PROJECT DEVELOPMENT AGREEMENT

by and between

THE CITY OF CHULA VISTA,
a California charter city and municipal corporation,

and

LMC-Millenia Investment Company, L.P.
a California limited partnership

Dated as of December 6, 2022

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LIST OF EXHIBITS

PROJECT DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF CHULA VISTA AND LMC-MILLENIA INVESTMENT COMPANY, L.P.

This PROJECT DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of December 6, 2022 ("**the Effective Date**") by and between the City of Chula Vista, a chartered municipal corporation ("**City**") and LMC-Millenia Investment Company, L.P., a California limited partnership (the "**Developer**") (collectively, the "**Parties**" and, individually, a "**Party**"), with reference to the following Recitals:

RECITALS

A. Developer is the owner of the Land (defined below), which is presently undeveloped.

B. Developer has caused the preparation of certain Building Plans and Specifications (defined below) for the development of a multi-story Class A office building on the Land, and related improvements (the "Project"), and obtained building permits from the City for development thereof.

C. Concurrently herewith, City and Developer are entering into that certain Purchase and Sale Agreement for City's acquisition of the Land and the completed Project from Developer on the terms set forth therein.

D. Developer has experience developing multi-story Class A office projects like the Project and has identified four (4) experienced prime contractors that have expressed interest in building the Project.

E. On the terms set forth herein, City desires to engage Developer to develop the Project on the Land and possible additional related improvements (defined below, collectively, as the "Improvements"), with such development to occur in coordination with City's acquisition of the Land and the completed Improvements from Developer under the terms of the Purchase Agreement.

F. On the terms set forth herein, Developer (1) desires to cause the development and delivery of the Improvements to the City; and (2) acknowledges and agrees to comply with City's procurement and project implementation requirements applicable to "Developer Performed Public Works" as more particularly described in Chula Vista Municipal Code Section 2.56.160(H) and herein.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the covenants, terms, and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the City and the Developer agree as follows:

ARTICLE I
DEFINITIONS

The following terms shall have the following definitions in this Agreement:

1.1. Acceptance. Duly authorized written notice provided by City to Developer that City has accepted an Improvement or the Improvements after Developer has performed and completed an Improvement or the Improvements in strict accordance with this Agreement and applicable law.

1.2. Amenity Building. The single-story building having a total area of approximately **5,850 square feet** to be constructed on the Land, as more particularly described in the Buildings Plans and Specifications.

1.3. Architect. The entity of M. Arthur Gensler Jr.& & Associates, Inc., a California corporation dba Gensler ("**Gensler**"), as architect, that prepared the Buildings Plans and Specifications under separate contract with the Developer.

1.4. Architect's Certificate. A certification from Architect in the form of the Certificate of Architect attached as Exhibit 1 to the Payment Request.

1.5. Buildings. The Library Building and the Amenity Building. The Buildings shall be delivered in "warm shell" condition, as provided in the Buildings Plans and Specifications.

1.6. Building Costs. The City-approved costs incurred by Developer to construct the Buildings.

1.7. Buildings Plans and Specifications. The plans and specifications for construction of the Buildings prepared by Gensler pursuant to the Design Contract that have been submitted to and approved by the City of Chula Vista under permit application numbers B17-0654 (Library Building), B17-0656 (Amenity Building), and B17-0657 (Six Level Parking Structure), subject to any modifications as may be required by City, at City's cost, in connection with any agreement reached with San Diego State University for modifications to the Library Building. The Buildings Plans and Specifications (1) do not include the plans and specifications for the Tenant Improvements and (2) each includes a portion of the existing design for the Site Work, which design will be subject to revision, as provided in **Exhibit D**.

1.8. Business Day(s). Any day other than a Saturday, Sunday, or legal holiday recognized in California.

1.9. City Delay. Any actual delay in achieving Substantial Completion of the Improvements caused by (1) City's failure to act within the time periods required herein, excluding any delays caused by Developer's failure to act or comply with its obligations hereunder and any Force Majeure Delay; (2) gross negligence or intentional misconduct by City materially affecting the performance of the work required to construct the Improvements, (3) changes requested by City to the scope of work for the Improvements after the commencement of construction thereof, other than change orders agreed upon by the Parties, or (4) City's failure to timely pay when due all undisputed amounts owed by City to Developer.

1.10. City Parties. The City of Chula Vista and its elected and appointed officers, elected and appointed officers, agents, employees, and representatives.

1.11. Closing. As defined in the Purchase and Sale Agreement.

1.12. Construction Supervision Fee. An amount equal to **3.5 percent** of Hard Construction Costs payable by City to Developer under the terms hereof.

1.13. Commencement Date. The date, which shall be no later than November 1, 2023, in which Developer commences construction activities for the Project.

1.14. Complete and Completion. With respect to the Buildings, means that the Developer has obtained and delivered to City a certificate of occupancy or other evidence of issuance of final inspection approval for the Buildings from the City. With respect to the Site Work, means that the Developer has obtained and delivered to City evidence of issuance of final inspection approval for the Site Work from the City. With respect to the Tenant Improvements, that the Developer has obtained and delivered to City a certificate of occupancy or other evidence of issuance of final inspection approval for the Tenant Improvements. With respect to the Parking Structure, means that the Developer has obtained and delivered to City evidence of issuance of final inspection approval for the Parking Structure from the City.

1.15. Completion Date. The date, which shall be no later than July 1, 2025 in which Developer is required to complete the Project, which date shall be subject to adjustment for City Delay, Force Majeure Delay, and/or agreement of the Parties.

1.16. Cost Increase Event. An event, to the extent that such event is not caused by the active or passive negligence or willful misconduct of Developer or a Developer Party, and to the extent such event actually increases the budgeted costs for the development, design, construction, maintenance, or permitting of the Improvements, or a portion thereof, including the following:

i. changes to the Project required by City or other governmental entity that are not the results of actions or omission of Developer or a Developer Party;

ii. unforeseen Project site conditions; and

iii. changes requested by City.

1.17. Defective Work. Any work, material, or equipment that does not conform to the Improvement Plans and Specifications or applicable Laws.

1.18. Design Contract. The contact dated December 13, 2016, between Developer, as owner, and M. Arthur Gensler Jr.&. & Associates, Inc., a California corporation dba Gensler ("**Gensler**"), as architect, pertaining to the preparation of the Building Plans and Specifications for the construction of the Buildings and all amendments to such contract.

1.19. Design and Construction Standards. The edition of the Design and Construction Standards adopted by the City for public works projects that is in effect when the Improvement Plans and Specifications are approved by the City.

1.20. Developer Fee. An amount equal to **four percent** of the Reimbursable Project Costs excluding Property Costs payable by City to Developer under the terms hereof.

1.21. Developer Parties. Developer, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, affiliates and successors and assigns of Developer.

1.22. Early Work. The wet and/or dry utility work to be constructed on the Land as part of the Improvements, the scope of work for which is described in **Exhibit D**.

1.23. Escrow. First American Title Insurance Company.

1.24. Green Book. The publication entitled "Standard Specifications for Public Works Construction", 2021 edition, written and promulgated by Public Works Standards, Inc.

1.25. Guaranteed Maximum Price. The sum of the Library Building GMP, Amenity Building GMP, Tenant Improvement GMP, Parking Structure GMP, and Site Work GMP.

1.26. Hard Construction Costs. The City-approved Reimbursable Project Costs actually incurred by Developer for construction of the Improvements pursuant to the Prime Contract.

1.27. Hazardous Material. Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any federal, state, or local environmental laws.

1.28. Improvement. Individually the Library Building, the Amenity Building, the Tenant Improvements, the Parking Structure, and the Site Work.

1.29. Improvement Plans and Specifications. Collectively the Buildings Plans and Specifications, the Tenant Improvements Plans and Specifications, Parking Structure Plans and Specifications, and the Site Work Plans and Specifications.

1.30. Land. That certain fee simple parcel of land located in Chula Vista, California, more particularly described in **Exhibit A** and depicted in **Exhibit B** attached hereto.

1.31. Laws. All Federal, State, and local laws and regulations applicable to the Improvements, the Project, or the Land.

1.32. Library Building. The multi-story, multi-use office building having a total area of approximately **169,000 square feet** to be constructed on the Land, as more particularly described in the Buildings Plans and Specifications.

1.33. Parking Structure. The parking structure, if any, to be constructed on the Land as part of the Improvements, which the design of which parking structure is described in **Exhibit D**.

1.34. Parking Structure Costs. The City-approved costs incurred by Developer to (1) modify the Six Level Structure Plans and (2) construct the Parking Structure.

1.35. Parking Structure Plans and Specifications. Either the Six Level Structure Plans (as defined in **Exhibit D** or the Revised Parking Plans approved by City, as applicable.

1.36. Payment Request. A request from Developer to City requesting payment for Reimbursable Project Costs, in the form of the Payment attached as **Exhibit H**.

1.37. Prime Contract. The contract between Developer and Prime Contractor approved by City pertaining to construction of the Improvements other than the Tenant Improvements.

1.38. Prime Contractor. A party under contract with the Developer approved by City to perform the construction of the Project.

1.39. Project. Collectively the development, design, construction, maintenance, and permitting of the Improvements.

1.40. Purchase and Sale Agreement. That certain Purchase and Sale Agreement, dated December 6, 2022, between Developer, as Seller, and City, as Buyer, and by which Developer agrees to sell to City and City agrees to buy the Land and Improvements.

1.41. Reimbursable Project Costs. The City-approved direct Hard Construction Costs (excluding overhead costs) and Soft Costs (excluding overhead costs) incurred with respect to the development, design, construction, maintenance, and permitting of the Improvements that are reimbursable pursuant to the terms of this Agreement. Reimbursable Project Costs shall not include any overhead costs, the Construction Supervision Fee, Developer Fee, or any costs incurred prior to January 1, 2023. Reimbursable Project Costs shall include (1) reasonable fees charged by Architect in connection with certifying Payment Requests and (2) costs for required insurance and bonds.

1.42. Site Work. The improvements to be constructed on the Land outside of the Buildings and the Parking Structure, including driveways, sidewalks, and landscaping.

1.43. Site Work Costs. The City-approved costs incurred by Developer to (1) modify the existing plans pertaining to the Site Work and (2) construct the Site Work.

1.44. Site Work Plans and Specifications. The plans and specifications for the Site Work described in the Buildings Plans and Specifications and Six Level Structure Plans to be further developed pursuant to **Exhibit D**.

1.45. Soft Costs. Costs for the development of the Improvements that do not constitute Hard Construction Costs including engineering services (i.e., civil, dry utilities, Geotech/soils, staking/survey, structural, traffic, wet utilities), architectural design services (i.e., building(s), land planning/design, landscape architecture, payment request certificate) and entitlement and permitting fees (i.e, utility deposits and reimbursables.)

1.46. Substantial Completion. The phase of construction of the Improvements at which the Improvements have been completed in accordance with the Improvements Plans and Specifications, subject only to punch list items that do not materially impair City's further improvement work or intended use of the Improvements.

1.47. Subcontractors. A party or parties under any subcontract with the Prime Contractor to perform work or provide supplies for the Improvements.

1.48. Tenant Improvements. The improvements to the interior of the Buildings in excess of the "warm shell" specifications for the Buildings described in the Buildings Plans and Specifications.

1.49. Tenant Improvements Costs. The City-approved costs incurred by Developer to design and construct the Tenant Improvements.

1.50. Tenant Improvements Plans and Specifications. The plans and specifications for the Tenant Improvements to be developed pursuant to **Exhibit D**.

ARTICLE II
TERM

2.1. Term of Agreement. This Agreement shall become effective on the Effective Date, and the term of this Agreement (the "**Term**") shall extend until Acceptance of the Project by City. The preceding sentence is not intended to and should not be interpreted to extinguish any of Developer's obligations under this Agreement that expressly survive the expiration or termination of this Agreement.

ARTICLE III
PROJECT

3.1. Scope of Project. Developer shall furnish, or cause to be furnished, all services, equipment, tools, apparatus, facilities, incidentals, materials, labor, and skill necessary to develop, design, construct, maintain, and permit the Improvements in strict accordance with the Improvement Plans and Specifications, this Agreement, and applicable law.

