retentions shall be disclosed on the certificate of insurance. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Developer or the City under this Agreement.

7.2 Indemnity and Release.

(a) Indemnity. Developer will indemnify and hold the City and its respective officers, directors, employees and agents harmless from, and reimburse the City and its respective officers, directors, contractors, employees and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a "Claim") which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees and agents to the extent any such Claim arises from or in connection with (i) any Developer Event of Default, (ii) the consequences of any alleged, established or admitted act or omission of Developer or any agents, contractors, representatives or employees of Developer, and (iii) any alleged, established or admitted act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City.

(b) Claims. If the City notifies Developer of any Claim, Developer shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Developer but reasonably satisfactory to the City; provided, that the City has the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Developer and the City, and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Developer, then the City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Developer shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Developer fails to assume within 20 days after being notified of the Claim the defense of the City, then the City may contest (or settle, with the prior written consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Developer's expense using counsel selected by the City; provided,

that if any such failure by Developer continues for 30 days or more after Developer is notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Developer's consent and without releasing Developer from any obligations to the City under this Section so long as, in the written opinion of reputable counsel to the City, the settlement or payment in full is clearly advisable. So long as Developer does not admit liability or agree to affirmative obligations on behalf of the City, Developer is authorized to settle a Claim for itself and the City.

(c) Release. Other than to the extent caused by a City Event of Default, Developer hereby releases the City with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City.

The provisions of this Section will survive the expiration or earlier termination of this Agreement.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default – Developer. The following constitute Events of Default by Developer:

(a) Failure to Pay. Developer fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from the City.

(b) Abandonment or Suspension. Following Commencement of Construction, Developer voluntarily abandons or substantially suspends such construction for more than 60 consecutive days, subject to Force Majeure.

(c) Failure to Perform Obligations. Without limiting any other provision of this Section, Developer fails to perform any other obligations or duties provided in this Agreement, subject to Force Majeure, after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by the City to Developer to perform such obligation and duty, or in the case of a default not susceptible of cure within 30 days, Developer fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(d) Insurance. Developer fails to maintain the insurance required under Section 7.1 hereof.

(e) Assignment. Developer violates the terms of Section 9.15 hereof.

(f) Other Agreement Events of Default. Developer commits an event of default under the City Security Instrument, the Declaration or the Deed which continues past any applicable grace, notice or cure period(s).

(g) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Developer, either in a proceeding brought by Developer or in a proceeding brought against Developer, and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or Developer consents to or acquiesces in such appointment or possession. Developer files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing collectively, "**Applicable Bankruptcy Law**") or an involuntary petition for relief is filed against Developer under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming Developer is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Developer.

(h) Litigation. Any reasonably meritorious third party suit shall be filed against Developer, which if adversely determined, would substantially impair the ability of Developer to perform in any material respect each and every one of its material obligations under and by virtue of this Agreement, and pursuant to which a permanent injunction is issued by a court of competent jurisdiction enjoining Developer from performing its obligations hereunder and such injunction is not released or bonded around within 90 days of its issuance, unless such claim arises out of or is related to the City entering into this Agreement with Developer.

8.2 Remedies of the City. Upon the occurrence and during the continuance of an Event of Default by Developer, the City has, as the City's sole and exclusive remedies, the remedies set forth below:

(a) Specific Performance. The City may institute an action for specific performance, to the extent permitted by Legal Requirements.

(b) Damages. The City may pursue a claim against Developer for actual, but not punitive or consequential, damages.

(c) Liquidated Damages. Developer will pay to the City as liquidated damages the sum of \$1,000 per day for each day a Developer Event of Default exists (without duplication), which sum has been agreed because of the difficulty and uncertainty of determining actual damages for each individual Event of Default.

(d) Tolling of Obligations under CWSA. The City may authorize Austin Energy to toll the performance of Austin Energy's obligations under the CWSA and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(e) Tolling of Other Obligations. The City may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(f) Remedies Under Other Agreements. The City may exercise any remedy provided to the City under the City Security Instrument (including without limitation, foreclosure thereunder), Deed and/or the Declaration.

EXCEPT AS SET FORTH ABOVE, THE CITY WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST DEVELOPER FOR DEVELOPER'S EVENT OF DEFAULT.

8.3 Events of Default – City. The following constitute Events of Default by the City:

(a) Failure to Pay. The City fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from Developer.

(b) Failure to Perform Obligations. Without limiting any other provision of this Section, the City fails to perform any other obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by Developer to the City to perform such obligation and duty, or, in the case of a default not susceptible of cure within 30 days, the City fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(c) Assignment. City violates the terms of Section 9.15 hereof.

