

EXCLUSIVE RIGHT TO NEGOTIATE AND REIMBURSEMENT AGREEMENT

(1762 Dale Road, Glendora, CA 91740)

THIS EXCLUSIVE RIGHT TO NEGOTIATE AND REIMBURSEMENT AGREEMENT (“**Agreement**”) is entered into as of this ____ day of July, 2025, between the CITY OF GLENDORA, a municipal corporation (“**City**”) and MERCY HOUSING CALIFORNIA, a nonprofit public benefit corporation (“**Developer**”). City and Developer are sometimes individually referred to herein as a “party” and jointly as the “parties.”

RECITALS:

A. The City owns that certain real property located at 1762 Dale Road, Glendora, CA 91740 (Assessor Parcel No. 8631-013-023), described in Exhibit A attached hereto, and incorporated herein, which consists of 2.17 acres of real property (“**Property**”). The Property was formerly operated as a senior assisted living facility (“**Former Facility**”), and is zoned as Corridor Buffer Residential (C-BR) within the Arrow Highway Specific Plan within the City of Glendora’s General Plan (“**General Plan**”), which allows for 20 residential units per acre.

B. The City acquired the Property on July 31, 2023 for a purchase price of \$4,725,000, pursuant to that certain Purchase and Sale Agreement, dated as of April 25 2023, between the City and David and Isabelle Youngman (“**Seller**”), and thereafter the City (through its contract with Horizons Construction Co. Int’l, Inc.) commenced to demolish the Former Facility, and abate the hazardous asbestos and lead containing materials associated with the Former Facility, which was completed on or about November 12, 2024, at a cost of approximately \$1,289,374. The Property is currently vacant.

C. Developer is interested in acquiring the Property to develop an affordable housing residential development, which is generally described in the “**Initial Project Description**” set forth in Exhibit B attached hereto, which shall be comply with all City land use policies and regulations, including the City’s zoning code and which will be consistent with the City’s goals and desires for the development of the Property as set forth herein (the “**Project**”). The Project shall comply with all applicable laws and regulations, including the City’s zoning code and General Plan regulations, and will be subject to City’s discretionary approval of all plans and specifications.

D. The completion of the Project will require: (i) negotiating and obtaining approval for the Conveyance Agreements (as defined below) by the City Council; (ii) obtaining approvals for the Project from the City and any other governmental entities that may be necessary; including, without limitation, completion and approval of all environmental documentation required under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “**CEQA**”) and applicable entitlement approvals for the Project; and (iii) if necessary, the resolution of any environmental contamination conditions on or under the Property (collectively, the “**Contingencies**”).

E. Pursuant to the terms of this Agreement, City and Developer intend to negotiate in good faith to enter into a purchase and sale agreement (the “**PSA**”), which shall include terms for the sale and transfer of the Property from City to Developer, which shall include a purchase price in the amount of at least Two Million One Hundred Thousand Dollars

(\$2,100,000) (the “**Purchase Price**”), a due diligence period, and other related agreements as may be required pursuant to the terms hereof (including the Conveyance Agreements, as defined below) to allow for the transfer of the Property by the City to Developer and set forth the terms for transfer of the Property by City to Developer together with the development of the Project. Separately, City shall be responsible for the compliance with the requirements of the Surplus Land Act (Govt. Code Sections 54220-54232) (“**SLA**”) prior to the execution of the PSA.

NOW, THEREFORE, and in consideration of the mutual covenants contained herein and incorporating the Recitals above, the parties mutually agree to the following:

SECTION 1. RECITALS; EFFECTIVE DATE; TERM; DEVELOPER OBLIGATIONS DURING INITIAL AND REMAINDER TERM.

- A. *Recitals.*** The foregoing Recitals are true and correct and incorporated herein and made a part hereof.
- B. *Effective Date.*** This Agreement shall become effective (“**Effective Date**”) on the later to occur of (i) the date that the City Council approves this Agreement; and (ii) the date that Developer has executed and delivered both this Agreement and the Deposit (as defined below) to the City. In the event that the Effective Date does not occur on or before July 18, 2025, this Agreement shall automatically terminate and be of no force or effect.
- C. *Term.*** The term of this Agreement (“**Term**”) shall commence on the Effective Date, and unless earlier terminated, shall consist of an Initial Term and a Remainder Term, and shall terminate upon conclusion of the Remainder Term. The Initial Term shall commence on the Effective Date and end one hundred twenty (120) days therefrom (“**Initial Term**”). Both the Developer and the City shall each have two (2) options, exercisable in each party’s sole and absolute discretion after giving five (5) days’ written notice prior to the expiration of the Initial Term, to extend the Initial Term for an additional thirty (30) day period. The “**Remainder Term**” shall commence upon the date following the City Council’s Initial Approval (as defined below) for the Project Plan(s) (as defined below), and shall terminate on the date that is two hundred seventy (270) days therefrom. The Developer and City shall have two (2) options, each exercisable in their sole and absolute discretion after giving five (5) days’ written notice prior to the expiration of the Remainder Term, to extend the Remainder Term (and thereby, the Term) by ninety (90) days each.
- D. *Developer Obligations During Initial Term.*** During the Initial Term, Developer shall do the following: (i) conduct its due diligence with respect to the Property and its proposed Project, (ii) prepare and present to City staff, one or more alternative Project Plan(s) (as such term is defined below), consistent with the Initial Project Description set forth under Exhibit B, as well as the overall intent for the development of the Project as described under this Agreement. More specifically, during the Initial Term, Developer shall:
1. Commence preliminary due diligence with respect to the Property and the Project as described herein, which shall include a review of an updated preliminary title report from Fidelity National Title Company, a copy of which shall be obtained by the City and shared with Developer withing five (5) days of the Effective Date.
 2. Submit a Concept Review Application (defined below) to the City for the Project and commence developing the basic business terms of the transaction for the

negotiation and execution of the Conveyance Agreements, including, without limitation, any applicable environmental approvals required under CEQA, any entitlements required for the Project, and the costs of resolving all Contingencies (if necessary). A “**Concept Review Application**” shall be required to provide guidance related to the following topics: site plan, floor plan(s), elevations, unit mix, unit affordability levels, population targeting, parking plan, and such other information as Developer deems relevant.

