RECORDING REQUESTED BY:

City Clerk

WHEN RECORDED MAIL TO:

CITY OF CHULA VISTA

Above Space for Recorder's Use

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into by and between the CITY OF CHULA VISTA, a chartered California municipal corporation ("City") and ACI SUNBOW LLC, a limited liability corporation ("Owner"). City and Owner whenever referenced herein collectively shall be referred to as "Parties" and whenever referenced hereinafter individually may be referred to as "Party." The Parties agree as follows:

RECITALS

A. City's Authority to Enter into Development Agreement. City is authorized under California Government Code sections 65864 et seq. to enter into binding development agreements with persons having legal or equitable interests in real property for the purposes of assuring, among other things, (i) certainty as to permitted land uses in the development of such property, (ii) provides for the construction of adequate public facilities to service such property, and (iii) ensures the successful completion of the Sunbow General Development Plan, a 604.8 acre master planned community ("Sunbow Master Plan").

B. The Property: Owner's Interest. Owner has a legal or equitable interest or both in the approximately 135.7-acre site more particularly described in Exhibit "A" attached hereto (the "Property"). The Property is the subject of this Agreement and is located within Sunbow II Phase 3 of the Sunbow Master Plan. Owner intends that its successors in interest and all other persons holding legal or equitable interest or both in the Property benefit from and be bound by this Agreement, as more particularly described herein. The owner intends to develop, improve, build on, sell or lease the Property or portions thereof to various builders (as hereinafter defined) who may acquire portions of the Property and the benefits and burdens under this Agreement.

C. The Project. The Property is being planned as a community with a range of residential uses, open space and MSCP Preserve areas, and recreational opportunities (the "Project"). More particularly, the Project is located south of Olympic Parkway, east of Brandywine Avenue, and north and northwest of the Otay Landfill. The Project will provide 534 multi-family medium-high-density residential dwelling units and 184 multi-family high-density residential dwelling units for a total of 718 units on the site. The Project will also include various passive and

active recreational open space areas distributed throughout the residential areas to provide recreational opportunities within walking distance of the proposed residential uses.

D. Approval of Community Benefit Agreement. The Owner and City entered into that certain Community Benefit Agreement (approved by Resolution No. 2020-003, January 7, 2020) wherein the Owner would provide eight million dollars that can be used by the City to direct the construction of a project in furtherance of the goals set forth in the University Innovation District Master Plan, on a site located within the University Innovation District Master Plan or within the SR-125 corridor that is owned by the City or under the control or ownership of a non-profit entity that has been established to effectuate the goals of the University Innovation District Master Plan (the "Job Enhancement Funds"). By way of example only, such project could involve : (i) the construction of a Class "A" office building or an academic, commercial or innovation facility or building that will attract job enhancing uses into the SR-125 corridor or the University Innovate District Master Plan; (ii) such other uses that would enable the development of an Institute for International Studies; or (iii) some other notable project at the City's discretion consistent with the goals of the University Innovation District Master Plan.

E. Project Approvals. On _____, the City approved a General Plan Amendment (by Resolution No. XX), an amendment to the Sunbow General Development Plan, an amendment to Sunbow Sectional Planning Area (SPA) Plan, (by Resolution No. XX), rezone (by Ordinance No. XX), a Development Agreement (by Ordinance No. XX), Tentative Map 20-0002 (by Resolution No. XX), and other related entitlements for the Project.

E. Certification of EIR. Prior to the City's adoption of the Existing Project Approvals (as hereinafter defined) described above, the City Council (i) independently reviewed and considered the significant environmental impacts of the Project and several alternatives to the Project as described in that certain Final Environmental Impact Report ("Project EIR") and (ii) adopted Resolution No. XXXX on XXX certifying the Project EIR as adequate and complete, making Findings concerning Mitigation Measures and Alternatives, adopting a Statement of Overriding Considerations and adopting a Mitigation Monitoring and Reporting Plan ("MMRP") all in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code section 21000, et seq. ("CEQA")

F. City and Owner Acknowledge. City and Owner acknowledge this Agreement will provide the following mutual benefits:

1. Facilitate the efficient development of the Project that will ensure the City's timely receipt of the Job Enhancement Funds; and

2. Establish mechanisms that will help provide for the financing and construction of facilities necessary to provide for anticipated levels of service to residents of the Project; and

3. Provide Owner with assurances regarding the Existing Project Approvals and regulations that will be applicable to the development of the Project consistent with the existing land use regulations and the Existing Project Approvals; and.

4. Assure that the Project does not cause any conflict with City's growth management goals and objectives by, for example, ensuring the provision of adequate public facilities at the time of Development, proper timing and sequencing of Development, effective capital improvement programming, and appropriate Development incentives; and

5. Allow for the development of the Property, that has remained undeveloped for the last thirty (30) years, with 718 multifamily units, a 0.9-acre Community Purpose Facility site, 16 acres of open space, and 64 acres of MSCP Preserve open space land.

G. The Parties agree that the covenants, promises and other material requirements of this Agreement constitute adequate consideration that is fair, just, mutual, equitable and reasonable. In particular, Owner would not enter into this Agreement, nor agree to provide and furnish funds for the public and private Development and infrastructure described in this Agreement, if not for the promise of City that the Property can be developed pursuant to the Existing Project Approvals and Applicable Laws. Similarly, City would not enter into this Agreement if not for the promise of Owner to provide the public facilities, public infrastructure and other public benefits provided for in this Agreement.

H. Planning Commission. On_____, City's Planning Commission held a duly noticed public hearing on this Agreement and at the conclusion of the hearing recommended approval of this Agreement.

I. City Council Approval. On _____, the City Council held a duly noticed public hearing on this Agreement, at the conclusion of which the Council introduced and conducted the first reading of the ordinance approving the Agreement, and subsequently, on _____, adopted Ordinance No. _____approving the Agreement. As part of its initial hearing, the City Council considered and approved the environmental documentation for this Agreement as being in compliance with the California Environmental Quality Act.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Owner hereby agree as follows:

ARTICLE 1
DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms shall mean:

"**Applicable Law**" means laws, rules, regulations and official policies of City (including General Plan policies, Administrative codes, ordinances, resolutions and other local laws, regulations, and policies of City) in force and effect on the Effective Date.

"City Council" means the Chula Vista City Council.

"City Laws" means any new rules, laws, regulations, policies, ordinances, resolutions and standards adopted by the City after the Effective Date of this Agreement that can be applied to

decisions on Future Project Approvals or amendments to Existing Project Approvals as provided for herein.

"**Builder**" means the entity, person or persons to whom Owner will sell, lease or convey or has sold, leased or conveyed the Property or portions thereof, for purposes of its improvement for residential, commercial, industrial or other uses.

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code sections 21000, et seq and State CEQA Guidelines, Title 14 of the California Code of Regulations, section 15000 et seq.

"**City**" means the City of Chula Vista, in the State of California.

"CFD" means a Community Facilities District formed pursuant to the provisions of the Mello-Roos Community Facilities District Act, California Government Code Section 53311, et seq.

"**Development**" means the construction, reconstruction, conversion, structural alteration, relocation, maintenance or enlargement of any structure; any mining, excavation, grading, landfill, or land disturbance; the construction of roadways, water and sewer infrastructure and other infrastructure improvements directly related to the Project whether located within or outside the Property; the installation of landscaping and other facilities and improvements necessary or appropriate for the Project; and any use or extension of the use of land.