(d) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of the City, either in a proceeding brought by the City, or in a proceeding brought against the City and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or the City consents to or acquiesces in such appointment or possession. The City files a petition for relief under Applicable Bankruptcy Law or an involuntary petition for relief is filed against the City under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming the City is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by the City.

(e) Litigation. Any reasonably meritorious suit shall be filed against the City, which if adversely determined, would substantially impair the ability of the City to perform each and every one of its obligations under and by virtue of this Agreement, which is not dismissed within 90 days of filing.

8.4 Remedies of Developer. Upon the occurrence of an Event of Default by the City, Developer has, as Developer's sole and exclusive remedies, the remedies set forth below:

(a) Termination of the Development. Developer may terminate its obligations under this Agreement to Takedown the Property.

(b) Specific Performance. Developer may institute an action against the City for specific performance, to the extent permitted by Legal Requirements.

(c) Damages. Developer may pursue a claim against the City for actual, but not punitive or consequential, damages.

(d) Tolling of Other Obligations. Developer may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the City Event of Default existed.

EXCEPT AS SET FORTH ABOVE, DEVELOPER WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST THE CITY FOR ANY CITY EVENT OF DEFAULT.

8.5 Rights and Remedies Are Cumulative. The rights and remedies of the parties to this Agreement are cumulative and the exercise by either party of any one (1) or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

8.6 LIMITED WAIVER OF SOVEREIGN IMMUNITY. **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY DEVELOPER SEEKING ONLY THE REMEDIES SPECIFIED IN SECTION 8.4 HEREOF AND THE SPECIFIC REMEDIES GRANTED IN AN ANY EXHIBIT HERETO. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT AND ANY EXHIBIT HERETO.**

ARTICLE IX MISCELLANEOUS PROVISIONS

9.1 Notices. Formal notices, demands and communications between the parties shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Developer: Constructive Ventures, Inc.
1000 East 8th Street
Austin, TX 78702
Attention: Larry Warshaw

with a copy to: Constructive Ventures, Inc.
1311A East 6th Street
Austin, Texas 78702
Attention: Perry Lorenz

with a copy to: TC Austin Development, Inc.
100 Congress Avenue, Ste. 225
Austin, TX 78701
Attention: Timothy McCabe

with a copy to: DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

City: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

with a copy to: City of Austin
Economic Growth and
Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78701
Attention: Director

and: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

and: Thompson & Knight L.L.P.
98 San Jacinto, Suite 1900
Austin, Texas 78701
Attention: James E. Cousar and Andrew Ingram

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the

case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

9.2 Limitation on Liability. No member, official or employee of the City shall be personally liable to Developer for any default or breach by the City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement. No Affiliate of Developer, and no officer, manager, director, partner, shareholder, member, official or employee of Developer or any Affiliate of Developer shall be personally liable to the City for any default or breach by Developer, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

9.3 Independent Contractor. Developer is an independent contractor with respect to the Improvements and the Public Improvements and is not serving as the employee or agent of the City. Nothing contained in this Agreement shall be construed as creating or constituting any partnership, joint venture, employment or agency between the parties. Each of Developer and the City has sole authority and responsibility to employ, discharge and otherwise control its own employees, and the respective employees of Developer and the City are not, and shall not be deemed to be, employees of the other. Neither party has the right or power to bind or obligate the other party for any liabilities or obligations without the prior written consent of the other party.

9.4 Severability. If any term(s) or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the City or Developer of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the City and Developer.

9.5 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Developer and the 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.

9.6 Entire Agreement. This Agreement and all the documents, agreements, exhibits and schedules referenced herein constitute the entire understanding and agreement of the parties and supersede all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

9.7 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against

whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

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

9.9 Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

9.10 Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and such other costs as may be found by the court or arbitrator. If any party hereto fails to pay any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of 18% per annum or the maximum rate of interest permitted under Legal Requirements.

9.11 No Third Party Beneficiaries. Except with respect to any permitted assignees of Developer and the City as contemplated in Section 9.15, the City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

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

9.13 Time of Performance. All performance dates (including without limitation cure dates) expire at 5:00 p.m. Central Standard Time, on the performance or cure date. A performance or cure date which falls on a day other than a Business Day is deemed extended to the next Business Day.

9.14 Estoppel Certificates. Upon 30 days' prior written notice and not more than twice in any 12-month period, the City and Developer each agree to sign and deliver to the other party a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

9.15 Successors and Assigns.

(a) General. Except as provided in this Section, this Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of the City and Developer, and where the terms “Developer” or “the City” are used in this Agreement, they mean and include their respective permitted successors and assigns. If any party hereto assigns its interest herein as permitted hereby, the assigning party will not be released from its obligations hereunder, except to the extent it obtains a written release from the beneficiary party to such obligations, which such beneficiary party may give or withhold in its sole and absolute discretion.