3. Develop an initial project schedule in cooperation with City staff.
4. Identify Developer’s potential and expected sources of financing and potential partners and investors in the Project and other reasonable information required by the City with respect to same. Notwithstanding the foregoing, Developer shall not be required to specify the final / ultimate sources of financing, partners, and investors for the Project during the Initial Term, and the parties understand and agree that such financing, partners, and investors shall be finalized during the Remainder Term and/or the term set forth in the Conveyance Agreements.
5. Prepare and deliver to City a statement of Developer’s financial capabilities, including contemplated or potential sources of equity and construction/permanent loan financing.
6. Developer shall prepare and deliver to City staff a proposed plan for public engagement with respect to the Project to be implemented by Developer and its consultants during the Remainder Term (as refined and modified by Developer based on the input and comments from City, the “**Public Engagement Plan**”). The City staff shall present the Public Engagement Plan to the City Council concurrently with the presentation of the Project Plans at the closed session meeting referenced below at Section 1.E.

As used herein, the term “**Project Plan(s)**” shall mean and include the following: (i) all anticipated uses (including the proposed occupant / tenant mix and number of units), square footages, and heights of the buildings for the Project, (ii) parking facilities and requirements, (iii) a proposed plan or plans to guide the overall development of the Property, (iv) proposed conceptual elevations for the development of the Project, and illustrative conceptual development designs and architectural rendering schemes for the Project, (v) the approximate locations and maximum floor areas for each of the uses proposed, including parking, and (vi) a proposed plan for the supportive services that will be offered to occupants / tenants of the Project. Developer’s initial Project Plan(s) may be updated from time to time during the Term of this Agreement in consultation with City staff.

- E. **City Council Initial Approval.** Prior to the expiration of the Initial Term including any extensions thereto, as may be permitted pursuant to Section 1.C above (provided that Developer has complied with its obligations under Section 1.D above), City staff shall present the Project Plan(s) to the City Council during a closed session meeting, and the City Council may select, propose modifications to, or reject the Project Plan(s), during such meeting. If the City Council gives its approval for one or more of the Project Plan(s) (the “**City Council’s Initial Approval**”), then the Remainder Term shall commence on the date following such approval. If the City Council proposes significant modifications to the Project Plans, which require further review and approval from the City Council, then

the Initial Term shall be deemed to have been automatically extended by up to thirty (30) days (or sixty (60) days if required by the Developer), during which additional time Developer shall make reasonable efforts to revise the Project Plan(s) in accordance with the proposed modifications, and City staff shall present the revised Project Plans to the City Council during a closed session meeting prior to the end of the Initial Term as the same may have been extended, which revised Project Plans, the City Council may either select or reject, without opportunity for additional modification, unless the Developer agrees to any such additional modifications in order to proceed.

F. Developer Obligations During Remainder Term. During the Remainder Term, Developer will continue with its due diligence for the Project and the Property and the parties will negotiate and complete final proposed drafts of the Conveyance Agreements for the City Council's approval as well as any other agreements that may be required in order to provide for the transfer of the Property to Developer and enable Developer to proceed with development of the Project. Among other things, the following shall be completed during the Remainder Term (and/or incorporated in the terms of the Conveyance Agreements):

G. Applications for and Processing of Entitlement and Governmental Approvals. During the Remainder Term, Developer shall use reasonable good faith efforts to submit applications for the entitlements and approvals required for the Project, including any requisite land use entitlements for the Project (the "**Entitlements**"), if any, and all approvals required from applicable governmental and/or quasi-governmental entities including, without limitation, the City, except for actual building permits, which will be obtained after Developer enters into the Conveyance Agreements. All such approvals and the expiration of all applicable appeals periods to such approvals, and the resolution of any filings of any such appeal by a third party shall be a condition precedent to the City's approval of the Conveyance Agreements and/or the transfer of the Property to Developer.

H. Category of Tenants / Occupants. The parties understand and agree that City's priority is for the Project to provide a mix of residential units consisting of special needs housing and reserved for low-income households, with preference given to residents of Glendora, subject to fair housing laws. The proposed tenant / occupant mix will be governed by the requirements of the low-income housing tax credit set out at Title 26, Section 42 of the Internal Revenue Code, as implemented by the California Tax Credit Allocation Committee and subject to any applicable requirements of state and federal fair housing laws.

I. Proforma. Developer shall provide a detailed proforma ("**Proforma**") listing the estimated budget for the construction and development of the Project, including cost estimates, expected income, valuation, and expected rates of return for the Project, a proposed financing plan for the development of the Project, by phase, if appropriate, including contemplated or potential sources of equity and construction and permanent loan financing. It is acknowledged that such Proforma may not be a final or complete proforma, to the extent it is not possible to determine all of the costs necessary to resolve the Contingencies.