3.2. Establishment of Guaranteed Maximum Prices (GMPs) for Project Improvements.

3.2.1. Preliminary Cost Estimate. Attached hereto as **Exhibit C** is a preliminary estimate of the Reimbursable Project Costs. Such preliminary estimate (1) is intended only to provide the Parties with a rough estimate of the Reimbursable Project Costs, (2) is not binding on either Party, and (3) has no effect on the determination of the Guaranteed Maximum Price. The actual Guaranteed Maximum Price for the Reimbursable Project Costs shall be established as provided herein.

3.2.2. Early Work. Promptly following the Effective Date, Developer shall solicit informal bids from Subcontractors to perform and Complete the Early Work. Upon City's approval of bids and contract documents for the selected Subcontractor for construction of the Early Work, Developer shall execute a contract with the selected Subcontractor and cause the Early Work to be performed and Completed. The Early Work shall not be subject to the procurement requirements in Article V of this Agreement. Developer shall be compensated for performance of the Early Work in the same manner as provided in Article VII of this Agreement.

3.2.3. Library and Amenity Buildings. Promptly following selection of the Prime Contractor, Developer shall cause Prime Contractor to solicit bids from Subcontractors to perform the work described in the Buildings Plans and Specifications. Upon City's approval of the Subcontractors' bids for construction of the Buildings, Developer and Prime Contractor shall establish a guaranteed maximum price for the Buildings Cost (which for the Library Building is herein referred to as "**the Library Building GMP**" and for the Amenity Building "**the Amenity Building GMP**"), which

guaranteed maximum price shall be subject to reasonable allowances for matters included in the scope of the work that cannot be established with certainty at that time.

3.2.4. Parking Structure. Promptly following City's approval of the Parking Structure Plans and Specifications, Developer shall cause Prime Contractor to solicit bids from Subcontractors to perform the work described in the Parking Structure Plans and Specifications. Upon City's approval of the Subcontractors' bids for construction of the Parking Structure, Developer and Prime Contractor shall establish a guaranteed maximum price for the Parking Structure Cost, which guaranteed maximum price shall be subject to reasonable allowances for matters included in the scope of the work that cannot be established with certainty at that time.

3.2.5. Tenant Improvements. Promptly following execution of the TI Improvement Contract (as defined in **Exhibit D**), Developer shall cause Prime Contractor to solicit bids from Subcontractors to perform the work described in the Tenant Improvement Plans and Specifications. Upon City's approval of the Subcontractors' bids for construction of the Tenant Improvements, Developer and Prime Contractor shall establish a guaranteed maximum price for the Tenant Improvements Cost ("**the Tenant Improvements GMP**") , which guaranteed maximum price shall be subject to reasonable allowances for matters included in the scope of the work that cannot be established with certainty at that time.

3.2.6. Site Work Cost. Promptly following City's approval of the Site Work Plans and Specifications, Developer shall cause Prime Contractor to solicit bids from Subcontractors to perform the work described in the Site Work Plans and Specifications. Upon City's approval of the Subcontractors' bids for construction of the Site Work, Developer and Prime Contractor shall establish a guaranteed maximum price for the Site Work Cost ("**the Site Work GMP**"), which guaranteed maximum price shall be subject to reasonable allowances for matters included in the scope of the work that cannot be established with certainty at that time.

3.2.7. GMP. As used herein, "**GMP**" shall mean the portion of the Guaranteed Maximum Price established for a portion of the Improvements, as such portion of the Guaranteed Maximum Price may be adjusted under the terms of this Agreement during the course of the Project.

3.3. Provision for GMP Increases. After the GMP has been established for a portion of the Improvements, the Reimbursable Project Costs for such Improvements shall not exceed such GMP unless such GMP has been increased, as provided herein. If Developer determines that the amount to be incurred or expended for the development, design, construction, maintenance, or permitting of an Improvement will exceed any respective GMP amount, Developer shall promptly notify the City in writing of the nature and amount of such increase ("**Cost Increase Notice**"). The Cost Increase Notice shall include: (a) the facts and circumstances related to the cost increase; (b) an itemized estimate of the cost increase; (c) a list of recommended changes to the Improvement or Project (e.g., deductive changes) which Developer believes could cause the cost to be at or below the current GMP, if any; (d) whether such increase constitutes a Cost Increase Event; and (e) a request that such additional costs be added to the applicable GMP. Developer shall not request and shall not be entitled to costs increases that result from Developer's or Developer Parties' negligence or willful misconduct. In response to a Cost Increase Notice the City, in its reasonable discretion, with written notice to Developer may either: (i) approve a cost increase in the applicable GMP, or (ii) direct that, if reasonable, Developer further value engineer, delete, or replace a component or subcomponents of an Improvement so that said Improvement can be constructed for the then current GMP amount. If there is a Cost Increase Event and City approves the cost increase as provided in this Section 3.3, the applicable GMP amount(s) shall

be increased accordingly. Any cost increase approved in accordance with this Section 3.3 shall include a proportional increase in the penal sums of the payment bond for the Project. Developer shall be solely responsible for all losses, costs, and liabilities of any kind incurred by Developer, the Prime Contractor, and any Subcontractor engaged in the performance of the Project, and any party supplying material or equipment for the Project, that result in the Project costs in excess of the applicable GMP that are incurred without the prior written approval of the City as provided in this Section 3.3. City shall bear the risk of increases to the Guaranteed Maximum Price to the extent caused solely by City Delay, City Event of Default, or Force Majeure Events. Any approved Cost Increase Event for City Delay shall not include any additional overhead costs.

3.4. Cost Reporting. Developer shall, during the Term and, with respect to each record, for a period of three (3) years after the date such record is created, maintain customary records of Reimbursable Project Costs that are incurred by Developer in connection with the Project. Such records shall include, but are not limited to, a general ledger, vendor invoices, cancelled checks, agreements with third-party contractors, and contractor progress payment billings. Developer shall furnish to City an itemized statement of the Reimbursable Project Costs incurred and paid by Developer in connection with the Project, as applicable, within thirty (30) days after Developer receives City's request therefor. The statement shall be sworn to and signed by Developer as fairly representing the Reimbursable Project Costs incurred and paid by Developer. Should Developer perform any construction with its own personnel, Developer shall maintain the following records with respect to the actual work performed by its own personnel: a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. Books and records herein required shall be maintained and made available either at the Project site or at such other location in San Diego County, California as is reasonably acceptable to City. City shall have the right with 48 hours' advanced notice and at reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof.

ARTICLE IV
PROJECT TIMELINES

4.1. Commencement and Completion of the Project.

4.1.1.1. Developer shall commence construction of the Project by no later than the Commencement Date and diligently prosecute the construction of the Project to Completion by the **Completion Date**. Developer acknowledges and agrees that, with the possible exception of anticipated cessation after the first inspection of Early Work, the cessation of construction of the Project for more than thirty (30) consecutive days, unless caused by a properly noticed and outstanding City Delay, a City Event of Default, or a Force Majeure Event (defined below), shall be deemed a failure by Developer to diligently prosecute the construction of the Project to Completion and shall constitute an Event of Default under this Agreement without further notice or cure right by Developer.

4.1.1.2. After the initial approval by the City, any changes to any of the Improvement Plans and Specifications must be approved by the City, in writing, in City's sole and absolute discretion, and, once approved, shall be considered a part of the "Buildings Plans and Specifications", "Parking Structure Plans and Specifications", "Tenant Improvement Plans and Specifications", and "Site Work Plans and Specifications", respectively, for purposes of this Agreement.

4.1.1.3. In constructing the Project, Developer shall comply with all construction requirements set forth in **Exhibit E** attached hereto and all Laws.

4.2. Project Schedule and Schedule Updates.

4.2.1. Planned Completion Date. The Project schedule shall indicate an anticipated completion date following the Commencement Date that is not later than the Completion Date (the "**Planned Completion Date**"). The Planned Completion Date may be extended in the event of a City Delay, a City Event of Default causing a delay, or a Force Majeure Delay, or other excusable delay expressly provided hereunder, provided that Developer duly requests a time extension for its performance as result of such delay in accordance with this Agreement.

4.2.2. Critical Path Method Schedules. Developer shall require that its Prime Contractor maintain a detailed, computer-generated, logic-driven, precedence style critical path method ("**CPM**") schedule that is prepared with Primavera or other software and that includes all work related to the Project. Developer shall submit to City all schedules that Developer receives from its Prime Contractor in a format acceptable to the City.

4.2.3. Schedule Updates. Developer shall provide City with regular schedule updates, not less than monthly, which shall include: actual start dates; planned completion dates; and remaining duration of activities in progress. Developer shall promptly notify the City of any changes to the schedule.

4.3. Unavoidable Delay. Each of the Developer and City shall be entitled to an extension of the date of the performance of any obligation required of such Party under this Agreement upon the occurrence of a Force Majeure Event as and to the extent set forth in this section.

(a) Definitions. The term "**Force Majeure Event**" means the occurrence of any of the following events, individually or in any combination, to the extent that (x) such event is beyond the reasonable control of the Developer or City, as applicable, that is asserting that a Force Majeure Event has occurred (the "**Force Majeure Party**") and (y) such event prevents or impairs such Force Majeure Party from the timely performance of its obligations under this Agreement including acts of terrorists, war (whether declared or not) or national conflicts; strikes, lockouts, labor disputes, boycotts or work stoppages not caused by, or limited to work performed for, Developer; unusual and adverse extreme weather conditions; governmental restrictions, regulations, or controls adopted after the date of this Agreement that are applicable area-wide, not Project-specific (e.g. restrictions on construction hours); delays by utility companies in bringing utility service to the Project due to no fault of Developer or Prime Contractor; delays in obtaining or inability to obtain labor, materials or reasonable substitutes, beyond time periods typical for the area (despite exercising commercially reasonable efforts to obtain); damage to the Building caused by fire or other casualty such as earthquakes. The term "**Force Majeure Delay**" means delay in completion of the Improvements caused by a Force Majeure Event.

(b) Calculation of Delay. Actual delays resulting from the occurrence of one or more Force Majeure Events occurring concurrently shall be calculated concurrently and not consecutively.

(c) Exclusions. For purposes of this section, a Force Majeure Event shall not include adverse general economic or market conditions not caused by any of the events described in Section 4.3(a) above.

(d) Notice and Acceptance Requirement. After the Force Majeure Party learns of any Force Majeure Event, the Force Majeure Party shall notify the other party in writing within ten (10) calendar days after the Force Majeure Party learns of, and in no event later than thirty (30) days after commencement of, a Force Majeure Event; however, a Force Majeure Party's failure timely to provide such notice shall reduce the period of Force Majeure Delay and shall not preclude the Force Majeure Party from asserting whatever remedies may arise from the Force Majeure Event (e.g., if the Force Majeure Party delivered such notice 15 days after the Force Majeure Party learned of the Force Majeure Event, then the period of allowed delay attributable to the Force Majeure Event would be reduced by five days). Such notice (the "**Initial Force Majeure Notice**") must be made in good faith and describe the Force Majeure Event creating delay, why such delay is occurring, the estimated expected duration of such delay, and the commercially reasonable efforts that the Force Majeure Party is taking to minimize the period of delay. Commencing on the date that is thirty (30) days after the date of the Initial Force Majeure Notice and for so long as the Force Majeure Event continues, the Force Majeure Party shall provide the other party with weekly written updates on the estimated expected duration of such delay and the efforts that the Force Majeure Party is taking to minimize the period of delay. Within thirty (30) days after the Force Majeure Event, the Force Majeure Party shall notify the other party in writing that the Force Majeure Event has ceased to exist and of the number of days by which Force Majeure Event has delayed the Project (the "**Force Majeure Notice**"). Within thirty (30) days after receipt of a Force Majeure Notice, the other party shall provide notice to the Force Majeure Party (the "**Force Majeure Response**") that either (a) requires additional information to make a determination regarding the Force Majeure Party's assertion of the existence of a Force Majeure Event or the duration of the delay caused by the Force Majeure Event, (b) approves the Force Majeure Notice, or (c) denies some or all of the Force Majeure Notice. If the responding party denies some or all of the Force Majeure Notice, the parties will meet and confer in good faith within ten (10) days after the delivery of the Force Majeure Response to attempt to reach a mutually acceptable modification to the Force Majeure Notice that will result in approval of the Force Majeure Notice ("**Meet & Confer Period**"). If the Parties do not agree on a modification to the Force Majeure Notice during the Meet & Confer Period, the Force Majeure Party may elect to withdraw the Force Majeure Notice and if the Force Majeure Party does not withdraw the Force Majeure Notice, then the dispute shall be resolved by a court of competent jurisdiction.

