

GWTP MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

TC GREEN WATER MASTER DEVELOPER, LLC

**CONCERNING THE DEVELOPMENT OF
THE GREEN WATER TREATMENT PLANT
AUSTIN, TEXAS**

Table of Contents

ARTICLE I DEFINED TERMS	1
1.1 Defined Terms.....	1
1.2 Modification of Defined Terms	9
1.3 References and Titles	9
1.4 Term of Agreement.....	9
1.5 ENA.....	9
ARTICLE II REPRESENTATIONS	9
2.1 Representations of the City	9
(a) Title	10
(b) Parties in Possession	10
(c) Proceeding by Governmental Authority	10
(d) Litigation or Administrative Proceeding.....	10
(e) Performance Will Not Result in Breach	10
(f) Execution.....	10
(g) Not a Foreign Person	10
(h) Broker.....	10
(i) Environmental	11
(j) 2 nd Street and Nueces Street Design	11
2.2 Representations of Developer	11
(a) Authorization.....	11
(b) Performance.....	11
(c) Execution.....	11
(d) Broker.....	11
(e) Executive Order 13224	11
2.3 Change in Representations.....	12
2.4 NO OTHER REPRESENTATIONS OR WARRANTIES	12
ARTICLE III COVENANTS AND AGREEMENTS	13
3.1 Developer's Development Related Covenants and Agreements	13
(a) Improvements Design and Performance	13
(b) Subdivision Plat	13
(c) Design and Construction of the Improvements	13
(d) Design and Construction of Public Improvements	14
(e) Licensing and Leasing	15
(f) Chilled Water Agreement.....	15
(g) Trees.....	15
3.2 Developer's General Covenants and Agreements.....	16
(a) Single Asset Entity.....	16
(b) Downtown Austin Alliance.....	16
(c) Intentionally Omitted.....	16
(d) M/WBE	16
(e) Prevailing Wage Ordinance.....	18
(f) OSHA Resolution	18

(g)	Shoal Creek Bridge Construction Easement	18
3.3	City's Covenants and Agreements	18
(a)	Litigation	18
(b)	No Further Sales	18
(c)	No Further Leases	18
(d)	Dedicated Team	19
(e)	Controlling Ordinances, Manuals, and Rules	19
(f)	Environmental	19
(g)	Inspection Prior to Takedown Date	20
(h)	Interlocking Stairs; Area of Refuge	21
(i)	Managed Growth Agreement	22
(j)	Shoal Creek Bridge	22
(k)	Staging Right	22
(l)	License for Underground Parking	23
(m)	Licenses for Certain Development Functions	23
ARTICLE IV PROPERTY TAKEDOWN AGREEMENTS		23
4.1	Takedown Agreement and Timing	23
(a)	Takedown Dates	23
(b)	Real Estate Market Delay of Takedown Date	24
(c)	Financing Market Delay of Takedown Date	25
(d)	Developer Unilateral Right to Delay Takedown Date	26
4.2	Takedown Conditions	26
(a)	The City's Takedown Conditions	26
(b)	Developer's Takedown Conditions	26
4.3	Title Binder and Survey	27
(a)	Title Binder	27
(b)	Updating Title Binder; Survey	27
(c)	Review of Updated Title Binder and Survey	27
(d)	Developer's Option to Waive Updating Title Binder and Survey	28
4.4	Condemnation	28
(a)	Knowledge	28
(b)	Developer's Role	28
(c)	Legal Requirements	28
ARTICLE V PROPERTY TAKEDOWN and transfer price payment		29
5.1	The Takedowns	29
(a)	The City's Takedown Obligations	29
(b)	Developer's Takedown Obligations	29
(c)	Taxes and Assessments	29
(d)	Closing Costs	29
ARTICLE VI Developer's payments and contributions		30
6.1	Shoal Creek Improvements	30
6.2	Arts in Public Places	30
6.3	Public Music	30
6.4	Excess Environmental Remediation Costs	31

ARTICLE VII INSURANCE AND INDEMNITY	31
7.1 Insurance	31
(a) General	31
(b) Special Requirements.....	32
(c) Additional Insured	33
(d) Cost	33
7.2 Indemnity and Release.....	33
(a) Indemnity	33
(b) Claims	34
(c) Release	34
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES	34
8.1 Events of Default – Developer.....	34
(a) Failure to Pay.....	34
(b) Abandonment or Suspension.....	35
(c) Failure to Perform Obligations	35
(d) Insurance	35
(e) Assignment.....	35
(f) Other Development Documents	35
(g) Receiver and Bankruptcy	35
(h) Litigation	35
8.2 Remedies of the City	36
(a) Termination	36
(b) Specific Performance	36
(c) Damages.....	36
(d) Intentionally Omitted.	36
(e) Tolling of Obligations under CWSA	36
(f) Tolling of Other Obligations	36
(g) Remedies Under Other Development Documents.....	36
8.3 Events of Default – City	36
(a) Failure to Pay.....	37
(b) Failure to Perform Obligations	37
(c) Assignment.....	37
(d) Receiver and Bankruptcy	37
(e) Litigation	37
(f) Other Development Documents	37
8.4 Remedies of Developer	37
(a) Termination of the Development.....	37
(b) Specific Performance	37
(c) Damages.....	37
(d) Tolling of Other Obligations	38
8.5 Rights and Remedies Are Cumulative	38
8.6 LIMITED WAIVER OF SOVEREIGN IMMUNITY	38
ARTICLE IX MISCELLANEOUS PROVISIONS	38
9.1 Notices	38
9.2 Limitation on Liability.....	40

