



CITY OF IRWINDALE

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MAYOR PRO TEM

ALBERT F. AMBRIZ
COUNCILMEMBER

MARK A. BRECEDA
COUNCILMEMBER

MANUEL R. GARCIA
COUNCILMEMBER

NOTICE AND AGENDA FOR THE SPECIAL MEETING OF THE

CITY COUNCIL

SUCCESSOR AGENCY TO THE IRWINDALE REDEVELOPMENT AGENCY

HOUSING AUTHORITY*

DECEMBER 8, 2021

5:30 P.M. – CLOSED SESSION

6:00 P.M. – OPEN SESSION

CLOSED SESSION – CITY HALL LARGE CONFERENCE ROOM

OPEN SESSION - IRWINDALE CITY COUNCIL CHAMBER

(Closed to the Public)

Pursuant to Irwindale Resolution No. 2021-100-3312

The Irwindale City Council has authorized the conduct of remote teleconference meetings of the City Council, including all City Commissions and committee meetings, and all regularly scheduled meetings that would normally take place in the City Council Chambers, under the provisions of Government Code Section 54956 § E, as authorized by AB 361.

The public's health and well-being are the top priority for the City, and you are urged to take all appropriate health safety precautions. To facilitate this process, the meeting and opportunities to participate are available through the following:

<https://us02web.zoom.us/j/87104592389>

Webinar ID: 871 0459 2389



Spontaneous Communications: The public is encouraged to address the City Council on any matter listed on the agenda or on any other matter within its jurisdiction. The City Council will hear public comments on items listed on the agenda during discussion of the matter and prior to a vote. The City Council will hear public comments on matters not listed on the agenda during the Spontaneous Communications period.

Pursuant to provisions of the **Brown Act**, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future City Council meeting.

Americans with Disabilities Act: In compliance with the ADA, if you need special assistance to participate in a City Council meeting or other services offered by this City, please contact City Hall at (626) 430-2200. Assisted listening devices are available at this meeting. Ask the Chief Deputy City Clerk if you desire to use this device. Upon request, the agenda and documents in the agenda packet can be made available in appropriate alternative formats to persons with disabilities. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Note: Staff reports are available for inspection at the office of the Chief Deputy City Clerk, City Hall, 5050 N. Irwindale Avenue, during regular business hours (8:00 a.m. to 6:00 p.m., Monday through Thursday).

Code of Ethics

As City of Irwindale Council Members, our fundamental duty is to serve the public good. We are committed to the principle of an efficient and professional local government. We will be exemplary in obeying the letter and spirit of Local, State and Federal laws and City policies affecting the operation of the government and in our private life. We will be independent and impartial in our judgment and actions.

We will work for the common good of the City of Irwindale community and not for any private or personal interest. We will endeavor to treat all people with respect and civility. We will commit to observe the highest standards of morality and integrity, and to faithfully discharge the duties of our office regardless of personal consideration. We shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

We will inform ourselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand. We will base our decisions on the merit and substance of that business. We will be fair and equitable in all actions, claims or transactions. We shall not use our official position to influence government decisions in which we have a financial interest or where we have a personal relationship that could present a conflict of interest, or create a perception of a conflict of interest.

We shall not take advantage of services or opportunities for personal gain by virtue of our public office that are not available to the public in general. We shall refrain from accepting gifts, favors or promises of future benefit that might compromise our independence of judgment or action or give the appearance of being compromised.

We will behave in a manner that does not bring discredit or embarrassment to the City of Irwindale. We will be honest in thought and deed in both our personal and official lives.

Ultimate responsibility for complying with this Code of Ethics rests with the individual elected official. In addition to any other penalty as provided by law, violation of this Code of Ethics may be used as a basis for disciplinary action or censure of a Council Member.

These things we hereby pledge to do in the interest and purposes for which our government has been established.

IRWINDALE CITY COUNCIL



OPEN SESSION – 5:30 P.M.

A. CALL TO ORDER

- B. ROLL CALL: Councilmembers / Authority Board: Albert F. Ambriz, Mark A. Breceda, Manuel R. Garcia; Mayor Pro Tem / Vice Chair Larry G. Burrola; Mayor / Chair H. Manuel Ortiz**

SPONTANEOUS COMMUNICATIONS

Spontaneous communications are limited to the special meeting agenda items only.

C. RECESS TO CLOSED SESSION

A. Conference with Labor Negotiator

Pursuant to California Government Code Section 54957.6

Agency Designated Representatives: William Tam, City Manager; Adrian Guerra, Legal Counsel; Mary Hull, Human Resources Manager; Jeanette Duran, Interim Director of Finance/City Treasurer

Employee Organizations: IMEA, ICEA, IPOA, and Unrepresented Employees

B. Conference with Legal Counsel—Anticipated Litigation

Significant Exposure to Litigation

[Pursuant to Government Code section 54956.9(c), (d)(2), e(3)]

A point has been reached where, in the opinion of the legislative body of the local agency, upon the advice of its legal counsel based on existing facts and circumstances, that there is significant exposure to litigation against the local agency. The existing facts and circumstances consist of a claim filed by Five Points LLC, pursuant to the Government Claims Act, which alleges claims for damages in the amount of \$20 million for (1) breach of contract, (2) breach of implied-in-fact contract; (3) breach of the covenant of good faith and fair dealing; (4) promissory estoppel based on the purchase and sale agreement. A copy of the claim is included in this agenda package for public review and available for review in the City Clerk's office upon request.

C. Conference with Real Property Negotiators

Pursuant to California Government Code Section 54956.8

Property: Las Casitas
5164 Ayon Avenue
Parties: Northridge Group & Housing Authority
Under Negotiation: Price and terms of potential sale

Property: 2200 Arrow Highway
Negotiating Parties: Athens Services and Successor Agency
Under Negotiation: Price and terms of sale

D. Public Employee Appointment

Pursuant to California Government Code Section 54957

Title: City Manager / Interim City Manager

D. RECONVENE IN OPEN SESSION

E. REPORT FROM CLOSED SESSION

F. *CONSENT CALENDAR***

1. Approval of Amendment No. 10 to the Project Reimbursement Agreement (AKA – Deposit Agreement) Relating to Solid Waste Materials Recovery Facility / Transfer Station Agreements between the City and Arakelian Enterprises, Inc., dba Athens Services

Recommendation: That the City Council (1) Approve Amendment No. 10 to the Project Reimbursement Agreement between the City and Arakelian Enterprises, Inc., dba Athens Services (“Athens”) and (2) Authorize the City Manager to execute Amendment No. 10 following approval as to form by the City Attorney.

Department: Community Development

2. Waive Condition of Closing for the Sale of Property Located at 2200 Arrow Highway by the Successor Agency to Athens Services, Authorization to Vest Title in Irwindale Investments LLC, a special purpose entity, rather than Athens as part of the Sale of Property, and Authorization to Execute CC&R’s to Identify City as Beneficiary Thereto

Recommendation: That the City Council (1) Authorize the City Manager to execute the CC&Rs for the property at 2200 Arrow Highway (“Property”) to identify the City as the beneficiary of the CC&Rs.

That the Successor Agency take the following actions:

(1) Waive the requirement that, as a condition of Closing on the sale of the property at 2200 Arrow Highway ("Property") FROM THE Successor Agency to Athens, Athens must be in a conditions to pull building permits and, instead, authorize Closing subject to the following: (a) Athens will have 10 days from the Close of Escrow to pull the grading permit; and (b) Athens will have 5 months from the Close of Escrow to pull the building permit (subject to extensions by the Executive Director).

(2) Authorize the title of the Property to be vested in Irwindale Investments LLC, a special purpose entity ("SPE"), rather than Athens at the Closing.

(3) Approve (A) the following documents to be executed at Closing and authorize the Executive Director to execute same as necessary, subject to Agency Counsel approval as to form: (i) Partial Assignment and Assumption Agreement and Consent, (ii) Guaranty, (iii) modified Grant Deed, and (iv) modified CC&Rs as provided in this agenda report and (B) the Lease Agreement (and Memorandum of Lease) between the SPE and Athens. All the foregoing are subject to any non-substantive revisions as approved by the Executive Director and Agency Counsel.

(4) Authorize the Executive Director to execute all required documents necessary for Closing the sale of the Property DDA and consistent with these approvals and subject to Agency Counsel's approval as to form.

Department: Administration

G. ADJOURNMENT

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Chief Deputy City Clerk, certify that I caused the agenda for the special meeting of the City Council, Irwindale Successor Agency to the Irwindale Community Redevelopment Agency and Housing Authority to be held on December 8, 2021, be posted at the City Hall, Library, and Post Office on December 7, 2021 at 4:51 p.m.

Laura M. Nieto, MMC

Laura M. Nieto, MMC
Chief Deputy City Clerk

*Amended to include Housing Authority

**Amended to revise New Business to Consent Calendar

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7
8

9 FIVE POINTS, LLC,

10 Claimant,

11 v.

12 CITY OF IRWINDALE,

13 Respondent.
14

**CLAIM PURSUANT TO GOVERNMENT
CODE SECTIONS 900 *ET SEQ.***

15 TO THE CLERK OF THE CITY OF IRWINDALE:

16 Pursuant to California Government Code Sections 900 *et seq.*, Five Points, LLC
17 (“Claimant”) submits the following claim to the City of Irwindale (the “City”). Claimant’s current
18 address is 9034 West Sunset Boulevard, West Hollywood, California 90069. Responses to this
19 Claim should be sent to Lara R. Leitner, Esq. at Jeffer Mangels Butler and Mitchell, LLP, 1900
20 Avenue of the Stars, Los Angeles, California 90067.

21 Claimant asserts a Claim against the City for damages for breach of contract, breach of
22 implied-in-fact contract, breach of the covenant of good faith and fair dealing, and promissory
23 estoppel. In addition, Claimant intends to assert claims against the City that are not subject to
24 Government Code § 945.4. The facts upon which this Claim are based include, but are not limited
25 to, the following:
26
27
28

I. PARTIES TO THE CLAIM

1. Claimant Five Points, LLC (“Claimant”) is a California limited liability company with its principal place of business located at 9034 West Sunset Boulevard, West Hollywood, California 90069. Claimant is the owner and developer of the property that is the subject of this lawsuit.

2. Respondent the City of Irwindale (“City”) is and was a municipal corporation and Charter City existing under the laws of the State California. The City is the successor agency to the Irwindale Community Redevelopment Agency (“ICRA”).

II. DETAILED STATEMENT OF CLAIM

3. Claimant brings this claim against the City to recover the millions of dollars owed to it as a result of the City’s breaches of the parties’ contract and related conduct. In short, the City induced Claimant to purchase a former mining pit it owned for millions of dollars, pay millions of dollars more to remediate the site and assist the City in settling its liabilities, all based upon the promises and assurances of the City that the site was to be developed for industrial uses. When Claimant designed, paid for environmental review and sought entitlements for the very project envisioned in the parties’ purchase, sale and development agreement, the City simply changed its mind and refused to approve the project, leaving Claimant with nothing to show for its multi-million dollar investment.

A. The City Conveys Property to Claimant for Light Industrial or Commercial Development

4. In June 2005, the ICRA acquired real property located at 5175 Vincent Avenue, which is composed of three parcels (APNs: 8417-034-904, 910, 911) totaling 35.4 acres (the “Site”). The Site was a former mining pit known as the “Manning Pit” that was used in the 1970s for disposal of salt, clay, and sand wash and then, in the 1980s, was backfilled with a variety of construction debris.

5. The ICRA acquired the Site with plans to reclaim and redevelop the Site, a portion of which would be developed with affordable housing using the former Low and Moderate Income Housing Fund (“LMHIF”). In light of challenges and delays ICRA incurred in reclaiming the Site,

1 the ICRA transferred the Site from the LMHIF to the non-housing ICRA account using
2 redevelopment set-aside funds with plans to provide a mix of housing and commercial or light
3 industrial development on the Site.

4 6. The Site was contaminated with hazardous materials, including unacceptable
5 concentrations of lead and other deleterious materials. On April 3, 2007, the ICRA issued a
6 request for proposal for the remediation work that needed to be done before the Site could be
7 developed. On October 10, 2017, the City awarded the contract to remediate and backfill the Site
8 to Dispatch Transportation, LLC dba Windrow Earth Transport (“Dispatch”). On November 6,
9 2008, the Planning Commission approved a conditional use permit and adopted a mitigated
10 negative declaration for the remediation and filling of the former Manning Pit. On September 14,
11 2011, Commodity Trucking Acquisition (“Commodity Trucking”) acquired Dispatch’s rights to
12 the License Agreement and conditional use permit for reclamation of the Site.

13 7. On May 16, 2014, Mason & Mason prepared an appraisal report for the Site that
14 documented the existence of deleterious material and potential lead-contaminated soil.

15 8. On December 13, 2013, the City, Commodity Trucking, and Claimant’s
16 predecessor, M&A Gabae, LLC (referred to herein as “Claimant”), entered into an Exclusive
17 Negotiating Agreement (“ENA”) to negotiate the purchase, sale and development of the Site for
18 future light industrial and/or commercial use. The purpose of the ENA was to facilitate the
19 development of the Property for industrial uses by introducing a capital investor to assume the
20 financial risk of remediating and reclaiming the Property in exchange for its right to purchase the
21 Property for industrial development.

22 9. Claimant stepped in to assist the City by assuming financial and environmental
23 risks associated with the costly and time consuming remediation and reclamation efforts necessary
24 for the Site. Without Claimant’s involvement, the City would likely have left the Manning Pit in
25 its original condition given the prohibitive expense and exposed liability that the City discovered
26 the work would require. Together, the City, Claimant, and Dispatch formed a public-private
27 partnership to share the risk and reclaim a major land asset for the benefit of all parties and the
28 community at large.

10. While Dispatch’s remediation work was underway, redevelopment agencies in California were abolished. The dissolution procedures of ABX1 26 and subsequently AB 1484 (enacted in June 2012) required the disposition or transfer of properties formerly held by the redevelopment agencies. Pursuant to ABX1 26, AB 1484, and City Resolution No. 2012-08-2547, the City serves as the successor agency to the ICRA. On August 8, 2014, the Department of Finance approved the transfer of the Site from the ICRA to the City, and the City acquired the Site on August 27, 2014.

11. In October 2015, the City Council adopted Resolution No. 2015-70-2799 approving a Purchase, Sale and Development of Real Property and Joint Escrow Instructions (“PSDA”) for Claimant’s acquisition and development of a 25.4 acre portion of the Site (the “Property”) for “light industrial and/or commercial” development. The remaining approximate 10 acres along the western boundary would be reserved for the City for residential and other compatible uses. The City found the Project would provide “a significant economic opportunity” through the development of underutilized and blighted property, employment opportunities, tax revenue, and other amenities. Resolution No. 2015-70-2799 states that the PSDA “is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City of Irwindale, and their citizens, will strengthen the City’s land use and social structure, and alleviate economic and physical blight within the City.”

12. On November 15, 2015, the City and Claimant executed the PSDA. All references to “Buyer” and “Developer” in the PSDA apply to Claimant as assignee. A true and correct copy of the PSDA is attached hereto as Exhibit A.

B. The PSDA

13. The PSDA provides for the purchase by Claimant of the Property for \$3,058,571.43 for future development of light industrial and/or commercial facilities. Section 10.2 of the PSDA states that “The Site shall be developed by the Buyer as provided in the Buyer’s scope of development and conceptual plans (“Scope of Development”) as indicated on the attached Exhibit ‘B’ and the plans and permits to be prepared by Developer and approved by the City pursuant to Section 10.4. Notwithstanding any other provision set forth in this Agreement to the contrary,

Developer, subject to reasonable approval of City, shall have the right to modify or change the Scope of Development.”

14. The Scope of Development in Exhibit B states in relevant part: “The ‘Project’ to be developed on the Site, when submitted at a future date, shall be light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses; improvements shall include but not be limited to, attendant streets, lighting, landscaping, decorative perimeter walls, and other public improvements. The Project shall include a landscaped ‘buffer area’ (‘Residential Buffer’) to separate the Project’s industrial components from the residential areas.”

15. Section 10.2(e) of the PSDA provides that the “City shall be responsible for obtaining the approval of this Agreement and any future Project as required by CEQA.”

16. Section 10.3(a) of the PSDA provides that the City “warrants and represents that the City of Irwindale General Plan and Zoning Ordinance permit Seller’s proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit “B”, subject only to (i) approval of this Agreement and the proposed Project pursuant to Government Code § 52201, (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Irwindale review and approval of a Final Map for the project, and (iv) those entitlements required under Section 5.1(b)(v) hereof.” The PSDA further provides, however, that the City “shall reasonably cooperate with Buyer in procuring the foregoing approvals.”

17. Section 10.3(b) provides that “Prior to the Effective Date of this Agreement, the [City] approved the Buyer’s conceptual plans and Scope of Development (Exhibit ‘B’).”

18. Section 10.3(d) provides, in relevant part, that “in no case shall [the City] be entitled to require changes which are inconsistent with the Scope of Development (Exhibit ‘B’), including previously-approved or deemed-approved modifications to the Scope of Development.”

19. Section 10.8 provides that “Buyer agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public

improvements and (ii) aesthetic landscaping in the Residential Buffer to be maintained in such a manner as to effectively and attractively screen the Residential Area from visual, noise and dust impacts associated with the Project.”

20. Section 10 of the PSDA contains “Covenants Relating to the Project” that restrict Claimant’s ability to transfer or sell the Property and binds Claimant to the Scope of Development and Schedule of Performance contemplated in the PSDA. In other words, the PSDA required Claimant to carry out the Project pursuant to the Scope of Development.

21. Section 10.2(a) contains “Critical Construction Deadlines.” Among other things, Section 10.2 provides that the City shall complete its Site Plan and Design Review approvals by no later than January 31, 2017. Exhibit E to the PSDA, Schedule of Performance, provides that the City Planning Commission shall act on Claimant’s entitlement applications within 270 days of submittal and the City Council shall act within 60 days of the Planning Commission decision, such that City review and action on the entitlements is to be completed within a year of application submittal. Section 12.4 of the PSDA provides that time is of the essence.

C. Claimant Applies for Entitlements and Approvals for the Project

22. Relying upon the City’s promises and commitments to facilitate Claimant’s development of the Site consistent with the PSDA, Claimant paid millions of dollars to ensure the remediation of the Site. Among other things, Claimant has fully reclaimed the 10-acre parcel reserved for the City for development of housing, which is critical given the City’s Regional Housing Needs Assessment (RHNA) allocation and the City’s Housing Element Update.

23. In further reliance on the PSDA and the City’s promises, commitments, and representations that it would support and facilitate the Project, Claimant also contributed \$2 million towards the City’s settlement with Waste Management. Claimant had no obligation to contribute towards the settlement but did so in the spirit of cooperation and partnership given the PSDA.

24. In light of the PSDA, Claimant submitted entitlement applications to the City in 2017 for the development and construction of a single-story ±545,735 square-foot speculative concrete tilt-up building and associated passenger vehicle and truck parking on the Property (the

1 “Project”). The building would consist of ±10,000 square feet of office space (5,000 square feet
2 ground floor/5,000 square feet mezzanine) and ±535,735 square feet of warehouse space. The
3 Project was fully consistent with the Scope of Development described in the PDSA.

4 25. Although many potential uses for the tilt-up building are allowable by right due to
5 its M-2 (Heavy Manufacturing) zoning designation, the Project proposes clean, light industrial
6 uses.

7 26. Among the entitlements, was an application for a General Plan Amendment (No.
8 02-2017) to change the designation of a portion of the Property from residential to
9 industrial/business park to conform with the industrial/business park General Plan designation for
10 the rest of the Property (“General Plan Amendment”). According to the City itself, due to a
11 mapping error, a portion of the Site was designated in the General Plan for residential uses,
12 although the intent of the Plan was to designate the entire Site for industrial uses.

13 27. Claimant also applied for Site Plan and Design Review (No. 04-2017) for the
14 construction of the Project (“Site Plan & Design Review”).

15 28. On August 9, 2018, the Planning Division held a meeting for members of the
16 public to review, comment, and ask questions about the proposed Project. Claimant’s
17 representatives and City staff were present to answer questions.

18 29. In January 2019, in response to a letter from the State Attorney General, the
19 Planning Commission continued a scheduled hearing regarding the Project and the City required
20 preparation of an Environmental Impact Report (“EIR”) for the Project instead of a Mitigated
21 Negative Declaration (“MND”) as had previously been proposed under the California
22 Environmental Quality Act (“CEQA”).

23 30. The City took approximately 2.5 years to prepare the EIR (SCH#2018121056),
24 thereby significantly delaying the Project.

25 31. On February 20, 2020, a Scoping Meeting was held to establish the scope of the
26 EIR to be prepared.

27 32. Pursuant to CEQA, an alternative design was also fully analyzed in the EIR. The
28 alternative project consisted of three separate industrial warehouse buildings with separately

designated parking areas for a total of ±544,483 square feet of industrial use (“Project Alternative”). City staff concluded that, the Project Alternative, like the Project itself, incorporated the design elements of the Commercial and Industrial Design Guidelines.

33. On February 17, 2021, the Draft EIR (“DIER”) was circulated for public review and comment for the required 45 days through May 2, 2021. The DEIR analyzed 21 environmental study areas and three project alternatives (i.e., the Project Alternative, no project, or a project utilizing the maximum floor area ratio allowed), offered mitigation measures, and identified one significant and unavoidable environmental impact in the area of air quality. As a result, the EIR required City Council approval of a Statement of Overriding Considerations.

34. On July 15, 2021, Claimant facilitated a non-City sponsored community meeting to further discuss the Project. Prior to the meeting, Claimant also distributed 1500 flyers to nearby Irwindale and County of Los Angeles neighborhoods and followed up with door-to-door visits.

D. The City Breaches the PSDA and Rejects the Project

35. On July 21, 2021, the City Planning Commission held a hearing on (1) the EIR; (2) a General Plan Amendment to change the General Plan land use designation for a portion of the Site from residential to industrial/business park; and (3) Site Plan & Design Review for the Project.