4.4. Liquidated Damages. Developer's failure to complete the Project by the Completion Date will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive calendar day in excess of the time specified for completion of the Project plus additional days duly authorized and approved in writing by the City, Developer shall pay City, or have withheld monies due it, an amount of $5,000 per day. Execution of this Agreement shall constitute agreement by City and Developer that the liquidated damage amount specified in the table above is the minimum value of the costs and actual damage caused by the failure of Developer to complete the Project within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Developer if such delay occurs.

ARTICLE V
PROCUREMENT REQUIREMENTS

5.1. Award of Sole-Sole Source Prime Contract. Pursuant to the findings of the Chula Vista City Council found in City Council Resolution _____, the Developer may award the prime contract to Prime Contractor for the construction of the Project subject to the terms and conditions of City Council Resolution _____, this Agreement, and applicable Laws.

5.2. Subcontractor Bid and Award Process for the Project. Developer shall award subcontracts in strict compliance with the Chula Vista Municipal Code (CVMC) section 2.56.160(H),City Council Resolution No. _____, as further delineated in the bid and award process that is attached as **Exhibit G**, and in accordance with the terms of this Article V.

5.2.1. Best Qualified Contractor Subcontract Award. If applicable, Developer shall provide notice of its intention to award a subcontract to a "best qualified contractor" to City for City's consideration. If approved by City, in City's sole discretion, City shall evidence its approval of the Developer's proposed best qualified subcontract award by delivering a signed Best Qualified Contractor Subcontract Award Approval in the form set forth in **Exhibit I**.

5.3. Bid Opening and Award. Developer shall provide the City with a copy of the tabulation of competitive bid results with respect to each contract and subcontract it intends to award for the Project. Developer shall provide the City with copies of all executed contracts awarded for the Project and Developer shall certify in writing to the City that such contracts were awarded in accordance with the process described in CVMC 2.56.160(H) and this Agreement.

ARTICLE VI
DESIGN AND CONSTRUCTION STANDARDS

6.1. Standard of Care. Developer will furnish efficient business administration and supervision and manage the implementation of the Project in an expeditious and economical manner consistent with City's interests. Developer shall cause the Prime Contractor and all Subcontractors to construct the Improvements in a skillful and workmanlike manner and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer shall cause all professional consultants to perform their services in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the services in the same discipline in the State of California.

6.2. Compliance with Laws.

6.2.1. Developer's Compliance with Laws. Developer and Developer Parties shall, in all activities on or in connection with the Land, the Project, or the Improvements, and in all uses thereof, including without limitation access to or presence on the Land, and construction of the Improvements, abide by and comply with, and cause all Developer Parties to abide by and comply with, all Laws. City shall not have any obligation or responsibility to cause Developer or Developer Parties to comply with Laws applicable to the Land, the Project, or the Improvements, or any use thereby by Developer or the Developer Parties.

6.2.2. Prevailing Wage. Developer acknowledges and agrees that:

6.2.2.1. Any construction, alteration, demolition, installation, or repair work, in each case for the Project, required or performed under this Agreement constitutes "public work" under California Prevailing Wage Law, including Labor Code §§ 1720 through 1861, et seq. ("**PWL**"), and obligates Developer to cause such work to be performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all persons subject to the PWL.

6.2.2.2. Developer shall cause all persons performing "public work" for the Project under this Agreement to comply with all applicable provisions of the PWL and other applicable wage Laws.

6.2.2.3. Developer's violations of the PWL shall constitute a breach under this Agreement.

6.2.2.4. City hereby notifies Developer, and Developer hereby acknowledges, that the PWL includes, without limitation, Labor Code § 1771.1(b) that provides that the following requirements described in Labor Code § 1771.1(a) shall be included in all bid invitations and "public work" contracts: "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of § 4104 of the Public Contract Code, or engage in the performance of any contract for "public work," as defined in this chapter, unless it is currently registered and qualified to perform "public work" pursuant to Section 1725.5. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Sections 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform "public work" pursuant to Section 1725.5 at the time the contract is awarded."

6.2.2.5. Developer acknowledges that its obligations under the PWL with respect to the Project include, without limitation, ensuring that:

a. pursuant to Labor Code § 1771.1(b), a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform "public work" pursuant to § 1725.5;

b. pursuant to Labor Code § 1771.4(a)(1), the call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("**DIR**");

c. pursuant to Labor Code § 1771.4(a)(2), it posts or requires the Prime Contractor to post job site notices, as prescribed by regulation; and

d. pursuant to Labor Code § 1773.3(a)(1), it provides notice to the DIR of any "public works" contract subject to the requirements of the PWL, within thirty (30) days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work. Pursuant to Labor Code § 1773.3(a)(2), the notice shall be transmitted electronically in a format specified by the DIR and shall include the name and registration number issued by the DIR pursuant to §1725.5 of the contractor, the name and registration number issued by the DIR pursuant to §1725.5 of any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information that the DIR specifies that aids in the administration and enforcement of the PWL. PWC-100 is the name of the form currently used by the DIR for providing the notice, but Developer shall determine and use whatever form the DIR requires.

6.2.2.6. The City shall not be responsible for Developer's failure to comply with any applicable provisions of the PWL.

6.3. Compliance with Design and Construction Standards; Chula Vista Building Code.

6.3.1. Developer shall comply, and require compliance by the Prime Contractor, Subcontractors, employees, and agents, or other Developer Parties, with the applicable Design and Construction Standards, in connection with the Project.

6.3.2. Developer shall comply, and require compliance by any of its Prime Contractor, Subcontractors, employees, and agents, or other Developer Parties, with the applicable provisions of the Chula Vista Building Code in connection with the Project.

6.4. City Approval Not a Waiver of Obligations. Where approval by the City is required under this Agreement, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable Laws or other requirements of this Agreement.

6.5. Site Safety, Security. Developer shall be responsible for safety and security of all persons, materials, equipment, and property on, under and about the Land and any Improvements from the Effective Date until Closing by the City.

6.5.1. Environment. In the construction and development of the Improvements, Developer shall comply with all environmental laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice ("**BMP**") guidelines and pollution elimination requirements as may be established by an enforcement official. Developer shall prepare and incorporate into the drawings and specifications a Stormwater Pollution Prevention Plan ("**SWPPP**") to be implemented by Developer during Project construction and, until Acceptance. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and shall be in conformance with the City of Chula Vista BMP Design Manual and CVMC Chapter 14.20 (Storm Water Management and Discharge Control).

6.5.2. Access to Project Site. During construction, the City shall have the right, but not the obligation, to enter upon and inspect the portions of the Land where the construction of the Improvements is ongoing, during normal business hours and upon a two (2) Business Days' prior notice to Developer (except for or in connection with inspections undertaken by City in its regulatory capacity and except in the case of an emergency in which case no prior notice shall be required). Nothing herein shall limit the City's right to enter the Land at any time to exercise its police powers.

6.6. Public Right-of-Way. All work, including materials testing, special testing, and surveying to be conducted in the public right-of-way shall be coordinated with the City. Developer agrees to follow all Laws and regulations, and all written and publicly available standards and regulations of the City, as applicable, while working in the public right-of-way, including, but not limited to, utilizing proper traffic control and obtaining necessary permits.

6.7. Traffic Control. In connection with the Project, Developer shall be responsible for traffic management, including traffic control implementation, maintenance, and preparing detailed traffic control plans to be submitted to the City for approval.

6.8. Maintenance. Developer shall maintain and be responsible for each portion of the Land and the Improvements from the Effective Date until Closing, including ongoing erosion prevention measures. All costs incurred by Developer in maintaining the Land and Improvements are included in

allowed Reimbursable Project Costs and, if a GMP has been established for such costs, subject to such GMP.

6.9. Construction Cooperation.

6.9.1. Within thirty (30) days after the Effective Date, the Parties shall schedule a meeting at the site regarding the construction and development of the Improvements. Developer and City shall cause executive and project level personnel of Developer and City to attend such meeting.

6.9.2. At 8:00 AM on the fifth (5^{th}) Business Day of each month at the site, (or such other time and place as the Parties may reasonably agree), Developer and City shall cause appropriate representatives of Developer and City to attend a meeting regarding the construction and development of the Improvements and other matters related thereto. Other meetings relating to the Project shall be held at times and at such frequency as reasonably requested by the Developer or City.

ARTICLE VII
PAYMENT OF PROJECT COSTS

7.1. Progress Payments. In consideration for Developer's satisfactory performance under this Agreement, and conditioned upon timely and properly submitted Payment Requests to City, the City agrees to make progress payments to the Developer in accordance with the provisions of this Section 7.1. The amount of each progress payment shall be computed as follows:

7.1.1. The amount of each progress payment shall include:

7.1.1.1. The Reimbursable Project Costs actually incurred by Developer and for which Developer has made payment since the prior Payment Request;

7.1.1.2. the Developer's Fee calculated based upon the Reimbursable Project Costs then owed;

7.1.1.3. Developer's Construction Management Fees calculated based upon the Hard Construction Costs

7.1.2. The amount of each progress payment shall then be reduced by, without duplication:

a. Ten percent (10%) retention of the amount of Reimbursable Project Costs submitted by Developer for reimbursement;

b. The amount by which the Architect, pursuant to the Architect's Certificate that is attached to such Payment Request, reduces the amount to be paid with respect to such Payment Request. The Architect may reduce such amount to the extent the work performed by Developer for which payment is requested has not been substantially performed in accordance with Buildings Plans and Specifications, Tenant Improvement Plans and Specifications, Parking Structure Plans and Specifications, and Site Work Plans and Specifications.

Prerequisites to Progress Payment.

7.1.2.2. Payment Request. Prior to City's making any payments to Developer, Developer shall provide the City with a Payment Request. Each Payment Request shall be on the form attached hereto as **Exhibit H**, or other form as agreed to by the Parties. The City shall not have an obligation to make payment to Developer unless and until Developer provides a completed Payment Request, together with all of the items described therein (including the Architect's Certificate), and such Payment Request is approved by the City as provided in Section 7.1.3below.

7.1.2.3. Inspection. In connection with any City review of a Payment Request, or otherwise, City shall have the right to inspect the Improvements as provided in section 2-11 of the Greenbook. Developer shall ensure that all persons and entities providing work or services for the Project cooperate with City and comply with City's inspection rights under this Section.

7.1.2.4. City Approval. The City will review each Payment Request and the supporting documentation. If the City Manager or designee finds in his/her reasonable discretion that any Payment Request is incomplete or contains material errors or misstatements, then the City shall inform Developer in writing within fifteen (15) Business Days after Developer provides the Payment Request to City of the reasons for City's finding(s). Developer shall have the right to respond to the finding(s) by submitting further documentation or information after receipt of the City's finding(s). The City shall review any further documentation received from Developer in support of the Payment Request and inform Developer of City's approval or denial of Payment Request, or portions thereof, within ten (10) Business Days after Developer provides such further documentation to City. If the City determines that the Payment Request is still incomplete or contains material errors or misstatements, but that sufficient and complete information exists with respect to a portion of the Payment Request, then the City shall approve Payment Request with respect to such portion of the Payment Request.

7.1.3. Time of Payment. If the City approves all or a portion of a Payment Request, then the City shall cause payment to be made to Developer within thirty (30) days after such approval.

7.1.4. Additional Costs. Provided that City has timely and fully paid all uncontested amounts owed under this Agreement, any costs that may accrue, such as interest on late payments to the Prime Contractor, Subcontractors, suppliers, or consultants as a result of the Developer's failure to make a payment to such parties shall not be the obligation of the City and such additional costs shall be the obligation of the Developer and not eligible for reimbursement.

7.2. Final Payment. In consideration for Developer's Completion of the Project, and subject to City's Acceptance of the Project in accordance with Article VIII, City agrees to make a final payment to Escrow which shall include all withheld retention amounts and any other balances due by no later than thirty-five (35) days after Acceptance; however, if City elects to exercise City's option under the Purchase and Sale Agreement to complete the Closing prior to the Target Closing Date (as such terms are defined in the Purchase and Sale Agreement), such final payment shall be delivered through Escrow on the date specified by City in the Early Closing Notice (as such term is defined in the Purchase and Sale Agreement).