9.3	Independent Contractor	40
9.4	Severability	40
9.5	Construction of Agreement.....	40
9.6	Entire Agreement	40
9.7	No Waiver	41
9.8	Time Is of the Essence	41
9.9	Governing Laws	41
9.10	Attorney’s Fees and Interest	41
9.11	No Third Party Beneficiaries	41
9.12	Counterparts.....	41
9.13	Time of Performance	41
9.14	Estoppel Certificates.....	41
9.15	Successors and Assigns	42
	(a) General	42
	(b) City Assignment	42
	(c) Developer Assignment.....	42
	(d) Developer Assignment.....	42
	(e) Bankruptcy	43
9.16	No Recording/Filing	43
9.17	Effect of Force Majeure, City Caused Delays and Developer Caused Delays	43
9.18	Further Acts	44
9.19	Consents and Approvals	44
9.20	Correction of Technical Errors	44
9.21	Interstate Land Sales Full Disclosure	44

Exhibit A-1	Graphic Depiction of the Property
Exhibit A-2	Block 1
Exhibit A-3	Block 23
Exhibit A-4	Block 185
Exhibit A-5	Block 188
Exhibit B	Tree Designations
Exhibit C	Declaration
Exhibit D	Deed
Exhibit E	M/WBE Resolution
Exhibit F	Prevailing Wage Ordinance
Exhibit G	Shoal Creek Bridge Construction Easement Area
Exhibit H	OSHA Resolution
Exhibit I	Master Development Agreement Joinder
Exhibit J	Excluded Contracts

GWTP MASTER DEVELOPMENT AGREEMENT

This GWTP Master Development Agreement (this “**Agreement**”) is made to be effective as of the ____ day of _____, 2012 (the “**Effective Date**”), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the “**City**”) and TC GREEN WATER MASTER DEVELOPER, LLC, a Delaware limited liability company (“**Developer**”).

RECITALS

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

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

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

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

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

F. The City, CVI and TC Austin entered into an ECC Master Development Agreement dated _____, 2010 [sic] concerning the sale, purchase and development of the ECC.

G. Developer is a wholly owned subsidiary of TC Austin.

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

ARTICLE I DEFINED TERMS

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

“**Affiliate**” means any Person controlling, controlled by or under common control with any other Person. For the purposes of this definition, the term “control” when used with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

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

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

“**Block**” means Block 1, Block 23, Block 185 or Block 188, as applicable.

“**Block 1**” means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-2 attached hereto.

“**Block 23**” means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-3 attached hereto.

“**Block 185**” means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-4 attached hereto.

“**Block 188**” means the property commonly known by such name as shown on Exhibit A-1 attached hereto and described on Exhibit A-5 attached hereto.

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

“**Certificate of Occupancy**” means a final, conditional or temporary certificate of occupancy or certificate of completion, as applicable, of a majority of a shell building (or its equivalent) issued by the applicable Governmental Authority, determined on a Block by Block basis.

“**City Caused Delay**” means any actual delay to the extent caused solely by the City (a) with respect to its obligations which *are not specified* hereunder in its capacity as a governmental entity (such as building permit issuance or plat approval), by its unlawful action or inaction; provided however, if Developer is obligated under this Agreement or the Declaration to perform an action within a specified time period, and that time period is shorter than the specific time frame established by Legal Requirements for a related

regulatory action by the City acting in its governmental capacity, then the time for Developer's performance will be extended beyond the contractual time period at least to the date of the related City regulatory action, (b) with respect to its obligations which *are specified* hereunder in its capacity as a governmental entity (such as providing a dedicated review team), by its unreasonable delay in such action or inaction, or (c) in its capacity as a landowner (such as design approval, and financial approvals), by its failure to meet the specific timeframes for action set forth herein.

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

"Claim" as defined in Section 7.2(a) hereof.

"Commence Construction" and **"Commencement of Construction"** mean the commencement of bona-fide pouring of concrete footings for construction of the proposed improvements on the Property or similar activity for construction of the proposed "build out" of the applicable Improvements on the Property, as applicable for each Block following the Takedown of such Block.

"Community Facility Agreement" means a Community Facility and Cost Reimbursement Agreement between the Developer and the City regarding the reimbursement of the cost of the Environmental Remediation and the Public Improvements, as applicable (each of which the City Council authorizes the City Manager to negotiate and execute).

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

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

(b) all Governmental Authorities having jurisdiction have issued Certificates of Occupancy for such Improvements, and

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

"Cure Period" as defined in Section 4.3(c) hereof.

“**CWMOU**” means a Chilled Water Memorandum of Understanding between Developer and Austin Energy concerning the delivery of chilled water to all or any portion of the Property.

“**CWSA**” means a Chilled Water Service Agreement between Developer and Austin Energy concerning delivery of chilled water to all or any portion of the Property.

“**Declaration**” means the Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit C. While the intent of the term of this Agreement is to cover the initial development of the Property, the intent of the term of the Declaration is to cover a much longer period of time to ensure that the Property is maintained, reconstructed (if applicable) and redeveloped (if applicable) in accordance with the intent of this Agreement. One Declaration will be filed for all Blocks at the first Takedown.

“**Deed**” means the Special Warranty Deed substantially in the form attached hereto as Exhibit D.

“**Developer Caused Delay**” means any actual delay caused solely by Developer’s failure to meet the specific timeframes for action set forth herein.

“**Disclosure Notice**” as defined in Section 2.3 hereof.