36. City staff stated in its staff report to the Planning Commission that “[t]he proposed tilt-up building incorporates many of the desired design elements from the Commercial and Industrial Design Guidelines. The layout, landscaping and design of the site also incorporated encouraged design principles. For example, the use of an authentic period style compatible with City context, new buildings that draw upon the fundamental characteristics of existing buildings in the City, façade depth of plans and variations on all sides, including varied rooflines, berms, meandering sidewalks and multi-layered landscaping. The large building incorporates tower elements as focal points and breaks up the expansive exterior walls with architectural projections and details around the windows. The vertical and horizontal reveals, arched parapets and multi-color palette also work to add depth and character to the building. The design is similar to many of the recently approved developments, which have been designed to closely adhere to the

1 guidelines, while maintaining function and aesthetic uniqueness.”

2 37. Accordingly, “[s]taff recommend[ed] that the Planning Commission: 1) Adopt
3 Resolution No. 803(21) recommending that the City Council certify the FEIR, adopt the Findings
4 of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting
5 Program (MMRP); 2) adopt Resolution 804(21) recommending that the City Council approve
6 [the] General Plan Amendment...; and 3) adopt Resolution No. 805(21) recommending that the
7 City Council approve Site Plan and Design Review...subject to the proposed Conditions of
8 Approval for the single or three (3) building alternative.” In particular, staff recommended “that
9 the Planning Commission recommend that the City Council find that the significant unavoidable
10 adverse impacts of the industrial warehouse project are clearly outweighed by the economic,
11 social, technological, and other benefits of the project, as set forth in the Statement of Facts and
12 Findings and Statement of Overriding Considerations that will provided to the City Council. The
13 project benefits include additional employment opportunities to the community, development of
14 an industrial warehouse building on a site that is consistent with the policies of the General Plan
15 and zoning, and is accessible to regional markets, and conforms to the City’s design guidelines in
16 an effort to promote quality urban design. The impacts that were found in the EIR to be significant
17 and unavoidable are related to: Air Quality[.] Although the EIR identifies certain significant
18 environmental effects that will result if the project is implemented, all significant effects that can
19 feasibly be avoided or mitigated will be by the imposition of conditions and/or mitigation
20 measures. Based on current State Law, unavoidable air quality impacts are common with many
21 projects such as the proposed industrial warehouse project.”

22 38. For no stated reason, the Planning Commission hearing was continued to August 9,
23 2021. Despite staff’s recommendation, the Planning Commission voted 3-0 to recommend denial
24 of the Project to the City Council and requested that staff draft resolutions denying the project
25 based on the Commission’s conclusion that, despite the City’s representations and promises, the
26 Project benefits do not outweigh its impacts.

27 39. On September 15, 2021, the Planning Commission adopted Resolution Nos.
28 808(21), 809(21), and 910(21) recommending that the City Council deny certification of the FEIR,

the General Plan Amendment, and the Site Plan & Design Review.

40. On October 13, 2021, the City Council held a hearing on Claimant’s FEIR, General Plan Amendment, and Site Plan & Design Review. At the conclusion of the hearing, the City Council declined to adopt the Statement of Overriding Considerations, thereby upholding the Planning Commission’s denial of the FEIR, the General Plan Amendment, and the Site Plan and Design Review.

III. CLAIM FOR DAMAGES

41. Section 12.13 of the PSDA states that “The covenants and agreements contained herein shall survive Close of Escrow and...shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.” Likewise, Section 12.16 of the PSDA states that “This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties thereto.”

42. Pursuant to the terms of the PSDA, the City “approved the Buyer’s conceptual plans and Scope of Development (Exhibit ‘B’)” for the Project, which confirmed Claimant’s right to pursue development that is “light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses.” (PSDA, Section 10.3(b); PSDA, Exhibit B). Section 10.3(d) further states that “in no case shall Seller be entitled to require changes which are inconsistent with the Scope of Development (Exhibit ‘B’), including previously-approved or deemed-approved modifications to the Scope of Development.” In other words, the PSDA provides that the City sold the Property to Claimant for a specific purpose.

43. The City also “warrant[ed] and represent[ed] that the City of Irwindale General Plan and Zoning Ordinance permit [the] proposed development, and construction, operation, and use of the Site as provided in th[e] [PSDA]” and that it would “cooperate with Buyer in procuring” “those development approvals yet to be obtained, including site plan review,” “City of Irwindale review and approval of a Final Map for the project,” and “those entitlements required under Section 5.1(b)(v)” of the PSDA. (PSDA, Section 10.3(a)).

44. Claimant has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the PSDA. To the extent Claimant did not perform any conditions, its nonperformance was excused by the City's failure to perform.

45. The City breached the PSDA by, among other things: (1) rejecting Claimant's Project in its entirety even though the City had already "approved the Buyer's conceptual plans and Scope of Development (Exhibit 'B') for the Project "[p]rior to the Effective Date" of the PSDA and stated that the Property "shall" be developed with light industrial and/or commercial uses; (2) failing to cooperate with Buyer in procuring the remaining entitlements and approvals for the Project in violation of Section 10.3(a) of the PSDA; (3) failing to obtain CEQA compliance; and (4) failing to comply with critical construction deadlines.

46. The City made clear contractual promises to Claimant to convey the Property, approve the Scope of Development, and cooperate in securing City approvals and entitlements for the Project. The City breached its duties under the PSDA by denying outright Claimant's proposed Project that the City had already contractually and in its course of dealings approved in concept and scope.

47. Claimant paid several million dollars for the Property at its fair market value (\$3,058,571.43) on reliance on the City's promises and commitments to facilitate the Project. Also, Claimant expended millions more preparing, applying for, and pursuing the remaining entitlements and approvals for the Project on justifiable reliance on the City's promises and remediating the Site and contributing towards the City's settlement with Waste Management.

48. Implied in the PSDA is also a covenant of good faith and fair dealing. The City breach the implied covenant of good faith and fair dealing by taking action to deny Claimant the benefits of its bargain with the City.

49. In addition, the City is also liable to Claimant on a promissory estoppel theory. Beginning in 2013, the City made clear promises to Claimant that it would cooperate and collaborate in obtaining Project approvals and entitlements. Such promises were made both in writing through the PSDA, orally, and through its course of conduct and dealings with Claimant. The City manifested its promises to cooperate in securing Claimant's remaining entitlements and

1 approvals for the Project through its participation and facilitation of City sponsored meetings
2 regarding the Project over the last six years.

3 50. Claimant remains ready, willing and able to move forward with the Project
4 pursuant to the PSDA. Claimant has the financial, technical, and professional resources in place to
5 ensure the timely execution and completion of the Project.

6 51. As a direct and proximate result of the City's breaches of its contract and other
7 obligations, Claimant has been damaged in an amount no less than \$20 million. This amount
8 includes the \$3,058,571.43 purchase price of the Site; costs incurred remediating the Property and
9 contributing to the Waste Management settlement; costs incurred for processing entitlements,
10 architectural/engineering and design costs, legal and consulting fees and other related expenses;
11 and lost profits. Claimant would not have incurred those costs and expenses but for the City's
12 promises, representations, and actions guaranteeing Claimant's right to develop the Property with
13 light industrial uses consistent with the City approved Scope of Development in the PSDA.

14 52. Claimant is therefore entitled to recover at least \$20 million due to the losses
15 suffered at the hands of the City. Thus, the claim would result in an unlimited civil case.

16
17 DATED: November 18, 2021

JEFFER MANGELS BUTLER & MITCHELL LLP
MATTHEW D. HINKS
LARA R. LEITNER

18
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20 By: 
21 LARA R. LEITNER
22 Attorneys for Claimant FIVE POINTS, LLC
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EXHIBIT A

**AGREEMENT FOR PURCHASE, SALE & DEVELOPMENT
OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

Escrow No. 600649-LA2

Date of Opening of Escrow: 11/25, 2015

To: Escrow Holder
Phyllis Chambers.
First American Title Insurance Company
National Commercial Services
777 South Figueroa Street, 4th Floor
Los Angeles, CA 90017
Phone: 213-271-1720
Email: pchambers@firstam.com

THIS AGREEMENT FOR PURCHASE, SALE & DEVELOPMENT OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made this 28th day of October, 2015 ("Effective Date"), by and between THE CITY OF IRWINDALE, a California Charter City ("**Seller**" and occasionally herein "**City**"), and M&A GABAE, a California limited partnership ("**Buyer**" and occasionally herein "**Developer**").

RECITALS

A. This Agreement pertains to the conveyance to Buyer by Seller of those certain parcels of vacant real property consisting of approximately 25.4 acres in the City of Irwindale more particularly described and depicted in **Exhibit "A"** attached hereto (the "**Site**"). As shown and described in Exhibit "A" the Site excludes that residential area adjacent to the Site's eastern border (the "**Residential Area**"). The Site was initially acquired by the Irwindale Community Redevelopment Agency ("**ICRA**") using the former Low and Moderate Income Housing Fund ("**LMIHF**") to develop affordable housing on a portion of the Site. In light of the challenges and time required to secure reclamation of the Site, the ICRA subsequently for consideration made to the LMIHF transferred the Site from the LMIHF to the non-housing ICRA account using redevelopment set-aside funds. The goal of such transfer was to secure a mix of housing and commercial or light industrial development on the reclaimed Site.

B. The Site contained (and continues to contain as of the Effective Date) deleterious materials that included potentially contaminated soil with lead concentrations above the soluble threshold limit concentrations for lead. The potential risks of having to dispose any lead-contaminated soil is included in a May 16, 2013 appraisal report prepared by Mason & Mason.

C. On April 3, 2007, the ICRA issued a Request for Proposals ("**RFP**") for the Site's remediation, filling of abandoned mine pits, removal of contaminated soils, and other work (collectively, "**Remediation**") to accomplish future development of the Site. Dispatch Transportation, LLC dba Windrow Earth Transport ("**Dispatch**"), by way of its April 16, 2007, response to the RFP, proposed to remediate materials placed on the Site by the ICRA's former

contractor as well as any third parties and perform a grading operation to bring the Site to street level.

D. On October 10, 2007, Dispatch was awarded the contract by ICRA to perform the Remediation. During Dispatch's ongoing performance of the Remediation, a California State Supreme Court ruling on the constitutional validity of two 2011 legislative budget trailer bills, ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), resulted in the outright elimination of all 425 redevelopment agencies in the State of California. The dissolution procedures under ABX1 26 include a process for the disposition and/or transfer of assets, including property holdings of former redevelopment agencies. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, made significant changes to the provisions of ABX1 26, including the process for asset management/disposition/transfers. Pursuant to ABX1 26 and AB 1484, the City serves as Successor Agency to the ICRA following the adoption by the City Council of the City of Irwindale ("City Council") of Resolution No. 2012-08-2547, adopted on January 11, 2012.

E. Under AB 1484, the Site is subject to the disposition process requiring the State Department of Finance ("DOF") to approve a Long Range Property Management Plan ("LRPMP") prepared by the Successor Agency describing the proposed sale of properties owned by the Successor Agency, including the Site. The transfer of the Site by ICRA to the City was approved by DOF via DOF's approval of the LRPMP on August 8, 2014. Therefore, on August 27, 2014, the Site was purchased by the City from the Successor Agency for the then-current fair market value, as confirmed by the May 16, 2013, appraisal report prepared by Mason & Mason.

F. On December 13, 2013, the City, Dispatch, and Developer entered into an Exclusive Negotiating Agreement ("ENA") by which the parties agreed to negotiate the sale of the Site by the City to Developer for light industrial and/or commercial development. The "Project" to be developed on the Site shall include light industrial and commercial improvements including attendant streets, lighting, landscaping and other public improvements. The Project includes a landscaped "buffer area" ("**Residential Buffer**") to separate the Project's industrial components from the Residential Area. Landscaping and all improvements to the buffer areas shall be maintained by Developer at no cost to City. Developer shall not be required to install any improvements in the Residential Area, but shall use commercially reasonable efforts to provide that any utilities and public improvements developed within the Site are installed in a manner so as to allow for a seamless and efficient tie to the Residential Area. The Project, including demarcations of the Residential Buffer, shall be further described and depicted in the Project description, concept plans, architectural renderings and site plans consistent with **Exhibit "B"** to be prepared by Developer and submitted to City for review and approval.

G. The City and the Developer now desire to enter into this Agreement to provide for the sale of the Site from the City to the Developer for Project development. In accordance with Irwindale Charter Section 607(j) and Irwindale Municipal Code Section 3.44.160, the City Council has considered the sale of the Site pursuant to this Agreement for the full, appraised fair market value and, per Resolution No. 2015-70-2799 approved concurrently with this Agreement, found that the sale is appropriate to further the City Council's goals of providing for economic development of underutilized and blighted property in the City.

H. The City Council found that the proposed Project will result in a significant economic opportunity. The Site will be revitalized from an extreme blighted condition, including the excavation of contaminated soils and back-filling of clean fill for abandoned mining pits. The City Council finds and determines that the Project is likely to result in employment of City residents, substantial increases in tax revenues to the City, and provide other amenities. City acknowledges the public benefit of such results and wishes to encourage expansion of job opportunities in the City. This Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City of Irwindale, and their citizens, will serve to strengthen the City's land use and social structure, and alleviate economic and physical blight within the City.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY.

1.1 Generally. Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer all Buyer's rights, title and interests to the Site upon the terms and conditions hereinafter set forth.

2. OPENING OF ESCROW; CLOSING DATE; PURCHASE PRICE.

2.1 Opening of Escrow. Within three (3) business days after the execution of this Agreement by Buyer and Seller and approval by the Irwindale City Council, the Parties shall open an escrow ("**Escrow**") with the Escrow Holder identified above (herein the "**Escrow Holder**") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("**Opening of Escrow**"). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. Escrow shall close on or before sixty (60) days following the Opening of Escrow ("**Closing Date**"), unless extended by mutual written agreement of the parties. The terms the "**Close of Escrow**" and/or the "**Closing**" are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of Los Angeles County, California.

2.3 Purchase Price. The Purchase Price for Buyer's acquisition of all interests of Seller in the Site is THREE MILLION FIFTY-EIGHT THOUSAND, FIVE-HUNDRED SEVENTY-ONE DOLLARS AND 43/100 (\$3,058,571.43).

3. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

3.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will cause the deposit with Escrow Holder of all additional funds

and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Los Angeles County, if any; and

(b) The Purchase Price and such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

3.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

(a) A grant deed conveying the Site to Buyer in the form attached hereto as **Exhibit "C" ("Grant Deed")**.

(b) Two duplicate originals of California Form 590 Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board ("**California Residency Affidavit**"); and

(c) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

3.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed to be recorded when (but in no event after the date specified in Section 2.2 above) it can issue the Title Policy in the form described in Section 4.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

3.4 Escrow Holder Responsibilities. Escrow Holder will not have any responsibilities for the parties' performance of the terms of the Agreement which are to be performed after the Closing. If required pursuant to the terms hereof, the parties may execute supplemental escrow terms and instructions on Escrow Holder's standard form provided such supplemental instructions are consistent with the terms hereof.

4. **TITLE MATTERS.**

4.1 Approval of Title. Buyer acknowledges that it has received copies of that preliminary title report for the entire Site dated April 9, 2013, as Order No. NCS-600649-LA2 (the "**Preliminary Title Report**"). As of the Effective Date, Buyer approves title in the form specified in Section 4.2.

4.2 Title Policy. Upon receipt by Escrow Holder of the Grant Deed in favor of Buyer executed and acknowledged by Seller as instrument for the conveyance of the Site, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner's policy of title insurance ("**Title Policy**"), or,

upon Buyer's request therefore, an ALTA extended coverage owner's policy of title insurance, issued by Title Company, with liability in the amount of the Purchase Price, insuring the Site according to the terms of the Title Policy and showing title vested in Buyer free of encumbrances, *except*:

(a) All non-delinquent general and special real property taxes, assessments and Los Angeles County solid waste fees for the current fiscal year;

(b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report and as approved by Buyer;

(c) The standard printed exceptions and exclusions contained in the Title Policy;

(d) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Site.

5. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

5.1 Conditions to Closing.

(a) *Conditions to Buyer's Obligations.* The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent on or before the Closing Date ("Buyer's Conditions"):

(i) Title Company will issue the Title Policy as required by Section 4.2 of this Agreement.

(ii) Seller has deposited the executed Grant Deed into Escrow.

(iii) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement

(iv) All Seller representations and warranties specified in Section 7.1 are true and correct.

(v) Buyer's approval of any other conditions specified in this Agreement.

(vi) Seller shall not be in default of any term or condition of this Agreement.

(vii) A fully executed copy of the "**Assignment and Assumption Agreement**" as defined and described in Section 6.3(a) hereof has been deposited into Escrow.

(viii) Buyer shall have secured any and all approvals needed to ensure that the Residential Area and any other areas demarcated as "Not A Part" in the Site depiction at Exhibit "A" and excluded from the Site's legal description in Exhibit "A" are legally subdivided from the Site, subject to the provisions of Section 6.3(b) below.

Buyer's approval or disapproval of Buyer's Conditions shall be in Buyer's sole and absolute discretion, for any or no reason; provided, however, if Buyer has not delivered written notice of approval or disapproval of Buyer's Conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been approved by Buyer.

(b) *Conditions to Seller's Obligations.* The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent on or before the Closing Date ("Seller's Conditions"):

(i) The instruments and funds accruing to Seller pursuant to this Agreement including but not limited to a fully executed copy of the Assignment and Assumption Agreement has been deposited with Escrow Holder.

(ii) The Purchase Price has been deposited into Escrow.

(iii) Buyer shall not be in default of any term or condition of this Agreement.

(iv) A executed copy of the Consent to Agreement for Purchase, Sale and Development of Real Property (defined and described in Section 6.3) approved by Licensee and in a form materially similar to that attached hereto as Exhibit "F", has been deposited into Escrow.

(v) Buyer shall have secured any and all approvals needed to ensure that the Residential Area and any other areas demarcated as "Not A Part" in the Site depiction at Exhibit "A" and excluded from the Site's legal description in Exhibit "A" are legally subdivided from the Site, subject to the provisions of Section 6.3(b) below. This condition shall be deemed fulfilled, unless waived in writing by Seller, upon Buyer obtaining a City-approved Final Map, Parcel Map, Lot Line Adjustment, Lot Split, or other such legal mechanism permitted under the Subdivision Map Act (Govt. Code §§ 66410 et seq.) for the legal division of the Residential Area and "Not A Part" areas from the Site.

(vi) Buyer shall provide Seller with a letter evidencing a commitment from lender(s) (in form and substance reasonably acceptable to City) indicating that such lender(s) have a definitive interest in financing the acquisition, construction and/or development of the Project by Buyer. Evidence of financial commitments shall also outline the financial terms pursuant to any proposed financing for the Project as well as specifically identify the sources of all equity

financing to be used by Buyer in the development of the Project. In the event the Project is to be financed exclusively by equity financing, the equity commitment shall evidence an amount sufficient to provide for the net acquisition costs of the Site and development of the Project by Buyer, as the case may be. The evidence of financial commitments required by this condition is further described in Section 10.3 of this Agreement.

Seller shall deliver to Escrow Holder and Buyer written notice of disapproval or waiver of the conditions set forth in this Section 5.1 on or before the Closing. In the event Seller shall fail to deliver such notice on or before the Closing each such condition shall automatically and conclusively be deemed to have been approved by Seller.

5.2 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 5.1(a) and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 5.1(b).

5.3 Termination for Failure of Condition. In the event Buyer fails to waive, approve or disapprove any condition precedent specified in Section 5.1(a) or elsewhere in this Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure in writing and Buyer shall have a period of ten (10) days from receipt of such notice to elect in writing to waive such matter, approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to so approve or waive such matter within said ten (10) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to waive, approve or disapprove any condition precedent specified in Section 5.1(b) or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller in writing of such failure and Seller shall have a period of ten (10) days from receipt of such notice to elect in writing to waive such matter, approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to so approve or waive such matter within said ten (10) days shall be deemed to constitute disapproval thereof and Seller's election to terminate.

6. CONDITION OF SITE; RELEASES/INDEMNITY SITE CONDITION.

6.1 Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and

Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance, trespass, or damages to property or persons.

6.2 Hazardous Materials. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

6.3 Environmental Remediation and Grading. Buyer and Seller acknowledge that the Site requires environmental Remediation as described in that certain "License Agreement For Performance of Remediation and Grading" dated October 10, 2007 (the "**License Agreement**") and that the environmental Remediation may include, but is not limited to, the removal of buried fuel storage tanks and other possible buried structures as well as the removal of any soil contamination caused by possible tank leaks, application of fill soils to fill former mining pits at the Site, removal of contaminated soils, tallus, and other Hazardous Material clean-up. The Buyer and Seller further acknowledge that any necessary environmental Remediation of the Site will be performed by Buyer after Close of Escrow. As such, since the Site environmental Remediation has not yet occurred, Buyer and Seller hereby agree as follows:

(a) *License to Enter; Assignment of License Agreement*. Seller shall assign to Buyer all Seller's rights and obligations under the License Agreement as to the Site (which excludes any remediation obligations and grading of the Residential Area which the City shall remain as owner and party to the License Agreement), and Buyer shall assume all such rights and obligations from Seller. Said assignment by Seller and assumption by Buyer shall be a condition precedent to the Closing memorialized in an "**Assignment and Assumption Agreement**" to be drafted in a form reasonably acceptable to Seller, Buyer, and Licensee (as defined in this Section 6.3(a)) which shall contain Licensee's acknowledgment and acceptance of the assignment by Seller and assumption by Buyer of that portion of the License Agreement that encompasses the Site and Licensee's approval of the sale of the Site to Buyer. . Buyer shall thereafter abide by the terms of the License Agreement to allow Dispatch as ("**Licensee**") the right to enter upon the Site to conduct soils, engineering, or other tests and studies, and to perform the Remediation or for any other purposes to carry out the terms of the License Agreement. Pending formal approval of the Assignment and Assumption Agreement by Buyer, Seller and Licensee, Licensee consents to this Agreement, as confirmed and evidenced by the "**Consent to Agreement for Purchase, Sale and Development of Real Property**" attached hereto as Exhibit "E", subject to and conditioned upon the "**Accommodation Agreement**" (as defined in Section 1(d) of the

ENA) detailing the uses of the Buyer's funds for the Remediation and describing Licensee's access, if any, to such funds.