ARTICLE VIII
ACCEPTANCE OF IMPROVEMENTS

8.1. Acceptance of Project Improvements. Subject to Developer's Completion of the Improvements in strict accordance with the Improvement Plans and Specifications, in compliance with this Agreement and all Laws, and Developer's satisfaction of all Conditions of Acceptance set forth in Section 8.1.1, the City will agree to Accept the Improvements. Provided that City's Acceptance of a portion of the Improvements does not interfere with construction of the remainder of the Improvements, then City may, in City's sole discretion, Accept one or more portions of the Improvements prior to Completion.

8.1.1. Conditions of Acceptance. Prior to Acceptance of the Improvements, or any portion thereof, Developer shall:

8.1.1.1. Complete all punch-list items from the City's inspection of the Improvements.

8.1.1.2. Record a Notice of Completion (NOC) that is approved by the City with the County Recorder of San Diego County at least thirty-five (35) days prior to Acceptance of such portion of the Improvements.

8.1.1.3. Submit to the City the following with respect to such portion of Improvements:

a. Record drawings or "as-builts" in the form of final as-built CAD files; and

b. As-built drawings that show all differences between the Improvement Plans and Specifications as drawn and the work as actually installed. The as-built drawings will also show any work added to the Improvements that was not shown on the Improvement Plans and Specifications. Mechanical and electrical as-built drawings shall indicate the routing of all piping, duct work, and power and control wiring.

c. One set of final as-graded soils reports;

d. Completed City Form 5519 Certification;

e. Completed City Form 5522 Statement of Substantial Conformance;

f. Operations and maintenance manuals; and

g. All written guaranties and warranties furnished or required to be furnished by Prime Contractor, Subcontractors, or materials suppliers related to the Improvements.

8.1.1.4. Submit to City documentation and information reasonably necessary for City to provide the following items to Developer with respect to the Improvements or a portion thereof:

a. Approval from City's Land Surveyor, as applicable, confirming survey monuments are set and verified (as applicable); and

b. Written approval from City's NPDES section, as applicable, confirming stormwater requirements have been satisfied.

8.1.2. Acceptance Notice and Confirmation of Acceptance. When Developer reasonably determines that the conditions for Acceptance of any component of the Improvements have been satisfied, Developer will provide written notice thereof to City (an "**Acceptance Notice**"). The City shall either confirm its Acceptance of such component of the Improvements or set forth the reasons for denying its Acceptance within ten (10) Business Days after City's receipt of such Acceptance Notice. If the City denies Acceptance, then Developer shall take such steps as may be reasonably necessary to address the City's reasons for denying its Acceptance and submit a new Acceptance Notice to City and the foregoing process shall continue on an iterative basis (and City shall have ten (10) Business Days to respond to each Acceptance Notice) until the City has confirmed that Acceptance of such component has occurred. Acceptance of any Improvement or the Improvements shall not limit any of Developer's obligations under this Agreement, including those in Article XI (Defective Work), and Acceptance does create any obligation upon any City to repair or correct any defects in any Improvement or the Improvements. For the avoidance of doubt, notwithstanding an Acceptance of any Improvement by the City, Developer acknowledges and agrees that Developer is responsible for the maintenance of all Improvements until Closing.

8.1.3. Effect of City's Early Closing Option. If City delivers to Developer an Early Closing Notice (as defined in the Purchase and Sale Agreement), the conditions of Acceptance described above shall be modified to include only those conditions that can reasonably be satisfied as the revised Closing Date specified by City in the Early Closing Notice.

ARTICLE IX
WARRANTIES

9.1. Enforcement of Warranties. Upon Acceptance of each applicable component of the Improvements, Developer shall assign any manufacturer's warranties to the City accepting ownership of such applicable component of the Improvements. Until such warranties are assigned to the City, Developer shall enforce for the City's benefit all warranties provided in any contract with respect to such Improvements and any other explicit warranties with respect to such Improvements.

9.1.1. Materials and Workmanship. In addition to all other warranties provided by law or this Agreement, Developer shall require its Prime Contractor and Subcontractor(s) to warrant all work on the Project against Defective Work for a period of three (3) following the date of Completion (the "**Warranty Period**").

9.1.2. New Materials and Equipment. Developer shall require its Prime Contractor and Subcontractor(s) to warrant and guarantee to City that all materials and equipment incorporated into the Improvements are new unless otherwise specified and approved by City.

9.1.3. Documentation. Developer shall furnish, or cause its Prime Contractor to furnish, City with all warranty and guarantee documents with respect to the Improvements prior to Acceptance.

9.2. Additional Warranties. In addition to the warranties set forth in this Article, following Acceptance, Developer or its Prime Contractor shall assign to City any and all other manufacturer's or installer's warranties for equipment or materials not manufactured by the Prime Contractor provided as part of the work related to the Project. Developer shall furnish, or cause its Prime Contractor to furnish, the City with all warranty and guarantee documents with respect to the Improvements prior to Acceptance.

ARTICLE X
DEFECTIVE WORK

10.1. Correction, Removal, or Replacement. If the City (1) determines any Improvement contains Defective Work and (2) within the Warranty Period provides written notice thereof to the Developer, the Developer's Prime Contractor, or applicable Subcontractor, Developer shall promptly correct, repair, or remove and replace, or cause the correction, repair, or removal and replacement of, the Defective Work.

10.2. Extension of Warranty. When Defective Work, or damage therefrom, has been corrected, repaired, removed and replaced, as applicable, during the initial Warranty Period, the Warranty Period for such Defective Work will be extended for an additional time period equal to the period commencing on the date City delivered to Developer notice of the Defective Work and ending on the date of the satisfactory completion of the correction, repair, or replacement and removal, as applicable.

10.3. Right of City to Correct. In the event of the Developer's failure to comply with the requirements of Section 10.1 within thirty (30) days after Developer receives notice of Defective Work from the City, or in the event of an emergency or immediate threat to public safety, Developer shall as promptly as practicable correct, repair, or remove and replace the Defective Work. If Developer does not do so, the City may, in its sole and absolute discretion, correct, repair, or remove and replace the Defective Work. In such circumstances, the costs payable to the Developer shall be reduced by the actual cost incurred by the City to correct, remove, or replace the Defective Work, or, if all amounts owed to Developer have been paid, Developer shall be liable to reimburse City for any and all costs incurred to correct, repair, or remove and replace Defective Work.

10.4. No Limitation on Other Remedies. Exercise of the remedies for Defective Work pursuant to this Article X shall not limit the remedies the City may pursue under this Agreement or at law or equity.

10.5. Survival. This Article X shall survive the earlier termination or expiration of this Agreement.

ARTICLE XI
SECURITY FOR CONSTRUCTION

11.1. Performance Bond. Developer shall provide a performance bond (or bonds) on a form acceptable to the City for the construction of the Improvements. The performance bond (or bonds) shall name City as co-obligee. The aggregate amount of such bond(s) will be no less than the amount payable from Developer to the Prime Contractor for the Improvements then under contract. Developer shall cause the City to be named as a co-obligee of such performance bond(s).

11.2. Payment Bond. Developer shall provide a payment bond (or bonds) on a form acceptable to City for the construction of the Improvements and the aggregate amount of such bond(s) will be no less than the amount payable from Developer to the Prime Contractor for the Improvements then under contract.

11.3. Admitted Sureties. All bonds required by this Agreement must be issued by a surety authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, and maintain an underwriting limitation sufficient to issue bonds in the amount required by this Agreement.

11.4. Delivery and Maintenance. Within five Business Days following establishment of the Library Building GMP, Developer shall deliver the payment bond(s) and performance bond(s) to the City. With respect to any portion of the Improvements under contract, Developer shall ensure that (a) the payment bond is maintained though the period of time required by California Civil Code Section 9558 and (b) the performance bond is maintained for at least three (3) years following Acceptance of such portion of the Improvements. The cost for such bonds are included in the allowed Reimbursable Project Costs as Hard Construction Costs.

11.5. Increases to Penal Sums. If the estimated amount payable to a Prime Contractor for the Project is increased, the Developer shall advise such Prime Contractor and the surety of the increased amount and the payment bond and performance bond shall be increased accordingly.

11.6. Notice and Opportunity to Cure. The payment bond(s) and performance bond(s) shall include provisions that the surety will not be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Developer and Prime Contractor or on the part of any obligee named in such bond, without prior written notice to the City and sufficient opportunity to cure.

11.7. Insolvency or Bankruptcy. If the surety on any of the above-mentioned bonds pertaining to Project is declared bankrupt becomes insolvent (as defined in Insurance Code Section 985), or its right to do business is terminated in the State of California, Developer shall, within fifteen (15) Business Days after Developer's actual knowledge or receipt of notice from the City, substitute or require the substitution of another bond and surety, reasonably acceptable to the City, on the same terms and conditions as provided above.

11.8. Calling a Bond. Developer acknowledges and agrees that if Developer's construction of the Project has not been performed in accordance with this Agreement or if the Developer has failed to cure any Defective Work as required by this Agreement, the City may use the performance bond referenced herein to complete the Project. This remedy is not a limitation on remedies of the City, as applicable and is in addition to any other remedy that the City may have at law or in equity.

11.9. Survival. Developer's obligations under this Article shall survive the expiration and/or termination of this Agreement.

ARTICLE XII
INDEMNITY AND DUTY TO DEFEND

12.1. General Indemnity. To the maximum extent allowed by law, Developer shall defend, indemnify, protect, and hold harmless the City and the City Parties, at Developer's sole cost and

expense and with counsel approved by City, from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all related costs arising directly or indirectly out of (i) the performance, or lack of performance, by Developer of any of its obligations under this Agreement, (ii) the construction of the Improvements or any portion or component thereof, (iii) any breach by Developer of its obligations under this Agreement, (iv) any accident, injury, or damage whatsoever caused to any person or the property of any Person on or near the Land; (v) the use, occupancy, possession, or operation of the Land, or (vi) any acts or omissions of any Developer Party in any way related to this Agreement, except for claims or litigation arising through (1) the sole negligence or willful misconduct of City, or (2) City's breach of its obligations under this Agreement or the Purchase and Sale Agreement. The foregoing indemnity obligations of Developer are in addition to, and not in limitation of, any other indemnity obligations of Developer contained in this Agreement or any other agreement between City and Developer.

12.2. Damage to Other Properties. The indemnification and agreement to hold harmless set forth in Section 12.1 shall extend to damages, including without limitation monetary claims based on allegations of takings or inverse condemnation, resulting from diversion of waters, change in the volume of flow, modification of the velocity of the water, erosion or siltation, or the modification of the point of discharge as the result of, and to the extent of and proportion caused by, the negligence by Developer, its officials, officers, the Prime Contractor, Subcontractor(s), agents, or employees in the construction of the Improvements.

12.3. Hazardous Materials Indemnity.

12.3.1. Developer hereby assumes for itself and shall defend, indemnify, protect, and hold harmless the City and the City Parties from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders (judicial or administrative), judgments, and all related costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment, waters or natural resources, including any loss of or damage to any City's real or personal property), resulting from, any Hazardous Materials activity on, about or under the Land by Developer or any Developer Party, or any breach by Developer of its obligations under this Section 12.3, at Developer's sole cost and expense and with counsel and experts selected by City. Developer's obligations under this section include, without limitation, any environmental cleanup, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Agreement or any federal, state or local government agency because of Hazardous Materials present in the air, soil or ground water above, on, or under the Land. City shall have a direct right of action against Developer even if no third party has asserted a claim. The indemnification and environmental cleanup requirements under this section include but are not necessarily limited to:

12.3.1.1. Losses attributable to diminution in the value of the Land or the Improvements;

12.3.1.2. Losses of rental or other income from the Land or the Improvements;

12.3.1.3. Loss or restriction of use of rentable space(s) in the Land or the Improvements;

12.3.1.4. Adverse effect on the marketing of any space(s) in the Land or Improvements; and

12.3.1.5. All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including reasonable attorney, consultant, and expert fees and expenses).

Notwithstanding the foregoing, nothing in this Section 12.3 shall be construed to apply to any Hazardous Materials that were (1) present on the Land prior the date Developer became the owner of the Land and (2) disclosed to City in the Due Diligence Documents (as governed by the terms of the Purchase and Sale Agreement).