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

“**Environmental Remediation**” means all work required to design, obtain permits, and safely excavate and remove any petroleum contaminated soil currently located on Block 23 and Block 188 to the extent necessary to effect the contemplated development, as more particularly set forth in the applicable Community Facility Agreement. Such work shall include the design and installation of retention systems in the public right of way along the entirety of the Northern property line of Blocks 23 and 188 (to the extent creek bank stabilization is not adversely affected), the Eastern property line of Block 23, and the Western property line of Block 188. The design and installation of this retention system will be coordinated by Developer and the City to ensure that it does not conflict with the design and construction of the Improvements to be completed on Block 23 and Block 188. The work shall also include the complete excavation of both blocks to a depth necessary to entirely remove the contaminated soil, the anticipated extent of which is described in the Site Investigation Report prepared by URS and submitted to TCEQ as IOP No. 805. Upon completion of the excavation the retention system will be left in place, and a drainage facility will be installed to allow for drainage of the excavated area.

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

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

“Final Ready Date” means the later of (a) the Initial Ready Date, (b) the date of the Voluntary Cleanup Program Certificate of Completion (to residential standards) issued by the TCEQ concerning all Blocks which does not prohibit or materially affect the anticipated construction, development and use of the proposed Improvements, (c) the date of the Innocent Owner/Operator Program Certificate by the TCEQ concerning Blocks 23 and 188 which does not prohibit or materially affect the anticipated construction, development and use of the proposed Improvements, and (d) the substantial completion of the Environmental Remediation. If the programs/certificates noted in this definition are changed, this definition will automatically be modified to refer to the successor programs/certificates; provided however, if all the other conditions listed in this paragraph have been satisfied but such Innocent Owner/Operator Program Certificate has not been issued, then the Final Ready Date will be deemed to occur as of the satisfaction of the other conditions (but Developer may continue to pursue issuance of such Innocent Owner/Operator Program Certificate).

“Financing Delay Period” as defined in Section 4.1(c) hereof.

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

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

“Hazardous Materials” mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Legal Requirements or common law, as “hazardous substance,” “hazardous material,” “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such

synthetic gas) or derivatives thereof. “**Hazardous Materials**” also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

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

“**Initial Ready Date**” means the date of the Voluntary Cleanup Program Certificate of Completion (to residential standards) issued by the TCEQ concerning Block 1 which does not prohibit or materially affect the anticipated construction, development and use of the proposed Improvements. If the programs/certificates/standards noted in this definition are changed, this definition will automatically be modified to refer to the successor programs/certificates/standards.

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

“**Legal Requirements**” mean applicable restrictive covenants (including the Declaration), service extension requests, zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions, including without limitation, the Waterfront Overlay District, Downtown Creek Overlay, Capital View Corridor restrictions, Great Streets Development Program and Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines).

“**License Agreement**” means a license granted by the City for the activities listed in Sections 3.3(l) and 3.3(m) (each of which the City Council authorizes the City Manager to negotiate and execute).

“**Market Delay Period**” as defined in Section 4.1(b) hereof.

“**M&M Lien**” means a lien, claim of lien or affidavit of a lien concerning any work performed or materials delivered.

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

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

“**M/WBE Resolution**” means the City Council Resolution attached hereto as Exhibit E.

“**Objection Period**” as defined in Section 4.3(c) hereof.

“**Ordinance**” as defined in Section 3.1(g) hereof.

“Other Development Documents” means the Deed, Declaration, each Community Facility Agreement and each License Agreement.

“Permitted Encumbrances” mean (a) general real estate taxes on each Block for the year of Takedown of that Block, if any, (b) the Declaration, (c) other than the public utility easements and rights of ingress/egress as reserved in instruments recorded in Volume 12852, Page 120 and Volume 8460, Page 413 Real Property records of Travis County, Texas, which the City will vacate, all exceptions to title coverage with respect to a Block set forth for such Block in the Title Binder and any update thereto provided that no exception that first appears on any update to the Title Binder will be a Permitted Encumbrance unless it also qualifies under (d) or (e) immediately below, (d) all matters shown on the subdivision plat for the Property approved by Developer, which approval will not be unreasonably withheld, conditioned or delayed, (e) any other encumbrances approved, or caused, by Developer, and (f) any matter which is accepted by Developer or deemed a Permitted Encumbrance under Section 4.3(c) hereof.

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

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

“Property” means certain real property located in the City of Austin, Travis County, Texas, commonly known as the Green Water Treatment Plant, as more particularly shown on Exhibit A-1 attached hereto and described on Exhibit A-2 through Exhibit A-5 attached hereto. The Property includes all of Block 1, Block 23, Block 185 and Block 188.

“Public Improvements” means the (a) 2nd Street extension from San Antonio Street west to the Shoal Creek Bridge, (b) Nueces Street extension from the 3rd Street alley located adjacent to the northern Property line to Cesar Chavez, each including utility extensions and construction to the City’s Great Streets Development Program, and (c) the Water Quality Basin.

“Public Improvements Completion” means the day on which all of the following have been satisfied:

(a) the applicable Public Improvements have been substantially completed (which may not include the final street “top coat”) in accordance with the plans and specifications therefor as evidenced by a certificate of substantial completion from Developer’s engineer,

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

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

“**Public Improvements City Plans**” as defined in Section 3.1(d)(i).

“**Public Improvements City Plans License**” as defined in Section 3.1(d)(i).

“**Shoal Creek Bridge**” as defined in Section 3.1(d) hereof.

“**Shoal Creek Bridge Construction Easement**” means a temporary construction easement for the construction of the Shoal Creek Bridge as provided in Section 3.2(g) hereof in the area shown on Exhibit G attached hereto.

“**Staging Right**” as defined in Section 3.3(k) hereof.

“**Survey**” means any survey of the Property (or any Block) prepared by a civil engineer for the Developer.

“**Takedown**” means the transfer by the City of a Block to Developer.

“**Takedown Date**” as defined in Section 4.1(a) hereof.