(b) *Ongoing Performance of Remediation and Grading Work.* Seller and Buyer shall cooperate with each other to accomplish the ongoing performance of the Remediation pursuant to the terms of the License Agreement and work in good faith to address and approve any approvals and documents needed to assure the Remediation and grading work is performed in a timely manner. Such cooperation shall be aimed at minimizing any delays to the Project work or disruptions due to the shared boundary during and upon completion of the Remediation. Such cooperation shall further include, but not be limited, to correcting and reestablishing any lot line issues or errors that arise as the Site and Residential Area are being adjusted or when the Site and Residential Area is fully graded and ready for development.

(c) *Encroachment Agreement from County.* Buyer and Seller acknowledge that the Remediation and grading of the Site and Residential Area shall require the parties to secure an encroachment agreement or permit from the County of Los Angeles for the placement of fill material within an area owned by the County immediately south of the Site and Residential Area. The fill material is necessary to provide an appropriate buttress per applicable building code standards to support the fill and grading operations at the Site and Residential Area. As part of its consent to this Agreement per the **Consent to Agreement for Purchase, Sale and Development of Real Property**, Licensee agrees to comply with all applicable filling and buttressing requirements and abide by County of Los Angeles conditions related to same.

(d) *Option to Extend Closing.* As an alternative to the ongoing performance of Remediation on the Site by Licensee after Closing, Buyer, Seller, and Licensee may mutually negotiate in writing a means by which the Remediation would be completed by the Seller.

6.4 As-Is Acceptance of Site. The Buyer shall accept the Site AS-IS and does agree to take the Site in its current condition AS-IS, WITH ALL FAULTS, all defects and conditions whatsoever then existing on the Site, including any Hazardous Materials, vaults, fill soils, debris, pipelines, wells, or other structures that are or may be located in, on, under, or around the Site, whether known or unknown. From and after the Closing, Buyer assumes all responsibility for any and all such defects, faults, and conditions and shall be responsible to affect any remedy or cure, if required by any applicable law or ordinance with respect to all defects in the Site, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials now present upon, or remaining within the Site after the completion of the Remediation. Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site. Buyer acknowledges that any liability of Seller for the environmental condition of the Site is extinguished as of the Closing and that Seller, as of the Closing, shall have no liability for remediating any environmental condition of the Site and that Buyer as of the Closing shall indemnify Seller against any claim or liability relating to the condition of the Site.

(a) *Buyer's Release of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, Buyer shall as of the Closing hereby release Seller, its officers, directors, shareholders, affiliates, subsidiaries, heirs, and successors from any and all claims, liabilities, expenses, costs, or damages that Buyer may incur arising from the presence of any Hazardous Materials which are or may be located in, on, under, or around the Site, whether or not caused by Seller or any predecessor-in-interest of Seller, and whether or not known to Seller or Buyer at or before the Close of Escrow. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

(b) *Buyer's Indemnification of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, as of the Closing, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel as reasonably approved by Buyer), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any violation of the Environmental Laws including, without limitation, any release, treatment, use, generation, storage, or disposal of Hazardous Materials in, on, under, around, or from the Site at any time before or after the Close of Escrow including, without limitation, the cost of any required or necessary remediation or removal of any such Hazardous Materials, any costs of repair of improvements on the Site or surrounding properties necessitated by such remediation or removal and costs of any testing, sampling, or other investigation or preparation of Remediation or other required plans undertaken prior to such remediation or removal. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

6.5 Indemnification and Release from Liabilities Relating to New Legislation. Buyer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of legislation effective June 29, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, the 2011 Assembly Bills ABx1 26 and ABx1 27 became effective on June 29, 2011. ABx1 26 purports to eliminate redevelopment agencies while ABx1 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. On December 29, 2011, the California Supreme Court in *Community Redevelopment Association v. Matosantos* (No. S194861) upheld the constitutionality of ABx1 26 and struck-down the constitutionality of ABx1 27, thus, absent further legislation, effecting the abolishment of redevelopment activities. Buyer hereby acknowledges that ABx1 26, as amended by certain budget trailer bills, might be interpreted or applied in such a manner as to undermine or invalidate Seller's authority to convey the Site to Buyer in accordance with the terms hereof. In order to address this uncertainty, the parties agree as follows:

(a) *Legal Challenge to Transaction; Election to Terminate Agreement.* If, at any time prior to Buyer's commencement of vertical construction of the Project, there arises a legal challenge to the validity or legality of this Agreement and its underlying transactions including but not limited to challenges arising from ABx1 26, the

Matosantos ruling, or any subsequent legislation amending ABx1 26, then either party may, in its sole and absolute discretion, elect to terminate this Agreement by written notice to the other party. In the event of such termination of the Agreement by either party, such termination will require, at the minimum, the return of any Purchase Price amounts that have been paid to Seller (if any) pursuant to this Agreement and the re-vesting by Buyer of all rights, title and interest to the Site back to Seller. No such termination shall be deemed a default by either party and in the event of such termination, each party shall have no further obligations to one another under this Agreement other than those obligations that specifically survive the termination of this Agreement. The right to terminate this Agreement as provided hereunder shall terminate upon Buyer's commencement of vertical construction of any portion of the Project but in no event later than December 1, 2016.

(b) *Rights of Non-Terminating Party.* Notwithstanding the foregoing, should a party elect to terminate this Agreement pursuant to Section 6.5(a), the non-terminating party may invalidate such termination and require continued performance provided; 1) the party seeking to invalidate such termination shall pay all costs of defense, expenses, damages, claims, and liabilities, including attorney fees, foreseeable or unforeseeable, directly or indirectly, as they are incurred, arising from any legal challenge described in this Section 6.5.

(c) *Option to Extend Closing.* In the event any legal challenge described herein and subject to the provisions of this Section 6.5 that arises before the Closing, the Buyer and Seller may extend the date of Closing by a mutually-accepted, written amendment of this Agreement, for a period as may be necessary to accommodate the delays that may be caused by such legal challenge and/or the time needed to determine whether or not this Agreement shall be terminated pursuant to Section 6.5(a).

6.6 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article 6 shall survive the Close of Escrow and the delivery of the Grant Deed(s).

7. REPRESENTATIONS AND WARRANTIES BY SELLER.

7.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to the best of Seller's knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Site; and (iii) shall survive the Close of Escrow as well as any future transfer of the Site by Buyer or any transferee, successor or assignee of Buyer:

(a) To the best of Seller's knowledge, there are no contracts, leases, claims or rights affecting the Site or any agreements entered into by or under Seller that would adversely affect Buyer's rights with respect to this Agreement or Buyer's right or ability to develop the Project on the Site, except as heretofore disclosed in:

(i) The Preliminary Title Report.

(ii) The geotechnical inspection agreement for the Site and Residential Area dated July 22, 2009, by and between the Irwindale Community Redevelopment Agency and KFM Geoscience, as amended and assumed by the City of Irwindale on behalf of the former Irwindale Community Redevelopment Agency and the successor to KFM Geoscience, Tetra Tech BAS Geoscience per that certain First Amendment to Tetra Tech BAS Geoscience Contract for Construction Quality Assurance Geotechnical Services for the Remediation and Reclamation of the Manning Pit, dated August 26, 2015;

(iii) Section 6.5 of this Agreement,

(iv) The License Agreement or,

(v) The ENA.

(b) Seller has delivered or, within the period required in Section 5.1(a) and Article 3, will deliver true, correct and complete copies of all the documents and other information specified in Section 5.1(a) and Article 3 including any other documents or information that may be required under this Agreement. Seller represents and warrants that to the best of Seller's knowledge, the information contained therein is true and accurate.

(c) Other than as provided herein, to the best of Seller's knowledge, there are no other executory contracts, options or agreements relating in any manner to all or any portion of the Site or any interest therein.

(d) From and after the date of the Preliminary Title Report, Seller has not created or taken any action to create, or otherwise caused any additional encumbrances to be placed against or encumber title to the Site other than those shown on the Preliminary Title Report.

(a) Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

7.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 7.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have five (5) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow

Holder, and immediately receive without further instruction a return of all sums deposited in the Escrow by Buyer.

7.3 No Other Representations or Warranties by Seller. Other than those express representations and warranties contained in this Agreement, Seller makes no other representations or warranties, either express or implied.

8. **REPRESENTATIONS AND WARRANTIES BY BUYER.**

8.1 "AS-IS" Condition of Site. Subject to the provisions of Section 5.1 and as set forth in Section 6.4, Buyer represents, acknowledges, and agrees that Buyer is electing to purchase the Site in its "AS-IS, WHERE IS" physical condition except to the extent set forth in Section 6.5.

8.2 Sole Reliance. Buyer represents and acknowledges that it is relying solely upon Buyer's own inspections and investigations with respect to its decision to purchase the Site.

8.3 Legislation. Buyer represents that as for the matters disclosed in Section 6.5, Buyer is not relying on any legal analysis of Seller or Seller's legal counsel.

9. **ESCROW PROVISIONS.**

9.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder.

9.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Los Angeles County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 12.16 after recordation. All funds, if any, received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Los Angeles County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder from Escrow Holder's general escrow accounts.

9.3 Prorations of Real Property Taxes. Buyer acknowledges that Seller is a governmental agency, not subject to payment of Real Property Taxes ("Taxes"). Accordingly, Buyer shall be solely responsible for payment of Taxes for the Site accruing after Close of Escrow and/or seeking, if warranted, a refund of any overpayment of Taxes from the appropriate taxing agencies. Utilities and other expenses of the Site which are payable by or to the owner of the Site shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any reimbursement payment of prorated utilities or other expenses after the Close of Escrow by either Seller or Buyer shall be rendered to the appropriate party within five (5) business days after completion of the final proration. Seller shall receive a credit for any refundable utility or governmental deposits made by Seller with respect to the Site, if any, and shall assign to Buyer all rights to same including but not limited to the right to receive a refund of such deposits.

9.4 Payment of Costs. Buyer shall pay one hundred percent (100%) of the documentary transfer taxes, one half of the escrow fees, recording fees, 100% of its attorneys' fees and costs, 100% of the charges for recording the Grant Deed, and 100% of the additional portion of the Title Policy premium which is attributable to the cost of obtaining any additional title endorsements not included in standard CLTA owner's coverage. Seller shall pay one-half of all escrow fees, 100% of the Title Policy premium for CLTA standard owner's coverage, and 100% of its attorneys' fees and costs. Notwithstanding the foregoing, in the event a party defaults under this Agreement, the defaulting party shall pay all escrow fees and charges.

9.5 Termination and Cancellation of Escrow. If Escrow fails to close as of the Closing Date, and provided the Escrow has not been extended by mutual written instruction from both Buyer and Seller and deposited into Escrow, Escrow shall immediately terminate automatically without further instruction or action from Buyer, Seller or Escrow Holder, and Escrow Holder is instructed to immediately return all funds and documents then in Escrow to the respective depositor. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

9.6 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. The name and address of Escrow Holder is set forth on the first page of this Agreement. It is agreed that Escrow Holder is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section 12.16 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

9.7 Possession. Possession of the Site shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Site following the Close of Escrow, it shall automatically become the property of Buyer excepting such personal property that is the property of Licensee under the License Agreement.

10. COVENANTS RELATING TO THE PROJECT.

10.1 Restrictions On Transfer. The qualifications of Buyer are of particular concern to the Seller, and it is because of such qualifications that Seller has entered into this Agreement with Buyer. The Seller has considered Buyer's experience and financial capability, the Project proposed by Buyer and its affiliates, the Site location and its characteristics, the public costs, if any, of acquiring and developing the Site, the potential return on the investment of public funds, if any, and the product mix necessary to produce a successful Project. Based upon these considerations, the Seller has imposed the following restrictions with respect to an assignment of this Agreement or Transfer of the Site as defined below;

(b) (a) *Transfer Defined*. As used in this section, the term "**Transfer**" shall include any assignment, or conveyance, of this Agreement, the Site, or the improvements thereon other than to an entity which assumes all of Buyer's obligations hereunder and controls, or is controlled by, or under control of Buyer. A Transfer shall also include the hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon provided such hypothecation, mortgage, pledge, conveyance, or encumbrance is not directly related to the acquisition or financing of the Site or the Project as further described in Section 10.1(c) below. A Transfer shall also include the assignment or transfer of more than fifty percent (50%) of the ownership and/or control of Buyer as of the Effective Date to an entity not under the direct control of Buyer as further described in Section 10.1(c) below ("Buyer Affiliate"). Buyer is a limited partnership and as such, Transfer shall refer to the transfer or assignment of more than fifty percent (50%) of the limited partnership interest subject to the provisions of Section 10.1(c). ; *Transfers Require Approval*. Buyer shall not enter into a Transfer directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Seller which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Buyer of its interests in the Site, which assignment requires Seller approval, Seller shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed transferee to perform Buyer's obligations hereunder; (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed transferee will complement the other users and uses in the City of Irwindale downtown area, whether commercial users or otherwise.

In the absence of a specific written agreement with the Seller, prior to the issuance of a Certificate of Completion as described in Section 10.9(b) for the entire Project or any portion thereof, no Transfer (including without limitation an assignment or transfer not requiring Seller approval hereunder) shall be deemed to relieve Buyer or any successor

party from any obligations under this Agreement. In addition, no assignment and assumption of any of Buyer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Seller an assignment and assumption agreement in a form reasonably approved by the Seller assuming such obligations.

(c) *Exceptions.* The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 10.3, but Buyer shall notify Seller in advance of any such mortgage, deed of trust, or other form of conveyance (but only for purposes of financing the Project).

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(iv) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A conveyance of the Site to any entity Buyer Affiliate. "**Buyer Affiliate**" shall mean any entity which owns or controls Buyer, to any entity owned or controlled by Buyer, to any entity owned or controlled by or affiliated with any entity which owns or controls Buyer, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Buyer shall be a party, or to an entity to which all or substantially all of the assets of Buyer have been sold.

(vi) Transfers of ownership or control interest between members of Buyer's immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Buyer's immediate family, or among the entities constituting Buyer.

(e) *Ground Leases & Individual Unit Purchases.* Buyer may enter into ground lease conveyances to a ground lessee or individual commercial/industrial unit purchases to implement the Project subject to all provisions of this Section 10.1.

(f) *Release Of Buyer.* Seller's consent to a Transfer shall not be deemed to release Buyer of liability for performance under this Agreement unless such release is specific and in writing executed by Seller, which release shall not be unreasonably

withheld. Upon the written consent of Seller to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Buyer under this Agreement by the assignee, Buyer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Buyer is in default under the terms of this Agreement prior to said Transfer.

(g) *Termination; Lease Provisions.* Notwithstanding anything to the contrary in this Agreement, the Buyer Transfer restriction described in this Section 10.1 shall unconditionally terminate upon the recordation of the Notice of Completion for the entire Project. From and after the date of recordation of the Notice of Completion, Buyer shall have no restrictions on Transfer with respect to this Agreement, the Site, the Project or the improvements thereon.

10.2 Scope Of Development & Schedule Of Performance. The Site shall be developed by Buyer as provided in the Buyer's scope of development and conceptual plans ("Scope of Development") as indicated on the attached Exhibit "B" and the plans and permits to be prepared by Developer and approved by the City pursuant to Section 10.4. Notwithstanding any other provision set forth in this Agreement to the contrary, Developer, subject to the reasonable approval of City shall have the right to modify or change the Scope of Development. In the event of any conflict between the narrative description of the Project in this Agreement (including Exhibit "B") and the ultimate, final approved plans and permits with respect to an altered Scope of Development, the approved plans and permits shall govern.

(a) *Critical Construction Deadlines.* Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay (Section 11.5 hereof) or changes in the Scope of Development as mutually approve in writing by both Buyer and Seller. Buyer shall keep the Seller reasonably informed of the progress of construction and submit to the Seller written reports of the progress of the construction when and in the form reasonably requested by the Seller. In no event shall Buyer be required to submit written progress reports more often than one time every quarter. The parties shall begin and complete all plans, reviews, construction and development specified in the Scope of Development within the times specified in the "Schedule of Performance" as described in the attached Exhibit "E" or such reasonable extensions of said dates as may be mutually approved in writing by the parties. Project construction shall proceed generally within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties. Critical Project construction deadlines are estimated as follows:

(i) Final map (if applicable), Site Plan and Design Review approvals shall be completed no later than January 31, 2017.

(ii) Grading shall commence no later than six (6) months following Site Plan and Design Review Permit approvals.

(iii) Vertical construction shall commence no later than twenty-four (24) months following Site Plan and Design Review Permit approvals.

(iv) Completion of all Project improvements shall be accomplished no later than thirty-six (36) months following Site Plan and Design Review Permit approvals. In addition to delays in the Project deadlines as may be permitted due to Enforced Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement including but not limited to changes in the Scope of Development as mutually agreed upon in writing between the parties, which may be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both Buyer and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

(b) *Truck Routes.* Buyer shall make all reasonable efforts to ensure that all vehicles entering and exiting the Site shall utilize the access route at the northern corner of the Site on Vincent Avenue, and acknowledges that it must provide access to the County of Los Angeles and otherwise comply with the County's right to utilize such access for ingress egress to County-owned properties. Additionally, all commercial trucks shall utilize traffic circulation routes as prescribed by any mitigation adopted through the approved Site Plan and Design Review Permit.

(c) *Use of Water.* Buyer shall ensure procurement from the applicable water supplier, and use water in the amounts and manner necessary to control dust at that Site as well as any other prudent operational purpose as described by any mitigation adopted through the approved Site Plan and Design Review Permit.

(d) *Responding to Public Concerns.* Buyer shall respond to any reasonable public complaints or concerns related to the Project via public outreach, website outreach, cooperation with the Seller, shall make a written record of all complaints received and present them to Seller within 72 hours of receiving a complaint.

(e) *CEQA Compliance.* The City shall be responsible for obtaining the approval of this Agreement and any Project as required by CEQA. Without limitation of the foregoing, Buyer specifically acknowledges and agrees that Buyer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements. .

10.2 Project Financing.

(a) *Buyer Solely Responsible for Project Costs.* Buyer is responsible for paying all costs for the Project unless otherwise provided herein. Project costs include the total Project construction costs, all Site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all

fixtures and equipment for the facility, and all other costs related to the Project of any nature whatsoever.

Although the parties hereto believe that the Site is being conveyed to the Buyer at fair market value, in accordance with the May 16, 2013, appraisal report prepared by Mason & Mason, and that no financial assistance or public monies are being provided to Buyer with respect to the Project, Buyer acknowledges that should construction or development of the Site qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), it may cause Buyer to be required to pay prevailing wages for any aspect of the development. Buyer believes to its actual knowledge that the Project is not subject to Prevailing Wage Law because no funding sources for the Project will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Buyer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Buyer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Buyer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Buyer shall indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Seller makes no representation that any construction completed by Buyer is or is not subject to Prevailing Wage Law.

(b) *Buyer's Financial Statements.* Buyer agrees to provide the Seller with reasonable documentation and financial statements to the end of demonstrating that Buyer can fund the total projected/estimated Project costs through, cumulatively, the following sources: (i) Buyer equity, (ii) private financing from financial institutions, and/or (iii) financing provided through foreign investment via the USCIS-administered Immigrant Investor Program, also known as the "EB-5" program, or (iv) other reliable funding sources. To this end, no later than the Close of Escrow, Buyer agrees to deliver to Seller, for Seller's reasonable approval, financial statements which, demonstrate that Buyer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with whom Buyer conducts business evidencing their willingness to provide the financing required hereunder. If Buyer elects to self-fund the construction of the Project, Buyer may satisfy this obligation by providing Seller with a letter evidencing approval of the Project by the relevant parties on behalf of Buyer along with an explanation of facts demonstrating Buyer's ability to self-fund the Project. Equity commitment by the Buyer may be in the form of letters of intent from credit worthy investors.

(c) *Obtaining Construction & Permanent Loans.* Should Buyer choose to utilize any financing towards Project completion ("**Buyer Financing**"), Buyer agrees to deliver to Seller and obtain the reasonable approval of Seller of written commitments from financial institutions licensed to do business in California and reasonably

acceptable to the Seller ("Lender") agreeing to make a construction loan and/or a permanent loan to Buyer and secured by a deed of trust (said commitment and loan are sometimes referred to collectively as the "Loan").

Buyer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all loan applications, credit applications and data, financial statements, and loan documents in connection therewith, and shall actually draw upon and utilize the Loan only for financing the cost of the Project.

(d) *Seller Approval Of Lender.* Buyer shall not enter into any Buyer Financing without the prior written approval of Seller. Seller's written approval or disapproval shall not be unreasonably withheld or delayed. Seller's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

10.3 Project Plans, Final Building Plans.

(a) *Proposed Project's Consistency With Plans and Codes.* Seller warrants and represents that the City of Irwindale General Plan and Zoning Ordinance permit Seller's proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit "B", subject only to (i) approval of this Agreement and the proposed Project pursuant to Government Code § 52201, (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Irwindale review and approval of a Final Map for the Project, and (iv) those entitlements required under Section 5.1(b)(v) hereof. It is expressly understood by the parties hereto that Seller makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City provided however that Seller shall cooperate with Buyer in procuring the foregoing approvals. The City and any other governmental body with jurisdiction over the Project reserve full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

(b) *Evolution Of Development Plan.* Prior to the Effective Date of this Agreement, the Seller approved the Buyer's conceptual plans and Scope of Development (Exhibit "B"). On or before commencement of any Project construction, Buyer must submit to the Seller preliminary, and thereafter final, drawings and specifications for development of the Project in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, the Final Map and all other plans, drawings and specifications. Final drawings

will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development (Exhibit "B") and the various development approvals referenced hereinabove, except as such items may be amended by Seller and Buyer in writing. Plan submissions shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

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

(d) *Disapproval.* The Seller shall reasonably approve or disapprove any submittal made by Buyer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Buyer shall note the 30- day time limit, and specifically reference this Agreement and this Section 10.4(d). Any disapproval shall state in writing in reasonable detail the reason for the disapproval and the changes which the Seller requests be made. Buyer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) days of the date of disapproval. Thereafter, Seller shall have an additional ten (10) business days for review of the re-submittal, but if the Seller disapproves the re-submittal, then the cycle shall repeat, until the Seller's approval has been obtained. If Buyer desires to make any substantial change to approved working drawings, Buyer shall submit the proposed change to Seller for approval. If the drawings as modified by the proposed change conform to this Agreement and the Scope of Development (Exhibit "B"), City of Irwindale design criteria applicable to the Site, and all other applicable City of Irwindale regulations, Seller shall approve the change and Seller shall notify Buyer of its approval or disapproval in writing within thirty (30) days after submission of such proposed change.