"**Development Impact Fee" or "DIF"** means assessment, fee, charge or dedication imposed upon development within the City pursuant to a Development Impact Fee Program or equivalent program, adopted in accordance with the requirements of State law.

"Effective Date" means the first date on which all of the following are true: (a) the Owner has signed the Agreement and returned the signed Agreement to the City; (b) the City Council has adopted Ordinance No._____, approving the Agreement.

"**Existing Project Approvals**" means the entitlements for the Project described in Recitals above, and in particular the following: (i) amendment to the General Plan, (ii) amendment to the Sunbow General Development Plan (iii) an amendment to Sunbow SPA II, (iv) the rezone of the Property, (v) Tentative Map NO. 20-0002 , (vi) all associated documents that have been attached and made a part thereof, such as the PFFP, and (vii) the Project EIR, all as may be amended from time to time consistent with this Agreement.

"**Final Map(s)**" means any final subdivision map for all or any portion of the Property upon which the Project is located.

"**Future Project Approvals**" means all discretionary and ministerial permits and approvals requested by the Owner and approved by the City after the Effective Date of this Agreement, including, but not limited to: (i) grading permits; (ii) site plan reviews; (iii) design guidelines review; (iv) subdivisions of the Property, or re-subdivisions of the Property; (v) conditional use permits; (vi) variances; (vii) encroachment permits; (viii) rezoning's; and (ix) all

other reviews, permits, and approvals of any type which may be required from time to time to authorize public or private on- or off-site development which is a part of the Project.

"**Growth Management Ordinance**" means Chapter 19.09 of City's Municipal Code, as it exists on the date the Development Agreement is adopted.

"**Job Enhancement Funds**" means the sum of eight million dollars to be paid by Owner in three payments as provided herein and as further defined in Recital D.

"**Owner**" means the person, persons, or entity having a legal or equitable interest in the Property, or parts thereof, and includes Owner's successors-in-interest and "Builder" as defined herein.

"**PFFPs**" means the Public Facilities Financing Plan for the Project, adopted as a part of the Project.

"**Planning Commission**" means the Planning Commission of the City of Chula Vista.

"**Project**" means the Development of the Project and all related private and public improvements on and off the Property as provided for in the Existing Project Approvals and as may be authorized by the City in Future Project Approvals.

"**Project Improvements and Infrastructure**" means public and private improvements and facilities (located on and off the Property) constructed to serve the Project as described in the Existing Project Approvals or as may be imposed, pursuant to the terms of this Agreement, as part of Future Project Approvals.

"**Property**" means the real property described in Exhibit "A."

"**Term**" of this Agreement means the period defined in Article 2, below.

ARTICLE 2
TERM

2.1. Term. This Agreement shall become effective as to the Property upon the Effective Date and shall continue for fifteen (15) years ("Term") thereafter. The Term may be extended at the Owner's sole option for two additional ten (10) year terms. In addition to the extensions herein provided, the Owner may request that the term of the Agreement be extended beyond the two additional extensions, which will be processed in the same manner as an amendment to this Agreement. In the event of litigation challenging this Agreement or the Project, the Term is automatically suspended for the duration of such litigation and resumes upon final disposition of such challenge and any appeal thereof upholding the validity of this Agreement or the Project. In the event that a referendum petition concerning this Agreement or Project is duly filed in such a manner that the ordinance approving this Agreement or the Project is suspended, then the Term is deemed to commence upon City Council's certification of the results of the referendum election affirming this Agreement or the Project as the case may be.

2.2 Extension. The Term shall be extended for any period of time during which processing of applications for the Project, Future Project Approvals or issuance of building permits to Owner is suspended for any reason other than due to the actions or the default of the Owner, and for such period of time equal to the period of time during which any action by the City or court action limits the processing of such Project applications, Future Project Approvals, issuance of building permits or any other development of the Property consistent with this Agreement.

2.3. Covenants Running with the Land. As of the Effective Date, the terms and provisions of this Agreement are enforceable by the parties as equitable servitudes affecting the Property, constituting covenants running with the land pursuant to California law including, without limitation, Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Property, run with the Property, and are binding upon Owner and the successors and assigns of Owner during their respective ownership of the Property.

2.4. Execution and Recordation. The City shall promptly execute this Agreement within thirty (30) days after the Effective Date following City Council approval. The City may execute the Agreement in counterparts as set forth in Section 15.5 herein. Within 10 days after the Agreement has been executed by the City, the City Clerk shall notify the Owner of such execution and provide Owner the Agreement for recordation. The Owner shall cause the recordation of such Agreement and provide the City with a confirmed copy within ten (10) business days following its recordation.

2.5 Public Benefits. The Parties agree that the covenants, promises and other material requirements as set forth herein constitute adequate consideration that is fair, just, mutual, equitable and reasonable. The Owner would not enter into this Agreement, nor agree to provide and furnish funds for the public and private Development and infrastructure described in this Agreement, if not for the promise of City that the Property can be developed pursuant to the Existing Approvals and Applicable Laws. Similarly, City would not enter into this Agreement if not for the promise of Owner to provide the public facilities, public infrastructure and other public benefits provided for in this Agreement.

ARTICLE 3
VESTED RIGHTS

3.1. Vested Rights. In consideration of the benefits to City, as set forth herein, Owner is vested with the right to develop and maintain the Property to the land uses, densities and intensities of use, and the reservations and dedication of land for public purposes as provided in the Existing Project Approvals, as such approvals may be amended from time to time, and subject to Applicable Laws and as further provided in Section 3.4 below. If Future Project Approvals are obtained by Owner, they shall be vested to the same extent as the Existing Project Approvals.

3.2. Maximum Height and Size of Structures. The maximum height and size of structures to be constructed on the Project will be governed by the Existing Project Approvals.

3.3. Applicable Law. As provided by this Agreement, the rules, regulations and official policies (including General Plan policies, Administrative codes, ordinances, resolutions and other local laws, regulations and policies of City) governing the permitted uses, the density and intensity

of use, the design, improvement and construction standards and specifications of any improvements and the mitigation of impacts of the Project, shall be those in full force and effect on the Effective Date ("Applicable Law"). Applicable Law includes the Existing Project Approvals, as they may be issued or amended from time to time, in a manner consistent with both the terms and provisions of this Agreement. The City shall retain its discretionary authority as to amendments to Existing Project Approvals and to Future Project Approvals, provided however, such decisions shall be regulated by the Applicable Laws and as further provided in Section 3.4 below.

3.3.1. Amendments. By way of example, the following illustrate the application of amendments that would hinder, impede or cause an unreasonable delay of the Project as authorized by the Existing Project Approvals and would be considered in conflict with the Applicable Laws.