“**TCEQ**” means the Texas Commission on Environmental Quality, including its successors.

“**Title Binder**” means the Commitment For Title Insurance prepared by Heritage Title Company of Austin, Inc. with an effective date of March 5, 2012 as GF No. 102663 and all exceptions to title coverage set forth therein as provided in Section 4.4 hereof.

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

“**Transfer**” as defined in Section 9.15(c) hereof.

“**Transfer Price**” means, as applicable, the following:

<u>Block</u>	<u>Transfer Price</u>
1	\$15,830,208
23	\$11,982,915
185	\$10,277,470
188	\$4,309,407

“**Water Quality Basin**” means a water quality structure and associated stormwater infrastructure that will receive stormwater runoff from the public streets and

other public rights-of-way adjacent to the Property and from the Improvements developed or to be developed on each Block, which structure fulfills the water quality requirements of the City in effect as of the Effective Date.

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

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

1.4 Term of Agreement. The intent of this Agreement is to govern the initial development of the Property and the applicable Other Development Documents will govern the ongoing use of the Property. The term of this Agreement shall commence on the Effective Date and shall continue, on a Block by Block basis, until the date which is the earlier to occur of (a) three months following the Completion of the Construction on a Block, and (b) this Agreement is earlier terminated pursuant to the terms hereof. When this Agreement terminates as to a Block, this Agreement no longer applies to such Block (but the Other Development Documents may continue to apply to such Block).

1.5 ENA. The ENA is terminated as of the Effective Date and neither party has any ongoing responsibilities or liabilities thereunder.

ARTICLE II REPRESENTATIONS

2.1 Representations of the City. The City represents to Developer as follows (as applicable to each portion of the Property which has not been Takendown):

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

(b) Parties in Possession. As of the Effective Date, there is no party in possession of the Property (other than the City and its departments), and on the applicable Takedown Date, there will not be any party in possession of the applicable portion of the Property (subject to the Permitted Encumbrances and the Shoal Creek Bridge Construction Easement).

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

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

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

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

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

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

connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedowns and any expiration or termination of this Agreement.

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

(j) 2nd Street and Nueces Street Design. City has delivered to Developer all design documents and other related information in its possession or control related to the design of the extension of 2nd Street and Nueces Street (and related utilities) so that Developer can complete the design and construction work related thereto as required by Sections 3.1(d)(i)-(vii) hereof.

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

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

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

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

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

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

Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended).

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

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

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

ARTICLE III
COVENANTS AND AGREEMENTS

3.1 Developer's Development Related Covenants and Agreements.

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

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

(c) Design and Construction of the Improvements. Subject to Force Majeure and City Caused Delays, Developer shall Commence Construction of the Improvements in a timely manner following the applicable Takedown. Following Commencement of Construction, Developer shall, subject to Force Majeure and City Caused Delays, diligently and in good faith continue construction of the Improvements to Completion of Construction. Developer will cause the design and construction of the Improvements to comply with Section 1 of the Declaration relating to the City's design approval rights. The design and construction of the Improvements must show, on a Block by Block basis, reasonable progress towards the requirements hereof and the Declaration, including

without limitation, minimum square footage, public parking and affordable housing requirements. The City will not be responsible for the cost of the design, construction or development of the Improvements. Developer acknowledges that all Block faces must meet the Great Streets Development Program requirements (such requirements on all faces which front a street included in the Public Improvements will be included in the construction of the Public Improvements).

(d) Design and Construction of Public Improvements.

(i) City hereby grants to Developer a license to use those plans and specifications for the Public Improvements (the “**Public Improvements City Plans**”) which have been prepared for, and are owned by, the City (the “**Public Improvements City Plans License**”). Under the Public Improvements City Plans License, Developer will have the right to use the Public Improvements City Plans to construct the Public Improvements.

(ii) Contemporaneously with Developer’s design of the Improvements, Developer shall use the Public Improvements City Plans to complete the design of the Public Improvements. The completion of the design of the Public Improvements shall be subject to the prior written approval of the City both in its regulatory capacity and its landowner capacity. Each request for approval under this paragraph relating to the City’s landowner capacity will be made in the same manner a design approval request is made under Section 1 of the Declaration (except that the required “plans” shall mean all the construction drawings of the Public Improvements). Developer shall cause the completion of the design of the Public Improvements to comply with all Legal Requirements, this Agreement and the applicable Community Facility Agreement. The design of the 2nd Street extension must be compatible with the City’s design and construction of the connecting bridge across Shoal Creek (the “**Shoal Creek Bridge**”).

(iii) Subject to Force Majeure and City Caused Delays, Developer shall Commence Construction of the Public Improvements at the appropriate time following Commencement of Construction of the adjacent Improvements (i.e., commencement will begin in sufficient time to allow completion according to the following sentence). Following such commencement, Developer shall, subject to Force Majeure and City Caused Delays, diligently and in good faith continue construction of the Public Improvements. Developer shall cause the construction of the Public Improvements to comply with this Agreement, the Other Development Documents and the Legal Requirements. Developer’s obligations under this paragraph will terminate to the extent the Public Improvements City Plans License is terminated by the City.

(iv) Subject to Force Majeure and City Caused Delays, the Public Improvements Completion of the 2nd Street extension from the Shoal Creek Bridge to San Antonio Street must be achieved by the earlier to occur of (A) opening of the Shoal Creek Bridge, or (B) issuance of a Certificate of Occupancy for the first building on a Block to be completed, but such completion of the

Public Improvements Completion of the 2nd Street extension from the Shoal Creek Bridge to San Antonio Street is not required to occur prior to December 31, 2014.