J. Environmental Review. Environmental analysis pursuant to CEQA will occur as the Project Plans are developed and will commence during the Remainder Term with the preparation of an Initial Study in order to determine the scope of environmental review required for the Project (i.e., a negative declaration, mitigated negative declaration, or EIR,

as applicable). Environmental analysis will be completed during the Remainder Term and shall be a condition precedent to the transfer of the Property to Developer under the Conveyance Agreements. Developer has sole responsibility to pursue and obtain any and all necessary environmental approvals for the Project pursuant to CEQA at its sole cost and expense. Developer will undertake the studies, reports and analyses required, including traffic analysis, environmental impact analysis, and financing plans at its sole cost and expense; provided, however, that all environmental review (including preparation of an Initial Study, formal environmental studies and reports, and analysis required under CEQA) shall be performed by the City through its environmental/CEQA consultant(s), subject to reimbursement by Developer as provided in Section 3. The City shall serve as lead agency for purposes of environmental review under CEQA and Developer shall provide to City, in advance, all funds necessary to cover the costs of such environmental review as set forth in Section 3 below. Developer understands that all CEQA and Project Entitlement approvals are subject to the City's sole and absolute discretion in the exercise of its police powers and assumes the risk of not obtaining its required Entitlements for the Project, subject to the terms set forth herein. Approval of all such Entitlements and CEQA approvals shall be a condition precedent to the City's approval of the Conveyance Agreements and/or the transfer of the Property to Developer which condition shall be for the benefit of each of Developer and City.

K. Partners and Financial Capability. Developer shall, to the extent possible during the Remainder Term, provide adequate disclosure of Developer's partners, joint venturers, development managers, and operators, if any, who are participants, equity providers or principals of the Project (collectively, "**Developer Partners**"), and other reasonable and relevant information requested by City, concerning the above. If any Developer Partners are proposed, the City may require, as a condition to finalizing any Conveyance Agreements, that such Developer Partners enter into appropriate agreements with the City that the City deems necessary, provide a copy of the partnership or joint venture agreement to the City for review, or join in the execution of the Conveyance Agreements. In addition, Developer shall prepare and deliver to City a statement of Developer's financial capabilities, including a financing plan for the development of the Project, by phase, including anticipated sources of equity and construction and permanent loan financing (the "**Financial Capability Statement**"). The parties acknowledge that all Project financing (whether local, state, federal or private) will be finalized after closing on the Property under the PSA, and prior to commencing construction of the Project.

L. Public Engagement. Developer shall implement the approved Public Engagement Plan as set forth above, with any modifications requested by Developer from time to time and approved by the City in its reasonable discretion.

7. Title Review. Developer shall have the right, during the Term, to review title to the Property. If Developer identifies any objections to title ("**Title Objections**"), Developer shall notify the City in writing of such objections not later than thirty (30) days from the commencement of the Remainder Term. Upon receipt of the Developer's Title Objections, the City shall then have a period of ten (10) business days after receipt of Developer's notice to elect to cure or remove such Title Objections, which cure or removal must be implemented prior to the expiration of the Term. If the City elects not to cure, or fails to cure, any Title Objection within the specified period, Buyer may, at its option, either (a) waive such Title Objection and proceed with the transaction as contemplated herein, or (b) terminate this Agreement.

8. City Approvals. City shall have approved of Developer's Project, the Entitlements, the final Project Plans (as amended and modified during the Term of this Agreement), the Financial Capability Statement, and the Proforma, as set forth in this Section.

SECTION 2. NATURE OF NEGOTIATIONS.

- A. **Good Faith.** Provided this Agreement has not been terminated as provided above prior to the conclusion of the Initial Term, then upon the City Council's Initial Approval, the Remainder Term shall commence and the parties shall negotiate exclusively, diligently and in good faith to undertake the steps provided herein to prepare and enter into a purchase and sale agreement ("PSA"), a form of Affordability Covenant (which shall be for a term of 55 years), and a form of Grant Deed (or similar agreement(s)) for Developer's acquisition of the Property and the development of the Project, subject to the terms and conditions of this Agreement (such applicable agreement(s), the "**Conveyance Agreements**"). Additionally, to account for a scenario where the Purchase Price is below the fair market value ("**FMV**") for the Property, the Conveyance Agreements shall further consist of a Promissory Note, payable from a pro-rata share of residual receipts and secured by a Deed of Trust, in the amount of the appraised value for the Property (as determined pursuant to an appraisal to be obtained by Developer prior to the end of the Term (the "**Developer Appraisal**"); provided however, that the City shall have the right to review and reasonably approve of the Developer Appraisal in its good faith determination and/or commission, at its cost, a separate appraisal of the FMV for the Property (the "**City Appraisal**") in the event it reasonably questions or disputes the results of the Developer Appraisal; and the FMV shown in the City Appraisal shall govern unless otherwise agreed to by the parties) less the Purchase Price. The Project development will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan and zoning regulations (which may necessitate amendment or other modification to accommodate Developer's proposed uses). The Conveyance Agreements will specify that Developer will be solely responsible for obtaining all permit approvals for the Project and developing the Project in accordance with the project schedule set forth under the Conveyance Agreements. The City is not obligated to approve the Project or approve the Conveyance Agreements; however, following approval by the City Council of the Project and its required Entitlements, and the successful negotiation and approval of the Conveyance Agreements by the City Council, the parties shall proceed to sign the Conveyance Agreements. During the Term, City will not negotiate a similar agreement with any other third party regarding the development of the Property, and City agrees to process all required Entitlement applications and CEQA Processing documentation for the Project in good faith during the Term of this Agreement in order to enable the Developer to present the Project and all requisite Project Entitlement approvals for the City Council's consideration at a public hearing, subject to the terms and conditions set forth herein.
- B. **Deposit.** Within ten (10) business days following the City Council's approval of this Agreement, Developer shall deliver to City a deposit of Fifty Thousand Dollars (\$50,000) ("**Deposit**"). Upon entering the PSA, the Deposit made pursuant to this Agreement shall be ~~transferred and~~ credited to the deposit owed under the [PSA and transferred to the escrow established pursuant to the PSA](#), which for the avoidance of doubt shall also be in the amount of Fifty Thousand Dollars (\$50,000).