(i) Prevent all or a portion of the Project or the Property from being developed, used, operated or maintained in accordance with the terms and provisions of this Agreement, Existing Project Approvals, or Applicable Laws;

(ii) Limit or reduce the overall density, intensity or unit count of the Project, or any part thereof, to a density, intensity or unit count that is lower than that specified in this Agreement, Existing Project Approvals or Applicable laws;

(iii) Modify any land use designation or conditional use of the Property in a manner inconsistent with this Agreement, Existing Project Approvals, or Applicable Laws;

(iv) Limit or control the rate, timing, phasing or sequencing of the approval, development, construction or occupancy of all or any portion of the Project or Property except as specifically permitted by this Agreement;

(v) Impose any condition, dedication or exaction that would conflict with this Agreement, Existing Project Approvals, or Applicable Law;

(vi) Require the issuance of discretionary permits or nondiscretionary permits, to the extent such permits impose new or different substantive requirements on Owner or the Project that are not otherwise required by Applicable Laws, Existing Project Approvals, or this Agreement;

(vii) Apply to the Project any provision, condition or restriction that would be inconsistent with this Agreement, Existing Project Approvals, or Applicable Law;

(viii) Apply to the Project any rent control or price control provisions or uniform or prevailing wage requirements except to the extent required under state law, unless otherwise permitted by this Agreement;

(ix) Limit or control the location of buildings, structures, grading, or other improvements of the Project or the Property in a manner that is inconsistent with

or more restrictive than the limitations included in this Agreement, Existing Project Approvals, or Applicable Laws;

(x) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services or facilities in a manner other than as specifically set forth in this Agreement or Applicable Law (for example, water rights, water connections or wastewater treatment capacity rights, sewer connections, etc.) for the Project or the Property;

(xi) Apply to the Project or the Property any City Law allowed by this Agreement that is not uniformly applied on a City-wide basis to other development projects and properties;

(xii) Establish, enact, increase, or impose against the Project any fees, Development Impact Fees, assessments, liens or other monetary obligations other than (i) those specifically permitted by this Agreement, and (ii) City-wide taxes and assessments (provided such City-wide taxes or assessments are not disproportionately applied to the Property); or

(xi) Limit the processing or issuance of amendments to Existing Project Approvals or Future Project Approvals other than as specifically set forth in this Agreement or Applicable Law.

3.4. Development Impact Fees. Except as otherwise provided in this Agreement, only those Development Impact Fee in effect as of the Effective Date and as described on attached Exhibit B may be applied to the Project or the Property. All Project Development Impact Fees will be paid at the time the City issues certificates of occupancy unless otherwise noted in this Agreement. Any increase in a Development Impact Fee can be challenged by Owner, pursuant to City ordinance and state law. The Parties acknowledge that the provisions contained in this paragraph 3.4, and as set forth in Exhibit B, are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such Development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

3.5. Reserved Authority. The City may apply changes in City Laws, regulations, ordinances, standards or policies specifically mandated by changes in state or federal law in compliance with Article 12 herein. If City amends its Growth Management Ordinance, the amended Growth Management Ordinance shall apply to the Project upon Owner's written acceptance, which acceptance shall not constitute an amendment to this Agreement. This provision shall not affect any mitigation measures required of Owner under the environmental document certified for the Project.

3.6. Owner's Option to Apply New Rules. Owner may elect, with the City Manager, or their designee, consent to have applied to the Project any rules, regulations, policies, ordinances or standards enacted after the Effective Date of this Agreement. The City Administrative Officer shall not unreasonably withhold said consent.

3.7. Modifications to Existing Project Approvals. It is contemplated by the Parties to this Agreement that the Owner may seek modifications to the Existing Project Approvals from time to time. These modifications are contemplated as within the scope of this Agreement and shall, if approved by the City, be incorporated into and constitute for all purposes an Existing Project Approval. Owner and City agree that any such modifications to Existing Project Approvals will not constitute an amendment to this Agreement nor require an amendment to the Agreement. The City shall process and act on such applications in accordance with the applicable provisions of the Applicable Law.

3.8. Moratorium and other Limitations. This Project is exempt from any moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits, certificates of occupancy or other land use entitlements that are approved or to be approved, issued or granted within the City. To the maximum extent permitted by law, City must prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City must cooperate with Owner and undertake such actions as needed to ensure this Agreement remains in full force and effect. If City applies to the Project a City Law that Owner believes to conflict with Applicable Laws or this Agreement, Owner may take such action as may be permitted under Section 15.16 and Article 10 herein. City must not support, adopt or enact any City Law, or take any other action, which would violate the express provisions of this Agreement or the Existing Project Approvals. Owner may also challenge in court any City Law that would conflict with Applicable Laws or this Agreement or reduce the development rights provided by this Agreement, in accordance with the dispute resolution provisions of Section 15.19 below.

3.9. State and Federal Law. As provided in Government Code § 65869.5, in the event that state or federal laws or regulations, enacted after the Effective Date ("Changes in the Law") prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement will be, by operation of law, modified or suspended, or performance thereof delayed, as and to the extent that may be necessary to comply with such Changes in the Law. In the event any state or federal resources agency (i.e., California Department of Fish and Game, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Regional Water Quality Control Board/State Water Resources Control Board), in connection with its final issuance of a permit or certification for all or a portion of the Project, imposes requirements ("Permitting Requirements") that require modifications to the Project, then the parties will work together in good faith to incorporate such changes into the Project; provided, however, that if Owner appeals or challenges any such Permit Requirements, then the Parties may defer such changes until the completion of such appeal or challenge. As set forth in Section 3.6 herein, such modifications are contemplated to be within the scope of this Agreement and shall, upon written acceptance by the Parties, constitute for all purposes the Existing Project Approval and will not require an amendment to the Agreement.

3.10. Further Assurances. To the extent permitted by law, City must take all actions needed to ensure that the vested rights provided by this Agreement can be enjoyed by Owner including, without limitation, any actions needed to ensure the availability of public services and facilities to serve the Project or the Property as development occurs. Should any initiative, referendum, or other measure be enacted that would affect the Project or the rights provided by

this Agreement, Owner agrees to fully defend the City against such a challenge in a manner consistent with Section 15.18 below. The City must not take any actions relative to the Property whether or not covered by this Agreement that would impede, hinder or frustrate Owner's ability to develop or use the Property in a manner consistent with this Agreement.

3.11. Time for Construction and Completion of Project. Development of the Project shall be subject to all timing and phasing requirements established by the Existing Project Approvals. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intention of the City and Owner to cure that deficiency by specifically acknowledging that timing and phasing of development is completely and exclusively governed by the Existing Project Approvals, and that Owner has the right to develop the Project at such time as Owner deems appropriate within the exercise of its subjective business judgment. Nothing in this Agreement shall be deemed to require Owner to proceed with the development of any portion of the Project or make any financial commitment associated with any such development if, in Owner's sole and absolute discretion, Owner determines that it is not in Owner's best financial or other interest to do so. The City and Owner agree that the Project and related infrastructure is expected to be built in phases in response to existing market conditions over the term of this Agreement, there is no requirement that Owner initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City will not impose such a requirement on any Project Approval. The Parties acknowledge that Owner cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of the Owner, such as market demand, interest rates, competition and other factors. The provisions of the foregoing sentence do not, however, limit any obligation of Owner under this Agreement with respect to any development activities that are chosen by Owner to be undertaken hereunder.