(v) Subject to Force Majeure and City Caused Delays, the Public Improvements Completion of the Nueces extension from the 3rd Street alley to Cesar Chavez must be achieved by issuance of a Certificate of Occupancy for the first building which is adjacent to Nueces Street. Compliance with this covenant will be measured in two parts – Nueces Street from the 3rd Street alley to 2nd Street and Nueces Street from 2nd Street to Cesar Chavez.

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

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

B. execute such bills of sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence the City's ownership of the Public Improvements, without representation or warranty, except an obligation of Developer to cause its contractor to provide a maintenance bond for a period of one year, and

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

(vii) The Public Improvements will be designed and constructed by Developer and the cost thereof will be reimbursed by the City through a separate Community Facility Agreement.

(e) Licensing and Leasing. Subject to Section 3.3(k) hereof, Developer will not license, lease or otherwise similarly transfer possessory rights to any portion of the applicable Property prior to its Takedown without the prior written consent of the City (which may be withheld in the City's sole and absolute discretion).

(f) Chilled Water Agreement. Contemporaneously with the execution hereof, Developer shall use good faith efforts to negotiate with Austin Energy to obtain a CWMOU and CWSA with respect to each Block so long as the use of such chilled water is not more costly (other than de minimis additional costs) or cause burdensome operational issues than the alternatives or adversely affect Developer in complying with any LEED covenants under the Declaration.

(g) Trees. After the issuance of the RFP, submittal of the RFP Response and selection of the Developer, the City enacted Ordinance 20100204-038 (the "**Ordinance**"), commonly known as the Heritage Tree Ordinance. The Property currently has seven "Heritage" trees (Tree Numbers 1184, 1370, 1371, 1385, 1386, 1412

and 3018) and one “Protected” tree (Tree Number 1430), each as defined in the Ordinance, which are delineated on Exhibit B attached hereto. In connection with the Environmental Remediation during the City’s ownership of Block 23, Tree Number 3018 will be removed and mitigated. Prior to the development of Block 185, Tree Number 1184 will be transplanted to a location agreed upon by City and Developer near the Property. Not later than the Commencement of Construction for Block 1, Developer shall pay to the City the total sum of \$58,632 concerning the removal of Tree Numbers 1370, 1371 and 1430. In connection with the development of Block 1, Tree Numbers 1385, 1386 and 1412 will be removed and mitigated with new trees (or an increase in the minimum caliper of onsite Great Streets Development Program’s trees), or a combination thereof, of at least 324 caliper inches to be installed at the appropriate time in the next growing season but within 9 months of the Commencement of Construction on Block 1. Any “transplanted” trees required under this paragraph will include a five year Developer irrigation and maintenance commitment. Any “new trees” required under this paragraph will be located in City of Austin public parks as selected by the City and reasonably approved by Developer in as close a proximity to the Property as possible, be at least 4” caliper trees, be a variety which is listed as a potential future “Heritage” tree in the Ordinance and include a two year Developer warranty and irrigation commitment for all trees not located on the Property. Developer’s satisfactory performance of its obligations under this paragraph will be deemed full and complete compliance with the Ordinance.

3.2 Developer’s General Covenants and Agreements.

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

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

(c) Intentionally Omitted.

(d) M/WBE.

(i) Developer, its architect, and its general contractor shall use good faith efforts to meet the minority-owned and women-owned business enterprises (“**M/WBE**”) Participation Goals set forth herein. If Developer, its architect, and its general contractor do not meet each of the M/WBE Participation Goals the Developer must document good faith efforts to meet the goals that were not met. Good faith efforts are those efforts described in sections 2-9A-21 and 2-9B-21 of the M/WBE Ordinance. If Developer provides documentation evidencing these good faith efforts, Developer shall be deemed in compliance with such obligations. Failure to perform this obligation shall be considered a material

breach of this contract. If such failure includes providing false or misleading information to the City, Developer may also be subject to being barred, suspended, or deemed non-responsible in future City solicitations and contracts for a period up to five years. If an Event of Default results under this paragraph, Developer may also be subject to being barred, suspended, or deemed non-responsible in future City solicitations and contracts for a period up to five years.

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

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

(iii) Developer shall provide an outreach program designed to solicit participation of minority-owned businesses, women-owned businesses, and small businesses.

(iv) Developer shall inform the City’s Small and Minority Business Resources Department (“**SMBR**”) when Developer, its architect, or its general contractor desires assistance from SMBR in its efforts regarding the ethnic-specific M/WBE utilization goals set forth above. This assistance may include providing a list of certified M/WBE firms from which Developer may solicit or cause its architect or general contractor to solicit participation in design or construction, identifying potential scopes of work, establishing the bid packages available, scheduling and hosting outreach meetings, and assisting Developer in soliciting M/WBE firms to provide bids. The foregoing covenant does not require Developer to solicit participation during a period in which Developer is not designing and/or constructing the Improvements or Public Improvements, but rather, requires Developer to incorporate the standards and principles of the M/WBE Ordinance including the foregoing M/WBE Participation goals into its development process as and when such process exists. Additionally, the foregoing covenant does not require Developer to modify or amend any contract

or agreement that Developer has entered into prior to the Effective Date which are listed on Exhibit J attached hereto. In the event the Developer applies for a service extension request for the Property, Developer is encouraged to comply with the standards and principles of the M/WBE Ordinance in the design of the water and wastewater infrastructure and related facilities.

(v) Developer shall provide monthly reports to allow SMBR to track (A) the utilization on a percentage basis of M/WBE firms in the design and construction of the Improvements and Public Improvements, and (B) a summary of Developer's efforts to implement the M/WBE Resolution. SMBR shall provide the forms to be used by Developer in submitting such reports.