Seller's Community Development Director or designee shall have authority to determine on behalf of Seller if a proposed revision or change to any plans, drawings, or other documents previously approved by Seller is a material change requiring further City approval. If the Community Development Director or designee determines that the proposed revision or change is not a material change no approval by City of such revision or change will be necessary. Seller shall reasonably approve or disapprove the plans, drawings and related documents referred to in this Section 10.4 within the times stated in foregoing paragraph of this subpart (d). However, to the extent that Buyer proposes substantial and material revisions or changes to any plan, drawing, or other document previously approved by Seller, Buyer acknowledges that such substantial and material revision will require review by the City Council or such other legislative body(s) as may be applicable. City's review is intended to insure that the plans, drawings and related documents are reasonably consistent with the Scope of

Development (Exhibit "B"). Any disapproval shall state in writing the reasons for disapproval and the changes which Seller requests to be made. Such reasons and such changes must be consistent with the Scope of Development (Exhibit "B") and any items previously approved or deemed approved hereunder. Buyer, upon receipt of a disapproval based upon powers reserved to Seller hereunder, shall revise the plans, drawings and related documents, and shall resubmit to Seller as soon as possible after receipt of the notice of disapproval; provided that in no case shall Seller be entitled to require changes which are inconsistent with the Scope of Development (Exhibit "B"), including previously-approved or deemed-approved modifications to the Scope of Development.

During the preparation of all drawings and plans, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by Seller. If any substantial revisions or corrections of plans approved by Seller shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

10.4 Applicable Laws. Buyer shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

10.5 Anti-Discrimination During Construction. Buyer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Buyer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin.

10.6 County Solid Waste Materials Fee. Filling operations undertaken as part of the Remediation will utilize clean soil materials only and no recycled or crushed concrete will be imported and/or exported to/from the Site. As such, the parties believe that the Project is not subject to the Waste Discharge Permit fee requirements of the RWQCB, or County of Los Angeles, as may be applicable, or any other waste discharge-related fees (collectively "Discharge Fee") insofar as no "Solid Waste Materials, as that term is defined (copied below) in the Los Angeles County Code, section 20.88.020 H, will be imported at the Site. To this end, Buyer shall indemnify and defend the City for the cost of any Discharge Fees imposed by any regulatory authority pertaining to the Project as a result of the determination, if any, that the fill used in the fill operation contains waste, reused or recycled materials. Should there be a determination that Discharge Fees apply on another basis, the Seller, at its cost, will participate with Buyer in the joint defense of an action for collection (or challenge to the imposition) of the Discharge Fee. Solid Waste Materials are defined in Los Angeles County Code, section 20.88.0-20(H) as:

"Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes,

demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes."

Notwithstanding the foregoing, Buyer is aware that City, Seller and Dispatch are litigating the application of the Discharge Fee against Los Angeles County, per *City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency, et al, v. County of Los Angeles, et al*, (Los Angeles Sup. Ct. Case No. BS148777). Buyer acknowledges that an adverse ruling could result in application of the Discharge Fee to the Site, and hereby agrees to indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings. The License Agreement requires Licensee to indemnify Seller from such Discharge Fees and costs arising from the application of such Discharge Fees to the Site and Residential Area and Buyer shall cause compliance with those obligations under the License Agreement.

Rights Of Holders Of Approved Security Interests In Site.

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

(b) *No Encumbrances Except Mortgages To Finance The Project.* Notwithstanding the restrictions on transfer in Section 10.1, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but Buyer shall promptly notify the Seller of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Buyer or otherwise. *Buyer's Breach Shall Not Defeat Mortgage Lien.* Buyer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the Holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

(c) *Holder Not Obligated To Construct Or Complete Improvements.* The Holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or the improvements proposed thereon or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Site or any

portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(d) *Notice Of Default To Mortgagee, Deed Of Trust Or Other Security Interest Holders.* Whenever Seller shall deliver any notice or demand to Buyer with respect to any breach or default by Buyer hereunder, Seller shall at the same time deliver a copy of such notice or demand to each Holder of record of any mortgage who has previously made a written request to Seller therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the Holder unless such notice is given.

(e) *Right To Cure.* Each Holder (with respect to the rights of Seller) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

- (i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and
- (ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

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

In the event there is more than one such Holder, the right to cure or remedy a breach or default of Buyer under this Section 10.8(f) shall be exercised by the Holder first in priority or as the Holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Buyer under this Section 10.8.

No Holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Buyer's obligations to Seller by written agreement reasonably satisfactory to Seller with respect to the Site or any portion thereof in which the Holder has an interest. In the event any Holder shall decide, in its sole and absolute discretion to undertake or continue the construction or completion of the improvements, such Holder shall complete, in the manner required by this Agreement, the improvements to which the lien or title of such Holder relates, and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any Holder properly completing such improvements shall be entitled, upon written request made to Seller, to a Certificate of Completion from Seller.

(f) *Seller's Rights Upon Failure Of Holder To Complete Improvements.* In any case where one hundred eighty (180) days after default by Buyer in completion of construction of Project improvements under this Agreement, the Holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised its right to complete the improvements of the Project afforded in this

Section 10.8(e), or if it has exercised such right has not proceeded diligently with construction, Seller may, after ninety (90) days' written notice to such Holder ("Failure to Construct Notice") purchase the mortgage, upon payment to the Holder of an amount equal to the sum of the following:

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

Notwithstanding the foregoing, Seller's right to purchase the mortgage according to the term of this Section 10.8 shall be null and void if such Holder has exercised such right to construct the improvements and has diligently proceeded with such construction within the ninety (90) day period immediately after the receipt by Holder of the Failure to Construct Notice from Seller.

In the event that the Holder does not exercise its right to construct the improvement afforded in this Section 10.8, and Seller elects not to purchase the mortgage of Holder, upon written request by the Holder to Seller, Seller agrees to use reasonable efforts to assist the Holder with the sale of the Holder's interest to a qualified and responsible party or parties (as reasonably determined by Seller), who shall assume the obligations of making or completing the improvements required to be constructed by Buyer, or such other improvements in their stead as shall be satisfactory to Seller. The proceeds of such a sale shall be applied first to the Holder of those items specified in subparagraphs (i) through (v) listed hereinabove, and any balance remaining thereafter shall be applied as follows:

- (i) First, to reimburse Seller for all costs and expenses actually and reasonably incurred by Seller, including but not limited to payroll expenses, management expenses, legal expenses, and others.
- (vi) Second, to reimburse Seller for all payments made by Seller to discharge any other encumbrances or liens on the Site or to discharge or prevent

from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Buyer, its successors or transferees.

(vii) Third, any balance remaining thereafter shall be paid to Buyer.

(g) *Right Of Seller To Cure Mortgage, Deed Of Trust Or Other Security Interest Default.* In the event of a default or breach by Buyer (or entity permitted to acquire title under this Section 10.8) of a mortgage prior to the issuance by Seller of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the Holder of any such mortgage has not exercised its right to complete the Project, Seller may cure the default prior to completion of any foreclosure.

(h) *Right Of The Seller To Satisfy Other Liens On The Site After Conveyance Of Title.* After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development of the Project, and after the Buyer has had all amounts of time allowed by law to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Seller shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Buyer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Buyer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(i) *Minor Amendments.* Seller's City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Buyer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of Seller's legislative body.

10.7 Certificate(s) Of Occupancy & Certificate Of Completion.

(a) *Certificate(s) Of Occupancy.* It is anticipated that some portions the Project might be suitable for occupancy and use prior to the final completion of all Project improvements. When portions of the Project have been constructed to a point whereby certain Project improvements can be safely opened and occupied for business (in compliance with all applicable codes, permit requirements and local agency regulation) without any material interference from other Project activities, the Buyer may request from the City a Certificate of Occupancy for all such completed improvements. The issuance of such Certificate of Occupancy shall be in the reasonable discretion of the City and based on the Project's (or that portion of the Project for which a Certificate of Occupancy is requested) compliance with all codes, permit conditions and local agency regulations. Seller shall not unreasonably withhold a Certificate of Occupancy.

Upon issuance of a Certificate of Occupancy, Buyer's tenants shall, subject to the terms and conditions of their individual leases, promptly open for business to the public. The Buyer shall exert all reasonable efforts to keep any tenants of the Project then occupying space in the Project open for business to the public during regular and customary business hours despite any ongoing Project activities. Buyer shall

reasonably coordinate any ongoing Project activities with business hours in order to minimize any interference between the Project and any tenants open for business. Such efforts to be undertaken by Buyer may include in the reasonable discretion of Buyer, the undertaking of Project activities during hours other than regular and customary business hours and the phasing of the Project such that Project activities continuing after the issuance of the Certificate of Occupancy will be in locations other than areas open to the public.

(b) *Certificate(s) Of Project Completion.* Upon the completion of all Project construction required to be completed by Buyer pursuant to the terms of this Agreement, Seller shall furnish Buyer, within thirty (30) days of notice from Buyer to Seller of such completion, a "**Certificate of Completion**" in a form acceptable to Seller. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Los Angeles County.

(i) A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto.

(ii) After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the CC&Rs (as described in Section 10.10(a)).

(iii) In no event shall Seller shall unreasonably withhold a Certificate of Completion. If Seller refuses or fails to furnish a Certificate of Completion after written request from Buyer or any entity entitled thereto as described above, Seller shall provide a written statement of the reasons Seller refused or failed to furnish a Certificate of Completion. The statement shall also contain Seller's opinion of any further action Buyer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Seller will issue its Certificate of Completion subject to the completion by Buyer of the punch list items within one hundred and twenty (120) days of the issuance of the Certificate of Completion. A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any Holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code § 3093. Nothing herein shall prevent or affect Buyer's right to obtain a Certificate of Occupancy from the Seller before the Certificate of Completion is issued.

10.8 Use of the Site & Project; CC&Rs.

The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such assigns shall devote the Site to the uses specified therefore in the Project Scope of Development (Exhibit "B") or any plans as may be approved in writing by the City.

Buyer agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public improvements, and (ii) aesthetic landscaping in the Residential Buffer to be maintained in such a manner as to effectively and attractively screen the Residential Area from visual, noise and dust impacts associated with the Project. Buyer shall maintain all landscaping in the Residential Buffer at its sole cost and expense in a manner so as to allow for an attractive, seamless and efficient tie to the Residential Area and pursuant to the covenants, conditions & restrictions ("CC&Rs") in a form materially similar to that attached hereto as Exhibit "D".

11. DEFAULTS; ENFORCEMENT.

11.1 Defaults & Right To Cure. A "Non-Defaulting Party" in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice ("Cure Period"). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

- (a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) day period;
- (b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the Default;
- (c) Promptly commences to cure the Default within the thirty (30) day period;
- (d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- (e) Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

11.2 Legal Actions.

(a) *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 11.1, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

(b) *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

(c) *Acceptance Of Service of Process.* In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of process on Buyer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

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

11.4 Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

11.5 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Seller shall not excuse performance by Seller); or any other

causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Buyer, and shall not entitle Buyer to an extension of time to perform: (i) Buyer's failure to obtain financing for the Project, and (ii) Buyer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Seller and Buyer. The City Manager of Seller shall have the authority on behalf of Seller to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

12. MISCELLANEOUS.

12.2 Brokerage Commissions. Buyer and Seller each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12.3 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Site shall not release Seller of its obligations under this Agreement.

12.4 Time of Essence. Time is of the essence in this Agreement and with respect to each covenant and condition hereof. Buyer and Seller each specifically agrees to strictly comply and perform its obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

12.5 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

12.6 Qualification: Authority. Each individual executing this Agreement on behalf of the City as Seller or a partnership, LLC or corporation as Buyer represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership, LLC, corporation or the City in accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, and that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. The City as Seller represents and warrants that it has the authority to sell the Property to Buyer upon the terms and conditions of this Agreement. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

12.7 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Site, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

12.8 Interpretation: Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

12.9 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under 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 hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

12.10 Modifications. Except as otherwise specified herein, any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

12.11 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.12 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

12.13 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Article 10 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

12.14 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

12.15 No Withholding Because Non-Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or any out-of-state seller under California Revenue and Tax Code Section 18862 and that it will deliver to Buyer on or before the Close of Escrow (i) a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulation promulgated thereunder and (ii) a California Form 590.

12.16 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

12.17 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Buyer:	M&A Gabae
	9034 West Sunset Blvd
	West Hollywood, CA 90069
	Attention: Mark Gabay

To Seller: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attention: City Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Ste. 1700
Irvine, CA 92612
Attn: Fred Galante, Esq.
Facsimile: 949-223-1180

Escrow Holder: At the above stated address.

12.18 Exhibits. Exhibits "A" through "F", inclusive are attached hereto and incorporated herein by this reference. The Exhibits are as follows:

Exhibit	Description
A.	Legal Description of Site
B.	Scope of Development
C.	Grant Deed
D.	Form of CC&Rs
E.	Schedule of Performance
F.	Consent to Agreement for Purchase, Sale and Development of Real Property

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

"BUYER"

M&A GABAE
A California limited Partnership

By: _____

Mark Gabay, Managing General Partner

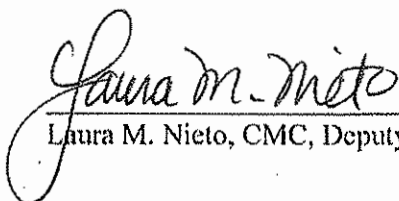
"SELLER"

CITY OF IRWINDALE,
A California Charter City

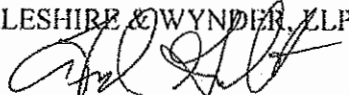
By: _____

Mark A. Breceda, Mayor

ATTEST:


Laura M. Nieto, CMC, Deputy City Clerk

APPROVED AS TO FORM
ALESHERE & WYNDELL LLP


Fred Galante, City Attorney

AGREED AND ACCEPTED AS OF THIS 25th DAY OF November, 2015

FIRST AMERICAN TITLE COMPANY

By: _____

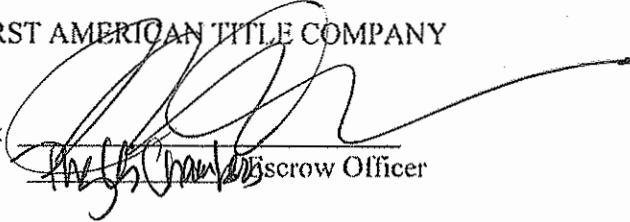

Escrow Officer

EXHIBIT A

Legal Description & Depictions of Site

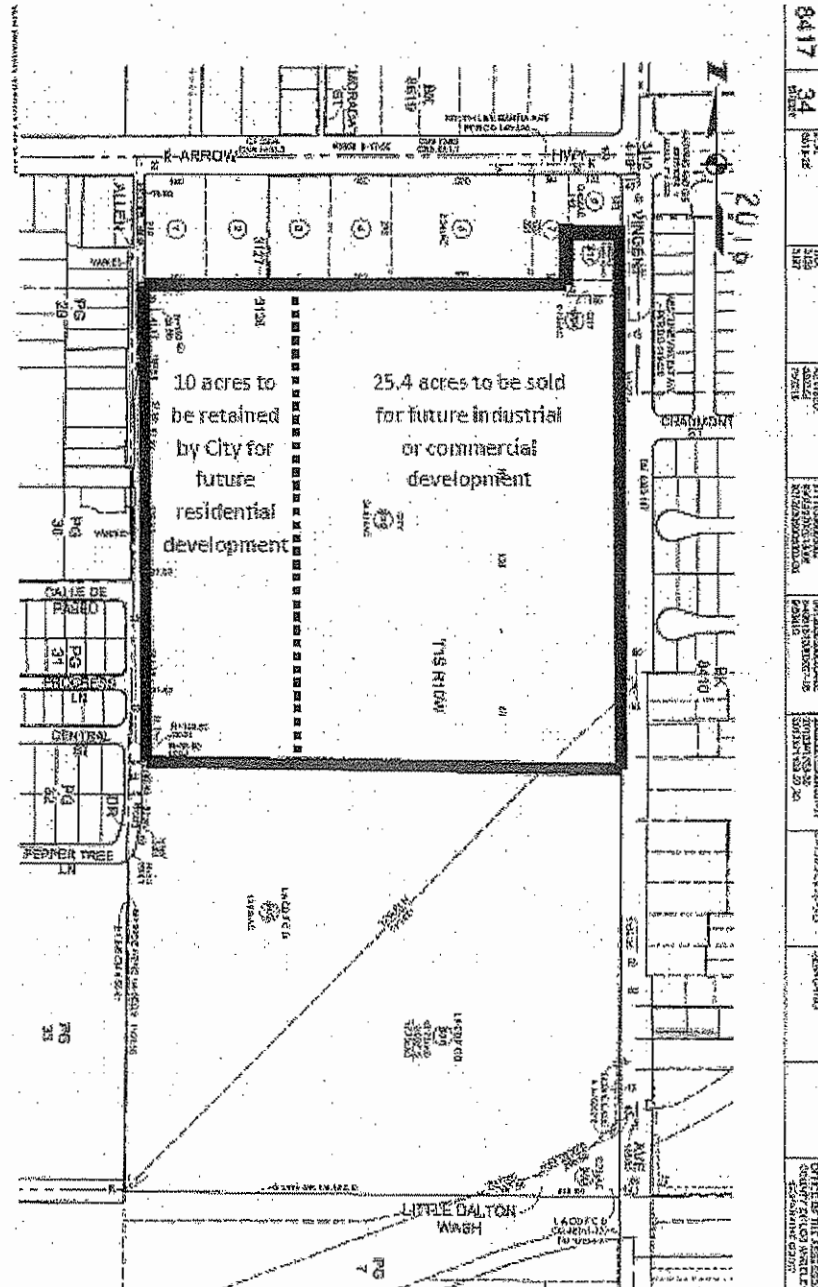


EXHIBIT B

Scope of Development

Any proposed future project shall be consistent with the City's General Plan and Zoning Code. The "Project" to be developed on the Site, when submitted at a future date, shall be light industrial and/or commercial in nature and shall include improvements to enhance the aesthetics of the surrounding neighborhood and protect the residential uses; improvements shall include but not be limited to, attendant streets, lighting, landscaping, decorative perimeter walls, and other public improvements. The Project shall include a landscaped "buffer area" ("Residential Buffer") to separate the Project's industrial components from the residential areas.

Since a project has yet to be identified and submitted for review, project impacts cannot be identified at this time. Therefore, any proposed future project on this property shall comply with the requirements of the California Environmental Quality Act through the preparation of an Initial Study that may result in the preparation of a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report."

EXHIBIT C

Form of Grant Deed

Deed

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, California 91706

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEE PER GOV. CODE § 27383

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF IRWINDALE, a California municipal corporation ("Grantor"), hereby grants to M&A GABAE, a California limited partnership ("Grantee"), all of its respective rights, title, and interest in the real property hereinafter referred to as the "Property" in the City of Irwindale, County of Los Angeles, State of California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf as of the date written below.

CITY OF IRWINDALE,
a California municipal corporation

Mark A. Breceda, Mayor

ATTEST:

Laura Nieto, Deputy City Clerk

Attachment 1 to Grant Deed

Legal Description of the Property

The Property is that certain real property located in the City of Irwindale, County of Los Angeles, State of California, and is described as follows:

EXHIBIT D

Form of CC&Rs

FREE RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Clerk

(Space above this line for Recorder's Office Use Only)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("CC&Rs") is made and entered into this ____ day of ____, 2015, by M&A GABAE, a California limited partnership (collectively, "Owner"). These CC&Rs are declared for the benefit of the CITY OF IRWINDALE, a California Charter municipality ("City"). Owner and City are occasionally referred to herein each as a "party" and collectively as the "parties".

RECITALS:

A. Owner is the purchaser of that certain real property located in the City of Irwindale, County of Los Angeles, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Site") from the City pursuant to that certain Agreement For Purchase, Sale & Development of Real Property and Joint Escrow Instructions dated October 28, 2015 ("Purchase-Sale Agreement").

B. City entered into the Purchase-Sale Agreement in reliance upon Owner entering into these CC&Rs. Additionally, City has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the appropriate planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City. That portion of the City's interest in real property most directly affected by these CC&Rs are public rights of way surrounding the Site.

C. City and Owner now desire to place restrictions upon the use and operation of the Site in order to ensure that the Site shall be developed and operated in accordance with the requirements set forth herein and in the Purchase-Sale Agreement.

D. It is the intent of City and Owner that these CC&Rs shall be recorded on title to the Site in the Office of the County Recorder for the County of Los Angeles, and that the terms hereof shall be binding on the Owner and its successors in interest in the Site until replaced with covenants applicable to the developed Site.

AGREEMENT:

NOW, THEREFORE, Owner declares, covenants and agrees, by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of City, the residents of the City of Irwindale, and every person buying an interest in the Site.

1. DEVELOPMENT OF THE SITE

Owner has represented and hereby represents to City that it intends to and will develop the Site in compliance with the City's ordinances. Owner represents that it will cause the Site and Residential Area to be graded so as to allow for full development in compliance with the City's ordinances and in accordance with the applicable provisions of the Los Angeles Building Code, including, but not limited to Chapter 33 thereunder, as incorporated into the City's Municipal Code under Irwindale Municipal Code Chapter 15.04 (collectively "Applicable Building Codes") and that Owner will diligently pursue approval of the grading plan currently being processed by the County of Los Angeles, which serves as the City's Building Department.