ARTICLE 4
PROCESSING PROJECT

4.1. Processing of Future Project Approvals. City will accept for processing development applications and requests for Future Project Approvals, or other entitlements with respect to the development and use of the Property and will consider such matters in accordance with the appropriate process set forth in the Applicable Laws. The City will diligently work towards the timely issuance of such entitlements, including grading plans, improvement plans, and other plans or permits, as needed to issue building permits such efforts will include the City's expedited processing of grading plans, improvement plans, and other plans or permits, as needed to issue a building permit. City shall treat the Project as a priority and shall make best efforts to dedicate sufficient attention and resources to the Project to facilitate the expeditious development thereof, as contemplated by this Agreement. The costs for processing work related to the Project, including hiring of additional City personnel to dedicate to the Project and/or the retaining of professional consultants, will be reimbursed to City by Owner in a manner consistent with the City Laws and applicable State law. City shall retain its discretionary authority to act on Future Project Approvals and apply City Laws to such matters, provided the City Laws do not conflict with

Applicable Laws or the rights provided by this Agreement. By way of example, the application of City Laws that would prevent the uses, densities or intensities of development specified herein or as authorized by the Existing Project Approvals or would unreasonably delay development of the Project would be considered in conflict with the rules, regulations and official policies in effect as of the Effective Date of this Agreement and to the intent of the Parties. In addition, the City may also apply changes in City Laws, regulations, ordinances, standards or policies specifically mandated by changes in state or federal law in compliance with Article 12 herein.

4.2 Length of Validity of Tentative Subdivision Maps. Government Code section 66452.6 provides that tentative subdivision map(s) may remain valid for a length up to the term of a Development Agreement. The City agrees that all tentative subdivision maps (vesting or otherwise) for the Project, shall be for a term coterminous with the length of this Agreement.

4.3 Pre-Final Map Development. If Owner desires to do certain work on the Property (for example, grading) after approval of a tentative map, but prior to the recordation of a final map, it may do so by obtaining a grading and/or other required approvals from the City prior to recordation of a final map. The permit or approval may be approved or denied by the City in accordance with the requirements of the Applicable Laws and other City regulations or policies as may be applicable; provided the Owner is in compliance with this Agreement and with the terms of all Existing Project Approvals and Future Project Approvals. In addition, the Owner shall be required to post a bond or other reasonably adequate security required by City in an amount reasonably determined by the City to assure the rehabilitation of the land if the applicable final map does not record.

4.4 Transfer of Rights and Obligations of Development. Whenever Owner conveys a portion of the Property, the rights and obligations of this Agreement shall transfer in accordance with Article 7 herein.

4.5. Cooperation with respect to Project Improvements and Infrastructure. City shall cooperate with Owner to take all actions necessary and appropriate to facilitate the timely development of Project Improvements and Infrastructure. Such cooperation includes, without limitation, the following actions as may be applicable to the City in the exercise of its legislative discretion: (i) the diligent and timely commencement of the City's exercise of its power of eminent domain authority in a manner consistent with the laws of the State of California (and subject to the City's exercise of its discretion, the making of all necessary findings and determinations required to exercise such power), to acquire any rights of way or other real property interests identified by Owner to be necessary or appropriate for the Project Facilities and Infrastructure; and (ii) City's diligent efforts to work with other landowners and governmental and quasi-governmental agencies to ensure the timely approval and construction of such Project Facilities and Infrastructure. Owner must notify City as to when a right of way will be required to meet Owner's construction schedule. Upon Owner's notice and as provided for by law, City agrees to use its best efforts to take such actions in a timely manner as needed to consider the acquisition of any and all necessary right of ways, provided however, the City shall not be obligated under this Section to exercise its power of eminent domain with respect to any real property.

4.6. City's Acceptance of Dedications. City agrees to accept the easements to be provided by the Owner for conservation of portions of the Poggi Creek channel within ninety (90)

calendar days of such offer by Owner. All other Owner offers of dedication required by this Agreement or the Existing Project Approvals must be accepted by City within a reasonable time, provided that the applicable improvements are completed consistent with Applicable Law.

4.7. Affordable Housing Obligation. Because of the special benefits provided by the Project as described in this Agreement, the City has provided the Project with a variance from its affordable housing obligations as permitted by the Balanced Communities Policy and Guidelines. The Project shall hereafter satisfy its affordable housing obligations by the following two requirements:

(i) Prior to the issuance of the two hundredth (200^{th}) building permit for the Project, the Owner shall execute an amendment to the covenants and restrictions ("Affordability Covenant") set forth in that certain Regulatory Agreement dated June 1, 2000 between the California Tax Credit Allocation Committee and Serena Sunbow, L.P. (recorded as Document No. 20000-0641390 in the San Diego County Recorder's Office, Nov. 27, 2000) to be extended for sixty-seven (67) low-income housing units in the Villa Serena residential housing project to June 1, 2055. The extended Affordability Covenant for the sixty-seven (67) units shall be recorded as a restrictive covenant in the official records of the County of San Diego.

(ii) The Owner shall implement an outreach program, including advertising and marketing, that would encourage buyers of all majority and minority groups, regardless of sex, handicap, and familial status.

4.8. Community Purpose Facilities. Owner is required to provide approximately 3.2 acres of land of CPF land for community purpose facilities ("CPF") based upon a ratio of 1.39 acres per 1,000 residents in accordance with Section 19.48.025 of the City's Municipal Code. The City has agreed that the CPF on-site obligation will be reduced to require Owner to provide a 0.9-acre parcel, including private recreational facilities, designated for CPF land uses in perpetuity as a part of the SPA. The City Council hereby waives the remaining CPF obligation of 2.3 acres because of the extraordinary public benefit provided by the payment from the Owner to the City of one million seven hundred fifty-nine thousand, one hundred thirty-four dollars ($1,759,134.00) based upon the evaluation described on Exhibit "B" attached hereto (the "CPF Benefit Funds"). The CPF Benefit Funds shall be due and payable before the issuance of the building permit for the 240^{th} unit. The CPF Benefit Funds satisfies the goals of CPF requirement by providing a community serving facility on land in the City's western territories that would not otherwise have been available for such community service use. The CPF Benefit Funds may be utilized by the City at its discretion for CPF uses in perpetuity. Therefore, the City hereby determines that the Owner is in compliance with the CPF requirements of Chapter 19.48. of the Municipal Code.

4.9. Park Facilities. The City shall waive the Parkland Acquisition and Development Fees/Quimby Fees ("PAD Fees") set forth in Chapter 17.10 and in- lieu thereof, the Owner shall pay the City a Park Benefit Fee, equal to the PAD fees that would have otherwise been due pursuant to Chapter 17.10, using the PAD fee rates in effect as of the Effective Date. The Park Benefit Fee shall be paid by Owner no later than final inspection for each unit. Park Benefit Fees may be utilized by the City to acquire or develop parkland, as the City determines appropriate and in the best interest of the City.

4.10. TDIF Obligations. The Transportation Development Impact Fee ("TDIF") credits for each development neighborhood within the Sunbow master plan was calculated as of February 1, 2003. The City acknowledges and agrees that the Owner is entitled to $455,330.67 in cash credits and 109.41 EDU ("Equivalent Dwelling Units") credits resulting from construction of improvements, such as East Palomar Street phases l B and 1 C, which may be used for the Project.

4.11. Job Enhancement Funds. The Owner shall provide the Job Enhancement Funds to the City in three payments. The first payment of up to one million dollars will be made upon the City's issuance of the first (1st) building permit based upon the City's sole determination that such amount is needed to provide start-up funding for a first phase of a University Innovation District opportunity. The second payment of one million dollars will be made upon the issuance of the one-hundredth (100th) building permit. The third payment of six million dollars plus any amount not requested by the City in the first payment will be made upon the issuance of the two-hundredth (200th) building permit for the Project. The Job Enhancement Funds shall be held by the City in a separate account to be used pursuant to the terms set forth in this paragraph. Should Job Enhancement Funds still be owed to the City by January 2023 and such delay is not the result of the City's failure to expedite the approvals described in paragraph 4.11.1 below, said amount will be increased based on the annual index change from the prior year (January 2022) of the Engineering News-Record, Building Cost Index (BCI) for the Los Angeles Area; or, in the event that such index is no longer published or otherwise available, the United States Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Diego – Carlsbad, California region. Each January thereafter, the remaining amount of the Job Enhancement Funds due to the City shall be increased based upon the annual index change from the prior year as herein described. The adjustments shall be automatic and shall not require further action by the City Council.