12.4. Illegal Discharge to Storm Drains. Developer shall defend, indemnify, protect, and hold harmless City and City Parties from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from a discharge to public storm drains in violation of applicable laws to the extent arising out of the construction of the Improvements (an "**Illegal Discharge**") caused by any action or failure of Developer or any Developer Party to take reasonable measures to prevent an Illegal Discharge or any Illegal Discharge by any such persons or entities. Developer shall also be responsible for payment of any fines or penalties assessed against the City for an Illegal Discharge.

12.5. Costs of Defense and Award. Developer shall immediately accept all tenders and defend, at Developer's own cost, expense, and risk, any and all claims, demands, suits, actions, or other legal or administrative proceedings that may be brought or instituted against the City or any City Party are covered by the defense obligation in this Article. Developer acknowledges and agrees that its obligation to accept tender and defend City and all City Parties is absolute and not subject to any limitations in this Agreement, or elsewhere. Developer shall pay and satisfy any judgement, award, or decree that may be rendered against City or any City Party for any and all related legal expense and costs incurred by any of them.

12.6. Insurance Proceeds. Developer's obligation to defend, indemnify, protect, or hold harmless shall not be restricted to insurance proceeds, if any, it receives.

12.7. Declarations. Developer's obligations under this Article shall not be limited by any prior or subsequent declaration by Developer.

12.8. Survival. Developer's obligations under this Article shall survive the expiration and/or termination of this Agreement.

ARTICLE XIII
INSURANCE REQUIREMENTS

13.1. Insurance Requirements. Developer shall procure and maintain for the duration of the Agreement, and for five (5) years post occupancy of each Improvement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Project by Developer or any Developer Party. All insurance required to be maintained by Developer or Prime Contractor under this Article XIII and be included in Reimbursable Project Costs as Hard Construction Costs.

13.2. Forms and Amounts of Coverage. The policies for said insurance shall, as a minimum, provide the following:

13.2.1. Commercial General Liability. "Occurrence" form Commercial General Liability covering the Project site or the Project, operations and contractual liability assumed by Developer in this Agreement in the amount indicated in Section 13.2.1.1 below. Developer's defense and indemnification obligations under this Agreement shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

13.2.1.1. Commercial General Liability Policy Amount: Not less than Five Million Dollars ($5,000,000) per occurrence limit for bodily injury and property damage. The general aggregate limit shall be not less than Ten Million Dollars ($). All such limits may be satisfied by limits set forth in primary policies and excess policies.

13.2.2. Builder's Risk Property Coverage. Builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage and transit, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to the Project or in transit. Specific limits of insurance for flood shall be determined at the joint discretion of Developer and City. Earthquake limits shall, at a minimum, cover _____ year maximum probable loss or such other limits as are agreed to by Developer and City. City shall be named as an additional insured under any builder's risk policy procured by the Developer pursuant to this Agreement.

13.2.3. Worker's Compensation. Workers' compensation insurance covering all persons employed by Developer at the Project site and the Project and with respect to whom death or bodily injury claims could be asserted against Developer, City, a City Party, the Project site, the Project, with statutorily required limits, and employer's liability insurance with minimum limits of not less than the California State statutory minimum of One Million Dollars ($1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation endorsement.

13.2.4. Automobile Liability. If Developer owns or leases vehicles, business automobile liability insurance covering liability arising out of vehicles used on or about the Project site or the Project by Developer or its employees insuring against liability for bodily injury, death, and property damage in an amount not less than One Million Dollars ($1,000,000) each accident limit and Two Million Dollars ($2,000,000) combined single limit.

13.2.5. Contractor's Pollution Liability Coverage. Developer shall obtain or cause to be obtained Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of Five Million Dollars ($5,000,000)per claim or occurrence and Ten Million Dollars ($10,000,000) aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher. The City shall also be named as additional insureds on any such policy.

13.3. General Requirements.

13.3.1. Certificates and Other Requirements. Developer shall provide the City with insurance certificates, in the form customary in the insurance industry, issued by the insurer evidencing the existence of the necessary insurance policies and certified endorsements effecting coverage required by this Article ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the foregoing, Developer shall request copies of each insurance policy required under this Article and make available to the City for inspection at the Project site any insurance policy it receives.

13.3.2. Additional Insureds and Other Requirements. All liability insurance policies shall name, or be endorsed to name the City and all City Parties as additional insureds and protect the City and City Parties against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. If Developer receives notice of any cancellation, modification such that the requirements of this Agreement are no longer satisfied, suspension or voiding of an insurance policy required under this Article from the applicable insurance carrier, then Developer shall provide to the City written notice thereof within five (5) Business Days after receipt of such notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to the City. All insurance policies shall be endorsed to state that Developer's insurance is primary and not excess or contributory to any insurance issued in the name of the City. Further, all insurance companies must have an S&P or AM Best rating of not less than "A-".

13.3.3. Deductibles. Any deductibles or self-insured retentions must be declared to the Developer and the City and be consistent with customary deductibles and self-insured retentions, as applicable; provided, however, if the deductible or self-insured retention is in excess of One Million Dollars ($1,000,000), Developer shall provide the City with reasonably satisfactory evidence of its ability to meet the deductible or self-insured retention.

13.3.4. No Limit on Liability. The procuring of such required policies of insurance shall not be construed to limit Developer's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement.

13.3.5. Compliance with Insurance Requirements. Developer agrees not to keep on the Project site or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Project site. Developer shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Project site and represents to City that Developer will confirm that it is in compliance with such requirements at all times.

13.4. Waiver of Subrogation. Developer hereby releases City from any and all liability or responsibility to Developer or anyone claiming through or under Developer by way of subrogation or otherwise for any loss or damage to the Project site or Project improvements, or any of Developer's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Agreement or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of City.

13.5. Survival. Developer's obligations under this Article shall survive the expiration and/or termination of this Agreement.

ARTICLE XIV
RECORDS AND AUDITS

14.1. Retention of Project Records. Developer shall use commercially reasonable efforts to maintain the Project Records (defined below) for a period of not less than five (5) years after the date such record is created. Developer shall make available to the City any of the Project Records upon request of City. "**Project Records**" means the following documents and materials, but only if such documents and materials are related to the Project: contract documents, plans and specifications, inspection reports, invoices related to Reimbursable Project Costs, and documents that evidence payment of Reimbursable Project Costs or the basis for such payments. "Project Records" also means such other documents that (a) are reasonably necessary to evaluate (i) whether the Project has been or is being constructed in accordance with the requirements of this Agreement; (ii) whether the certifications that have been made in any Payment Request are true and correct; (iii) the existence of any Force Majeure Event that Developer asserts exists and the duration of any delay in connection therewith; or (vi) the amount of Reimbursable Project Costs that have been incurred.

14.2. Audit of Records. At any time during normal business hours, with 48 hours' advanced notice and as often as the City reasonably deem necessary, Developer shall make available, or shall cause its Prime Contractor or any Subcontractor to make available, to City for examination at the Project site or at such other location in San Diego County, California as is reasonably acceptable to the City all Project Records. Developer, the Prime Contractor, and Subcontractors will permit City to make audits of the Project Records. If any Project Records are not made available at the Project site or at such other location in San Diego County, California as is reasonably acceptable to City, then Developer shall pay all the travel related costs of City to audit such Project Records at the location where the records are maintained. Such costs will not be Reimbursable Project Costs.

14.2.1. Costs. Developer and Developer's agents shall allow City to audit and examine the Project Records and any and all accounting procedures and practices that City reasonably determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for extra work have been submitted under this Agreement.

14.3. Survival. Developer's obligations under this Article shall survive the expiration and/or termination of this Agreement.

ARTICLE XV
TITLE TO ALTERATIONS AND IMPROVEMENTS

15.1. Title to Project. The improvements constituting the Improvements which may be installed, constructed, or placed in, on, over, or under the Land, from time to time by Developer in accordance with this Agreement shall remain Developer's property until Acceptance. Upon Closing under the Purchase and Sale Agreement, the Improvements shall be owned by City.

15.2. Survival. The terms of this Article XV shall survive the expiration or earlier termination of this Agreement.

ARTICLE XVI
LIENS

16.1. No Right to Bind City. Neither Developer nor any Developer Party shall have any power or authority to do any act or thing, or to make any contract or agreement which shall bind City. City shall have no responsibility to Developer, Developer Party, or other person who performs, causes to perform, engages in or participates in any construction of the Project, any portion of the Project, or any other work on the Project site at the request of Developer, Developer Party, or other persons. Subject to City's timely and fully paying all uncontested amounts due under this Agreement, City shall not be required to take any action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

16.2. Notice of Non-Responsibility. Developer shall give written notice to all contractors, subcontractors, and materialmen of City's non-responsibility in connection with any construction of the Project, any portion of the Project, or any other work on the Project site.

16.3. Mechanics' Liens. Developer shall pay or cause to be paid all costs for work, labor, services, or materials supplied to or performed on the Land that might result in any mechanics' lien or similar lien. If Developer receives notice that any mechanics' lien or any similar lien is recorded against the Land and City has timely and fully paid all uncontested amounts owed under this Agreement, then Developer shall cause such lien to be released and removed of record within thirty (30) days after Developer receives notice of the recordation of the mechanics' lien or similar lien. Developer shall indemnify, defend, release and save City free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or caused to be performed or for materials or supplies furnished for the Improvements or at the Land.

16.4. Contest of Lien. If Developer in good faith wishes to contest the amount or validity of any lien (other than any lien with respect to taxes), then Developer shall have the right to do so; provided that (a) Developer shall first provide City with at least ten (10) Business Days' written notice prior to any such contest, (b) Developer shall first record a surety bond sufficient to release such lien; and (c) Developer shall cause the following conditions to remain satisfied during such contest:

16.4.1. such contest shall not place the fee estate of the Land in material danger of being forfeited or lost;

16.4.2. such contest shall be without cost, liability, or expense to City;

16.4.3. Developer shall prosecute such contest with reasonable diligence and in good faith; and

16.4.4. no Event of Default shall exist under this Agreement at the time of or during such contest.

16.5. City's Right to Pay. If (1) City has fully and timely paid all uncontested amounts owed under this Agreement, (2) Developer shall be in default in paying any charge for which a lien claim has been filed, and (3) Developer has not contested such lien in accordance with Section 16.4, then City may, but shall not be so obliged to, pay said lien claim and any costs incurred in connection therewith, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Developer to City, and Developer shall pay the

same to City, together with interest on the full amount thereof at the default rate from the date of City's payments until paid.

ARTICLE XVII
TAXES

17.1. Tax Claims. Each Party agrees to (A) promptly notify the other Parties of any audit, examination, or other proceeding with respect to any tax, tax return (including any schedule attached thereto), or information reporting related to the Project (collectively, the "**Tax Claims**", and individually, a "**Tax Claim**") and (B) reasonably cooperate with the other Parties in connection with any Tax Claim. In the event that any Tax Claim is asserted against City, Developer agrees to indemnify and defend City, at Developer's sole cost and expense, and hold City harmless from any and all expenses and related costs arising in connection with such Tax Claim.

ARTICLE XVIII
EVENTS OF DEFAULT AND REMEDIES

18.1. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default by Developer hereunder (each, an "**Event of Default**"):

18.1.1. Failure to Pay. Failure by Developer to pay, when due, any payment, or charge that Developer is required to pay, where such failure continues for a period of ten (10) days after written notice thereof from City.

18.1.2. Failure to Perform. Failure by Developer to perform any express or implied covenants or conditions in this Agreement, where such failure continues for thirty (30) days after written notice thereof from City; provided that, if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and Developer diligently commences such cure within such thirty (30) day period and thereafter diligently proceeds to rectify and cure such failure, then such failure shall not constitute an Event of Default; and provided, further, that if such failure is due to a Force Majeure Event, then such failure shall not constitute an Event of Default for so long as the Force Majeure Event exists.

18.1.3. Bankruptcy Event. The occurrence of a bankruptcy event. For purposes of this Agreement, a "bankruptcy event" shall mean any person liable for Developer's obligations under this Agreement of any of the following: (a) appointment of a receiver or custodian for any property of such person, or the institution of a foreclosure or attachment action upon any property of such person; (b) filing by such person of a voluntary petition under the provisions of the Bankruptcy Code; or (c) an involuntary petition under the provisions of the Bankruptcy Code shall be filed and (i) Developer shall have consented to such involuntary petition or failed to contest in a timely and appropriate manner or (ii) such involuntary petition continues undismissed for a period of 60 days or an order for relief shall have been entered; or (d) such person making or consenting to an assignment for the benefit of creditors or a composition of creditors.