Owner agrees to use, devote, and maintain the Site for (i) light industrial and commercial improvements on approximately two-thirds (2/3) of the easterly portion of the Site, including attendant streets, lighting, landscaping and other public improvements, and (ii) aesthetic landscaping in the Residential Buffer to be maintained in such a manner as to effectively and attractively screen the Residential Area from visual, noise and dust impacts associated with the Project. Owner shall maintain all landscaping in the Residential Buffer at its sole cost and expense in a manner so as to allow for an attractive, seamless and efficient tie to the Residential Area. The term Site, as used herein, includes the Residential Buffer.

2. MAINTENANCE.

2.1 General Maintenance Obligations. Following remediation and development of the Site in a manner consistent with the Commercial and/or Light Industrial Zone designation of the City, Owner, for itself and its successors and assigns, shall enter into a new covenant agreement to replace these CC&Rs, which shall require Owner to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition of comparable properties in the Irwindale area and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. Such conditions to be imposed

shall require the Owner to maintain the Property or cause the Property to be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2.2 Condition During Construction. During any period of remediation, grading or other construction activities, Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) in a safe condition, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) ground watering or other similar measures for the reasonable suppression of construction-related dust and air particulates; and (iii) employment of acoustical barriers, limited heavy construction hours, or other similar measures for the reasonable suppression of construction-related noise.

2.3 Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No obstructions to vehicular or pedestrian traffic shall project into any of the driveways, traffic aisles, or pedestrian thoroughfares in such a manner as to unreasonably block ingress, egress and circulation or create a safety hazard.

2.4 Right of Entry. From and after the date(s) that Owner's obligations to maintain the Site commence under Sections 2.1 through 2.3, and in the event Owner, or its successors or assigns, fail to maintain the common area of the Site as set forth in Sections 2.1 through 2.3 above, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City, City may, at its option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, subject to the rights of tenants to perform the landscaping or maintenance pursuant to such tenant's lease, City, its employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary maintenance. The City shall give Owner reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out these CC&Rs. The Owner, or its successors and assigns owning the affected portion of the Site, shall pay such costs as are reasonably incurred by City for such maintenance for the affected common area of the Site, including attorneys' fees and costs within thirty (30) days after receipt of a written invoice from City with supporting documentation for such costs.

Nothing in this Section 2.5 shall be construed to waive, limit or prevent the City from seeking all legal and equitable remedies for the abatement or prosecution of public nuisances found on the Site in the reasonable determination of a duly authorized official of the City, regardless of whether such nuisance conditions are located within a common area, tenant improvement, or any other portion of the Site.

2.5 Lien. If such costs incurred by City pursuant to Section 2.5 above are not

reimbursed within thirty (30) days after Owner's, or such successors or assigns, receipt of written notice thereof with supporting documentation as set forth in Section 2.5 above, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate equal to the lesser of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of the Owner or such successor or assign as well as a lien and charge, with power of sale, upon the property interests of Owner or such successor, and the rents, issues and profits of such property. City may bring an action at law against Owner or such successor obligated to pay any such sums or foreclose the lien against Owner's or such successor's property interests. Any such lien shall be created by recordation of a Notice of Claim of Lien against the affected portion of the Site and may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, *et seq.*, of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership or leasehold interest in and to the Site or the applicable portion thereof, and any purchaser at any foreclosure or trustee's sale (as well as the transferee under any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any monetary lien created by these CC&Rs, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure and are assessed hereunder to the purchaser at the foreclosure sale, as Owner of the subject Site after the date of such foreclosure sale, shall become a lien upon the affected portion of the Site upon recordation of a Notice of Claim of Lien as hereinabove provided.

3. COMPLIANCE WITH LAWS.

3.1 State and Local Laws. Owner or its successors and assigns shall comply with all ordinances and regulations of the State or City applicable to the Site. Owner or its successors and assigns shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

3.2 Environmental Conditions; Compliance with State and Local Soils Conditions Requirements. The Site consists of a former silt landfill. The fill of the former landfill comprising the Site is not adequately compacted requiring any construction on the Site to address soil compaction in the manner as may be required by the County of Los Angeles, the City's contract Building Department, at the sole cost, and responsibility of Owner or any successor owner of the Site, as further described in Section 1 above. Owner and its successor shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the conditions described in this Section 3.2. Owner and its successors take the Site AS-IS with respect to all environmental conditions thereon, and shall be responsible for any defects in the Site, including, without limitation, the physical, environmental and geotechnical condition of the

Site, and the existence of any contamination, hazardous materials, underground storage tanks, vaults, debris, pipelines or other structures located on, under or about the Site, excepting that nothing herein shall be construed to require Owner or its successors to hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

4. OBLIGATION TO REPAIR.

If a portion of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner, or its successor with respect to the affected portion of the Project, shall either (i) promptly proceed to obtain any available insurance proceeds and take all steps necessary to begin reconstruction and, upon receipt of insurance proceeds and any applicable permits and approvals, to promptly and diligently commence and to thereafter pursue the repair or replacement of the affected portion of the Project to substantially the same condition as existed prior to such damage or destruction, or (ii) if Owner, or such successor with respect to the affected portion of the Site, elects not to restore or replace such improvements, such Owner or successor shall promptly remove all debris from the affected portion of the Site and place the affected portion of the Site in a clear and secure condition. City shall cooperate with Owner, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration of any improvements. Following any such event of damage or destruction, Owner, or its successor with respect to the affected portion of the Site, may also reconstruct such other improvements on the Site as are consistent with applicable land use regulations provided it shall obtain all legally required approvals from the City and other governmental agency or agencies with jurisdiction with respect to those improvements.

5. ENFORCEMENT.

In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to these CC&Rs, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City, or, in the event said default cannot reasonably be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then City may declare an "Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

5.1 By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of these CC&Rs; or

5.2 Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or

5.3 Enter the affected portion of the Site and cure the Event of Default.

Except as otherwise expressly stated in these CC&Rs, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies

shall not preclude the exercise by it; at the same or different times, of any other rights or remedies for the same default or any other default by another party.

6. COVENANTS TO RUN WITH THE LAND.

Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in these CC&Rs. City and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site. All covenants, without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire term of these CC&Rs, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the CC&Rs, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land. City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Site by the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes of protecting the public health, safety and welfare.

Owner hereby agrees to hold, sell, and convey the Site subject to the terms of these CC&Rs. Owner also grants to the City, as a third party beneficiary hereof, the right and power to enforce the terms of these CC&Rs against the Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

7. INDEMNIFICATION.

Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of any property taxes and assessments applicable to its interest in the Site. Owner, and its successors and assigns, shall indemnify, defend and hold harmless City from and against any loss, liability, claim or judgment arising from their breach of the foregoing covenant. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

8. INSURANCE.

Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site, that during remediation, grading and related construction activities on the Site, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to Executive Director and the City's Risk Manager of the existence of, the following policies of insurance:

8.1 Comprehensive General Liability Insurance. Owner shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

8.2 Workers' Compensation Insurance. If applicable, Owner shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Owner shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers. Should the Owner be a sole proprietor, Owner will have to complete and submit a declaration of sole proprietor form to the City in lieu of proof of Workers' Compensation as it is not required for sole proprietors.

8.3 Automotive Insurance. Owner shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Owner arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$5,000,000 combined single limit for each accident.

9. ATTORNEY'S FEES.

In the event that a party to these CC&Rs brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in these CC&Rs, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

10. AMENDMENTS.

These CC&Rs shall only be amended by a written instrument executed by both the Owner and City or their successors in title, and duly recorded in the real property records of the County of Los Angeles.

11. NOTICES.

Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

To City: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Manager

With copy to: Aleshire & Wynder
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Fred Galante

To Owner: M&A Gabace
9034 West Sunset Blvd
West Hollywood, CA 90069
Attention: Mark Gabay

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

12. SEVERABILITY / WAIVER / LENDER PROTECTION.

12.1 Severability. If any provision of these CC&Rs shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

12.2 Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate these CC&Rs nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

12.3 Owner's Breach Does Not Defeat Mortgage Lien. Owner's breach of any of the covenants or restrictions contained in these CC&Rs shall not defeat or render void or invalid the lien of any mortgage, deed of trust or other security interest encumbering the Site made in good faith and for value but, unless otherwise provided herein, the terms, covenants, conditions, restrictions, easements and reservations of these CC&Rs shall be binding and effective against the holder of such encumbrance whose interest is acquired by foreclosure, trustee's sale, deed or assignment in lieu thereof, or otherwise.

13. GOVERNING LAW.

These CC&Rs shall be governed by the laws of the State of California.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Owner has executed these CC&Rs by its duly authorized representative on the date first written hereinabove.

"OWNER"

M&A GABAE, a California limited partnership

By: _____
Mark Gabay, Managing General Partner

APPROVED BY CITY OF IRWINDALE as third-party beneficiary to the CC&Rs:

City: CITY OF IRWINDALE, a municipal corporation

By: _____
Mark A. Breceda, Mayor+

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By _____
Fred Galante, City Attorney

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2015, before me, _____, a
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary in and for the State of California

[SEAL]

EXHIBIT "A"
LEGAL DESCRIPTION OF SITE

EXHIBIT E

Schedule of Performance

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
1.	Purchaser executes and delivers Purchase, Sale & Development Agreement ("PSDA") to Seller	Within 30 days of the Effective Date	
2.	Purchaser provides Seller with financial commitments to finance the Project	Within the Contingency Period	10.3
3.	Seller approves or disapproves financial commitments to finance the Project	Within 60 days of receipt of evidence of Purchaser's financial commitments	10.4
4.	Open Escrow	Within 3 days after execution of PSDA by Seller	2
5.	Seller delivers to Purchaser Title Insurance Commitment and Title Documents	Before Close of Escrow	5
6.	Purchaser approves or disapproves title exceptions	Within 30 days after delivery to Purchaser of Title Documents	5
7.	Seller delivers notice to Purchaser as to whether it will cure disapproved exceptions	Within 10 days after receipt of Purchaser's notice	5
8.	Purchaser submits land use entitlement applications for review, including site plans, floor plan, building elevations, materials board, and conceptual landscaping plan, and other discretionary actions for public hearing	Within 60 days after Close of escrow	10.2
9.	City Planning Commission approves or disapproves Purchaser's application for Approvals	Within 270 days of Purchaser's submittal of applications for Approvals	10.2
10.	City Council approves or disapproves Purchaser's application for Approvals	Within 60 days of Planning Commission decision	10.2

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
11.	Purchaser prepares and submits to City construction plans, drawings and specifications prepared in accordance with City approvals	Within 60 days after City Council decision	10.2
12.	Seller provides plan check comments	Within 60 days of Purchaser's submittal; provided that Purchaser may request expedited review subject to payment of City's standard expediting costs	10.2
13.	Escrow Agent gives notice of fees, charges, and costs to close escrow	One (1) week prior to Closing	
14.	Deposits into escrow by Seller:		
	a) Executed Deed	On or before 1:00 p.m. on the business day preceding the Closing Date	4.2
	b) Payment of Seller's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	
	c) Taxpayer ID Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	
	d) FIRPTA Certificate	On or before 1:00 p.m. on the business day preceding the Closing Date	
15.	Deposits into escrow by Purchaser:		
	a) The Deposit	Within 5 days after execution of PSDA	3.1
	b) The Purchase Price	On or before 1:00 p.m. on the business day preceding the Closing Date	2.3; 3.1

	<u>Item To Be Performed</u>	<u>Time For Performance</u>	<u>Agreement Reference</u>
	c) Payment of Purchaser's Share of Escrow Costs	On or before 1:00 p.m. on the business day preceding the Closing Date	
	d) Preliminary Change of Ownership Statement	Prior to Closing Date	
16.	Seller or Purchaser, as case may be, may cure any condition to closing disapproved or waived; or may cure any default	Within 30 days after date established therefore, or date of breach, as the case may be	11.1
17.	Close of escrow; recordation and delivery of documents	Within 60 days after Opening of Escrow	2.2
18.	Purchaser completes construction of a development project	Within 36 months after commencement of improvements, provided that Purchaser may complete project in phases consistent with market conditions.	10.2

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

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Purchaser and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days.

EXHIBIT F

Consent to Agreement for Purchase, Sale and Development of Real Property

EXHIBIT B



CITY OF IRWINDALE
**CLAIM FOR DAMAGES
TO PERSON OR PROPERTY**

INSTRUCTIONS

1. Claims for death, injury to person or to personal property must be filed not later than 6 months after the occurrence.
2. Claims for damages to real property must be filed not later than 1 year after occurrence.
3. Read entire claim before filing.
4. See page 2 for diagram upon which to locate place of accident.
5. This claim for must be signed on page 2 at bottom.
6. Attach separate sheets if necessary to give full details. Sign each sheet.
7. File with City Clerk, 5050 N. Irwindale Ave., Irwindale, CA 91706

Clerk's Official
Filing Stamp

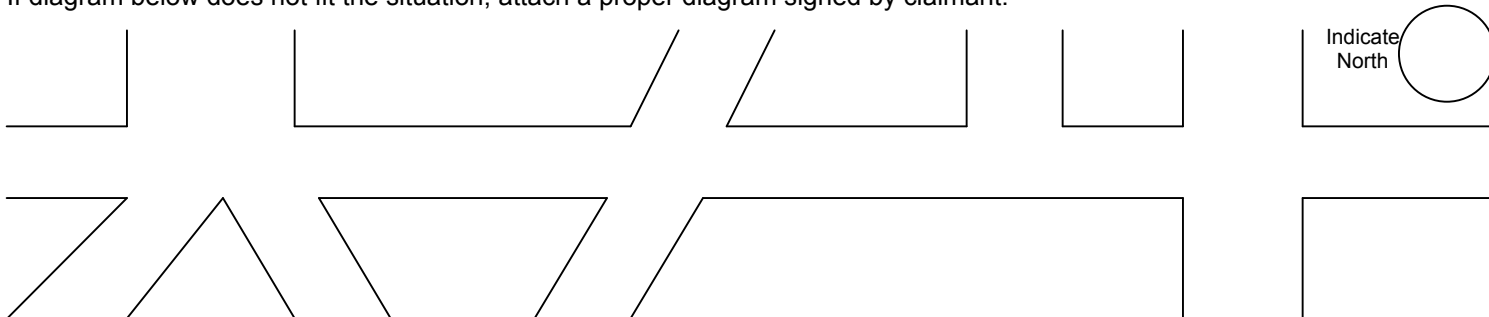
To: City of Irwindale		Claimant's Date of Birth N/A
Name of Claimant Five Points, LLC		Claimant's Occupation N/A
Home Address of Claimant		Home Telephone Number
Business Address of Claimant 9034 W. Sunset Blvd., West Hollywood, CA 90069		Business Telephone Number (310) 247-0900
Name and address to which you desire notices or communications to be sent regarding this claim: Lara Leitner, Esq., Jeffer, Mangels, Butler & Mitchell, LLP, 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067		
When did DAMAGE or INJURY occur? Date: <u>10/13/2021</u> Time: _____ If claim is for Equitable Indemnity, give date claimant served with complaint: _____	Names of any City employees involved in INJURY or DAMAGE	
Where did DAMAGE or INJURY occur? Describe in full detail and locate on diagram on page 2. Where appropriate, give street names, addresses, and measurements from landmarks: See Attachment 1.		
Describe in detail how the DAMAGE or INJURY occurred. See Attachment 1.		
Why do you claim the City of Irwindale is responsible? See Attachment 1.		
What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damage claimed. See Attachment 1.		

Claimant's Name: Five Points, LLC
State the amount which you are claiming as of the date of presentation of this claim. Give basis of computation. See Attachment 1.
Give estimated amount of future losses due to INJURY or DAMAGE: See Attachment 1.
Was damage and/or injury investigated by the police? <u>N/A</u> If yes, what City? _____ Were paramedics or ambulance called? <u>N/A</u> If yes, name City or ambulance _____ If injured, give name and address of your doctor and the date and time of your first visit:
Doctors and Hospitals: Doctor _____ Address _____ Date Hospitalized _____ Hospital _____ Address _____ Date Hospitalized _____ Hospital _____ Address _____ Date Hospitalized _____
Witnesses to DAMAGE or INJURY: List all persons and addresses of persons known to have information: Name _____ Address _____ Phone _____ Name _____ Address _____ Phone _____

READ CAREFULLY

For all accident claims, indicate on the diagram street names, including North, East, South, and West. Indicate place of accident with an "X". Indicate house numbers or distances to street corners.

If a City vehicle was involved, designate with an "A" the location of the City vehicle when you first saw it, and with "B" the location of yourself or your vehicle when you first saw the City vehicle. Indicate location of City vehicle at the time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1". Mark the point of impact with an "X". Note: If diagram below does not fit the situation, attach a proper diagram signed by claimant.



Signature of Claimant (if other than claimant, indicate relationship)

Lara R. Leitner

(Attorney for Claimant)

Typed Name

Lara R. Leitner

Date

11/19/2021

Note: Claims must be filed with the City Clerk. **Presentation of a false claim is a felony (Penal Code Section 72)**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On November 19, 2021, I served true copies of the following document(s) described as **CLAIM FOR DAMAGES TO PERSON OR PROPERTY** as follows:

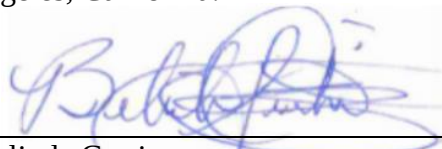
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address BCurtis5@jmbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 19, 2021, at Los Angeles, California.


Belinda Curtis

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SERVICE LIST

City Clerk
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attention: Chief Deputy City Clerk
Laura Nieto
lnieto@irwindaleca.gov

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: December 8, 2021

To: Honorable Mayor and Members of the City Council

From: William K. Tam, City Manager

Issue: Approval of Amendment No. 10 to the Project Reimbursement Agreement (AKA – Deposit Agreement) Relating to Solid Waste Materials Recovery Facility/Transfer Station Agreements Between the City and Arakelian Enterprises, Inc., dba Athens Services

City Manager's Recommendation:

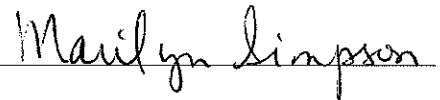
That the City Council approve the attached Amendment No. 10 to the Project Reimbursement Agreement Between the City and Arakelian Enterprises, Inc., dba Athens Services ("Athens").

That the City Council authorize the City Manager to execute Amendment No. 10 following approval as to form by the City Attorney.

Administrative Action:

Prepared / Submitted by:

Marilyn Simpson, Community Development Director

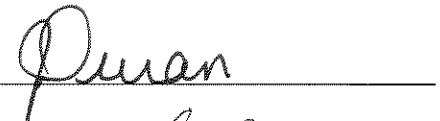


Reviewed by:

Adrian R. Guerra, City Attorney

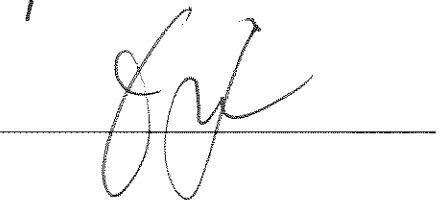
Electronically Approved

Jeanette Duran, Interim Finance Director/City Treasurer



Approved by:

William K. Tam, City Manager



Background and Analysis:

On June 25, 2008, the City and former Irwindale Community Redevelopment Agency entered into a "Memorandum of Understanding Related To Solid Waste Materials Recovery Facility/Transfer Station Agreements" ("MOU") with Athens Services ("Athens"), which commenced the City's and Athens' mutual understanding of how the proposed Materials Recovery Facility/Transfer Station (MRF/TS) was to be established and developed.

On October 22, 2008, the City and Athens entered into a Project Reimbursement Agreement ("Deposit Agreement") requiring Athens to deposit sufficient funds to pay for the City's processing of Athens's applications for the MRF/TS Project, the preparation of the Environmental Impact Report ("EIR") for the Project, and legal costs for preparation of documents related to the MRF/TS Project.

On April 13, 2011, the City approved Amendment No. 1 to the Project Reimbursement Agreement requiring Athens to deposit an additional \$200,000 as a result of the need to re-circulate the previously prepared EIR.

On June 22, 2011, the City approved Amendment No. 2 to the Project Reimbursement Agreement requiring Athens to provide for an increased deposit of \$50,000 once again as a result of the re-circulated EIR costs.

On December 12, 2012, the City approved Amendment No. 3 to the Project Reimbursement Agreement requiring Athens to provide for an increased deposit of \$250,000 required as a result of the need for further technical studies to complete the EIR.

On September 3, 2015, the City approved Amendment No. 4 to the Project Reimbursement Agreement requiring Athens to provide for an increased deposit of \$100,000 required to pay for additional technical review based on comments received on the Draft EIR in order to complete the Final EIR. This fourth amendment also provided a provision that for each additional \$200,000 of deposit requested, including the \$100,000 deposit requested for Amendment No. 4, Athens would receive an additional one-year extension to the existing Solid Waste Hauling Services Agreement between the City and Athens Services.

On March 23, 2016, the City approved Amendment No. 5 to the Project Reimbursement Agreement requiring Athens to provide for an increased deposit of \$50,000 required to pay for additional traffic analyses. Amendment No. 5 did not trigger the one-year extension to the existing Solid Waste Hauling Services Agreement.

On March 22, 2017, Athens and the City entered into Amendment No. 6 to provide for a further deposit of \$100,000 for costs to defend and prosecute the Project entitlements pertaining to the approval of the Project. Starting with Amendment No. 6, the aggregate costs of attorneys' fees (including those of the City Attorney), court costs and/or consultant fees incurred in the course of defending the legality, validity or adequacy of

the DDA, DA, development agreement approvals, or other actions of City pertaining to approval of the Project (the "Approvals"), are referred to as the "Aggregate Entitlements Defense Costs." The additional deposit required by Amendment No. 6 brought the total of the Aggregate Entitlements Defense Costs since Amendment No. 4 to \$250,000, which exceeds the \$200,000 extension threshold, thereby triggering a one-year extension to the Franchise Agreement – Trash Collection and Street Sweeping between the City and Athens.