4.11.1. Diligently process permits. The Parties agree to diligently work towards the timely issuance of the first building permit, the one-hundredth (100th) building permit and the two hundred (200th) building permits needed to trigger the Owner's obligation to deposit the Job Enhancement Funds with the City, such efforts will include the City's expedited processing of grading plans, improvement plans, and other plans or permits, as needed to issue a building permit as described in paragraph 4.1 above.

4.11.2. Investment of Funds. The City will invest the Job Enhancement Funds into the construction of a project in furtherance of the goals set forth in the University Innovation District Master Plan, on a site located within the University Innovation District Master Plan or within the SR-125 corridor that is owned by the City or under the control or ownership of a non-profit entity that has been established to effectuate the goals of the University Innovation District Master Plan. The Parties understand that the Owner shall not be required to provide any other additional funds or investments into such project identified by the City and as described herein. By way of example only, such projects could involve: (i) the construction of a class "A" office building, or an academic, commercial or innovation facility or building that will attract job enhancing uses into the SR-125 corridor or the University Innovation District Master Plan; (ii) such other building or facility that would enable the development of the Institute for International Studies; or (iii) some other notable project at the City's discretion consistent with the goals of the University Innovation District Master Plan.

ARTICLE 5
FINANCIAL MECHANISMS

5.1. Initiation of a CFD. Owner may, at its option, submit a written request to City on City's standard application form requesting that City establish a Community Facilities District to finance the Development Impact Fees described on Exhibit "C" to this Agreement, or the acquisition and construction of public facilities. To the extent the City determines it cannot meet the requirements under federal tax code to allow any Development Impact Fees to qualify under tax-exempt bonds, the City shall permit the issuance of taxable bonds to fund such fees (or portion thereof).

5.2. Establishment of CFD. City shall use reasonable good efforts to: (a) initiate and diligently pursue proceedings to establish such a Community Facilities District in accordance with the goals and policies in effect as of the Effective Date as set forth in Council Policy 505, April 4, 2019, attached hereto as Exhibit "D" ("Goals and Policies"), and (b) if the establishment of such Community Facilities District is approved by the City Council and the levy of special taxes and the issuance of bonds for or by such a District are approved by the qualified electors of such District, to thereafter levy and collect special taxes and issue bonds of such District in accordance with the Goals and Policies. The bonds of the CFD shall be sized based upon the estimated annual special tax revenues from the CFD at build-out being equal to one-hundred ten percent (110%) of (i) the projected annual gross debt service on any bonds of the CFD, plus (ii) priority annual administrative expenses. Priority annual administrative expenses to be funded from special taxes shall not exceed $75,000.

5.3. Failure to complete. If City fails to complete the CFD proceedings and record the notice of special tax lien within two hundred ten (210) days following Owner's submittal of a complete application, other than due to delays caused by Owner's failure to provide necessary information or inaction by Owner or by other circumstances outside the control of City, or if City establishes the CFD in a manner, structure or subject to conditions that are expressly inconsistent with the Goals and Policies or this Agreement, then (a) City and Owner shall meet and confer and reasonably consider the creation of another financing mechanism to finance the Development Impact Fees or such public facilities, including, but not limited to, reasonable efforts to consider assisting Owner to establish an alternative financing mechanism.

ARTICLE 6
PUBLIC INFRASTRUCTURE

6.1. Construction of Project Improvements and Infrastructure. The City may require Owner to construct or fund the construction of any Project Improvements, and Infrastructure pursuant to the conditions of the Existing Project Approvals provided any off-site improvements are based upon the Project's fair share obligation and are needed to serve the Project. To the extent Owner may be required to provide appropriate improvement security pursuant to the requirements of the Existing Project Approvals or as required by Applicable Laws, City agrees to use its best efforts to ensure the release of any improvement security provided by Owner upon the performance of the secured act or the City's good faith acceptance of the secured improvement. Owner may submit a request to reduce the amount of improvement securities every six (6) months subject to the City's review and approval. Project Improvements or Infrastructure, such as street

improvements, shall be designed and constructed, in accordance with the provisions and standards set forth in the Existing Project Approvals as applicable. Notwithstanding the foregoing, the Project shall not be conditioned to fund or construct any public infrastructure including, without limitation, streets, sewer, storm drain, basins, water connections, park, open space, landscaping, and dry utility facilities, that may be needed to serve the site upon which the class "A" building or such other project will be constructed within the University Innovation District Master Plan,

6.2. Pioneering of Project Improvements and Infrastructure. City shall use its reasonable best efforts to ensure that the Owner is not required to finance or construct any Project Improvements and Infrastructure in excess of its fair share costs as established by Applicable Law, including, without limitation, the legal requirements of "essential nexus" and "rough proportionality" ("Fair Share"). To the extent Owner is required to construct, install, or otherwise provide financing (i.e., "Pioneers") for any Project Improvement and Infrastructure that is oversized so as to benefit an area larger than the Project, the City shall take one of the following actions: (1) City will use its best good faith efforts to secure funding from other landowners or developers for that portion of the cost of such oversized improvements that is attributable to projects or areas owned, developed or proposed for development by such other landowners or developers by requiring such landowners or developers to enter into reimbursement agreements directly with Owner; (2) establish a Reimbursement District that includes the other landowners or developers that are benefited from the oversized facilities so that the Owner may be reimbursed for the pro-rata share of benefits conferred to the other landowners or developers by the oversized facility; or (3) include said improvements in a Development Impact Fee Program adopted by the City and provide Owner with reimbursement from the amounts collected from said fee, equal to the pro-rata share of the benefits conferred to the other landowners or developers. If the Project Improvements and Infrastructure is covered by a future Development Impact Fee Program adopted by the City, Owner shall be reimbursed from the amounts received from such fee program, subject to the City's Director of Public Works reasonable determination that such costs are allowable under the applicable Fee Program. The fact that such improvements may be financed by an assessment district, Community Facility District or other financing district shall not prevent said reimbursement to the Owner.

6.3. Reasonable Relationship between Project and Requirement. The cost of providing Project Improvements and Infrastructure to the Project or the Property shall be consistent with the following principles: (i) there shall be a reasonable relationship between the Project and any Public Improvement or Infrastructure required to by constructed by the Project; (ii) there shall be a reasonable relationship between the services and the Project; (iii) the costs that are to be borne for such services by the Project shall not exceed the estimated reasonable cost of providing such services; (iv) the level of municipal services provided to the Project, including the level of operation and maintenance of Project Improvements and Infrastructure, shall be equal to the level of service provided within the City limits; and (v) there shall be a reasonable relationship between any fee required to finance Project Improvements or Infrastructure or municipal services and the cost of such improvements or services funded by such fee. For purposes of this paragraph "reasonable relationship" between the Project and any requirement imposed thereon, shall mean an "essential nexus" and "rough proportionality" between the Project and such requirement in accordance with State law.