18.1.4. Breach of a Representation or Warranty.

18.1.4.1. Any representation or warranty by Developer under this Agreement or the Exhibits attached hereto, including any representation or warranty made in any payment request or certification provided or delivered by Developer pursuant to this Agreement, is not true, correct, or

complete in any material respect and Developer does not cure such deficiency within ten (10) Business Days after it actually knows about such deficiency, or within ten (10) Business Days after Developer receives written notice thereof; provided that, if the nature of such breach is such that the same cannot reasonably be cured within such ten (10) Business Day period, and Developer diligently commences such cure within such ten (10) Business Day period and thereafter diligently proceeds to cure such breach, then such failure shall not constitute an Event of Default.

18.1.4.2. Specified Defaults. The occurrence of any event expressly stated to constitute an Event of Default under this Agreement.

18.2. Remedies for Events of Default. Upon any Event of Default, the City may, in addition to all other rights and remedies afforded to City hereunder or by law or in equity, take any one or more of the following actions:

18.2.1.1. Termination of Agreement. Terminate this Agreement by giving Developer written notice. Failure by the City to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default.

18.2.2. Perform Acts on Behalf of Developer. Perform any act that Developer is obligated to perform under this Agreement in Developer's name and on Developer's behalf, without being liable for any claim for damages therefor, and Developer shall reimburse City on demand for any expenses which City may incur in effecting compliance with Developer's obligations under this Agreement (including, but not limited to, collection costs and legal expenses), plus interest thereon at the default rate.

18.2.3. Assignment of Plans and Other Matters. Require Developer to, in which case Developer shall, (i) at Developer's sole cost and expense, assign and transfer to City all of Developer's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the development of the Improvements on the Land, free and clear of liens and claims by third parties, in connection with and (ii) execute and deliver to City, within five (5) Business Days of the City's request, in a form provided by and acceptable to the City, an instrument confirming the assignment and transfer of such property and interests to City and, within such five (5) Business Day period, to deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Improvements or the Land to City. Developer agrees to reasonably cooperate with City at no cost or expense to City in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Land or the Improvements, which may be required for the City to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Land or the Improvements.

18.2.4. Early Closing Option. If City elects to terminate this Agreement or exercise any remedy following an Event of Default that materially impairs Developer's ability to perform Developer's obligations under this Agreement, then City must concurrently deliver an Early Closing Notice that specifies a revised Closing Date not later than 45 days after Developer's receipt of the Early Closing Notice.

18.3. City Events of Default. The occurrence of any one or more of the following events shall constitute an event of default by City hereunder (each, an "**City Event of Default**"):

18.3.1. Failure to Pay. Failure by City to pay, when due, any payment, or charge that City is required to pay hereunder, that is not subject to a good faith dispute where such failure continues for a period of ten (10) days after written notice thereof from Developer.

18.3.2. Failure to Perform. Failure by City to perform any express or implied covenants or conditions in this Agreement, where such failure continues for thirty (30) days after written notice thereof from Developer; provided that, if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and City diligently commences such cure within such thirty (30) day period and thereafter diligently proceeds to rectify and cure such failure, then such failure shall not constitute an Event of Default.

18.4. City Events of Default. Upon any City Event of Default, the Developer may take any one or more of the following actions:

18.4.1. Adjustment to Schedule. To the extent that a City Event of Default has caused a delay in Developer's ability to complete the Improvements by the Completion Date, Developer may receive an extension of time to achieve Completion or achieve any milestone date affected by the Event of Default.

18.4.2. Adjustment to GMP. To the extent that a City Event of Default has caused an increase in the costs of the Improvements, Developer may receive a proportionate increase the GMP amount for any component of the Improvements affected by the City Event of Default.

18.4.3. Compel Early Closing. If City has failed to cure a material City Event of Default within the time periods provided hereunder for such cure, then, within 60 days following the expiration of the applicable cure period (i) Developer may deliver to City written notice (a "**Developer Early Closing Notice**") that, if City does not cure the City Event of Default within ten days following City's receipt of such Developer Early Closing Notice, City will be deemed to have delivered an Early Closing Notice (as such term is defined in the Purchase and Sale Agreement) and (ii) if City fails to cure the City Event of Default within ten days following City's receipt of Developer's Early Closing Notice, then (a) City shall be deemed to have delivered an Early Closing Notice and (b) date for completing the early Closing shall be 90 days after City's receipt of the Developer's Early Closing Notice.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

19.1. Notices. All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next Business Day, if sent prepaid by recognized overnight service such as FedEx for delivery the next Business Day; or (iii) three (3) Business Days after deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid.

Each Party to this Agreement shall be provided with a copy of each notice given to any other Party under this Agreement.

Until notice of a change of address is properly given, notice shall be given at the following addresses:

To the City:	City of Chula Vista 276 Fourth Avenue Chula Vista, California 91910 Attention: City Manager
With a copy to:	City of Chula Vista 276 Fourth Avenue Chula Vista, California 91910 Attention: City Attorney
To Developer:	LMC-Millenia Investment Company, L.P. Attn: Lee M. Chesnut 1155 Camino Del Mar, PMB 525 Del Mar, California 92014
With copy to:	F. Sigmund Luther, Esq. 5333 Mission Center Road, Suite 360 San Diego, California 92108

The Parties may designate different addresses to which subsequent notices, certificates, or other communications will be sent.

19.2. Captions. Captions in this Agreement are inserted for convenience of reference. They do not define, describe, or limit any term of this Agreement.

19.3. Time of Essence. Time is of the essence with respect to this Agreement and each of its provisions.

19.4. Partial Invalidity. If any term, provision, covenant or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, covenant or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by Law.

19.5. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the Parties affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the Parties with respect to the subject matter hereof, except for the Purchase and Sale Agreement.

19.6. Joint and Several. If there is more than one person constituting Developer (i) the obligations imposed upon such persons or entities under this Agreement shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Agreement shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

19.7. Developer's Authority. Developer hereby represents and warrants as of the Effective Date that Developer is a duly formed and existing entity qualified to do business in the state in which the Project site is located and that Developer has full right and authority to execute and deliver this Agreement and that each person signing on behalf of Developer is authorized to do so.

19.8. Dispute Resolution.

19.8.1. Notice. Developer and City shall endeavor to reasonably inform the other party of any disputes arising under or related to this Agreement ("Dispute").

19.8.2. Initiation of Dispute Resolution. Developer or City may initiate the dispute resolution process by providing notice and making a written demand to the other Party to initiate formal dispute resolution ("**Demand**"). Upon noticing a Demand, Developer and City shall engage in good faith in executive-level negotiations to attempt to resolve the Dispute. Developer and City may mutually agree to mediation of the Demand in lieu of or in addition to negotiation of a Dispute. The reasonable costs of mediation will be shared evenly between Developer and City.

19.9. Attorneys' Fees. Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, the prevailing party shall be entitled to have and recover from the non-prevailing party reasonable attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

19.10. Governing Law. Venue for any legal proceeding shall be in San Diego County, California. This Agreement shall be construed and enforced in accordance with the Laws of the State of California.

19.11. Modification. This Agreement may not be amended, modified, terminated, or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors or assigns.

19.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

19.13. Drafting Presumption; Review Standard. The parties acknowledge that this Agreement has been agreed to by each of the Parties, that each of the Parties have consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against the drafting Party. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Agreement, any approval or consent to be given by City, or the City Council, may be given or withheld in City's, or the City Council's, sole and absolute discretion.

19.14. Administrative Claims. If required by applicable Laws, no suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with the City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the CVMC, as same may from time to time be amended (the provisions of which are

incorporated by this reference as if fully set forth herein), and such policies and procedures used by the City in the implementation of same.

19.15. Non-liability of City Officials and Employees. No officer, director, member, official, employee, consultant, or member of the governing board of City shall be personally liable to Developer in the event of any default or breach by City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.

19.16. Further Assurances. From time to time upon the request of a Party, the other Party shall, at the requesting Party's expense, promptly execute, acknowledge and deliver such further documentation and do such other acts and things as the requesting Party may reasonably request in order to effect fully the purposes of this Agreement in such a manner that is consistent with and does not contradict, modify, or amend this Agreement.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By:_____
Mary Casillas Salas, Mayor

DEVELOPER

LMC-Millenia Investment Company, L.P., a California limited partnership

By LMC-Millenia GP, LLC
a Delaware limited liability company

By_____
Lee M. Chesnut, Manager

ATTEST:

By: _____
Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

By: _____
Glen R. Googins, City Attorney

Exhibit A

Legal Description of the Land

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

LOT 7 OF CHULA VISTA TRACT NO. 09-03, OTAY RANCH MILLENIA PHASE 2 (EASTERN URBAN CENTER), IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 16081, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 28, 2015.

APN: 643-060-57-00

Exhibit B

Depiction of the Land

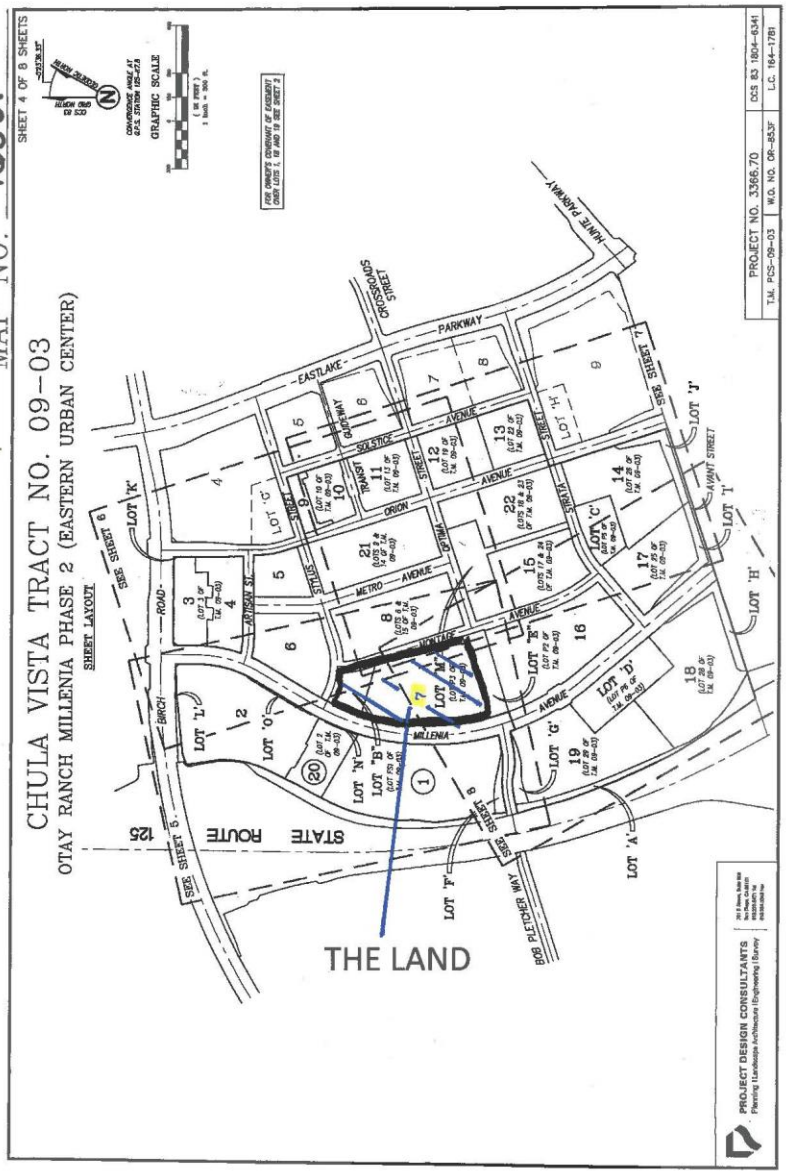

Exhibit C

Preliminary Estimate of Project Costs

Early Work Estimated Costs: *Payable as reimbursement of actual cost NTE $500,000*	$500,000
Library Building Estimated Costs: (warm shell)	$38,000,000
Library Building Tenant Improvements Estimated Costs: *TIs on 110,000 sf*	$13,750,000
Site Work Estimated Costs: *Estimate of proportionate share of site work surrounding Library and Amenity buildings*	$4,794,438
Parking Structure Estimated Costs	$14,000,000
Amenity Building Estimated Costs:	$6,000,000
Developer Fee and Construction Supervision Fee	$5,223,750
TOTAL ESTIMATED REIMBURSABLE PROJECT COSTS	**$82,252,297**
Other Costs (land acquisition costs under PSA)	$11,000,000
Previously incurred Soft Costs (payable under PSA)	$3,145,203
Estimate Total	**$96,413,391**

Exhibit D

Procedures to Complete Tenant Improvement Plans and Specifications, Parking Structure Plans and Specifications, and Site Work Plans and Specifications

1. Tenant Improvements.

1.1 Space Plan and Preliminary Specifications. After execution of the Prime Contract, but no later than one (1) week following execution of the Prime Contract, the Developer shall engage an architect approved by City ("**TI Architect")** to prepare a schematic space plan (**"the TI Space Plan"**) pertaining to the design of the Tenant Improvements and preliminary specifications pertaining to the Tenant Improvements (**"the TI Preliminary Specifications"**). When the initial draft of the TI Space Plan and the TI Preliminary Specifications have been prepared, Developer shall submit the initial draft of the TI Space Plan and the TI Preliminary Specifications to City for City's review and approval, which approval may be given or withheld in City's sole discretion. If City disapproves the TI Space Plan and the TI Preliminary Specifications, then (1) City shall provide written comments for proposed changes to The TI Space Plan and the TI Preliminary Specifications and (2) City and Developer shall cooperate to provide the required information to TI Architect to allow TI Architect to revise the proposed The TI Space Plan and the TI Preliminary Specifications to incorporate all changes requested by City; however, if City has not approved the TI Space Plan and the TI Preliminary Specifications by January 15, 2024, then a City Delay shall exist.