(e) Prevailing Wage Ordinance. Developer shall, or shall use demonstrated good faith efforts to, require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to pay the prevailing wage as defined in the City of Austin Ordinances attached hereto as Exhibit F.

(f) OSHA Resolution. Developer shall, or shall use demonstrated good faith efforts to, require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to comply with the OSHA Resolution attached hereto as Exhibit H.

(g) Shoal Creek Bridge Construction Easement. City, at no cost, shall have the right to occupy the Shoal Creek Bridge Construction Easement for the purpose of constructing the Shoal Creek Bridge. The Shoal Creek Bridge Construction Easement location may change from time to time as the needs of the City, in its construction of the Shoal Creek Bridge, and the Developer, in its development of the Property, may change and the City and the Developer shall work together in good faith to facilitate any such relocation!

3.3 City's Covenants and Agreements.

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

(b) No Further Sales. Prior to a Takedown, subject to Section 4.4 regarding condemnation, the City will not voluntarily sell or otherwise transfer all or any remaining portion of the Property to a party other than Developer, without the prior written consent of Developer which Developer may grant or deny in its sole and absolute discretion.

(c) No Further Leases. Without the prior written consent of Developer (which Developer may grant or deny in its sole and absolute discretion) prior to a Takedown, other than the Permitted Encumbrances and the Staging Right, the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any applicable remaining portion of the Property which (i) cannot be terminated on up to 30

days prior notice (and in any event not later than the applicable Takedown), and (ii) materially and adversely interferes with Developer's obligation to redevelop the applicable Property under this Agreement.

(d) Dedicated Team. Commencing on the Effective Date and ending on the date which is 12 months following the last scheduled Takedown, the City will use its good faith efforts to dedicate and maintain resources to review the architectural plans required to be submitted to the City under the Declaration, subdivision plats, site development permits, Community Facility Agreements, license applications, public infrastructure and shell building permits/applications.

(e) Controlling Ordinances, Manuals, and Rules. As provided in Section 3 of the Declaration, the Improvements must be constructed in accordance with all "Legal Requirements" (as defined in the Declaration). Solely for the benefit of the initial developer of the Improvements (as opposed to any other owner, tenant, licensee or occupant of the Improvements), commencing on the Effective Date and ending on the date which is 12 months following the last scheduled Takedown, the application of all City of Austin ordinances, manuals, and rules regarding land development, including the Land Development Code, to the development of the Improvements for which a building permit has been issued by such date will be "locked-in" by limiting them to the terms and provisions as they exist on the Effective Date; except the following applicable City of Austin ordinances, manuals and rules shall not be "locked-in" and may be enforced as enacted or amended:

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

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

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

(f) Environmental.

(i) City will use commercially reasonable efforts to cause its environmental consultant to pursue issuance of the Voluntary Cleanup Program Certificate of Completion and Innocent Owner/Operator Program Certificate referenced in the definitions of "Final Ready Date" and "Initial Ready Date". Developer, at its election, may pursue issuance of the Innocent Owner/Operator Program Certificate referenced in the definition of "Final Ready Date" and City shall use its good faith efforts to assist in Developer's pursuit of such Innocent Owner/Operator Program Certificate.

(ii) City will hire Developer to manage the construction and remediation necessary to achieve completion of the Environmental Remediation, which arrangement will be evidenced by a Community Facility Agreement. All costs to complete the Environmental Remediation will be reimbursed by the City through a Community Facility Agreement (subject to the terms thereof).

(iii) The City will keep Developer generally informed as to the progress on the City's efforts to satisfy the requirements for the Initial Ready Date and the Final Ready Date.

(g) Inspection Prior to Takedown Date.

(i) Developer may enter upon the Property, and cause authorized representatives of Developer to enter upon the Property to conduct general or special physical investigations and inspections of the Property on behalf of Developer in furtherance of the purpose of assessing and causing the development of the Property (the "**Inspection Right**"). In no event may Developer conduct general or specialized tours through the Property or hold any event on the Property without the prior written consent of City. All inspections performed by Developer shall be at Developer's sole expense. Developer shall make such inspections in good faith and with due diligence and in compliance with all Legal Requirements. City reserves the right to have a representative present at the time of making any such inspection. Developer shall notify City not less than two business days in advance of exercising the Inspection Right.

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

(iii) DEVELOPER ACKNOWLEDGES THAT THE INSPECTION RIGHT IS GRANTED TO THE PROPERTY AS IS, WITH ALL FAULTS, IN ITS EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR

**IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY,
SPECIFICALLY INCLUDING THE PROPERTY’S GENERAL STATE OF
SAFETY FOR INDIVIDUALS.**

(h) Interlocking Stairs; Area of Refuge.

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

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

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

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

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

- A. Spring Condominiums
300 Bowie Street
Austin, TX 78703
- B. 7 Rio

615 West Seventh Street
Austin, TX 78701

C. Tara Condominiums
Sacramento, CA

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

(i) Managed Growth Agreement. Chapter 25-5-81 of the City Code provides that an approved site plan expires three years from the date of its approval. As a result of the significant challenges and delicate market conditions associated with marketing, developing, and financing the Improvements, the Developer has requested an extension of the site plan expiration date for the Improvements' each approved site plan. Thus, the expiration date of the approved site plan for the Improvements under Chapter 25-5-81 of the City Code will be five years from the date of its respective approval, subject to the exceptions set forth in Chapter 25-5-81 of the City Code. All other terms of Chapter 25 of the City Code will remain in effect as provided therein, subject to Section 3.3(e) hereof. Additionally, the expiration date of the Thomas C. Green Water Treatment Plant Decommission and Deconstruction Site Plan SP-2008-0258d(XT) (the current site plan for the Property) is extended to May 23, 2013. This section is deemed a "managed growth agreement" pursuant to Chapter 25-1-540 of the City Code.