ARTICLE 7
TERMINATION UPON SALE TO PUBLIC

7.1. Termination of Agreement with Respect to Lots to Public. The provisions of Article 7 shall not apply to the sale, or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user who intends to occupy the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction by Owner of both of the following conditions:

(i) The lot has been finally subdivided and individually or in bulk sold, or leased (for a period equal to or longer than one year) to a homebuilder, or to a member of the public or other ultimate user; and

(ii) All benefits set forth under Section 2.5 of this Agreement required at that point in time have been provided by Owner.

7.2 Partial Termination. The Owner has the right to request that the City approve a partial termination of this Agreement, to release a portion(s) of the Property from the Agreement's obligations and benefits. A partial termination shall be approved by the City if Owner demonstrates to City that the portion(s) of the Property to be released from the Agreement's obligations is/are not needed to satisfy any of the obligations established in this Agreement. If City makes such a determination, such released property shall not be subject to any of the obligations created in this Agreement, and, similarly, shall not receive any of the benefits granted in this Agreement.

ARTICLE 8
ANNUAL REVIEW

8.1. City and Owner Responsibilities. The City will, at least every twelve (12) months during the Term of this Agreement, pursuant to California Government Code section 65865.1, review the extent of good faith substantial compliance by Owner with the terms of this Agreement. Pursuant to California Government Code section 65865.1, as amended, Owner shall have the duty to demonstrate by substantial evidence its good faith compliance with the terms of this Agreement at the periodic review. Either City or Owner may address any requirement of the Agreement during the review.

8.2. Review Letter. If Owner is found to be in compliance with this Agreement after the annual review, City shall, within forty-five (45) days after Owner's written request, issue a review letter in recordable form to Owner ("Letter") stating that based upon information known or made known to the City Council, the City Planning Commission and/or the City Administrative Officer, this Agreement remains in effect and Owner is not in default. The owner may record the Letter in the Official Records of the City of Chula Vista.

8.3. Failure of Periodic Review. City's failure to review at least annually Owner's compliance with the terms and conditions of this Agreement shall not constitute, or be asserted by City or Owner as, a default by Owner or City with respect to the Agreement.

ARTICLE 9
ENCUMBRANCES AND RELEASES ON PROPERTY

9.1. Discretion to Encumber. This Agreement shall not prevent or limit Owner in any manner at Owner's sole discretion, from encumbering the Property, or any portion of the Property, or any improvement on the Property, by any mortgage, deed of trust, or other security device securing financing with respect to the Property or its improvement.

9.2. Mortgagee Rights and Obligations. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Owner of the performance of Owner's obligations under the Agreement which has not been cured within thirty (30) days following the date of default. If there are no such defaults by Owner, the City Administrative Officer shall notify the requesting Party of that fact in writing.

9.3. Releases. City agrees that upon written request of Owner and provided that all payments and the requirements and conditions required by this Agreement have been performed, City may execute and deliver to Owner appropriate release(s) of obligations imposed by this Agreement in form and substance acceptable to the City Recorder and title insurance company, if any, or as may otherwise be necessary to effect the release of a portion of the Property to an individual home buyer or parcel of property that has been built out and sold to an ultimate consumer. City Administrator Officer shall not unreasonably withhold approval of such release(s).

9.4. Subordination. Owner agrees to enter into subordination agreements with all lenders having a lien on the Property to ensure that the provisions of this Agreement bind such lienholders should they take title to all or part of the Property through a quitclaim deed, sale, foreclosure or any other means of transfer of property. As a condition precedent to obtaining the benefits that accrue to the Owner or the Property under this Agreement, this Agreement by and through said subordination agreements shall be prior and superior to such liens on said Property. The owner shall deliver to the City the fully executed subordination agreements for the Property in a form acceptable to the City Council and suitable for recording, prior to the second reading of the ordinance adopting the Agreement.

ARTICLE 10
DEFAULT

10.1. Events of Default. A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:

(i) A warranty, representation or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made.

(ii) A finding and determination by City made following a periodic review under the procedure provided for in California Government Code section 65865.1 that upon the basis of substantial evidence Owner has not substantially complied with one or more of the terms or conditions of this Agreement.

(iii) City does not accept, timely review, or consider requested development permits or entitlements submitted in accordance with the provisions of this Agreement.

(iv) If either Party defaults under this Agreement, the Party alleging such default will give the breaching Party not less than thirty (30) days' notice of default in writing. The notice of default will specify the nature of the alleged default, and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. During any period of cure, the Party charged will not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default will exist and the noticing Party will take no further action.

10.2. Option to Set Matter for Hearing or Institute Legal Proceedings. After proper notice and the expiration of the cure period, the noticing Party to this Agreement, at its option, may (i) institute legal proceedings or (ii) schedule hearings before the Planning Commission and the City Council for a determination as to whether this Agreement should be modified, suspended, or terminated as a result of such default.

10.3. Waiver. Nothing in this Agreement shall be deemed to be a waiver by Owner or City of any right or privilege held by Owner or City pursuant to federal or state law, except as specifically provided herein. Any failure or delay by a Party in asserting any of its rights or remedies as to any default by the other Party will not operate as a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

10.4. Remedies upon Default. In the event of a default by either Party to this Agreement, the Parties shall have the remedies of specific performance, mandamus, injunction and other equitable remedies. Neither Party shall have the remedy of monetary damages against the other; provided, however, that the award of costs of litigation and attorneys' fees shall not constitute monetary damages.

10.5. Remedies for Breach. All remedies at law or in equity which are consistent with the provisions of this Agreement are available to City and Owner to pursue in the event there is a breach provided, however, neither Party shall have the remedy of monetary damages against the other except for an award of litigation costs and attorneys' fees as provided for by this Agreement.

ARTICLE 11
MODIFICATION OR SUSPENSION

11.1. Modification to Agreement by Mutual Consent. Except as specifically provided for herein, this Agreement may be modified, from time to time, by the mutual consent of the Parties only in the same manner as its adoption by an ordinance as set forth in California Government

Code sections 65867, 65867.5 and 65868. The term, "Agreement" as used herein, will include any such modification properly approved and executed.

11.2. Minor Modifications. The Parties to this Agreement contemplate that there may be periodic clarifications and minor modifications to this Agreement. Such minor clarifications or modifications when agreed upon by the Parties hereto are anticipated and shall not constitute an amendment to this Agreement or a modification pursuant to this Article 11 but shall automatically be incorporated herein upon execution in writing by the Parties.

11.3. Unforeseen Health or Safety Circumstances. If, as a result of facts, events, or circumstances City finds that failure to suspend or modify this Agreement would pose an immediate threat to the health or safety of the City's residents or the City, the following shall occur:

(a) Notification of Unforeseen Circumstances. Notify Owner of (i) City's determination; and (ii) the reasons for City's determination, and all facts upon which such reasons are based; and

(b) Notice of Hearing. Notify Owner in writing at least fourteen (14) days prior to the date, of the date, time and place of the hearing and forward to Owner a minimum of ten (10) days prior to the hearings described in paragraph 12.3(c) below, all documents related to such determination and reasons therefor; and

(c) Hearing. Hold a hearing on the determination, at which hearing Owner will have the right to address the City Council. At the conclusion of said hearing, City may take action to suspend this Agreement as provided herein. The City may suspend this Agreement if, at the conclusion of said hearing, based upon the evidence presented by the Parties, the City finds failure to suspend would pose an immediate threat to the health or safety of the City's residents or the City.