- C. *Property.*** City represents that it owns the Property in fee simple absolute but makes no representation concerning Developer's ability to acquire, lease, and/or develop it. At its sole cost and expense (subject to the reimbursement provisions set out at Section 3.C hereof), Developer shall conduct its own due diligence, including all Property investigations, it deems necessary to assure itself of the suitability of the Property for development and the viability of the Project. Notwithstanding the foregoing, (i) City shall cooperate with and provide reasonable assistance to the Developer in its due diligence efforts, (ii) City shall give written notice to Developer within ten (10) days of the City's Community Development Director's actual knowledge of any new encumbrance to title to the Property added during the Term or upon reasonable request by the Developer and in connection therewith, City shall share with Developer copies of any actually known and unrecorded title encumbrances, and (iii) City shall work in good faith to assist Developer in the preparation of materials necessary for obtaining the Project Entitlements.
- D. *Access to Property.*** During the Term, City shall permit Developer and its employees, agents, representatives and contractors reasonable access to the Property pursuant to Section 4 to conduct due diligence including environmental evaluations, engineering studies, surveys, geological work or other studies as reasonably desired by Developer.
- E. *Nature of the Project; Required Approvals.*** The Conveyance Agreements shall provide that Developer must develop the Project consistent with all applicable laws, ordinances, regulations, the General Plan and City zoning requirements.
- F. *Environmental Review.*** Immediately following the Effective Date, City shall deliver to Developer copies of information, studies and other documents in City's possession including, but not limited to, any Phase I study, and any known communications or notices of any violations, defaults related to any environmental matters at the Property. During the Term of this Agreement, Developer shall, at its sole cost and expense, (i) undertake all studies, reports, analysis, Project designs, traffic analysis, environmental impact analysis and financing plans as Developer deems necessary for Developer to determine, in its discretion, whether it desires to undertake the Project, and (ii) pursue and obtain any necessary environmental approvals for the Project pursuant to CEQA. Developer shall deliver copies of all such studies to City upon completion. All approvals required for the Project are subject to the City's discretion in the exercise of its police powers and its obligations under CEQA and shall be a condition precedent to the City's approval of the Conveyance Agreements. The City will assist Developer in preparing any environmental documentation and processing any environmental review necessary for the Project.
- G. *Financial Terms.*** Developer understands and agrees that it shall be obligated to pay the Purchase Price to the City upon the terms set forth in the Conveyance Agreements, subject to the approval of the City Council of the City of Glendora. Developer shall be solely responsible for financing and constructing the Project. City will not provide any financial assistance to the Project.
- H. *Due Diligence.*** At the end of the Term, Developer will specify the result of the due diligence investigations. Upon the closing on the sale of the Property pursuant to the Conveyance Agreements, it will become the Developer's responsibility to correct any adverse environmental conditions required pursuant to its development of the Property; however, prior to such date, the Developer shall incur no liability for the condition of the Property and/or obligation to correct any environmental condition thereon, unless caused

or exacerbated by Developer and/or its contractors, agents, employees, as further set forth in Sections 4 and 5 below, and subject to the terms of Sections 4 and 5 below. .

- I. **Formal Approvals.** The Conveyance Agreements shall become effective only after it is considered and formally approved by the City Council (“**Formal Approvals**”).
- J. **SLA Approval.** Prior to the expiration of the Remainder Term (or otherwise, the date that is sixty (60) days prior to the City’s approval of the PSA), City shall formally declare the Property as exempt pursuant to the terms of the SLA and comply with the terms of the SLA in order to enable the transfer of the Property to Developer in compliance with the terms and conditions of the SLA.

SECTION 3. TERMS REGARDING THE CITY’S PROCESSING COSTS FOR THE PROJECT AND THE DEPOSIT.

- A. **City Processing Costs.** Developer shall be obligated to pay the City all regular fees, costs, and expenses imposed / incurred by the City (as set forth in the City’s master fee schedule, as updated or modified from time to time) for (i) the processing of Developer’s Project, (ii) all Project applications, including, without limitation, all Entitlement and permit applications for the Project, (iii) the preparation and review of studies, Project Plans, proformas, reports and design services, and agreements related to the development of the Project and Project-related infrastructure, including, without limitation the Conveyance Agreements, and (iv) CEQA Processing costs (as defined below).

For purposes of this Agreement, the term “**CEQA Processing**” shall mean: (i) preparing necessary CEQA reports and documents, including traffic engineering, any studies or analyses of the financial value of the Project, other environmentally-pertinent analyses, and additional supporting documentation, as necessary and appropriate in accordance with CEQA; (ii) distributing such documentation to responsible agencies and others; (iii) noticing and holding public hearings and considering public comments on such CEQA documents and reports; (iv) considering certification of such CEQA documents and reports and other documentation through a City Council Resolution in accordance with CEQA; and (v) preparing, negotiating, and approving all environmental documents required under CEQA.