On May 23, 2018, Athens and the City entered into Amendment No. 7 to increase the Agreement by an additional \$150,000, for further defense and prosecution of the Project entitlements pertaining to the approval of the Project. Amendment No. 7 brought the total of the Aggregate Entitlements Defense Costs to \$400,000, thereby triggering a second one-year extension to the Franchise Agreement – Trash Collection and Street Sweeping between the City and Athens.

On December 11, 2019, Athens and the City entered into Amendment No. 8 to provide for an additional deposit in the amount of \$250,000, as required to fund corrections and proceed with a revised environmental analysis as directed by the Los Angeles County Superior Court in its October 2019 ruling. The additional \$250,000 deposit required under Amendment No. 8 brought the total of the Aggregate Entitlements Defense Costs to \$650,000 (for City's portion of the Aggregate Entitlement Defense Costs), thereby triggering a third one-year extension to the Franchise Agreement – Trash Collection and Street Sweeping between the City and Developer.

On August 20, 2020, the Los Angeles County Superior Court granted the City of Baldwin Park attorneys' fees in the amount of \$500,000 in relation to Los Angeles County Superior Court Case No. BS1634000. Interest accruing on the attorneys' fees award is anticipated in an amount not likely to exceed \$16,500.

On December 9, 2020, the parties entered into Amendment No. 9 to require an additional deposit in the amount of \$516,500. The additional \$516,500 deposit required under Amendment No. 9 brought the total of the Aggregate Entitlements Defense Costs to \$916,500 (for City's portion of the Aggregate Entitlement Defense Costs), thereby triggering an additional one-year extension to the Franchise Agreement – Trash Collection and Street Sweeping between the City and Developer once \$400,000 (\$200,000 for the fourth one-year extension and \$200,000 for the fifth one-year extension) of the \$516,500 deposit has been expended. Notably, five extensions is the maximum number of extensions to which Developer is entitled under the existing Agreement.

On November 24, 2021, the City informed the Developer that a further deposit of approximately \$175,000 would be necessary to cover additional costs to defend and prosecute the Project entitlements pertaining to the approval of the Project. Amendment No. 10 requires the increased deposit of \$175,000 under the Project Reimbursement Agreement and will also bring the total maximum Project trust deposit amount to \$2,591,500.

Fiscal Impact:

None

Attachments:

A: Amendment No. 10 to the Project Reimbursement Agreement (AKA — Deposit Agreement) Relating to Solid Waste Materials Recovery Facility/Transfer Station Agreements Between the City and Arakelian Enterprises, Inc., dba Athens Services

Attachment "A"

AMENDMENT NO. 10 TO PROJECT REIMBURSEMENT AGREEMENT

THIS AMENDMENT NO. 10 TO PROJECT REIMBURSEMENT AGREEMENT (this "Amendment No. 10") is made as of December 8, 2021, by and between the CITY OF IRWINDALE, a California municipal corporation ("City"), and ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California Corporation ("Developer").

RECITALS

A. On or about June 25, 2008, the Developer, City and Irwindale Community Redevelopment Agency ("Agency") entered into that certain Memorandum of Understanding ("MOU") for consideration of the development and operation of a Solid Waste Materials Recovery Facility/Transfer Station ("MRF/TS") in the City, as more specifically described in the MOU ("Project"), to be located on an approximately 17.22 acre site, located at 2200 Arrow Highway (APN 8535-001-911), which is currently owned by the City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency and anticipated to be acquired by Developer in the manner contemplated in the MOU.

B. Pursuant to the MOU, the Developer submitted to City an application for development and operation of the Project at the Site. A Disposition and Development Agreement for transfer of the Project site ownership to Developer (the "DDA") was approved by the City Council on June 8, 2016.

C. On October 22, 2008, the City and Developer entered into that certain Project Reimbursement Agreement ("Agreement") for the purpose of establishing the rights and responsibilities of each party with respect to the processing of Developer's application for the Project, the preparation of the EIR for the Project, and the reimbursement of the costs associated therewith. The term "Agreement" is inclusive of all Amendments thereto described hereinafter.

D. From 2008 through 2012, the Agreement and the MOU were both amended by City and Developer on multiple occasions to provide increased deposit reimbursements for the City's costs resulting from the need to re-circulate the previously prepared EIR and conduct further technical studies to complete the final EIR.

E. On September 23, 2015, the Developer and City entered into Amendment No. 4 to provide for an increased deposit required as a result of the revised Scope of Work for the re-circulated EIR. With the additional Project reimbursable amount of \$100,000 required by Amendment No. 4, the total maximum Project trust deposit was increased to \$1,350,000. Also, Amendment No. 4 provided that going forward, for each additional \$200,000 paid by Developer, including the \$100,000 amount required by Amendment No. 4, the Developer would receive an additional one-year extension to the existing Franchise Agreement — Trash Collection and Street Sweeping between the City and Developer.

F. On March 23, 2016, the Developer and City entered into Amendment No. 5 to provide for an increased deposit of \$50,000 as a result of further CEQA consultant costs incurred by the City, additional traffic analyses, and oversight of final CEQA review and document preparation by the City Attorney's office.

G. On March 22, 2017, the Developer and City entered into Amendment No. 6 to provide for a further deposit of \$100,000 for costs to defend and prosecute the Project entitlements pertaining to the approval of the Project. Starting with Amendment No. 6, the aggregate costs of attorneys' fees (including those of the City Attorney), court costs and/or consultant fees incurred in the course of defending the legality, validity or adequacy of the DDA, DA, development agreement approvals, or other actions of City pertaining to approval of the Project (the "Approvals") that are either reimbursable to the City under the Amendments or are separately incurred directly by Athens for its own attorneys in the course of defending the Approvals, are referred to as the "Aggregate Entitlements Defense Costs." The additional deposit required by Amendment No. 6 brought the total of the Aggregate Entitlements Defense Costs (for City's portion of the Aggregate Entitlement Defense Costs) since Amendment No. 4 to \$250,000, which exceeds the \$200,000 extension threshold, thereby triggering a one-year extension to the Franchise Agreement — Trash Collection and Street Sweeping between the City and Developer.

H. On May 23, 2018, the Developer and City entered into Amendment No. 7 to provide for an additional deposit in the amount of \$150,000, as required for further defense and prosecution of the Project entitlements pertaining to the approval of the Project. The increased deposit of \$150,000 required under Amendment No. 7 brought the total maximum Project trust deposit amount to \$1,650,000. The additional \$150,000 deposit required under Amendment No. 7 also brought the total of the Aggregate Entitlements Defense Costs to \$400,000 (for City's portion of the Aggregate Entitlement Defense Costs), thereby triggering a second one-year extension to the Franchise Agreement — Trash Collection and Street Sweeping between the City and Developer. Notably, Developer is entitled to a maximum of five such extensions.

J. On December 11, 2019, the Developer and the City entered into Amendment No. 8 to provide for an additional deposit in the amount of \$250,000, as required to fund corrections and proceed with a revised environmental analysis as directed by the Los Angeles County Superior Court in its October 2019 ruling. The additional \$250,000 deposit required under Amendment No. 8 brought the total of the Aggregate Entitlements Defense Costs to \$650,000 (for City's portion of the Aggregate Entitlement Defense Costs), thereby triggering a third one-year extension to the Franchise Agreement — Trash Collection and Street Sweeping between the City and Developer.

K. On August 20, 2020, the Los Angeles County Superior Court granted the City of Baldwin Park attorneys' fees in the amount of \$500,000 in relation to Los Angeles County Superior Court Case No. BS1634000. Interest accruing on the attorneys' fees award was anticipated in an amount not likely to exceed \$16,500.

L. On December 9, 2020, the parties entered into Amendment No. 9 to require an additional deposit in the amount of \$516,500. The additional \$516,500 deposit required under Amendment No. 9 brought the total of the Aggregate Entitlements Defense Costs to \$916,500 (for City's portion of the Aggregate Entitlement Defense Costs), thereby triggering a fourth and fifth one-year extension to the Franchise Agreement — Trash Collection and Street Sweeping between the City and Developer once \$400,000 (\$200,000 for the fourth one-year extension and \$200,000 for the fifth one-year extension) of the \$516,500 deposit has been expended. Notably, five extensions is the maximum number of extensions to which Developer is entitled under the existing Agreement..M.

On July 22, 2021, the City informed the Developer that a further deposit of approximately \$175,000 would be necessary to cover additional costs to defend and prosecute the Project entitlements pertaining to the approval of the Project.

N. The increased deposit of \$175,000 required under this Amendment No. 10 will also bring the total maximum Project trust deposit amount to \$2,591,500.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 2 of the Agreement, entitled "Payment" shall be amended in its entirety to read as follows to provide for the increased deposit; provided that any further deposit will require a separate amendment to the Agreement:

"2. Payment.

A. Developer agrees to reimburse City in full for all costs and expenses incurred by City up to an aggregate total of Two Million Five Hundred Sixteen Thousand Five Hundred Dollars (\$2,591,500) payable for costs and expenses (a) pursuant to any contract between City and one or more environmental consultants to be selected by the City in cooperation with Developer (collectively, the "EIR Consultant(s)") to prepare the environmental documents necessary for the Project (the EIR Consultant contracts shall collectively be referenced as "Consultant Agreements"); (b) pursuant to any contract (collectively, the "Contracts") between City and other consultants and attorneys (collectively, the "Additional Consultants") as City may require to process and negotiate permits, entitlements and proposed conditions of approval of the Project; and (c) all costs of City attorney fees and EIR Consultants for the amendment, implementation and processing of Project environmental analyses and entitlements in order to conform to any judgment or order of the Los Angeles County Superior Court in Case No. BS163450 [consolidated with BS171509 and related to BS163400 and BS171622]; (collectively, the "Expenses").

B. City acknowledges that, prior to executing this Agreement, Developer has paid to City a lump sum deposit on November

19, 2008, in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000) ("Initial Deposit"); a second lump sum deposit on April 13, 2011 in the amount of Two Hundred Thousand and No/100 Dollars (\$200,000) ("Second Deposit"); a third lump sum deposit on August 15, 2011 in the amount of Fifty Thousand and No/100 Dollars (\$50,000) ("Third Deposit"); a fourth lump sum deposit on January 4, 2013 in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) ("Fourth Deposit"); a fifth lump sum deposit on July 8, 2014 in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) ("Fifth Deposit"); a sixth lump sum deposit on October 5, 2015, in the amount of One Hundred Thousand and No/100 Dollars (\$100,000) ("Sixth Deposit"); a seventh lump sum deposit on May 5, 2016 in the amount of Fifty Thousand and No/100 Dollars (\$50,000) ("Seventh Deposit"); an eighth lump sum deposit on April 10, 2017 in the amount of One Hundred Thousand and No/100 Dollars (\$100,000) ("Eighth Deposit"); a ninth lump sum deposit on or about May 28, 2018, in the amount of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) ("Ninth Deposit"), a tenth lump sum deposit on or about December 18, 2019 (\$250,000) ("Tenth Deposit"), and an eleventh lump sum deposit on or about December 9, 2020 (\$516,500) ("Eleventh Deposit").

As of the date of this Amendment No. 10, City and Developer agree that the unexpended balance of the Deposits is \$87,750.00. The City requires Developer to submit an additional deposit (the "Twelfth Deposit") of \$175,000. The Twelfth Deposit shall be paid by Developer within five (5) business days after the date of execution of this Amendment No. 10. The Initial through Twelfth Deposits shall collectively be referred to as the "Deposits".

C. City acknowledges that, pursuant to the terms of (1) that certain Disposition and Development Agreement proposed to be closed as between Developer and the Successor Agency to the Irwindale Community Redevelopment Agency (the "DDA") and (2) that certain Development Agreement proposed to be entered into by and between Developer and City (the "DA") the Parties agree as follows:

(i) Notwithstanding anything to the contrary set forth herein, if at any time the aggregate costs of attorneys' fees (including those of the City Attorney and Developers' attorneys), court costs and/or consultant fees incurred in the course of defending the legality, validity or adequacy of the DDA, DA, development approvals, or other actions of City pertaining to the approval of the Project (the "Aggregate Entitlements Defense Costs"), equal or exceed the amount of (x) One Million Dollars (\$1,000,000), less (y) the aggregate amount of any costs actually paid from the Sixth Deposit through the Twelfth Deposit that is not otherwise returned to Developer as set forth below, *then* Developer shall have the right (but

not the obligation) at any time to terminate this Agreement, the DDA and the DA. For purposes of clarification, the offset against the \$1,000,000 threshold for Aggregate Entitlements Defense Costs as described in clause (y) in the preceding sentence does not include the \$1,250,000 paid by Developer for the Initial through Fifth Deposits; the offset described in clause (y) only includes costs actually paid from the Sixth Deposit through the Twelfth Deposit for expenditures by the City for the purposes set forth herein. Any portion of Deposits paid for Aggregate Entitlements Defense Costs that are not actually expended by the City for the purposes set forth herein will be returned to Developer, and the Parties shall have no further obligations to one another under this Agreement. Nothing in this paragraph shall be construed as limiting or waiving, in whole or part, Developers' indemnity or hold harmless obligations to the City with respect to damages or other costs for claims or litigation that do not qualify as Aggregate Entitlements Defense Costs. Provisions of the DDA and DA pertaining to any issue relating to Aggregate Entitlements Defense Costs shall be construed in a manner consistent with this provision.

(ii) Developer shall automatically receive a one (1)-year Rolling Extension under the Franchise Agreement — Trash Collection and Street Sweeping for every Two Hundred Thousand Dollars (\$200,000) actually paid towards the Aggregate Entitlements Defense Costs under the Sixth Deposit through the Twelfth Deposit, and not otherwise returned to Developer, or to Developer's attorneys, not to exceed five (5) years of cumulative Rolling Extensions. For example, the total Aggregate Entitlements Defense Costs (for City's portion of the Aggregate Entitlement Defense Costs), starting from the Sixth Deposit through Amendment No. 7 equaled Four Hundred Thousand and No/100 Dollars (\$400,000), entitling Developer to two (2) Rolling Extensions, which Rolling Extensions were granted pursuant to the Amendments Nos. 6 and 7. Amendment No. 8 equaled Two Hundred Fifty Thousand and No/100 Dollars (\$250,000), also exceeding the \$200,000 threshold amount to trigger a third Rolling Extension. Finally, with Amendment No. 9, the additional total of Five Hundred Sixteen Thousand Five Hundred and No/100 Dollars (\$516,500), and its expenditure by the City, triggered an additional Rolling Extension.

City shall provide an accounting of all expenses under this Amendment No. 10 and will return any unspent funds to Developer within 60 days after the Los Angeles Superior Court discharges the writ.

Nothing herein is intended to alter the proviso that Developer is limited to a maximum of five (5) Rolling Extensions. It is

acknowledged by the Parties that the Rolling Extensions granted pursuant to this clause may not be terminated by the City (excepting in the case of a default by Developer of the DA, DDA, this Agreement or any other Project-related Agreement that would otherwise permit the City to terminate the applicable agreement(s) in accordance with its/their terms), are not discretionary in nature, and shall apply without regard to whether the Project is ultimately developed by Developer.”

2. Full Force and Effect. Except as expressly modified herein all other provisions of the Agreement shall remain unmodified and in full force and effect.

3. Corporate Authority. The persons executing this Amendment No. 10 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 10 on behalf of said party, (iii) by so executing this Amendment No. 10, such party is formally bound to the provisions of this Amendment No. 10, and (iv) the entering into this Amendment No. 10 does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 10 as of the date first written above.

"City"

ATTEST:

CITY OF IRWINDALE, a California municipal corporation

By: _____
Laura M. Nieto, MMC
Chief Deputy City Clerk

By: _____
William K. Tam, City Manager

APPROVED AS TO FORM:

ALESHIRE & WYNDER

By: _____
Adrian R. Guerra
City Attorney

"Developer"

ARAKELIAN ENTERPRISES, INC., dba
ATHENS SERVICES, a California Corporation

By: _____

Its: _____

By: _____

Its: _____

- ☒ City Council
- ☒ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: December 8, 2021

To: Honorable Mayor and Members of the City Council/ Honorable Chair and Members of the Successor Agency Board

From: William K. Tam, City Manager/Executive Director

Issue: Waive Condition of Closing for the Sale of Property Located at 2200 Arrow Highway by the Successor Agency to Athens Services, Authorization to Vest Title in Irwindale Investments LLC, a special purpose entity, rather than Athens as part of the sale of property, and Authorization to execute CC&R's to identify City as Beneficiary Thereto

City Manager/Executive Director's Recommendation:

That the City Council:

1. Authorize the City Manager to execute the CC&Rs for the property at 2200 Arrow Highway ("Property") to identify the City as the beneficiary of the CC&Rs.

That the Successor Agency Board take the following actions:

1. Waive the requirement that, as a condition of Closing on the sale of the property at 2200 Arrow Highway ("Property") from the Successor Agency to Athens, Athens must be in a condition to pull building permits and, instead, authorize Closing subject to the following: (a) Athens will have 10 days from the Close of Escrow to pull the grading permit; and (b) Athens will have 5 months from the Close of Escrow to pull the building permit (subject to extensions by the Executive Director).
2. Authorize title of the Property to be vested in Irwindale Investments LLC, a special purpose entity ("SPE"), rather than Athens at the Closing.
3. Approve: (A) the following documents to be executed at Closing and authorize the Executive Director to execute same as necessary, subject to Agency Counsel approval as to form: (i) Partial Assignment and Assumption Agreement and Consent, (ii) Guaranty, (iii) modified Grant Deed, and (iv) modified CC&R's as provided in this agenda report. and (B) the Lease Agreement (and Memorandum of Lease) between the SPE and Athens. All the foregoing are subject to any non-substantive revisions as approved by the Executive Director and Agency Counsel.
4. Authorize the Executive Director to execute all required documents necessary for Closing the sale of the Property DDA and consistent with these approvals and subject to Agency Counsel's approval as to form.

Administrative Actions:

Prepared by:

Adrian Guerra, City Attorney/Agency Counsel

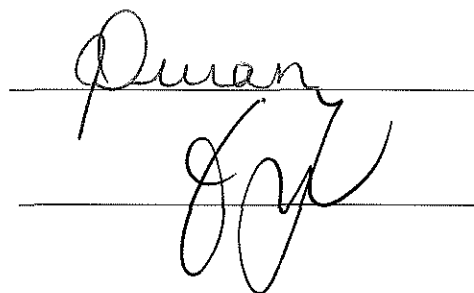
Electronically Approved

Reviewed by:

Jeanette Duran, Interim Finance Director / Interim
City Treasurer

Approved by:

William K. Tam, City Manager/Executive Director



BACKGROUND

On June 25, 2008, the City of Irwindale, the Irwindale Community Redevelopment Agency ("ICRA") and Athens Services, Inc. ("Athens") entered into a Memorandum of Understanding ("MOU") for the proposed sale of the property located at 2200 Arrow Highway (APN # 8535-001-911) ("Property") from the ICRA to Athens for the development of a Materials Recovery Facility/Transfer Station (MRF/TS). The MOU, which served as an exclusive negotiating agreement between the parties, has governed the eventual sale and proposed development of the site. Specifically, on October 11, 2017, the Successor Agency to the ICRA approved the sale of the Property via the Disposition and Development Agreement along with the City Council approving all necessary approvals for development of the Property. Following a court challenge thereafter and revisions to the Environmental Impact Report, the Successor Agency Board and City Council re-approved the same actions and the Successor Agency to the ICRA executed that certain Disposition and Development Agreement dated February 24, 2021 ("DDA").

DISCUSSION

The DDA originally anticipated that title to the Property would be conveyed to Athens. However, Athens recently requested that title be vested in Irwindale Investments LLC, a special purpose entity ("SPE") rather than Athens. The SPE is comprised of certain entities and persons involved with Athens but the SPE is not an affiliate of Athens in that it is not owned by Athens. The SPE does not meet the limitations on a "transfer" under the DDA and has limited assets. As a condition to Successor Agency approving the vesting in the SPE and to offset the risks to the Agency and the development of the Project, the following documents will be executed at Closing:

- *(New) Partial Assignment and Assumption Agreement and Consent:* Athens assigns the DDA to the SPE (although Athens is not released) and SPE assumes all obligations under the DDA and DA. Athens and SPE

indemnify Agency for any challenge to the Property transfer as a condition to Agency's consent.

- *(New) Lease Agreement:* SPE (as owner/landlord) leases the Property to Athens (as tenant) until all obligations under the Project documents (DDA & DA) are performed. Lease cannot be terminated without Agency consent. A memorandum of lease will be recorded in the Official Records immediately following the Grant Deed.
- *(New) Guaranty:* Athens guarantees performance of all obligations of SPE.
- *Modified CC&Rs:* The CC&Rs under the DDA are modified to (i) include both SPE (as owner) and Athens (as tenant) as joint obligors; (ii) reflect current status of Project documents; (iii) includes provisions regarding Lease noted above; (iv) adds new provision regarding timing for issuance of grading permit (10 days after Closing) and building permits (within 5 months of Closing); and (v) adds a provision indemnifying the Agency for any challenge to the transfer of the Property.

Additionally, Athens has requested that a condition of Closing be waived. Specifically, Section 404.2(b) of the DDA requires Athens to be in a condition to pull building permits at the time of closing. Athens has requested that this condition be waived and instead that the Agency Board authorize Closing subject to the following additional covenant be inserted in the CC&Rs: (a) Athens will have 10 days from the Close of Escrow to pull the grading permit; and (b) Athens will have 5 months from the the Close of Escrow to pull the building permit. The Executive Director is also authorized to grant an extension of the building permit requirement upon written request if a delay is caused by reasons not within Athens' control. Staff has no objection to this request.

Lastly, the City Council is being asked to authorize the City Manager to execute the CC&R's for the Property to include the City as a beneficiary of the CC&R's.

CEQA REVIEW

The Environmental Impact Report for this project was previously adopted by the City Council and covers these actions proposed in this report as there are no changes to the project or its development as approved by the City Council and Successor Agency Board.