ARTICLE 12
CHANGE IN STATE OR FEDERAL LAW OR REGULATIONS

12.1. State or Federal Law or Regulation. If any state or federal law or regulation enacted during the Term of this Agreement, or the action or inaction of any other affected governmental jurisdiction, precludes compliance with one or more provisions of this Agreement, or requires changes in plans, maps, or permits approved by City, the Parties will act pursuant to paragraphs 12.1(a) and 12.1(b), below.

(a) Notice; Meeting. The Party first becoming aware of such enactment or action or inaction will provide the other Party (ies) with written notice of such state or federal law or regulation and provide a copy of such law or regulation and a statement regarding its conflict with the provisions of this Agreement. The Parties will promptly meet and confer in a good faith and reasonable attempt to modify or suspend this Agreement to comply with such federal or state law or regulation.

(b) Hearing. If an agreed-upon modification or suspension would not require an amendment to this Agreement, no hearing shall be held. Otherwise, the matter of such federal or state law or regulation will be scheduled for hearing before the City Council. Fifteen (15) days' written notice of such hearing shall be provided to Owner, and the City Council, at such hearing, will determine and issue findings on the modification or suspension which is required by such federal or state law or regulation. The owner, at the hearing, shall have the right to offer testimony and other evidence. Any modification or suspension shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the City Council. If the Parties fail to agree after said hearing, the matter may be submitted to nonbinding mediation pursuant to subsection 15.19, prior to the filing of any legal action by any Party. Any suspension or modification may be subject to judicial review in conformance with this Agreement.

ARTICLE 13
ASSIGNMENT, TRANSFER AND NOTICE

13.1. Assignment of Interests, Rights and Obligations. Owner may transfer all or any portion of its interest in, and rights and obligations under, this Agreement to any person acquiring an interest or estate in all or any portion of the Property (any such portion, a "Transfer Property"), including, without limitation, purchasers or ground lessees of such Transfer Property (a "Transferee") without any act or concurrence by City. Any such transfer must, as and to the extent set forth below, relieve the transferring party (a "Transferor") of any and all rights and obligations under this Agreement insofar as they pertain to the Transfer Property. No sale, transfer or assignment shall require the amendment of this Agreement.

13.2. Transfers to Third Persons in General. In connection with any transfer by a Transferor of all or any portion of the Property, the Transferor and the Transferee may enter into a written agreement regarding the respective rights and obligations of the Transferor and the Transferee in and under this Agreement (a "Transfer Agreement"). Any such Transfer Agreement may contain provisions (i) releasing the Transferor from any rights and obligations under this Agreement that relate to the Transfer Property, provided the Transferee expressly assumes all such rights and obligations, (ii) transferring to the Transferee a vested right to improve and use that portion of the Property being transferred and any other rights or obligations of the Transferor arising under this Agreement, and (iii) addressing any other matter deemed necessary or appropriate in connection with the Transfer of the Transfer Property.

13.3. Release Provisions. A Transferor has the right, but not the obligation, to seek City's consent to those provisions of any Transfer Agreement purporting to release such Transferor from any obligations arising under this Agreement (the "Release Provisions"). If a Transferor fails to seek City's consent or City fails to consent to any of such Release Provisions, then such Transferor may nevertheless transfer to the Transferee any and all rights and obligations of such Transferor arising under this Agreement.

13.4. City Consent. City will review and consider promptly and in good faith any request by a Transferor for City's consent to any Release Provisions. City's consent to any such Release Provisions may be withheld only if, in light of the proposed Transferee's reputation and financial resources, such Transferee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such Transferee. In no event will City's consent to any Release Provisions be unreasonably be withheld.

13.5. Non-Assuming Transferees. Except as otherwise required by Owner in Owner's sole discretion, the burdens, obligations and duties of Owner under this Agreement terminate with respect to, and neither a Transfer Agreement nor City's consent is required in connection with, (i) any individual single-family residence (and its associated lot) that has received a certificate of occupancy and been conveyed to a third party, (ii) any property that has been established as a separate legal parcel for other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") are deemed to have no obligations under this Agreement but continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section exempts any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.

ARTICLE 14
DISPOSAL OF LAND

14.1. Disposal of Land. Pursuant to City Council Resolution No. _____, attached hereto as Exhibit "X", the City determined that certain real property consisting of approximately 7,000 square feet of slope area, more particularly described in the attached Exhibit "X" ("Land"), falls within the definition of "surplus land" pursuant to Government Code section 54221 and is not necessary for the City's use. As such, the City is considering the disposal of the Land in accordance with the process and requirements set forth in the California Surplus Land Act, Government Code sections 54220 et seq. ("SLA"). The City intends to send a written notice of availability of the Land by electronic mail or by certified mail to the all of the entities identified in Government Code section 54222 within two (2) days of the Effective Date of this Agreement. At the conclusion of the process set forth in the SLA if no qualified entities/agencies desire to purchase or lease the Land, the City shall begin good faith negotiations with the Owner, to purchase the Land; provided however, nothing herein shall be construed to bind the Parties to either the purchase or sell of the Land. The total purchase price ("Purchase Price") for the Land shall be based on the fair market value of comparably designated land located in the City of Chula Vista as determined by an appraisal conducted by an appraiser contracted by the City and paid for by the Owner. The Owner may provide information to the appraiser to assist in obtaining an appraisal that reflects fair market value of the Land. If the Land is transferred to an entity other than the Owner, the City shall reimburse the Owner for the cost of the appraisal within ten (10) days of the execution of the sales agreement with the other entity. The appraisal process will allow the City to sell or lease the Land at fair market value and is not considered negotiations with respect to the sell or lease of the Land.

Should the Owner agree to the Purchase Price, the City shall convey to Owner a grant deed transferring fee simple title to the Land in recordable form, duly executed by the City, free and clear of all recorded liens, encumbrances, assessments, easements, leases and taxes; except those which are reasonably approved by the Owner. Should the Parties ultimately agree to a transfer of the Land, other terms to be negotiated shall include but not be limited to: (a) transfer of the Land in "as-is" condition; (b) the opportunity for Owner to conduct due diligence with respect to the legal and physical condition of the Land and to accept or reject the same; (c) the establishment of an escrow to coordinate the transfer; and (d) other standard and appropriate terms for transactions of this nature.

14.2. The City hereby grants Owner, and its employees, contractors, consultants and agents (each an "Owner Party"; collectively, the "Owner Parties"), at Owner's sole cost and risk,

permission to access to the Land prior to the conclusion of the SLA process for disposal of the Land, to perform clearing, grading, and geotechnical mitigation measures on the Land provided however no buttress construction work shall be allowed (collectively, the "Early Access Activities"). Notwithstanding the foregoing, the Owner agrees to make any changes as necessary, to the Entitlements for the City's approval or denial prior to the issuance of any building permit if construction of the slope buttress on the Land is necessary for conformance with the Entitlements and the purchase of the Land or the transfer of the Land to Owner does not occur or is rendered impossible for any reason. The Owner further agrees to be responsible for any and all costs associated with or related to early access to the Land, including but not limited to: (i) any and all Early Access Activities, (ii) implementing all further construction and work necessary to restore the Land to a condition that existed prior to Owner's access to the Land, if needed, (iii) implementing all necessary modifications to the Project Entitlements and other Project requirements, and (iv) compliance with the Subdivision Map Act and all other applicable laws and regulations. The permission hereby granted by the City will be considered as Permission to Access the Land for purposes of applying for a separate grading permit for the Project, including for the Land. Notwithstanding the foregoing, Owner understands that a grading permit is needed prior to performing any clearing, grading and geotechnical mitigation measures on the Land.