1.2 Working Drawings. After City has approved the TI Space Plan and the TI Preliminary Specifications, Developer shall cause TI Architect to prepare working plans and specifications (collectively, **"the Working Drawings"**) that (i) define the scope of work, hereinafter referred to as **"Developer's TI Work,"** (ii) shall be based upon the TI Space Plan and TI Preliminary Specifications, and (iii) shall be sufficiently detailed to apply for a building permit and to solicit subcontractors and material suppliers to prepare and submit fixed bids. Following preparation of the Working Drawings, Developer shall (1) deliver to City a copy of the Working Drawings for City's approval and (2) deliver to Prime Contractor a copy of the Working Drawings for Prime Contractor to solicit bids from subcontractors. If City has an objection to the Working Drawings, then (1) City shall specify the objection in a writing delivered to Developer and (2) Developer shall cause TI Architect to revise and resubmit to City the Working Drawings until City approves the Working Drawings; however, if City has not approved the Working Drawings by May 1, 2024 then a City Delay shall exist; provided that a City delay shall not exist if the failure to timely approve the Working Drawings is caused by delays by Developer, a Developer Party, or the TI Architect.

1.3 TI Improvement Contract. After City approves the Working Drawings, Developer shall, pursuant to a written contract (**"the TI Improvement Contract"**), engage the services of Prime Contractor to construct and install Developer's TI Work in an expeditious, diligent and workmanlike manner. The general form of the TI Improvement Contract shall be substantially similar to the American Institute of Architects form cost plus a fee contract with a guaranteed maximum price. The Subcontractors to perform the work under the TI Improvement Contract shall be selected as provided in **Exhibit G** of this Agreement.

1.4 Change Orders. If during the course of performing the Developer's TI Work any changes are proposed to the scope of the work as described in the approved Working Drawings (excluding change proposed by City), such changes shall be submitted to City for City's approval, which shall not be

unreasonably withheld, conditioned or delayed if such changes are reasonably required for the good and workmanlike completion of the Developer's TI Work. City may, at any time(s) request changes to the scope of the work described in the approved Working Drawings, provided that incorporation of such change into the scope of Developer's TI Work shall be conditioned upon City's acknowledgement of (1) a reasonably estimated period of City Delay related to such change, if any, and (2) an appropriate adjustment to the Tenant Improvement GMP.

1.5 City's Election Not to Proceed with Developer's TI Work. Notwithstanding the foregoing, City may, at any time in advance of Developer's execution of the TI Improvement Contract and in City's sole and absolute discretion, elect not to proceed with the Developer's TI Work, in which case (1) City shall reimburse Developer for all costs incurred and substantiated by Developer in connection with the preparation of the TI Space Plan, the TI Preliminary Specifications, and the Working Drawings and (2) without Developer's prior written approval, which approval shall not be unreasonably withheld or delayed, City shall not cause any of the Developer's TI Work to be commenced and performed until after the Closing Date (as such term is defined in the Purchase and Sale Agreement).

2. Parking Structure.

2.1 Parking Design Alternatives. Parking for users of the Library Building is contemplated take the form of one of the following:

2.1.1 Six level structure (three levels below grade, one level at grade, and two levels above grade) having a capacity of approximately 1,300 spaces "**the Six Level Structure**"). The plans for the Six Level Structure ("**the Six Level Structure Plans**") are permit ready and do not require any modification to the Six Level Structure Plans to construct the Parking Structure.

2.1.2 Four level structure (three levels below grade and one level at grade) having a capacity of approximately 800 spaces ("**the Four Level Structure**"). No plans for the Four Level Structure currently exist, but if City elects to proceed with the Four Level Structure, the Six Level Structure Plans will be modified to eliminate the two levels of above grade parking.

2.1.3 Three level structure (two levels below grade and one level at grade) having a capacity of approximately 600 spaces ("**the Three Level Structure**"). No plans for the Three Level Structure currently exist, but if City elects to proceed with the Three Level Structure, the Six Level Structure Plans will be modified to eliminate the two levels of above grade parking and one level of below grade parking.

2.1.4 One level surface parking (no structure). No plans currently exist for surface parking only. City acknowledges that if City elects to proceed with surface parking only and not construct a parking structure, then the parking on the land will not be sufficient to comply with the minimum parking requirements under applicable building codes and additional parking off site would be required.

2.2 Parking Design Selection. On or before the date that is 12 months following the Effective Date, City shall advise Developer in writing of which of the four parking alternatives City wants to be constructed. If City selects an alternative other than the Six Level Structure, then Developer shall engage Architect to revise the Six Level Structure Plans to incorporate the changes required to construct the alternative selected by City (such revised plans are herein referred to as "**the Revised Parking Plans**.") When the initial draft of the Revised Parking Plans have been prepared, Developer shall submit the initial

draft of the Revised Parking Plans to City for City's review and approval, which approval may be given or withheld in City's reasonable discretion. If City reasonably disapproves the Revised Parking Plans, then (1) City shall provide written comments for proposed changes to the Revised Parking Plans and (2) City and Developer shall cooperate to provide the required information to Architect to allow Architect to revise the proposed the Revised Parking Plans to incorporate all changes reasonably requested by City; however, if City has not approved the Revised Parking Plans by January 15, 2024, then a City Delay shall exist; provided that a City delay shall not exist if the failure to timely approve the Revised Parking Plans is caused by delays by Developer, a Developer Party, or the Architect

2.3 Construction. As used herein, "**the Parking Plans and Specifications**" shall mean either the Six Level Structure Plans or the Revised Parking Plans approved by City, as applicable. After City selects the Six Level Structure Plans or approves the Revised Parking Plans, Developer shall, pursuant to a written change order ("**the Parking Change Order**") to the Prime Contract engage the services of Prime Contractor to construct the improvements described in the Parking Plans and Specifications in an expeditious, diligent and workmanlike manner. The Subcontractors to perform the work under the Parking Change Order shall be selected as provided in **Exhibit G** of this Agreement.

3. Site Work.

3.1 Existing Site Work Plans and Specifications. At the time this Agreement is executed, plans for the Site Work ("**the Existing Site Work Plans and Specifications**") have been prepared, but need to be modified in the following respects because the Existing Site Work Plans and Specifications were prepared in contemplation of two multi-story office buildings being constructed on the Land:

3.1.1 The bridge and exterior access stairs shown on the Existing Site Work Plans and Specifications will not be constructed.

3.1.2 The existing building pad on which the additional office building was proposed to be constructed on the Land shall improved with a sprinkler system and planted with hydro-seed.

3.1.3 The landscaping and related amenities in area around the perimeter of the existing building pad on which the additional office building was proposed to be constructed need to be modified to be compatible with a project in which such additional building is not being built.

3.2 Revised Site Work Plans and Specifications. Developer shall engage Architect to revise the Existing Site Work Plans and Specifications to incorporate the changes required to address the changes described above (such revised plans are herein referred to as "**the Revised Site Work Plans and Specifications**"). When the initial draft of the Revised Parking Plans have been prepared, Developer shall submit the initial draft of the Revised Site Work Plans and Specifications to City for City's review and approval, which approval may be given or withheld in City's reasonable discretion. If City reasonably disapproves the Revised Site Work Plans and Specifications, then (1) City shall provide written comments for proposed changes to the Revised Site Work Plans and Specifications and (2) City and Developer shall cooperate to provide the required information to Architect to allow Architect to revise the proposed the Revised Site Work Plans and Specifications to incorporate all changes reasonably requested by City; however, if City has not approved the Revised Site Work Plans and Specifications by January 15, 2024, then a City Delay shall exist; provided that a City delay shall not exist if the failure to timely approve the

Revised Site Work Plans and Specifications is caused by delays by Developer, a Developer Party, or the TI Architect.

3.3 Construction. As used herein, "**the Site Work Plans and Specifications**" shall mean the Revised Site Work Plans and Specifications approved by City. Developer shall, pursuant to a written change order ("**the Site Work Change Order**") to the Prime Contract engage the services of Prime Contractor to construct the improvements described in the Site Work Plans and Specifications in an expeditious, diligent and workmanlike manner. The Subcontractors to perform the work under the Site Work Change Order shall be selected as provided in **Exhibit G** of this Agreement.

4. Early Work. The wet and/or dry utility work to be constructed on the Land as part of the Improvements as more particularly in the Subcontract procured and executed in accordance with Section 3.2.2 of the Agreement, which is anticipated to include trenching and installation of a potable water line(s)and/or communications infrastructure from the building pad(s) to the anticipated location of the water meter(s) in a manner to allow inspection by the City's building department for Building Permit Nos. (B17-0654 (Library Building), B17-0656 (Amenity Building), and B17-0657 (Six Level Parking Structure) by no later than February 28, 2023.

5. City's Approvals. City's approvals described above shall be made in City's capacity as a party to this Agreement and no approval by City under this Agreement shall be construed as City's approval of the Working Drawings in City's regulatory capacity as a governmental agency that reviews and approves applications for building permits and inspects works of improvement for compliance with Laws.

6. Performance of Exhibit D Work. For the avoidance of doubt, Developer's performance of any work pursuant to this Exhibit D shall be subject to all terms, conditions, performance standards, performance specifications, and other requirements of the Agreement.

Exhibit E

Construction Requirements

1. Contractors. City shall have the right to approve the contractors and subcontractors for the Project, in its reasonable discretion. All contractors and subcontractors performing any Project must be licensed in the State of California.

2. Architects and Engineers. All architects and engineers must have an active license to practice in the State of California.

3. Construction Barricades. Developer shall install a construction barricade around the area of Project, and erect such other protective measures as may be reasonably required by City.

4. Dust and Trash Control. Developer shall take commercially reasonable steps to minimize dust resulting from work in furtherance of the Project, and shall promptly dispose of all trash generated from the work in furtherance of the Project.

5. Performance Bond and Payment Bond. Article ___ of the Agreement shall govern requirements relating to Performance and Payment Bonds for the Project.

6. Construction Schedule. The Agreement governs provisions relating to the schedule for the Project.

7. Copy of Record Set of Plans and Certificate of Completion. Following the conclusion of the Project, Developer shall deliver to City (i) a set of "as-built drawings" and (ii) a copy of the certificate of completion issued by the applicable government agency, if any such certificate of completion must be issued.

8. Conflict. In the event of conflict between the terms of these Construction Requirements and terms of the Agreement, the terms of the Agreement shall control.