FISCAL IMPACT

None

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Irwindale as Successor Agency
5050 North Irwindale Avenue
Irwindale, CA 91706
Attn: Executive Director

APN. 8535-001-911

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

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("**Declaration**") is made this ____ day of _____, 2021 by IRWINDALE INVESTMENTS, LLC, a Delaware limited liability company ("**Investments LLC**" and/or "**Owner**"), and ARAKELIAN ENTERPRISES, INC., a California corporation dba Athens Services ("**Athens**") (as tenant) in favor of THE CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY ("**Agency**") and the CITY OF IRWINDALE, a municipal corporation ("**City**").

RECITALS:

A. Owner is the fee owner of that certain real property located in the City of Irwindale, County of Los Angeles, State of California as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**Property**").

B. In accordance with the terms of that certain Disposition and Development Agreement dated February 24, 2021 between the Agency and Athens ("**DDA**"), as partially assigned to and assumed by Owner pursuant to that certain Partial Assignment, Assumption and Consent dated December __, 2021 ("**Assignment/Consent**"), Owner acquired the Property from the Agency pursuant to that certain Grant Deed ("**Deed**") from the Agency to Owner which was recorded concurrently with this Declaration.

C. Concurrently with the recordation of the Deed in the Official Records of Los Angeles County ("**Official Records**"), that certain Memorandum of Lease was recorded evidencing the lease of the Property from Investments LLC to Athens pursuant to that certain Lease Agreement dated December __, 2021 ("**Lease**").

D. The Agency was formed pursuant to Health & Safety Code § 34167.5, which made the Agency the successor-in-interest to all assets and obligations of the former Irwindale Community Redevelopment Agency ("**Former RDA**"). On December 29, 2011, the California State Supreme Court issued a ruling on the constitutional validity of two 2011 legislative budget trailer bills, ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), which resulted in the outright dissolution of all 425 redevelopment agencies in the State of California. As part of that dissolution process, former redevelopment lands, like the Property,

inured to successor agencies by operation of law. Moreover, the dissolution laws provide a process for the disposition and/or transfer of assets, including property holdings of the Former RDA. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, provided further detailed procedures governing the disposition of Former RDA assets such as the Property.

E. On January 6, 2005, the City issued a Request for Expressions of Interest and Statements of Qualifications (“**REI/SOQ**”) from interested and qualified parties to plan, permit, build, operate and maintain a state-of-the-art regional municipal solid waste transfer station and recovery facility (“**MRF/TS**”) at the Property to manage and process mixed municipal waste (“**MMW**”) generated within and outside of the City. The City received multiple responses to the REI/SOQ. On March 3, 2005, ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California Corporation (“**Athens**”) submitted a proposal in response to the City’s REI/SOQ that met or exceeded all requirements of the REI/SOQ by proposing the construction and operation of the MRF/TS, accompanied by a public Fueling Facility/Convenience Store and appurtenant improvements (collectively, the “**Project**”).

F. On or about February 24, 2021, in order to promote industrial development and fulfill the City’s obligations under the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 *et seq.* (the “**Act**”) and the Global Warming Solutions Act of 2006 (“**AB 32**”), City and Athens, along with the Agency, finalized a series of agreements regarding the Project (referred to herein collectively as the “**Agreements**” as defined below), including conveyance of the Property to Investments LLC pursuant to the Assignment/Consent (as defined in Recital I) and Athens’ development and operation of the proposed MRF/TS. The Parties intend that the MRF/TS will provide for the long-term management and recycling of municipal solid waste generated in the City. The MRF/TS will serve as a point to accept, process, recover, and transfer MMW and residue following diversion activities to an appropriate permitted end-point disposal facility.

G. Pursuant to the City’s development requirements, the City has approved the following land-use entitlements for the Project; (i) a Conditional Use Permit (“**CUP**”), (ii) Site Plan and Design Review Permit (collectively, “**Site Plan**”), and (iii) General Plan Amendment/Zone Change and Zoning Code Amendment (“**GPA/ZA**”) to allow Athens to develop and operate a solid waste processing and materials recovery facility and transfer station (“**MRF/TS**”) on the Property. The CUP, Site Plan and GPA/ZA for the Project are herein collectively referred to as the “**City Entitlements**.”

H. Agreements governing the Project and Athens’ use of the Property include: (i) a Development Agreement dated as of February 24, 2021 between Athens and City (“**DA**”), (ii) the DDA (undertaken in compliance with ABx1 26 and AB 1484), which DDA places certain restrictions on the Property in order that Athens may develop and operate the MRF/TS, and pursuant to which Agency covenanted to transfer the Property to Athens (subject to the terms of such DDA), (iii) a “**Reimbursement Agreement**” between City and Athens, dated October 22, 2008, as amended, under which Athens is obligated to reimburse or advance funds to City for all development costs associated with the Project, including, but not limited to, conducting environmental reviews under CEQA, processing and negotiating permits, entitlements and conditions, and legal costs; (iv) a Franchise Agreement – Operations of MRF/TS between Athens

and City, governing the use and operation of the MRF/TS (as may be amended from time to time) ("**Franchise Agreement – Operations**"), (v) a Franchise Agreement – Trash Collection and Street Sweeping, dated April 13, 2011, as amended, governing the exclusive right and obligation of Athens to collect solid waste and sweep streets in the City ("**Franchise Agreement – Trash Collection and Street Sweeping**"), and (vi) a Solid Waste Facilities Permit to be issued by the California Integrated Waste Management Board or its successor ("**SWFP**"). The foregoing agreements and instruments, together with all City ordinances approving the foregoing agreements and instruments, as each may be amended from time to time in accordance with its respective terms, are collectively referred to herein as the "**Agreements**."

I. Pursuant to the Assignment/Consent, Athens assigned its right and obligations under the DDA to take title to the Property to Investments LLC and Investments LLC assumed such right and obligations, and Agency consented to such limited assignment and assumption. Athens retains all other rights, privileges, and obligations of "Athens" under the DDA and the Agreements. Pursuant to the Assignment/Consent and this Declaration, Investments LLC covenants to lease to Athens, and Athens covenants to lease from Investments LLC, the Property.

J. Athens, Investments LLC, the Agency and City intend, in exchange for the parties' entering into the Agreements and City approval of the City Entitlements, that Athens, Investments, LLC, and each of their successors and assigns, shall hold, sell, and convey the Property subject to the covenants, conditions, restrictions, and reservations set forth in this Declaration, the Agreements and that the Agency and City shall have the right and power to enforce the covenants, conditions, restrictions, and reservations as provided herein.

K. Agency desires to establish and grant certain covenants, conditions and restrictions upon the Property for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and effectuating the Redevelopment Plan and the operations of the MRF/TS. Such covenants, conditions and restrictions shall bind the Property, the Agency and its successors and assigns, including Athens and Investments, LLC.

NOW, THEREFORE, Athens and Investments LLC, jointly and severally, covenant and agree, for itself, its successors and assigns, and all persons claiming under or through it, that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth.

TERMS AND CONDITIONS

ARTICLE 1

COVENANTS, CONDITIONS, AND RESTRICTIONS.

1.1 Recitals. The foregoing Recitals are true and correct and incorporated herein by this reference.

1.2 Project & Use. Development of the Property shall be undertaken pursuant to the City Entitlements and the terms of the Agreements. Athens and Investments LLC, and each of their successors and assigns, hereby covenants and agrees that the Property may only be used for the operation of the Project and related purposes, consistent with the terms, covenants and conditions as set forth in the Agreements and City Entitlements. Athens and Investments LLC, and

each of their successors and assigns, hereby covenants and agrees that the Property shall not be occupied, purchased, conveyed or otherwise utilized for purposes of real estate speculation.

Athens and Investments LLC represent and covenant to the Agency and City that (a) the term of the Lease is not less than the period reasonably required to permit Athens to perform its obligations under the DA and the DDA; (b) the Lease shall not be terminated prior to the expiration of Athens' obligations under the DA and the DDA, or otherwise with the written consent of Agency; and (c) the Lease contains a covenant from Athens to exercise its rights as a lessee under Section 365(h) of the Bankruptcy Code to remain in possession of the Property in the event that Investments LLC or its successors or assigns rejects the Lease in a proceeding under 11 U.S.C. Section 101 et seq. ("**Bankruptcy Code**") and the Agency and City are third party beneficiaries of that specific provision of the Lease. Athens hereby covenants, for itself and its successors and assigns, to exercise its rights as a lessee under Section 365(h) of the Bankruptcy Code to remain in possession of the Property in the event that Investments LLC or its successors or assigns rejects the Lease in a proceeding under the Bankruptcy Code and the failure of Athens to do so shall be a material default under this Declaration.

1.3 Incorporation of Franchise Operations Agreement. Athens and Investments LLC and each of their successors and assigns, hereby covenants and agrees to building the improvements in accordance with the terms of the DDA and DA; to hold, use and maintain the Property, and to operate the MRF/TS, subject to all rights and obligations established by the Franchise Agreement – Operations. All terms and provisions of the Franchise Agreement – Operations, a true and correct copy of which is attached hereto as "Exhibit B" and incorporated herein by this reference, are hereby incorporated into the terms of this Declaration as though set forth herein in full, and the provisions of the Franchise Agreement – Operations shall be binding upon the Property as a covenant, condition and restriction hereof.

1.4 Compliance With Ordinances. Each of Athens, Investments LLC and their successors and assigns shall comply with all ordinances, regulations and standards of the City and Agency applicable to the Property. Athens and Investments, LLC shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Property.

1.5 Public Agency Rights of Access. Athens and Investments, LLC, and their successors and assigns hereby covenants and agrees to grant to the Agency, the City and other public agencies the right, at their sole risk and expense, to enter the Property or any part thereof at all reasonable times with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Property. Any damage or injury to the Property or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the damage.

1.6 Non-Discrimination. There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, sexual orientation, gender or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination

or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

1.7 Confirmation & Indemnity. Athens and Investments LLC confirm that the consummation of the DDA (and recordation of the Grant Deed) is in compliance with all California laws applicable to the sale or transfer of real property by the Agency and hereby jointly and severally agree to indemnify, defend and hold the Agency harmless from all costs, expenses, and penalties as well as reasonable attorney fees for any violation or alleged violation. This indemnity is material consideration for Agency's consent to the Assignment/Consent.

1.8 Construction Covenants. Pursuant to the DDA Section 404.2(b), Athens was required, as a condition to Closing, to have obtained all Required Approvals, to have submitted final building plans for the Project for City approval, and to post normal City fees and any required security (collectively the "**Requirements**"). Agency waived this condition in reliance on Athens covenanting that Athens shall obtain grading permit within ten (10) days from the Close of Escrow. Additionally, Athens will obtain building permit five (5) months from the Close of Escrow; however, Athens may request and the Executive Director can grant an extension, which shall not be unreasonably withheld, based on delays resulting from outside agencies, which are beyond the City and Athens control.

ARTICLE 2 ENFORCEMENT

2.1 Termination. No breach of this Declaration shall act as a waiver or entitle any party to cancel, rescind or otherwise terminate this Declaration, or excuse the performance of such obligations hereunder; provided that, however, this limitation shall not affect in any manner any other rights or remedies available by reason of such breach or by reason of the terms and provisions of the other Agreements.

2.2 Injunction. Notwithstanding anything contained herein to the contrary, in the event of any violation or threatened violation of any of the terms, covenants, restrictions and conditions contained herein, in addition to the other remedies herein provided, the right to enjoin such violation or threatened violation in a court of competent jurisdiction shall remain available.

2.3 City as Third-Party Beneficiary. Owner and Athens hereby acknowledge and agree that the terms of this Declaration and of the Agreements are intended for the benefit of the City of Irwindale and, as such, the City is hereby declared to be a third-party beneficiary to this Declaration with all rights and powers of enforcement over this Declaration.

ARTICLE 3 ENCUMBRANCES & MORTGAGE PROTECTION

3.1 Breach Not to Default Mortgage Lien. The breach of any of the covenants or restrictions contained in this Declaration by Athens or Investments LLC or either of their successors and assigns, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Declaration; but, unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Declaration

shall be binding and effective against the holder of any such mortgage or deed of trust and any owner of any of the Property or any part thereof whose title thereto is acquired by foreclosure, deed-in-lieu of foreclosure, trustee's sale, or otherwise.

3.2 Amendments or Modifications to Declaration. No purported rule, regulation, modification, amendment and/or termination of this Declaration shall be binding upon or affect the rights of any mortgagee holding a mortgage or deed of trust upon the Property that is recorded in the Official Records prior to the date any such rule, regulation, modification, amendment or termination is recorded in the Official Records, without the prior written consent of such mortgagee.

3.3 Liens Subordinate. Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to the Property and any purchaser at any foreclosure or trustee's sale (as well as any by deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the Property after the date of such foreclosure sale, shall become a lien upon the Property and may be perfected and foreclosed.

ARTICLE 4 COVENANTS TO RUN WITH THE LAND

This Declaration is designed to create equitable servitudes and covenants running with the Property. Athens and Investments LLC hereby declare that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to these covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Property. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall: (i) run with the Property, (ii) be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns, and (iii) shall be binding upon Athens, Investments LLC and each of their successors and assigns and successors in interest.

ARTICLE 5 TERM

5.1 Term of Declaration. The term of this Declaration shall commence on the date of recordation in the Official Records and shall be coterminous with the longest term applicable to the Agreements, or whichever of the Agreements is last to terminate.

5.2 Upon Termination of Declaration. Upon expiration of the term of this Declaration, the covenants, conditions and restrictions described herein shall automatically terminate and cease to be of binding effect, and the City and the Agency shall, after written request of Investments LLC or its successor, execute and record such instruments as Investments LLC

reasonably requires to release and relinquish this Declaration. In addition, Investments LLC or its successor shall have the right to execute and record such instruments as may be reasonably required to release and relinquish this Declaration and any amendment thereto.

ARTICLE 6 MISCELLANEOUS

6.1 Modification. This Declaration may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by Athens, Investments LLC, Agency and City or their respective successors or assigns, and duly recorded in the Official Records.

6.2 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

6.3 Severability. The invalidity or unenforceability of any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

6.4 Termination of Agency. The parties agree that should Agency cease to exist as an entity at any time during the term of this Declaration, all rights of Agency hereunder are automatically assigned to City and City shall have the right to enforce all of the terms and conditions herein.

6.5 Attorney's Fees. In the event that a party to this Declaration brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Declaration, or otherwise arising out of this Declaration, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees and attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

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

6.7 Entire Agreement and Waivers. This Declaration integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Declaration supersedes all negotiations and previous agreements among the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Declaration, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of the party.

6.8 Severability. In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent

jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

6.9 Notices. Any notice to be given under this Declaration shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, at the following address:

If to Athens:	Athens Services P.O. Box 6009 City of Industry, CA. 91716-0009
With copy to:	Manatt, Phelps & Phillips, LLP 2049 Century Park East, Suite 1700 Los Angeles, CA 90067 Attention: Victor De la Cruz
If to Investments LLC:	Irwindale Investments, LLC c/o Athens Services P.O. Box 6009 City of Industry, CA. 91716-0009
With copy to:	Manatt, Phelps & Phillips, LLP 2049 Century Park East, Suite 1700 Los Angeles, CA 90067 Attention: Victor De la Cruz
If to Agency:	City of Irwindale as Successor Agency to the Irwindale Community Redevelopment Agency 5050 North Irwindale Avenue Irwindale, CA 91706 Attn: Executive Director
With copy to:	Aleshire & Wynder, LLP 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Attention: Adrian Guerra, Agency Counsel
If to City:	City of Irwindale 5050 North Irwindale Avenue Irwindale, CA 91706 Attn: City Manager
With a copy to:	Aleshire & Wynder, LLP 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Attention: Adrian Guerra, City Attorney

Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mails. Any party may change address for notice by giving written notice of such change to the other party.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first written above.

ATHENS

ARAKELIAN ENTERPRISES, INC., a
California Corporation dba "Athens Services"

By: _____
Ron Arakelian, Jr.,
Board Chairman

By: _____
Michael Arakelian,
Vice President/Secretary

Dated: _____, 2021

INVESTMENTS LLC

IRWINDALE INVESTMENTS, LLC, a
Delaware limited liability company

By: _____
Name: _____
Its: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

AGENCY:

CITY OF IRWINDALE AS SUCCESSOR
AGENCY TO THE IRWINDALE
COMMUNITY REDEVELOPMENT AGENCY

By: _____
H. Manuel Ortiz, Chair

Dated: _____, 2021

ATTEST:

By: _____
Laura M. Nieto, CMC
Chief Deputy Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Adrian Guerra,
Agency Legal Counsel

CITY:

CITY OF IRWINDALE, a municipal
corporation

By: _____
H. Manuel Ortiz, Mayor

Dated: _____, 2021_

ATTEST:

By: _____
Laura M. Nieto, CMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Adrian Guerra,
City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

That certain real property in the City of Irwindale, County of Los Angeles, State of California legally described as follows:

PARCEL 2 OF PARCEL MAP NO. 22152, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 231, PAGES 15 THROUGH 18 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B
COPY OF FRANCHISE AGREEMENT – OPERATIONS

(Copy to be attached prior to execution)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

SEAL:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

SEAL:

PARTIAL ASSIGNMENT AND ASSUMPTION OF DDA AND CONSENT

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF DDA AND CONSENT (this "Assignment") is made as of December ____, 2021 by and among Arakelian Enterprises, Inc. a California corporation dba Athens Services ("Assignor"), Irwindale Investments, LLC, a Delaware limited liability company ("Assignee") and CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY ("Irwindale Successor Agency").

RECITALS

A. Assignor is a party to that certain Disposition and Development Agreement by and between Assignor and the Irwindale Successor Agency ("DDA") regarding, among other matters, the purchase and development of certain real property and improvements located in the City of Irwindale, County of Los Angeles, State of California which is more particularly described in the DDA as the "Site." Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DDA.

B. Assignor and the City of Irwindale ("City") are parties to that certain Development Agreement No. 02-2016 dated February 24, 2021, approved by City Council Ordinance No. 753 and that certain Franchise and Facility Operations Agreement dated ____, 2021, approved by City Council Resolution No. 2021-06-3268 and certain entitlements and agreements with regard to the development of the Site and the Project thereon (collectively with the DDA, the "Project Agreements")

C. Assignor desires to assign to Assignee the limited right under the DDA to take title to the Site from the City, and the Assignee desires to accept such assignment and assumes the obligations under the DDA.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Effective Date.** This Assignment shall be effective upon recordation of the Grant Deed in the Official Records of Los Angeles County vesting title of the Site in Assignee ("Effective Date").

2. **Assignment and Assumption.** As of the Effective Date, Assignor hereby assigns to the Assignee all of its right to take title to the Site from the City under the DDA for the limited purposes of acquiring the fee simple title to the Site and Assignee assumes all such obligations. Assignor retains all other rights, privileges, and obligations of "Athens" under the DDA, including, but not limited to, the obligation to deposit the Purchase Price. Assignor will remain primarily responsible for all obligations of Athens under the Project Agreements although Assignee acknowledges that it takes title to the Site subject to the Project Agreements and the Lease as defined below.

3. **Consent.** Irwindale Successor Agency consents to the assignment as set forth in Section 1 on the condition that at the Closing, the Assignor and Assignee will execute a lease agreement ("Lease") and record a memorandum pursuant to which Assignee will lease the Site to Assignee. This Assignment shall not be construed to release Assignor of liability under the DDA or any of the Project Agreements nor as a consent for any other transfer under the Project Agreements.

4. **Confirmation & Indemnity.** Assignor and Assignee confirm that this Assignment and the consummation of the DDA are in compliance with all California laws applicable to the sale or transfer of real property by the Irwindale Successor Agency and hereby jointly and severally agree to indemnify, defend and hold the Irwindale Successor Agency harmless from all costs, expenses, and penalties as well as reasonable attorney fees for any violation or alleged violation. This indemnity is material consideration for Irwindale

Successor Agency's consent to the Assignment.

5. **Counterparts.** This Assignment may be signed in counterparts and by telecopier or Adobe portable document format file. Separately signed counterparts shall form a single document.

6. **Governing Law.** This Assignment shall be governed by and construed according to the internal laws of the State of California without regard to any doctrine or principal of conflict or choice of law.

7. **Successors and Assigns.** The provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and their respective heirs, executors, administrators, successors and assigns.

8. **Entire Agreement.** This Assignment constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such matters. This Assignment may not be amended except by a writing signed by each of the parties hereto. All schedules and exhibits attached hereto, or to which reference is made in this Assignment, are deemed incorporated in this Assignment whether or not actually attached.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set above.

ASSIGNOR:

Irwindale Investments, LLC
a Delaware limited liability company

By: _____
Name:
Its:

ASSIGNEE:

Arakelian Enterprises, Inc.,
a California corporation

By: _____
Name:
Its:

IRWINDALE SUCCESSOR AGENCY:

CITY OF IRWINDALE AS SUCCESSOR TO THE
IRWINDALE COMMUNITY REDEVELOPMENT
AGENCY, a public body, corporate and politic

By: _____
William Tam, Executive Director

ATTEST:

APPROVED AS TO FORM:

ALESHIRE AND WYNDER, LLP

By: _____
Adrian Guerra, City Attorney

GUARANTY

In order to induce the CITY OF IRWINDALE IN ITS CAPACITY AS SUCCESSOR TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY ("**Agency**"), to permit title of that certain unimproved real property premises in the County of Los Angeles, State of California, located at 2200 Arrow Hwy, Irwindale, California 91706 ("**Property**") to vest in Irwindale Investments, LLC, a Delaware limited liability company ("**Irwindale Investments**"), Arakelian Enterprises, Inc., a California corporation dba Athens Services ("**Guarantor**") hereby enters into this Guaranty ("**Guaranty**") and guarantees, promises and undertakes as follows:

1. **Guaranty of Obligations.** Guarantor absolutely and unconditionally guarantees and promises to Agency it shall pay and perform all obligations of Guarantor and Irwindale Investments (and each of their successors and assigns) under (i) that certain Disposition and Development Agreement by and between Guarantor and Agency ("**DDA**"); (ii) that certain Development Agreement No. 02-2016, approved by City Council Ordinance No. 753; (iii) that certain Franchise and Facility Operations Agreement, approved by City Council Resolution No. 2021-06-3268; (iv) all entitlements and agreements with regard to the development of the Property and the Project (as defined in the DDA); (v) the Grant Deed conveying the Property to Irwindale Investments; (vi) the Lease Agreement evidenced by the Memorandum of Lease recorded concurrently with the Grant Deed; and (vi) the Declaration of Covenants, Conditions and Restrictions recorded concurrently with the Grant Deed (collectively with the "**Project Agreements**"). The obligations under the Project Agreements are sometimes hereinafter referred to individually as a "**Guaranteed Obligation**" and collectively as the "**Guaranteed Obligations**."