B. Refundability of Deposit.

- a. Initial Term. During the Initial Term of this Agreement, and provided Developer is not in breach of any of its obligations under this Agreement (after any applicable notice and cure period has elapsed) and through no fault of Developer, the City Council’s Initial Approval is not given to proceed with the commencement of the Remainder Term, the Deposit shall be returned to Developer. In the event this Agreement terminates during the Initial Term as a result of any uncured breach by Developer of its obligations under this Agreement, City shall be entitled to retain the Deposit.
- b. Remainder Term. During the Remainder Term of this Agreement, the Deposit shall be non-refundable to Developer, however, the Deposit shall be reimbursable to Developer if (i) Developer has performed all obligations necessary for the City staff (and its legal counsel) to prepare the draft Conveyance Agreements for approval by the City Council, and Developer is not otherwise in breach of any terms or

obligations under this Agreement, but City staff fails to prepare, or otherwise recommend, in good faith, approval of the draft Conveyance Agreements or the Project during the Remainder Term, or (ii) the City Council fails to conduct a public hearing thereon and formally vote to approve or disapprove the Conveyance Agreements or the Project. Notwithstanding the foregoing, in the event the parties enter into the Conveyance Agreements following their approval by the City Council, the Deposit shall be offset against the Purchase Price and/or the deposits (or other monetary contributions) required to be paid by Developer to City under the Conveyance Agreements.

- C. City's Reimbursement Obligation.** Notwithstanding anything to the contrary contained in this Agreement, if during the Term the City fails to comply with its obligations as set forth in Section 2.A (a "**Specific City Breach**"), then, subject to the terms and conditions set forth in Section 7, Developer may, as its sole and exclusive remedy hereunder for such Specific City Breach (but in addition to any remedy described in Section 3.B above), terminate this Agreement and recover from the City, Liquidated Damages in the amount, and subject to the terms and conditions, set forth in this Section 3.C.

CITY AND DEVELOPER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH DEVELOPER MAY SUFFER AS A RESULT OF A SPECIFIC CITY BREACH. THEREFORE, CITY AND DEVELOPER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT DEVELOPER WOULD SUFFER IN THE EVENT THAT CITY COMMITS A SPECIFIC CITY BREACH, IS AND SHALL BE, AS DEVELOPER'S SOLE AND EXCLUSIVE REMEDY (WHETHER AT LAW OR IN EQUITY), THE AMOUNT OF THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000). SAID AMOUNT SHALL BE THE FULL, AGREED AND "LIQUIDATED DAMAGES" FOR A SPECIFIC CITY BREACH BY CITY. UPON A SPECIFIC CITY BREACH BY CITY (FOLLOWING THE NOTICE AND CURE PROCEDURES SET FORTH IN SECTION 7 BELOW), THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR THE RIGHT OF DEVELOPER TO COLLECT SUCH LIQUIDATED DAMAGES FROM CITY. THE PROVISIONS OF THIS SECTION 3.C ARE SEPARATE AND APART FROM ANY REMEDIES AVAILABLE TO DEVELOPER UNDER THE PSA OR OTHERWISE UNDER THIS AGREEMENT.

City Initials

Developer Initials

The terms and provisions under this Section 3 shall survive the expiration or termination of this Agreement.

SECTION 4. RIGHT TO ENTER THE PROPERTY. During the Term, City grants Developer, its agents and employees, a limited license to enter upon the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, reports, investigations and tests shall be performed at Developer's sole cost and expense.

Prior to any entry onto the Property, Developer shall (i) notify City the date and purpose of each intended entry together with the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations; (iv) allow an employee of City to be present at City's election; (v) keep the Property free and clear of all materialmen's liens, liens pendens and other liens arising out of the entry and work performed under this provision; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California; (vii) provide to City certificates of insurance evidencing that Developer has procured and paid premiums for the insurance policies set forth on Exhibit C attached hereto which insurance policies shall name the City as an additional insured; (viii) return the Property to substantially its original condition following Developer's entry; (ix) provide City copies of all studies, surveys, reports, investigations and other tests derived from any inspection performed pursuant to this Section (collectively, "**Reports**"); and (x) if the parties enter into the Conveyance Agreements, Developer will take title pursuant to a Grant Deed, subject to any title exceptions caused by Developer exercising this right to enter.

SECTION 5. ENVIRONMENTAL INDEMNITY. Developer agrees to indemnify, and hold City free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) (collectively, "**Claim(s)**") which City may suffer or incur as a consequence of Developer's exercise of the license granted pursuant to Section 4 or any act or omission by Developer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Developer (except City or their agents or employees) with respect to this Agreement, the Property or the Project, excepting, (i) any and all Claims arising from the mere discovery by Developer of any hazardous materials or other physical, biological, environmental or other conditions that may impact the use or value of the Property, or (ii) any Claims actually caused by the gross negligence or willful misconduct of City (or their agents or employees). Developer's obligations under this Section shall survive termination of this Agreement for a period of one (1) year).

SECTION 6. CITY'S DISCRETION AND NO WAIVER OF POLICE POWERS. City agrees to negotiate diligently and in good faith with Developer for the Conveyance Agreements for a Project consistent with the Project Plan(s) approved by the City Council and on suitable terms and conditions which comply with the General Plan and the City's existing zoning requirements; provided, however, City is under no obligation to enter into the Conveyance Agreements and expenses which are incurred by Developer during the Term shall be incurred at Developer's sole risk and expense, subject to the terms contained herein. In connection with the foregoing, prior to the Formal Approvals, Developer's reliance on any representations or promises by City or its staff or consultants, or individual Council members, is undertaken at Developer's sole risk and expense, subject to the terms set forth in Section 3.C above. Although obligated to negotiate in good faith, neither City nor Developer are under any obligation to enter into the Conveyance Agreements.