(b) City Assignment. Without Developer’s prior consent, the City may only assign its interest in the Property to a special entity to facilitate the redevelopment of the Property, provided the City remains liable for the City’s obligations to Developer in this Agreement. If the City assigns its interest hereunder, the City’s assignee shall execute an assumption agreement unconditionally assuming the City’s obligations hereunder, a copy of which shall be provided to Developer.

(c) Developer Assignment. Prior to Commencement of Construction of the Improvements, Developer shall not assign (including without limitation, by transfer or pledge of a majority of [or controlling] ownership interests, merger, or dissolution, which transfer or pledge of majority interest of [or controlling] ownership interests, merger, or dissolution shall be deemed an assignment), transfer or hypothecate all or any interest in this Agreement (other than a mortgage or pledge in connection with the financing of the Property’s acquisition and/or development) (a “Transfer”), without the City’s prior written consent, provided however, without the City’s prior consent (but with prior written notice to the City) Developer may Transfer its interest in this Agreement to TC Austin, another wholly owned Affiliate of Trammell Crow Company, or an Affiliate of Developer provided that such Affiliate is owned and controlled by the people or entities that own and control Developer as of the Effective Date. Following Commencement of Construction of the Improvements, Developer may effectuate a Transfer without the City’s consent.

(d) Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Developer (or its successor in interest hereunder) is permitted to assign this Agreement in disregard of the restrictions contained in this Article (or if this Agreement shall be assumed by a trustee for such person), the trustee or assignee shall cure any Event of Default under this Agreement and shall provide adequate assurance of future performance by the trustee or assignee, including (i) the source of performance of Developer’s obligations under this Agreement for which adequate assurance shall mean the deposit of cash or equivalent security with the City in an amount equal to the sum of 20% of Developer’s estimated remaining monetary obligations under this Agreement, which deposit shall be held by City, without interest, as security for the full and faithful performance of all of the obligations under this Agreement on the part of Developer yet to be performed; (ii) that the trustee’s or assignee’s development expertise with respect to mixed use urban developments is at least equal to that of Developer as of the Effective Date, and (iii) that the use of the Property shall be in accordance with the terms hereof and, further, shall in no way diminish the reputation of the Property as a “Class A” mixed use urban development or impose any additional burden upon the Property or increase the services

to be provided by City. If all Events of Defaults are not cured and such adequate assurance is not provided within ninety (90) days after there has been an order for relief under Applicable Bankruptcy Law, then this Agreement shall be deemed rejected, Developer or any other person in possession shall immediately vacate the Property and the City shall have no further liability to Developer or any person claiming through Developer or any trustee under this Agreement.

9.16 No Recording/Filing. Neither party will record or file this Agreement or any memorandum thereof in any public recording office.

9.17 Effect of Force Majeure. If the City or Developer is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of Force Majeure and if such party has not otherwise committed an Event of Default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(a) The affected party shall give prompt written notice of such occurrence to the other party; and

(b) The affected party shall diligently attempt to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

9.18 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Developer agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Takedown or at such other time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

9.19 Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor amendments and minor modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Agreement without approval of the Austin City Council.

9.20 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Developer, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement

may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

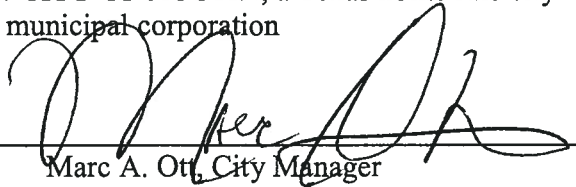
9.21 Interstate Land Sales Full Disclosure. The City and Developer acknowledge and agree that the sale of the Property in accordance with this Agreement will be exempt from the provisions of the Interstate Land Sales Full Disclosure Act in accordance with the exemption applicable to the sale of property to any person who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale of such property to persons engaged in such business.

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation

By: 
Marc A. Ott, City Manager

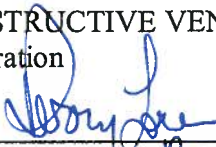
Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

Thompson + Knight LLP.

DEVELOPER:

CONSTRUCTIVE VENTURES, INC., a Texas corporation

By: 
Name: PERRY LORENZ
Title: Secretary

TC AUSTIN:

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC., a Delaware corporation

By: 
Name: Scott A. Dye
Title: Senior Vice President