(j) Shoal Creek Bridge. Subject to Force Majeure and Developer Caused Delays, City shall construct the Shoal Creek Bridge. In connection with the design of the Shoal Creek Bridge, City will afford Developer the right to provide input into such design regarding the functionality and connectivity to the 2nd Street extension to be constructed by Developer under Section 3.1(d)(iii) hereof. But City does not covenant to generally construct the Shoal Creek Bridge in accordance with any particular design or timetable, other than the mutually agreed upon design regarding such functionality and connectivity. Once constructed, City makes no representation or warranty regarding such functionality or connectivity.

(k) Staging Right. Commencing upon the closing of the first Takedown, the City grants to Developer, at no cost, subject to the Permitted Encumbrances and subject to City approval (not to be unreasonably withheld) of the general scope of staging activities, adequate visual and noise screening and access points, the right to occupy the remaining portions of the Property which have not yet been purchased under this Agreement solely for the purpose of staging its development activities on the Property (the "**Staging Right**"). The Staging Right will automatically terminate upon the expiration or earlier termination of this Agreement. In connection with such termination or expiration, any equipment or other materials which remain on the date which is 30 days following such expiration or termination on the portion of the Property which has not been Takedown will be deemed abandoned by the Developer and the City may, in its sole and absolute discretion, dispose of such property. No tenancy relationship or

other property right is created by the Staging Right and the City will not have an obligation to perform any services as a landowner whatsoever in connection with Developer's Staging Right.

(l) License for Underground Parking. Because the RFP encouraged a high density development on the Property and stated "[t]he Proposer should note that there is the ability to place a portion of the parking under 2nd Street and Nueces Street near the GWTP properties", subject to the execution of applicable License Agreements (which the City Council authorizes the City Manager to negotiate and execute), at no cost to the Developer, in connection with the development and operation of only the Property, the City will allow the Developer to construct and maintain, in connection with the initial development of the Property, an underground garage(s) under the rights of way of the Public Improvements solely for the use of the residents, tenants and guests of the Property and the general public (as opposed to regular use by residents, tenants and guests of neighboring properties).

(m) Licenses for Certain Development Functions. Subject to the execution/issuance of applicable License Agreements/permits, payment of applicable fees and reasonable City approval regarding the specific applicable location(s), in connection with its development of the Property, the City will allow the Developer to (i) temporarily use the rights-of-way (streets, sidewalks and alleys) which are contiguous to the Property, (ii) locate crane foundations in the public rights-of-way contiguous to the Property (so long as Developer removes such foundations located within 20' below finished grade), (iii) install a subgrade retention system for the Improvements and Environmental Remediation on the Property (including piles and tie backs) in the public rights-of-way contiguous to the Property and (iv) construct and install the Water Quality Basin underground within the public right-of way of Nueces Street between 2nd Street on the north and Cesar Chavez on the south with the right to tie into this system from each Block, which will satisfy all water quality requirements for each of the Blocks. The Water Quality Basin will be constructed as part of the Public Improvements to serve both private (i.e., the Blocks) and public (i.e., the Public Improvements) improvements and the design, permitting and construction cost thereof will be fully reimbursed by the City under a Community Facility Agreement, but be maintained by the owners of the Blocks under the Declaration at their expense.

ARTICLE IV PROPERTY TAKEDOWN AGREEMENTS

4.1 Takedown Agreement and Timing.

(a) Takedown Dates. The Takedowns of the Property will occur in four or less closings on the following dates:

	<u>Block</u>	<u>Timing</u>
First Takedown	1 or 23	Within 6 months following the Initial Ready Date (but in no event earlier than the date which is 6

		months following the Effective Date) (the “ First Required Takedown Date ”)
Second Takedown	Any remaining Block	Within the date which is the later of (a) 21 months following the First Required Takedown Date, and (b) 180 days following the Final Ready Date (the “ Second Required Takedown Date ”)
Third Takedown	Any remaining Block	Within 18 months following the Second Required Takedown Date (the “ Third Required Takedown Date ”)
Fourth Takedown	Any remaining Block	Within 15 months following the Third Required Takedown Date (the “ Fourth Required Takedown Date ”)

The First Required Takedown Date, Second Required Takedown Date, Third Required Takedown Date and Fourth Required Takedown Date, each a “**Takedown Date**” and collectively, the “**Takedown Dates**”.

The Developer, at its option, may Takedown any Block before the applicable Takedown Date, but such early Takedown will not accelerate any subsequent Takedowns.

(b) Real Estate Market Delay of Takedown Date. The *next occurring* Takedown Date (other than the First Required Takedown Date) may be delayed by Developer for up to 3 periods of 9 months each (a “**Market Delay Period**”) if one of the following conditions exist:

(i) Residential. If (A) Class A “for rent” multifamily vacancy rate for the City of Austin Central Business District exceeds 8%, or (B) the unsold inventory of new, completed for-sale high rise condominium units in the City of Austin Central Business District represents 10% of the total number of high rise condominium units in the City of Austin Central Business District, on the date which is 3 months prior to a scheduled Takedown Date.

(ii) Hotel. If occupancy of Class A hotel rooms in the City of Austin Central Business District is less than 70% for the prior 12 month period ending on the date which is 3 months prior to a scheduled Takedown Date.

(iii) Office. If Class A office direct vacancy rate for the City of Austin Central Business District exceeds 12% on the date which is 3 months prior to a scheduled Takedown Date.