Developer acknowledges and understands that each of the City Council, the City Planning Commission and/or the City Community Development Staff may be required to review and hold hearing(s) on the Project's Entitlements and environmental documentation required under CEQA. City reserves the right to exercise its discretion as to all matters which it is, by law, entitled or required to exercise. Nothing in this Agreement shall be construed as having the effect of waiving or limiting police powers and exercise of discretion by City. To this end:

1. **Discretion.** The Glendora City Council has complete and unfettered discretion to reject the Project and/or any Conveyance Agreements without explanation or cause and this Agreement is not committing City to undertake any activity requiring the exercise of discretion by City including the approval and execution of the Conveyance Agreements or any other act or approval. Developer acknowledges and agrees that City reserves the right to exercise its discretion as to all governmental matters which City is, by law, entitled or required to exercise, in its sole and absolute discretion and nothing in this Agreement shall be construed as having the effect of waiving or limiting police powers and exercise of discretion by City. By its execution of this Agreement, the City is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by City, or any department thereof including, but not limited to, taking any action for which prior environmental review is required under CEQA, the approval and execution of the Conveyance Agreements, the approval of any development proposal or land use regulation governing the Property or any other such governmental act or approval.
2. **Conveyance Agreements.** City's execution of the Conveyance Agreements shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council is required to make, including all necessary findings and determinations required under CEQA as well as state and local land use provisions / regulations. As to any matter which City may be required to exercise its unfettered discretion with respect to the Project, nothing herein nor in any Conveyance Agreements shall obligate City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of City's duties under this Agreement.
3. **Agreement to Negotiate.** This Agreement does not constitute a disposition of property and, therefore, does not require a public hearing. Execution of this Agreement does not constitute "approval" of a "project," as those terms are defined in CEQA. Nothing in this Agreement shall prevent or prohibit the parties from discussing or disclosing the fact that they are a party to this Agreement. Nothing in this Agreement shall limit, prevent, restrict or inhibit the City from providing any information in its possession or control that is required by law (as determined by the City Attorney for the City) to be disclosed, upon request or otherwise.

SECTION 7. TERMINATION; INDEMNIFICATION.

- A. **Termination.** Developer may terminate this Agreement for any reason upon ten (10) days prior written notice to City during the Initial Term, but thereafter, the Deposit shall be non-refundable to Developer, except as provided in Section 3(B) herein ("**Developer Termination**"). Upon a Developer Termination, the obligations of the parties under this Agreement will cease, except as otherwise set forth in this Agreement.
- B. **Default.** If a party fails to comply with its obligations ("**Defaulting Party**"), the other party ("**Non-Defaulting Party**") may terminate this Agreement if the Defaulting Party fails to cure such default within thirty (30) days after receipt of notice of default from the Non-Defaulting Party ("**Cure Period**"). If the Defaulting Party fails to cure during the Cure Period, the Non-Defaulting Party may terminate this Agreement by providing written notice to the Defaulting Party ("**Termination Notice**"). Notwithstanding the foregoing, in no event shall any Cure Period hereunder extend the Term. Developer's sole remedy for a City default shall be to terminate this Agreement by written notice, and receive a refund

of the Deposit (or, if applicable pursuant to the terms of Section 3.C., receipt of the Liquidated Damages) if allowed pursuant to the terms and conditions of Section 3 and this Section 7. If this Agreement terminates due to the expiration of the Term (without any fault or breach of this Agreement of Developer), Developer shall be entitled to the return of the Deposit. Upon termination of this Agreement, (i) neither party shall have any right, remedy or obligation under this Agreement, except that the indemnification provisions shall survive such termination; and (ii) each party specifically waives and releases any such rights or Claims it may otherwise have at law or in equity and expressly waives any rights to consequential damages or specific performance from the other party.

- C. *Indemnification by Developer.*** Developer agrees to indemnify, defend, and hold City and its respective members, officers, staff and agents (collectively, “**City Indemnitees**”) harmless from any and all Claims and other liability asserted against City resulting from Developer’s breach of this Agreement including, but not limited to, Developer’s entry onto the Property. This indemnity shall survive the expiration or termination of this Agreement. In the event that any Claim should be filed against any City Indemnitees as a result of a Developer breach of this Agreement or any of Developer’s actions taken pursuant to this Agreement and/or the Project, City shall promptly notify Developer of such Claim to permit Developer the opportunity to provide adequate representation to City Indemnitees with respect to any such Claim. Nothing in this Section shall be construed to mean that Developer shall hold City Indemnitees harmless and/or defend them to the extent of any Claims arising from the gross negligence, willful misconduct or illegal acts of any of City Indemnitees.
- D. *Obligation to Defend.*** Developer shall indemnify the City and its elected Councilmembers, boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all Claims brought to challenge the validity of any Entitlements or CEQA approvals granted pursuant to this Agreement and/or under the Conveyance Agreements or the validity of the Conveyance Agreements. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney’s office or use legal counsel of its choosing, but shall reimburse the City for any reasonable legal costs incurred by City. The Developer’s obligation to pay the cost of any such action, including judgment, shall extend until final judgment is rendered. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement, the Conveyance Agreements, or any Entitlement, CEQA, or development approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the parties shall confer in good faith as to how to proceed. Notwithstanding the Developer’s indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case, the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

SECTION 8. MISCELLANEOUS.