2. **Acceptance and Termination of Guaranty.** Agency shall be deemed to have accepted and relied upon this Guaranty upon recordation of the Grant Deed to Irwindale Investments in the Official Records of Los Angeles County. Upon full performance the Guaranteed Obligations, this Guaranty shall automatically terminate and shall be of no further force and effect; however, at such time and upon written request from Guarantor, Agency shall execute a document confirming termination of this Guaranty.

3. **Waiver of Defenses.** Guarantor hereby unconditionally and irrevocably acknowledges and agrees to the matters set forth below:

- (a) **Election of Remedies.** Guarantor waives any defense based upon Guarantor's loss of a right against Irwindale Investments arising from Agency's election of a remedy on any Guaranteed Obligation under bankruptcy or other debtor relief laws or under any other laws, including, but not limited to, those purporting to reduce Agency's right against Guarantor in proportion to the principal obligation of any Guaranteed Obligation (as presently contained in Section 2809 of the California Civil Code as it may be amended or superseded in the future).
- (b) **Action Against Irwindale Investments and Any Collateral (and Other Remedies).** Guarantor waives all right to require Agency to: (i) proceed against Irwindale Investments, any endorser, cosigner, other guarantor or other person liable on the Guaranteed Obligation; (ii) join Irwindale Investments or any endorser, cosigner,

other guarantor or other person liable on any Guaranteed Obligation in any action or actions that may be brought and prosecuted by Agency solely and separately against Guarantor on any Guaranteed Obligation; (iii) proceed against any item or items of collateral securing any Guaranteed Obligation or any guaranty thereof; or (iv) pursue or refrain from pursuing another remedy whatsoever in Agency's power.

- (c) Agency's Defenses. Guarantor waives any defense arising by reason of any disability or other defenses of Irwindale Investments, Irwindale Investments' successor or any endorser, cosigner, other guarantor or other person liable on any Guaranteed Obligation. Until all Guaranteed Obligations have been performed in full, even though it may be in excess of liability incurred hereby, Guarantor shall not have any right of subrogation and Guarantor waives any benefit or and right to participate in any collateral now or hereafter held by Agency. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of sale of any collateral securing any Guaranteed Obligation or any guaranty thereof, and notice of the existence, creation or incurring of new or additional Guaranteed Obligation.
- (d) Irwindale Investments' Financial Condition. Guarantor waives all right to require Agency to disclose any information with respect to: (i) any Guaranteed Obligation now existing or hereafter incurred; or (ii) any present or future action or inaction on the part of Agency, Irwindale Investments or any endorser, cosigner, other guarantor or other person liable on any Guaranteed Obligation. Guarantor hereby assumes the responsibility for being informed of the financial condition, credit and character of Irwindale Investments and of all circumstances bearing upon the risk of non-payment of any Guaranteed Obligation which diligent inquiry would reveal.
- (e) No Discharge. Guarantor shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following: (i) any alteration to the obligations under the Project Agreements; (ii) any allowance of time, forbearance, indulgence or other concession granted to Irwindale Investments under the Project Agreements; or (iii) the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of Irwindale Investments.
- (f) Information regarding Irwindale Investments. Guarantor assumes the responsibility for keeping informed of the financial condition of Irwindale Investments and of all other circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations, and agrees that Agency has no duty to advise Guarantor of any information known to Agency regarding any such financial condition or circumstances.

4. Subordination. Any indebtedness of Irwindale Investments or any endorser, cosigner, other guarantor or other person liable on any indebtedness now or hereafter owed to Guarantor is hereby subordinated to the Guaranteed Obligation. Such indebtedness owed to Guarantor shall, if Agency so requests, be collected, enforced and received by Guarantor as trustee

for Agency and be paid over to Agency on account of the Guaranteed Obligation but without reducing or affecting in any manner the liability of Guarantor set forth herein. Should Guarantor fail to collect the proceeds of any such indebtedness owed to it and pay the proceeds to Agency, Agency, as Guarantor's attorney-in-fact, may do such acts and sign such documents in Guarantor's name as Agency considers necessary to effect such collection.

5. **Invalid, Fraudulent or Preferential Payment.** Guarantor agrees that, to the extent Irwindale Investments or any endorser, cosigner, other guarantor or other person liable on any Guaranteed Obligation makes a payment or payments to, or is credited for any payment or payments made for or on behalf of Irwindale Investments to Agency, which payment or payments, or any part thereof, is subsequently invalidated, determined to be fraudulent or preferential, set aside or required to be repaid to any trustee, receiver, assignee or any other party whether under any bankruptcy, state or federal law or under any common law or equitable cause or otherwise, then, to the extent thereof, the obligation or part thereof intended to be satisfied thereby shall be revived, reinstated and continued in full force and effect as if such payment or payments had not originally been made or credited.

6. **Independent Obligations.** Guarantor's obligations hereunder are independent of the obligations of Irwindale Investments or any endorser, cosigner, other guarantor or other person liable on any Guaranteed Obligation and a separate action or actions may be brought and prosecuted against Guarantor on any Guaranteed Obligation.

7. **Non-Reliance.** In executing this Guaranty, Guarantor is not relying, and has not relied, upon any statement or representations made by Agency, or any agent or representative of Agency, with respect to the status, financial condition or other matters related to Irwindale Investments or the relationship between Irwindale Investments and Agency.

8. **Severability.** Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall remain effective.

9. **Assignment.** Agency may, with written notice to Guarantor, assign this Guaranty in whole or in part. This Guaranty shall inure to the benefit of Agency, its successors and assigns, and shall bind Guarantor and Guarantor's successors and assigns. If Agency ceases to exist, all rights of Agency under this Guaranty shall be deemed automatically assigned and transferred to the City of Irwindale with the right to enforce same.

10. **Attorney's Fees.** Whether or not any suit, action, arbitration or other dispute resolution proceeding is instituted in connection with this Guaranty, then the prevailing party shall be entitled to recover from the non-prevailing party any and all of the costs, expenses and fees incurred by the prevailing party in connection with the lawsuit, including reasonable attorneys' and consultants' fees and costs. The right to post-judgment costs and fees incurred to enforce a judgment shall not be merged into any award or judgment; and, the party enforcing the judgment may collect from the judgment debtor all costs and attorneys' fees incurred in enforcing the judgment.

11. **Governing Law.** This Guaranty shall be governed by and construed according to the laws of the State of California and Guarantor hereby submits to the jurisdiction of the courts

of the State of California.

12. Entire Agreement. This Guaranty contains the entire agreement with respect to the subject matter hereof and supersedes any and all other agreements, either oral or in writing, between the parties or persons representing the parties or either of them, with respect to the subject matter hereof.

13. Qualification; Authority. Each person executing this Guaranty on behalf of Guarantor, represents, warrants and covenants to Agency that (a) Guarantor is duly formed and authorized to do business in the state of its incorporation; (b) such person is duly authorized to execute and deliver this Guaranty on behalf of Guarantor in accordance with authority granted under the organizational documents of Guarantor; and (c) Guarantor is bound under the terms of this Guaranty.

14. Amendment or Modification. Any modification or amendment of any provision of this Guaranty must be in writing and bear the signature of both Agency and Guarantor.

15. No Waiver. The failure of Agency to enforce any term, covenant, or condition of this Guaranty shall not be construed as a waiver of Agency's right to enforce this, or any other, term, covenant, or condition of This Guaranty at any later date or as a waiver of any term, covenant, or condition of This Guaranty.

14. Construction. This Guaranty shall be construed according to its fair meaning with the intent to accomplish the intentions of the parties. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

(signatures on following page)

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date below.

GUARANTOR:

ARAKELIAN ENTERPRISES, INC., a
California Corporation dba "Athens Services"

By: _____
Ron Arakelian, Jr.,
Board Chairman

By: _____
Michael Arakelian,
Vice President/Secretary

Dated: _____, 2021

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO
AND MAIL TAX STATEMENTS TO:**

Athens Services
P.O. Box 6009
City of Industry, CA 91716-0009
Attn: President

APN 8535-001-911

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

THE UNDERSIGNED GRANTOR DECLARES that
the documentary transfer tax (computed on full value)
is \$11,220 pursuant to R&T §11922.

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("**Grantor**") hereby grants to IRWINDALE INVESTMENTS, LLC, a Delaware limited liability company ("**Grantee**"), that certain real property in the City of Irwindale, County of Los Angeles, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("**Site**").

As conditions of this conveyance, Grantee covenants by and for itself and any successors-in-interest for the benefit of Grantor and the City of Irwindale, a municipal corporation, as follows:

1. **Governing Documents.** The Site is being conveyed pursuant to the terms of that certain Disposition and Development Agreement between Grantor and Arakelian Enterprises, Inc., a California corporation dba ATHENS SERVICES dated February 24, 2021 ("**DDA**") and that certain Development Agreement No. 02-2016 dated February 24, 2021 which was recorded on December 2, 2021 as Instrument No. 20211784600 in the Official Records of Los Angeles County ("**DA**"). The DDA and DA are public records on file in the office of the City Clerk of the City of Irwindale, located at 5050 North Irwindale Avenue, Irwindale, CA 91706, and are incorporated herein by this reference. Grantee covenants and agrees for itself and its successors and assigns to use, operate and maintain the Site in accordance with the DDA and DA.

2. **Uses.** Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that upon the date of this Grant Deed and during construction through completion of development and thereafter, Grantee shall devote the Site to the uses specified in the DDA, DA and this Grant Deed for the periods of time specified therein. All uses conducted on the Site shall conform to the DDA and/or DA and all applicable provisions of the City's Municipal Code. The foregoing covenants shall run with the land.

3. **Term of Restrictions.** Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to the Site that Grantee, such successors and such assigns, shall not develop, operate, maintain and use the Site in violation of the terms and conditions of the DDA and/or DA (unless expressly waived in writing by Grantor) for the term of either the DDA or DA, whichever term is longer; provided that, however, the covenants contained in Section 4 shall remain in effect in perpetuity.

4. **Non-Discrimination.** Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish

or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

5. **Form of Nondiscrimination Clauses in Agreements.** Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(a) **Deeds:** In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

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

(c) **Contracts:** In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

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

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

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of _____, 2021.

GRANTOR:

CITY OF IRWINDALE ACTING AS SUCCESSOR
AGENCY TO THE IRWINDALE
REDEVELOPMENT AGENCY

By: _____
William Tam, Executive Director

ATTEST:

Laura Nieto, Agency Secretary

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By: _____
Adrian Guerra, Agency Counsel

ACCEPTANCE BY GRANTEE

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

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

Date: _____, 2021

“DEVELOPER”

IRWINDALE INVESTMENTS, LLC, a Delaware
limited liability company

By: _____
Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF SITE

That certain real Site in the City of Irwindale, County of Los Angeles, State of California, legally described as follows:

PARCEL 2 OF PARCEL MAP NO. 22152, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 231, PAGES 15 THROUGH 18 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2021 before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public

SEAL:

[illegible]

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

Notary Public

400899895

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made this ____ day of December, 2021 by and between Irwindale Investments, LLC hereinafter called "**Lessor**" and Arakelian Enterprises, Inc. dba Athens Services hereinafter called "**Lessee**."

RECITALS:

- A. Lessor owns that certain unimproved real property premises in the County of Los Angeles, State of California, located at 2200 Arrow Hwy, Irwindale, California 91706 and legally described on Exhibit A attached hereto ("**Premises**"). Lessor acquired the Premises from the City of Irwindale as the Successor Agency to the Irwindale Community Redevelopment Agency ("**Irwindale Successor Agency**") pursuant to that certain Grant Deed (as defined below).
- B. The Premises are subject to the following agreements (collectively the "**Agreements**"):
- i. 2020 Mitigation Monitoring and Reporting Program, adopted by City Council Resolution No. 2021-08-3270/SA Resolution No. 2021-13-3275.
 - ii. Disposition and Development Agreement dated February 24, 2021 by and between the Irwindale Successor Agency and Lessee, approved by City Council Resolution No. 2021-09-3271/SA Resolution No. 2021-14-3276 ("**DDA**").
 - iii. Development Agreement No. 02-2016 dated February 24, 2021, by and between the City of Irwindale ("**City**") and Lessee, approved by City Council Ordinance No. 753 ("**DA**").
 - iv. Conditional Use Permit No. 08-2016 and the conditions thereto, approved by City Council Resolution No. 2021-11-3273.
 - v. Site Plan and Design Review No. 06-2016 and the conditions thereto, approved by City Council Resolution No. 2021-12-3274.
 - vi. Franchise and Facility Operations Agreement dated _____, 2021 by and between the City and Lessee, approved by City Council Resolution No. 2021-06-3268 ("**Operations Franchise Agreement**").
 - vii. Franchise Agreement for Waste Hauling Services between the City and Lessee dated April 15, 2011 ("**Waste Hauling Franchise Agreement**").
 - viii. Grant Deed from the Irwindale Successor Agency to Lessor pursuant to which Lessor acquired title to the Premises from the Irwindale Successor Agency ("**Grant Deed**").
 - ix. Declaration of Covenants Conditions and Restrictions between the Irwindale Successor Agency and Lessor which were recorded concurrently with the Grant Deed ("**CC&Rs**").
- C. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DDA or DA.

AGREEMENT:

1. **Lease.** In consideration of payment of rents and performance of covenants herein contained, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Premises subject to the Agreements. The foregoing recitals are incorporated herein.

2. **Term.** The term of this Lease shall commence on the date of recordation of the Grant Deed ("**Effective Date**") and shall expire on the later to occur of: (i) expiration of all obligations of Athens under the DDA and the DA; or (ii) December 31, 2031 ("**Term**"). Concurrently with recordation of the Grant Deed, a Memorandum of Lease shall be recorded in the Official Records of Los Angeles County.

3. **Rent.** The monthly rent ("**Base Rent**") shall be _____ Dollars (\$____)

payable on the 1st day of each month, commencing December 1, 2021. Payments shall be made to Lessor at P.O. Box 14100, Irvine, California 92623, or at such other place as may be designated by Lessor from time to time. On August 1, 2022 and on each subsequent August 1 of each calendar year during the term (an "**Adjustment Date**"), Base Rent will increase by an amount equal to the product obtained by multiplying the then current Base Rent by a fraction, the numerator of which is the CPI U (All Urban consumers), for Los Angeles-Anaheim-Riverside for the May immediately preceding the Adjustment Date (the "**CPI**") and the denominator of which is the CPI for May, 2021. On the August 1, 2024, 2027 and 2030 Adjustment Dates, Base Rent will increase to the greater of (i) the CPI increase amount calculated pursuant to this Section 3, or (ii) the Fair Market Value, as determined by Lessor. Under no circumstances, however, will Base Rent decrease.

4. **Use.** The Premises may only be used for office, trucking, vehicle maintenance and all other legal and conforming uses appropriate to the Premises' current zoning restrictions and in compliance with the terms of the Agreements.

5. **Construction of Improvements; Maintenance.** Lessee accepts the Premises in their present as-is condition, and agrees to keep them in good repair and to perform and comply with all the obligations under the Agreements including, but not limited to, the construction of the improvements as required in the DDA and DA ("**DDA/DA Improvements**"). Upon termination of this Lease, Lessee shall surrender the Premises to Lessor in the good condition and repair, broom-clean, ordinary wear and tear expected.

6. **Indemnity.** Lessee agrees to indemnify, defend and hold Lessor harmless from any liability accruing by virtue of Lessee's occupancy and activities; and further agrees to conduct all business in compliance with all applicable laws, regulations and ordinances now in effect or hereinafter enacted.

7. **Utilities.** Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon.

8. **Taxes & Insurance.** Lessee shall pay all property taxes and premiums for fire insurance. Lessee will maintain public liability and property damage insurance, insuring Lessor and Lessee against liability arising out of ownership, use, occupancy or maintenance of the Premises with a minimum coverage of at least \$1,000,000 per occurrence, with an annual aggregate of \$2,000,000. Evidence of policy will be given by Lessee to Lessor within ten (10) days of execution of this Lease.

9. **Access.** Lessee shall permit Lessor and Lessor's agents to enter upon the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

10. **Limitation of Liability.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised Premises or any part thereof, and Lessee agrees to indemnify, defend and hold Lessor harmless from any claims for damages, no matter how caused.

11. **Condemnation.** If any part of the Premises shall be taken or condemned for public use, and a part thereof remains which is susceptible of occupation hereunder, this Lease shall, as to the part taken, terminate as of the date the condemnor acquires possession, and thereafter Lessee shall be required to pay such proportion of the rent for the remaining term as the value of the Premises remaining bears to the total value of the Premises at the date of condemnation; provided however, that Lessor may at his option terminate this Lease as of the date the condemnor acquires possession. In the event that the Premises are condemned in whole, or that such portion is condemned that the remainder is not susceptible for use hereunder, this Lease shall terminate upon the date upon which the condemnor acquires possession. All sums which may be payable on account of any condemnation shall belong to the Lessor, and Lessee shall not be entitled to any part thereof,

provide however, that Lessee shall be entitled to retain any amount awarded to him for his trade fixtures or moving expenses.

12. Improvements. Except for the DDA/DA Improvements, any and all improvements made to the Premises during the Term are subject to the written consent of the Lessor, and upon termination of this Lease shall belong to the Lessor, except trade fixtures of the Lessee. Lessee may upon termination hereof, remove all his trade fixtures, but shall repair or pay for all repairs necessary for damages to the Premises occasioned by removal.

13. Destruction. In the event of a partial destruction of the Premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this Lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the Premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this Lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this Lease may be terminated at the option of either party.

14. Bankruptcy by Lessee. In the event that a receiver shall be appointed to take over the business of the Lessee, or in the event that the Lessee shall make a general assignment for the behalf of creditors, or Lessee shall take or suffer any action under any insolvency or bankruptcy act, the same shall constitute breach of this Lease by Lessee.

15. Remedies. In the event of any breach of this Lease by Lessee, Lessor may, at his option (but subject to Section 18 below), terminate this Lease and recover from Lessee: (a) the worth at the time of award of the unpaid rent which was earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and (d) any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform his obligations under the Agreement or which in the ordinary course of things would be likely to result therefrom. Lessor may, in the alternative, continue this Lease in effect, as long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all his rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. If said breach of this Lease continues, Lessor may, at any time thereafter, elect to terminate the Lease.

16. Attorney Fees. In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney fees.

17. Holding Over. Any holding over after the expiration of this Lease, with the consent of Lessor, shall be construed as a month-to-month tenancy at a rental of the monthly rent being charged at the time of hold over.

18. Subleasing and Assignment. Lessee shall not sublease any of the Premises or assign this Lease without written consent of Lessor.

19. Lessee Covenant. In the event that the Lessor rejects this Lease in a proceeding under 11 U.S.C. Section 101 et seq., ("Bankruptcy Code"), then Lessee shall exercise Lessee's rights under Section

365(h) of the Bankruptcy Code to remain in possession of the Premises. Lessee agrees that the City shall be a third party beneficiary of this Section and shall have the right to enforce Lessee's covenant under this Section if Lessor fails to do so after receipt of written notice from the Irwindale Successor Agency and/or the City.

20. No Termination with Consent of Successor Agency. This Lease may not be terminated prior to the completion of all obligations of Lessee and Lessor under the DDA and DA (nor modified to provide for an earlier termination hereof) without the prior written consent of the Irwindale Successor Agency. Furthermore, the obligations with respect to the Agreements and Section 19 may not be modified without the prior written consent of Irwindale Successor Agency. This Section 20 shall automatically terminate upon completion of all obligations of Lessee and Lessor under the DDA and DA. Upon termination of the Irwindale Successor Agency, the right under this section shall automatically be deemed assigned to the City.

21. Non-Discrimination. The Lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.

(signatures on following page)

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease which shall be effective as of the Effective Date.

LESSOR:

Irwindale Investments, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

LESSEE:

Arakelian Enterprises, Inc.,
a California corporation

By: _____
Name:
Its:

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

That certain real property in the City of Irwindale, County of Los Angeles, State of California legally described as follows:

PARCEL 2 OF PARCEL MAP NO. 22152, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 231, PAGES 15 THROUGH 18 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Recording Requested by &
When Recorded Mail to:

APN. 8535-001-911

THE UNDERSIGNED GRANTOR DECLARES that
the documentary transfer tax (computer on full value)
is \$ _____

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

MEMORANDUM OF LEASE

This Memorandum of Lease is dated as of December ____, 2021 by and between Irwindale Investments, LLC, a Delaware limited liability company ("**Lessor**"), and Arakelian Enterprises, Inc., a California corporation dba Athens Services ("**Lessee**"), who agree as follows:

1. **Term and Premises.** Pursuant to that certain Lease Agreement dated December ____, 2021 ("**Lease**"), Lessor leases to Lessee and Lessee leases from Lessor that certain real property located at 2200 Arrow Hwy, Irwindale, California 91706 as legally described on Exhibit A attached hereto and incorporated by this reference herein ("**Premises**"). The term of the Lease shall commence upon recordation of this Memorandum and shall terminate only as specified in the Lease.

2. **Incorporation of Lease.** The terms and provisions of the Lease are incorporated herein by reference.

3. **Termination.** This Memorandum of Lease may only be released from title after termination of the Lease in accordance with its terms.

4. **Governing Document.** This Memorandum of Lease is being executed and delivered solely for the purpose of recordation, and it in no way modifies any of the provisions of the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Lease to be executed effective as of the date first above written.

Lessor:

IRWINDALE INVESTMENTS, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Lessee:

ARAKELIAN ENTERPRISES, INC.,
a California corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Legal Description of Premises

That certain real property in the City of Irwindale, County of Los Angeles, State of California legally described as follows:

PARCEL 2 OF PARCEL MAP NO. 22152, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 231, PAGES 15 THROUGH 18 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

SEAL:

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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