Exhibit F

Project Plans and Specifications

B17-0654 (Library Building)

B17-0656 (Amenity Building)

B17-0657 (Six Level Parking Structure)

Exhibit G

Approved Prime and Subcontractor Bid and Award Process

I. PRIME CONTRACTOR

Developer has selected as the prime contractor for the construction of the Project _____ ("Prime Contractor"). The Prime Contractor was selected by Developer from a pre-qualified list after a competitive solicitation process to determine the "best qualified contractor" after considering, without limitation, each bidders demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria, ". The process for solicitation and award to the Prime Contractor was approved by the City of Chula Vista City Council on December 6, 2022 pursuant to City Council Resolution No. _____.

II. SUBCONTRACTORS

A brief description of the process to be followed for the selection of subcontractors follows:

Initial Invitation to Propose

- Describe either: (i) targeted proposal process or (ii) open public bid process.

RFQ stage

- Identified potential subcontractors (minimum of five for each package) are invited to submit qualifications data. This includes information regarding past relevant / similar project experience, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory / management personnel, financial capability, and design capabilities (for design-build subcontracts).

RFP stage

- Where practical, Prime Contractor will obtain a minimum of three bids/competitive proposals from all subcontractors and from suppliers of materials or equipment directly to Prime Contractor and Prime Contractor will deliver such bids to Developer.
- Subcontractors deemed qualified are invited to submit detailed proposals including –
    - Qualitative factors
        - Supervisory personnel commitments and organization chart
        - Schedule management plan
        - Quality management plan
        - Plan for providing adequate qualified trades personnel
        - Pre-construction / design phase services approach and staffing
    - Quantitative factors
        - Pricing for the detailed subcontract package scope of work description as provided by Prime Contractor. This includes further breakdown as directed by Prime Contractor to allow for detailed pricing evaluation.
        - Estimated trades work-hours
        - Schedule detail and projected trades crew size graphs
        - Proposed rates for labor, equipment, insurance etc. (for use in future change order negotiations, or for billing purposes in the case of cost-plus/GMP subcontracts)

- Contract terms – Subcontractors are required to identify any exceptions to the subcontract documents and project manual provided by Prime Contractor, as well as any clarifications or exceptions to the scope of work definition provided.

- Proposals are evaluated jointly by Prime Contractor and Developer. In general, quantitative factors are given the most weight, but significant differences in evaluation of qualitative factors could overcome a difference in pricing. Prime Contractor and Developer may also consider other factors such as the maintenance of labor peace.

- The highest rated proposers (typically target three each) are invited for in-depth interviews.

Interview & BAFO stage

- In-depth interviews are conducted with the short-listed subcontractors. The interviews are focused on proposed supervisory personnel qualifications, the subcontractors' project plan, and insuring there is a complete understanding of the required scope and schedule for the subject package as well as regulatory requirements (i.e. prevailing wage etc.).

- Following interviews, subcontractors are provided with a list of Prime Contractor and Developer comments or questions to be addressed, feedback on any proposed exceptions to the contract documents, and are invited to provide a "best and final offer" price proposal.

Final selection & award process

- Prime Contractor and Developer jointly review updated, final proposals, and make tentative selection for award based on their determination of the overall value for the Project.

- Selected subcontractor is informed of their status, and any additional conditions for award by Prime Contractor, in consultation with Developer.

- After confirmation of the selected subcontractor's acceptance of any additional conditions, unsuccessful subcontractors are notified and provided a debrief regarding evaluation of their proposal.

- No subcontract will be awarded if either Prime Contractor (in its reasonable determination) or Developer objects thereto.

- Prime Contractor will provide to Developer, prior to commencement of the work and updated as changes may occur, a listing of all subcontractors and suppliers who Prime Contractor has retained to complete the work.

- From time to time after any subcontracts have been awarded, Developer will deliver a notice to the City with a list of such subcontracts and a confirmation that the subcontractors have been selected in accordance with the procedure set forth in this Exhibit.

Exhibit H

Form of Developer's Payment Request

[_____], 202[_]

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Manager

Re: Payment Request No. [___] under Project Development Agreement (the "**Agreement**"), dated as of December 6, 2022, by and between the City of Chula Vista, a chartered municipal corporation ("**City**") and LMC-Millenia Investment Company, L.P., a California limited partnership ("**Developer**").

Payment Request of $[_____]

Requested Payment Date: [_____], 20[__]

Dear City:

The Developer submits this Payment Request No. [___] (this "**Payment Request**") pursuant to Section 9.1.2 of the Agreement with respect to the Project. Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

In connection with the requested payment, the Developer hereby represents, warrants, and certifies as of the date hereof as follows:

(a) Schedule 1 accurately reflects for each line item in the (i) the current budget amount, (ii) amounts previously funded by City, (iii) the Requested Payment Amount, (iv) hard costs incurred, including retainage, and (v) retainage withheld.

(b) Schedule 2 accurately lists, for the Requested Payment Amount, each person or entity to whom any Reimbursable Project Costs have been paid (or are entitled to payment) and for each line item in such schedule and for each such person, the following: (i) the name of the payee paid, (ii) the invoice date, invoice number, and amount that Developer has paid to such person or entity, (iii) a description of the purpose of such payment, specifying the line item relating to each such payment. Further, that the amounts listed in Schedule 2 do not include any non-Project Costs or excluded costs under the Agreement. The information set forth in Schedule 2 as noted above is true, correct, and complete in all material respects.

(c) The Developer has delivered or caused to be delivered to City:

(i) copies of true and complete invoices that have been tendered for all Reimbursable Project Costs pursuant to this Payment Request; and

(ii) statutory lien/stop payment notice conditional waivers and releases associated with all work performed, or supplies provided, for the Project; and

(iii) copies of all approved increased costs executed prior to the date of this Payment Request.

(d) To Developer's actual knowledge, the construction performed for the Project as of the date hereof has been performed substantially in accordance in all material respects with the Improvement Plans and Specifications with respect to the Project, or to the extent any such construction has not been performed substantially in accordance in all material respects with the Improvement Plans and Specifications, the amount to be disbursed under this payment request has been reduced by $[_____] pursuant to the Architect's Certificate (as defined below) to reflect the reasonably estimated cost of causing such construction to be performed substantially in accordance in all material respects with the Improvement Plans and Specifications with respect to the Project.

(e) To the actual knowledge of Developer (after enquiring with Developer's Prime Contractor), no work or component of work has been rejected or disapproved by an inspector or other authorized representative of City.

(f) The amount of the Payment Request reflects a reduction of $[_____], being the amount for which the Developer does not intend to pay any Prime Contractor or any Subcontractor.

(g) The Project Budget presently in effect is dated [_____] and has not been amended and includes all amendments through Project Budget Amendment No. [___]]. Said budget (i) is based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) has been prepared in good faith and with due care, (iii) accurately sets forth, for each line item in the Project Budget, the total costs anticipated to be incurred to achieve Completion, and (iv) fairly represents in all material respects the Developer's reasonable expectation as to the matters covered thereby as of its date.

(h) The Developer is informed and believes, and on that basis represents, that the remaining Product Budget is sufficient to fully fund and Complete the Project.

(i) As of the date hereof, no Event of Default exists.

Attached to this Payment Request as Exhibit 1 is a certificate from the Architect (the "Architect's Certificate").

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Payment Request as of this [___] day of [_____], 202[_].

DEVELOPER

LMC-Millenia Investment Company, L.P., a
California limited partnership

By LMC-Millenia GP, LLC
a Delaware limited liability company

By_____
Lee M. Chesnut, Manager

Schedule 1 to Developer's Payment Request

Schedule 2 to Developer's Payment Request

EXHIBIT 1

Certificate of Architect

[_____], 20[__]

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: City Manager

LMC-Millenia Investment Company, L.P.,

Re: Payment Request No. [___] under Project Development Agreement (the "**Agreement**"), dated as of _____, 2022, by and between the City of Chula Vista, a chartered municipal corporation ("**City**") and LMC-Millenia Investment Company, L.P., a California limited partnership ("**Developer**")

Payment Request of $[_____]

Requested Payment Date: [_____], 20[__]

Dear City:

Capitalized terms used herein without definition shall have the meanings assigned to them in the Agreement.

[●] (the "**Architect**") hereby certifies as follows:

(a) The Architect has reviewed the above referenced Payment Request No. [___] (the "**Payment Request**") and the Agreement, to the extent necessary to understand the defined terms contained herein and in the Payment Request that are incorporated by reference from the Agreement and to provide the certification contained herein.

(b) The Architect hereby certifies and confirms that, pursuant to the observation of the work as required by the [describe Architect Agreement] and in accordance with applicable professional standards, the construction performed for the Project as of the date hereof has been performed substantially in accordance in all material respects with the Project, or to the extent any such construction has not been performed substantially in accordance in all material respects with Improvement Plans and Specifications, the amount to be disbursed under this payment request has been reduced by $[_____] to reflect the reasonably estimated cost of causing such construction to be performed substantially in accordance in all material respects with Improvement Plans and Specifications. The foregoing certification is subject to an evaluation of the Project for conformance with the Project upon Completion, to results of subsequent tests and inspections, and to correction of minor deviations from the Improvement Plans and Specifications, prior to Completion. This certificate is not a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and

material suppliers, or (4) made examination to ascertain how or for what purpose the Developer has used money previously paid on account of the Project.

(c) Any representations or certifications by the Architect herein shall mean an expression of the Architect's professional opinion to the best of its information, knowledge, and belief, and does not constitute a warranty or guarantee by the Architect.

The City is entitled to rely on the foregoing representations, warranties, and certifications in authorizing and making the disbursement requested in the Payment Request.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Architect as of this [___] day of [_____], 202[__].

[●]

By: _____
Name:
Title:

Exhibit I

Best Qualified Contractor Subcontract Award Approval Request

Request No. __

Reference is made to that certain Project Development Agreement (the "Agreement"), dated as of [●], 2022, by and between the City of Chula Vista, a chartered municipal corporation ("City") and LMC-Millenia Investment Company, L.P., a California limited partnership ("Developer"). Capitalized terms used herein without definition shall have the meanings assigned in the Agreement.

The Developer hereby provides notice of intent to award a subcontract to [insert] as a "best qualified" contractor (as described in Chula Vista Municipal Code section 2.56.160(H)). A draft of such subcontract is attached as Exhibit 1 hereto. In connection with this Best Qualified Contractor Subcontract Award Approval Request, the undersigned hereby certifies, represents, and warrants to the City, in each case, solely in his or her capacity as [insert title] of Developer and not in his or her individual capacity, as follows:

A. He (she) is a duly authorized representative or signatory of Developer, qualified to execute this Subcontract Award Approval Request on behalf of Developer and is knowledgeable as to the matters set forth herein.

B. The proposed subcontractor is as follows:

a. [Corporate Name]
b. [dba]
c. [Mailing Address]
d. [Contact Phone Number]
e. [Contact Email]
f. [California Contractor License Number]
g. [City of Chula Vista Business License Number]

C. The proposed subcontract includes the following scope of work: [insert scope]

D. The proposed subcontract is in the amount of $.

E. The Developer or its Prime Contractor conducted a qualification process that considered, among other things, any or all of the following: past relevant/similar project experience, construction experience and capability, labor relations, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory/management personnel, financial capability, and design capabilities (for design-build subcontracts).

F. The Developer or its Prime Contractor considered, among other things, any or all of the following: qualitative factors (i.e. personnel, schedule management, construction experience and capability, labor relations, experience, expertise and business practices and policies that increase the likelihood that the Project will be completed without disruption, and quality management) and quantitative factors (i.e. price, schedule details, and rate for labor, equipment, and insurance).

G. The Developer conducted a pre-selection in-depth interview with potential "best qualified" subcontractors.

H. The Developer determined that the proposed subcontractor provided the best value for the Project.

I. The proposed subcontract has been awarded in accordance with the Agreement.

I hereby declare, solely in my capacity set forth below and not in my individual capacity, that the above representations are true and correct.

DEVELOPER:

LMC-Millenia Investment Company, L.P., a California limited partnership

By LMC-Millenia GP, LLC
a Delaware limited liability company

By_____
Lee M. Chesnut, Manager

Dated: _____

By the City's execution of this Best Qualified Contractor Subcontract Award Approval Request, and in reliance upon the Developer's representations and certifications set forth in the above request for approval of Best Qualified Contractor Subcontract Award, the City hereby approves such award.

APPROVED:

CITY:

By: _____
[Name], [Title]

Dated: _____