- A. **Brokerage Commissions.** Each party ("**Indemnifying Party**") (i) represents to the other party ("**Indemnified Party**") that it has not engaged a broker, agent, or finder in connection with the transactions contemplated under this Agreement, and (ii) agrees to hold the Indemnified Party harmless from any Claim by any broker, agent, or finder retained by the Indemnifying Party.
- B. **Ownership of Documents.** During the Term, Developer shall retain ownership of all documents and Reports prepared by Developer (or its consultants) but shall provide City, at no cost or expense to City, with copies of any third-party consultant, contractor, or subcontractor reports, studies, analysis, Property plan layouts, engineering studies, memorandums, Reports, or similar documents regarding the Project, which documents shall not become the property of City absent a separate written agreement between the parties. Delivery of such documents to City shall be made without any representation, warranty, or liability whatsoever by Developer as to the accuracy or sufficiency of the contents of such documents and shall be subject to the rights of the preparers of such documents or Reports including, without limitation, any applicable copyrights. If the negotiations contemplated by this Agreement do not result in the execution of any Conveyance Agreements, Developer acknowledges and agrees that any and all Reports, studies, analysis, site plan layouts, engineering studies, memorandums, or similar documents, regarding the Project which were prepared during the Term and provided to the City, are public records subject to the California Public Records Act (Statutes of 1968, Chapter 1473; currently codified as Chapter 3.5 of Division 7 of Title 1 of the California Government Code), and therefore, may be used by the City for future planning purposes. Developer shall have no claim for compensation as a result of the exercise by the City (consistent with the terms of this Agreement) of its rights of nonexclusive ownership of said documents and materials hereunder. The City may not sell such plans or drawings to other parties, and may only use them conceptually for planning purposes related to the Project or such other potential project contemplated for the development of the Property. Developer may retain copies of such documents for its own use and shall have an unrestricted right to use such documents, including without limitation, all concepts embodied therein. Developer may elect to provide financial statements, information, and documents, along with its Project Proforma directly to the City Attorney's office or its financial consultant(s) in order to provide protection for its proprietary information. Nothing in the foregoing shall be interpreted to compel the Developer to share its own internal communications or communications with its attorneys and consultants.
- C. **No Personal Liability.** Nothing in this Agreement shall create any personal obligation or liability of staff members, employees, or agent of the City for any obligation of City under this Agreement and, conversely, nothing in this Agreement shall create any personal obligation or liability of any partner, member, principal, shareholder, employee, or agent of Developer for any obligation of Developer under this Agreement. All obligations of Developer under this Agreement shall be the joint and several obligations of Developer and any affiliate of Developer involved, at Developer's election, in Developer's activities under this Agreement.
- D. **No Conflicts.** Each party ("**Representing Party**") represents to the other party that the execution and delivery by the Representing Party of this Agreement, the performance of its obligations hereunder, and its fulfillment of the terms and conditions hereof do not

conflict with, violate or result in a breach of any applicable law or any term or condition of any document to which Representing Party is subject.

- E. *Amendment.*** This Agreement may only be amended or modified in writing executed by both parties.
- F. *Notices.*** All notices, including without limitation all approvals and consents, required or permitted under this Agreement shall be delivered in person, by messenger, by overnight mail courier, or by registered or certified mail, postage prepaid, return receipt requested, to each party at its address shown below, or to any other notice address designated in writing by such party. Any notice so delivered by personal delivery or messenger service shall be deemed delivered upon actual delivery. Any notice given by overnight courier with courier charges prepaid shall be deemed delivered twenty-four (24) hours after delivery to said overnight courier. Any notice so delivered by US mail shall be deemed delivered three (3) days after deposit in the US Mail.

City: City of Glendora
116 E. Foothill Blvd.
Glendora, CA 91741
Attention: Community Development Director
(562) 806-7722
jkugel@cityofglendora.gov

With copy to: Aleshire & Wynder, LLP
1 Park Plaza
Irvine, CA 92614
Attention: Danny Aleshire
(949) 223-1170
danny.aleshire@awattorneys.com

Developer: Mercy Housing California
1500 S. Grand Ave., Suite 100
Los Angeles, CA 90015
Attention: Erika Villablanca
213-743-5280
evillablanca@mercyhousing.org

With a copy to: Gubb & Barshay LLP
235 Montgomery St #1110
San Francisco, CA 94104
Attention: Evan Gross, Esq.
(415) 781-6600
egross@gubbandbarshay.com

- G. *Enforcement.*** This Agreement and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California. If any

legal action is necessary to enforce this Agreement, a court of competent jurisdiction in Los Angeles County shall be the sole venue and jurisdiction for the bringing of such action.

- H. **Waiver.** Any term may be waived only by a written waiver signed by the party against whom such waiver is to be asserted.
- I. **Construction.** All provisions shall not be construed in favor of or against either party, but rather as if both parties prepared this Agreement. The Recitals are incorporated by reference as substantive provisions of this Agreement.
- J. **Entire Agreement.** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof.
- K. **Restrictions on Assignment.** Developer may not assign or transfer this Agreement or any of its rights or obligations hereunder to any third party or entity without the prior written consent of City, and no voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers of Developer under this Agreement, except as expressly provided herein. Transfer of any ownership interest in Developer shall be deemed a transfer under this provision. During the Term, Developer shall promptly notify City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of the Developer, as well as any and all changes in the interest or the degree of control of the Developer by any such person, of which information the Developer or any of its members, managers, partners or officers are notified or may otherwise have knowledge or information. Upon the occurrence of any significant or material change, whether voluntary or involuntary, in membership, ownership, management or control of the Developer (other than such changes occasioned by the death or incapacity of any individual) that has not been approved by the City Manager, prior to the time of such change, the City may terminate this Agreement without liability to Developer by serving written notice of termination. Notwithstanding the foregoing, Developer shall be entitled, after giving written notice to the City (together with all associated documentation regarding such transfer, including the assignment and assumption agreement of Developer's rights and obligations under this agreement), to transfer this Agreement to, or to request that the Conveyance Agreements be entered into with, an entity that is wholly controlled, operated, and managed by Mercy Housing California, and which Mercy Housing California shall be and remain the general partner in and to such subsidiary entity.
- L. **Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action or other proceeding shall be entitled to recover its reasonable attorneys' fees and related costs and expenses.
- M. **Successors and Assigns.** This Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties, subject to the limitations on assignment by Developer set forth in this Agreement.
- N. **Electronic Execution.** The signature of any party to this Agreement transmitted to any other party by facsimile or e-mail shall be deemed an original signature of the transmitting party.