14.3 Owner agrees to defend, indemnify, and hold harmless City from and against any and all claims, actions, causes of action, loss, damage, injury, liability, cost or expense, including without limitation, attorneys' fees, arising from, connected with, or in any way related to: (i) City's grant of access to the Land; (ii) Owner's access to or possession of the Land; (iii) any Early Access Activities; (iv) the performance, condition, or existence of any work or improvements performed by the Owner on the Land; (v) the maintenance or lack of maintenance of the Land resulting for the Early Access Activities; or (vi) any Owner Parties' use of the Land, excepting, however, that City shall not be indemnified, saved, defended or kept free and harmless from any loss or liability resulting from City's own sole negligence or the sole negligence of the City's contractors, employees or agents.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1. Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is not of agency. This Agreement does not create any third-party beneficiary rights.

15.2. Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person, or mailed by first-class or certified mail, postage prepaid, addressed as follows:

If to City, to City

Attention: City Administrative Officer

If to Owner,

City or Owner may change its address by giving notice in writing to the other. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery, or, if mailed, two (2) business days following deposit in the United States mail.

15.3. Rules of Construction. In this Agreement, the use of the singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

15.4. Entire Agreement, Waivers, and Recorded Statement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Owner. Upon the completion of performance of this Agreement, or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the City Administrative Officer shall be recorded in the Official Records of the City. Unless otherwise specifically stated, nothing herein shall be construed to supersede, modify or amend other existing agreements between the Parties.

15.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to the original and all of which together shall constitute one and the same instrument.

15.6. Incorporation of Recitals. The recitals set forth in this Agreement are incorporated herein to this Agreement.

15.7. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

15.8. Consent. Where the consent or approval of City or Owner is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.

15.9. Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

15.10 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the City Recorder of the City, within ten (10) days following the Effective Date.

15.11 Delay, Extension of Time for Performance (Force Majeure). In addition to any specific provision of this Agreement, performance by either City or Owner of its obligations hereunder shall be excused during any period of delay caused at any time by reason of any event beyond the control of City or Owner which prevents or delays and impacts City's or Owner's ability to perform obligations under this Agreement, including, but not limited to the following: acts of God, enactment of new conflicting federal, state or local laws or regulations (such as: listing of a species as threatened or endangered), judicial actions (such as the issuance of

restraining orders and injunctions), or riots, strikes, pandemics, or damage to work in process by reason of fire, floods, earthquake, or other such casualties. In addition, any delay in Owner's performance herein may be excused if such delay is caused by City's failure to process any required plans, documents or approvals, provided, however, City's delay is not caused by Owner's failure to submit such plans or documents in a timely manner or is due to Owner's changes or amendments to said documents. If City or Owner seeks excuse from performance, it shall provide written notice of such delay to the other Party within thirty (30) days of the commencement of such delay. If the delay or default is beyond the control of City or Owner, and is excused, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

15.12. Covenant of Good Faith and Fair Dealings. No Party shall do anything which shall have the effect of harming or injuring the right of the other Parties to receive the benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and each Party shall do everything which this Agreement contemplates that such Party shall do in order to accomplish the objectives and purposes of this Agreement.

15.13 Time of Essence Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

15.14. Cancellation of Agreement. This Agreement may be canceled by the mutual consent of City and Owner only in the same manner as its adoption, by an ordinance as set forth in California Government Code section 65868 and shall be in a form suitable for recording in the Official Records of the City. The term "Agreement" shall include any such amendment properly approved and executed.

15.15. Estoppel Certificate. Within thirty (30) calendar days following a written request by any of the Parties, the other Parties to this Agreement shall execute and deliver to the requesting Party a statement certifying that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (ii) there are no known current uncured defaults under this Agreement, or specifying the dates and nature of any such default; and (iii) any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the Party which fails to deliver such statement that this Agreement is in full force and effect without modification, except as may be represented by the requesting Party, and that there are no uncured defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

15.16 Institution of Legal Proceeding. In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default as allowed by this Agreement or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California.

15.17. Attorneys' Fees and Costs. If any Party commences litigation or other proceedings (including, without limitation, arbitration) for the interpretation, reformation, enforcement, or rescission of this Agreement, the prevailing Party, as determined by the court, will be entitled to its reasonable attorneys' fees and costs.

15.18. Hold Harmless. In addition to any defense, indemnity, and hold harmless obligations of Owner, whether at contract or at law, Owner agrees to and shall hold City, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees or other persons acting on Owner's behalf, on the Project. Owner agrees to and shall defend City and its officers, agents, employees and representatives from actions for damage caused or alleged to have been caused by reason of Owner's activities on the Project. Owner agrees to indemnify, hold harmless, pay all costs and provide a defense for City in any legal action filed in a court of competent jurisdiction by a third Party challenging the validity of this Agreement. The provisions of this paragraph 15.18 shall not apply to the extent such damage, liability or claim is caused by the sole negligence or willful misconduct of City, its officers, agents, employees or representatives.

15.19. Non-binding Mediation. If this Agreement requires mediation in order to resolve a disagreement between the Parties, such mediation shall comply with the following provisions:

(a) Meet and Confer. The Parties shall meet and confer in good faith to attempt to resolve their disagreement. If the Parties are not able to resolve their disagreement within thirty (30) calendar days after their first meeting on the subject, the matter shall be submitted for non-binding mediation in accordance with the terms and conditions set forth below.

(b) Non-binding Mediation. In the event that the Parties are unable to resolve their disagreement by meeting and conferring among themselves as provided above, the Parties shall meet to select a mediator who will attempt to resolve the disagreement. Unless otherwise agreed by the Parties, the mediator shall have no affiliation with either of the Parties and preferably have experience in municipal or resource and habitat management. In the event that the Parties are unable to agree on a mediator within ten (10) calendar days after the expiration of the meet and confer period, the Parties shall petition the presiding Judge of the Superior Court of the City of Chula Vista to appoint a mediator who possesses the above-described qualifications.

(c) Mediation. The mediation shall occur at times and locations agreed upon by the Parties. The Parties shall submit to the mediator their respective relevant documents or evidence supporting their position that each may choose to provide. Neither Party, nor the mediator, shall have any discovery powers in the proceeding. The mediator shall meet with the Parties and attempt to resolve their disagreement by facilitating discussions between them. The mediator shall not take a position on the dispute unless requested to do so by both Parties. In the event that mediation process does not resolve the disagreement within twenty (20) days after first meeting with the mediator, unless extended by mutual agreement of the Parties, the mediation process shall terminate. All discussions at the mediation shall be kept confidential, as may be allowed by state and federal law, and shall not be discoverable in any subsequent proceedings. Each Party shall bear their own costs in the mediation and the Parties shall share equally in any and all costs charged

by the mediator. In the event that a resolution of the disagreement at issue is not reached, each Party reserves the right to pursue any and all remedies available at law or in equity with respect thereto.

Dated this _____ day of _____, 2021.

City of Chula Vista

_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Counsel

Sunbow ACI Company,

By: _____
_____