- O. *Authority.*** The person(s) executing this Agreement on behalf of Developer warrant that, (i) Developer is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of Developer, (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which Developer is bound.
- P. *Counterpart Execution.*** This Agreement may be executed in multiple counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first set forth above.

“DEVELOPER”

MERCY HOUSING CALIFORNIA, a California
nonprofit public benefit corporation

By: _____
Name:
Title:

“CITY”

CITY OF GLENDORA,
a municipal corporation

By: _____
Name: David Fredendall
Title: Mayor

ATTEST:

Kathleen Sessman, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Danny Aleshire, City Attorney

EXHIBIT A

PROPERTY LEGAL DESCRIPTION / DEPICTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF GLENDORA IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

PARCEL 1, AS SHOWN ON [PARCEL MAP NO. 2504](#), IN THE CITY OF GLENDORA, AS PER MAP FILED IN [BOOK 35 PAGE 53](#) OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM THAT PORTION OF SAID LAND NOT INCLUDED WITHIN THE LINES OF LOT 27 OF TRACT 21612, AS PER MAP RECORDED IN [BOOK 578 PAGES 31](#) AND 32 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, 50 PERCENT OF ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES WHICH MAY AT ANY TIME BE PRODUCED THEREFROM, AS GRANTED TO CHARLES B. COOPER AND WIFE BY DEED REGISTERED AUGUST 28, 1946 AS [DOCUMENT NO. 20235-O](#) IN THE OFFICE OF THE REGISTRAR OF LAND TITLES AND RECORDED AUGUST 29, 1946 IN [BOOK 23616 PAGE 311, OFFICIAL RECORDS](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

NON-EXCLUSIVE EASEMENT APPURTENANT TO SAID PARCEL 1, FOR INGRESS AND EGRESS, ROAD AND DRIVEWAY PURPOSES, AND PRIVATE AND PUBLIC UTILITIES, IN COMMON WITH OTHERS OVER, IN, ACROSS, WITHIN AND THROUGH THAT PORTION OF PARCEL 2 OF [PARCEL MAP NO. 2504](#), INCLUDED WITHIN A STRIP OF LAND 15 FEET WIDE, LYING 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING IN THAT CERTAIN WESTERLY LINE OF SAID PARCEL 1, SAID [PARCEL MAP NO. 2504](#), BEING ALSO THE EASTERLY LINE OF DALE ROAD AND BONITA AVENUE, AS SHOWN ON SAID [PARCEL MAP NO. 2504](#), AT A POINT DISTANT NORTH 0° 06' 52" WEST 35.80 FEET FROM THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL 1;

THENCE PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 1. SAID [PARCEL MAP NO. 2504](#) SOUTH 89° 58' 32" EAST 20.00 FEET; THENCE SOUTH 61° 33' 22" EAST 18.91 FEET;

THENCE PARALLEL WITH SAID NORTHERLY LINE SOUTH 89° 58' 32" EAST 56.40 FEET; THENCE SOUTH 42° 21' 42" EAST 40.00 FEET AND POINT "A"; THENCE NORTH 89° 51' 48" EAST 89.63 FEET AND POINT "B";

THENCE NORTH 79° 24' 28" EAST 26.05 FEET;

THENCE SOUTH 48° 54' 47" EAST 28.08 FEET TO A LINE WHICH IS PARALLEL WITH AND 17.00 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF SAID PARCEL 1 SAID [PARCEL MAP NO. 2504](#);

THENCE ALONG LAST MENTIONED PARALLEL LINE SOUTH 89° 59' 06" EAST TO THE SOUTHEASTERLY LINE OF PARCEL 2, SAID [PARCEL MAP NO. 2504](#).

EXCEPTING THEREFROM ANY PORTION THEREOF WIDER THAN 5.30 FEET ON EACH SIDE OF ABOVE DESCRIBED LINE BETWEEN SAID POINT "A" AND SAID POINT "B".

THE SIDE LINES OF THE ABOVE STRIP OF LAND SHALL TERMINATE WESTERLY IN SAID EASTERLY LINE OF DALE ROAD AND BONITA AVENUE AND EASTERLY IN THE EASTERLY AND SOUTHEASTERLY LINES OF PARCEL 2, SAID [PARCEL MAP NO. 2504](#).

[APN: 8631-013-023](#) AND 8631-013-007



EXHIBIT B

INITIAL PROJECT DESCRIPTION

The Project will consist of an approximately 65-70 unit affordable housing development serving a combination of special needs and low-income households.

EXHIBIT C

INSURANCE POLICIES

Developer obtain, provide and maintain at its sole cost and expense prior to any entry upon the Property the following policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General Liability Insurance. Commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01 or its equivalent, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

(b) Subcontractors. Developer shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

General Insurance Requirements.

(a) Proof of Insurance. Developer shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance.

(b) Duration of Coverage. Developer shall procure and maintain insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of Developer’s due diligence investigation activities with respect to the Property (which shall include its agents, representatives, employees or subconsultants).

(c) Primary/Noncontributing. Coverage provided by Developer shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders’ Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best’s Key Rating Guide, unless otherwise approved by the City’s Risk Manager.

(e) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Developer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Developer hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(f) Notice of Cancellation. Developer agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(g) Additional Insured Status. General liability shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(h) Pass Through Clause. Developer agrees to ensure that its subconsultants, subcontractors, and any other party involved, provide the same minimum insurance coverage and endorsements required of Developer. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section.

(i) Deductibles / Self-insured Retentions. Any deductibles and self-insured retentions must be declared to and approved by City.