Once utilized, a Market Delay Period will no longer be available to Developer (i.e., if Developer exercises the office Market Delay Period, the office Market Delay Period will no longer be available; provided however if Block 23 is the first Block to be Takedown, the “Office” Market Delay Period in Section 4.1(b)(iii) above will be replaced with the following:

Additional Residential. If Class A “for rent” multifamily vacancy rate for the City of Austin Central Business District exceeds 8% on the date which is 3 months prior to a scheduled Takedown Date.

A Market Delay Period may only be exercised by written notice to the City effective as of the date which is 2 months prior to a scheduled Takedown Date. Any notice of exercise of a Market Delay Period must be accompanied by evidence from a mutually acceptable research publication or commissioned study concerning the market factors listed above prepared by a third party that is unaffiliated with Developer. No Market Delay Period may be exercised if a Bankruptcy Event, Event of Default or Potential Event of Default exists.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Market Delay Period on October 1, 2014 would extend the *next occurring* Takedown Date by 9 months resulting in future Takedown Dates of October 1, 2015, July 1, 2016 and October 1, 2017.

(c) Financing Market Delay of Takedown Date. *All future occurring* Takedown Dates (other than the First Required Takedown Date) may be delayed by Developer for 1 period of 12 months (the “**Financing Delay Period**”) if a loan for the construction of the proposed improvements on the remaining Blocks is not available to Developer in the then current debt market on the date which is 3 months prior to a scheduled Takedown Date, based on any one or more of the following terms (and such other terms as are customary for similar projects):

- (i) loan amount of not less than 60% but not more than 80% of total projects costs related to the development of the applicable takedown Block;
- (ii) a market required guaranty not to exceed a 25% repayment and completion guaranty;
- (iii) an interest rate of not more than 8% per annum (fixed or equivalent rate); and
- (iv) a commitment or origination fee not more than 75 basis points.

A Financing Delay Period may only be exercised by written notice to the City effective as of the date which is 2 months prior to a scheduled Takedown Date. Any notice of exercise of a Financing Delay Period must be accompanied by evidence in form and content reasonably acceptable to the City from an independent third party stating that such financing is not available. No Financing Delay Period may be exercised if a Bankruptcy Event, Event of Default or Potential Event of Default exists.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Financing Delay Period on October 1, 2014 would extend *all future* Takedown Dates by 12 months resulting in future Takedown Dates of January 1, 2016, July 1, 2017 and October 1, 2018.

(d) Developer Unilateral Right to Delay Takedown Date. The *next occurring* Takedown Date (other than the First Required Takedown Date) may be delayed by Developer for up to 4 periods of 3 months each (a “**Unilateral Delay Period**”) which periods may be exercised one at a time or cumulatively, subject to the following conditions:

(i) Developer has given City not less than 60 days’ prior written notice of Developer’s intention to extend the next occurring Takedown Date.

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

(iii) Developer shall pay to City, contemporaneously with the written notice of the extension, an extension fee in the amount of \$125,000, which extension fee will be deemed due, payable, earned and nonrefundable, but will apply as a credit against Developer’s obligation to pay the Transfer Price at the next Takedown and if such next Takedown does not occur, City may retain such amount.

By way of example and not of limitation, if the future Takedown Dates are January 1, 2015, July 1, 2016 and October 1, 2017, the exercise of a Unilateral Delay Period on October 1, 2014 would extend the *next occurring* Takedown Date by 3 months resulting in future Takedown Dates of April 1, 2015, July 1, 2016 and October 1, 2017.

4.2 Takedown Conditions.

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

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

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

(iii) Contributions and Payments. Developer must make the applicable contributions and payments set forth in ARTICLE VI.

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

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

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

4.3 Title Binder and Survey.

(a) Title Binder. Developer has received and approved the Title Binder, subject to the exceptions noted in the definition of Permitted Encumbrances.

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

(c) Review of Updated Title Binder and Survey. If such (i) Survey shows any easement, right-of-way, or other encumbrance that was not created by, through or under Developer affecting the applicable Block, other than the Permitted Encumbrances, or (ii) updated Title Binder shows any additional exceptions to title coverage that were not created by, through or under Developer, other than the Permitted Encumbrances and the standard printed exceptions, and such new easement, right-of-way, other encumbrance or additional exceptions has an adverse effect on the title to the applicable Block, Developer shall, within 10 days after receipt of both the updated Title Binder and the Survey, notify the City in writing of such fact and the objections thereto (each such period, an "**Objection Period**"), in which event the City will have 10 days after the expiration of such Objection Period to cure such objections (the "**Cure Period**"). Upon the expiration of the Objection Period, Developer shall be deemed to have accepted the updated Title Binder and the Survey and all matters shown or listed thereon (except for the matters which are the subject of a notification permitted under the preceding sentence), and such matters will be included in the term "**Permitted Encumbrances**" as used herein. Notwithstanding anything to the contrary contained herein, the City shall have no obligation to bring any action or proceeding or otherwise to incur any expense to eliminate or modify such unacceptable exceptions except monetary liens, security interests and other collateral financing interests granted by the City against the Property, mechanic's liens arising out of any work performed by or under a contract with the City; judgment liens against the City and any exceptions and encumbrances created by the City after the Effective Date without Developer's consent. If the City is unable or unwilling to eliminate or modify such objectionable matters to the reasonable satisfaction of Developer within the Cure Period, Developer may, on or before the date which is 10 days following the expiration of the Cure Period (as its sole and exclusive remedies), either (x) terminate this Agreement as to the applicable Block by delivering written notice of termination to the City, in which event neither party shall have any right or obligation under this Agreement as to that Block, except those which expressly survive such

termination, (y) extend the Takedown Date by up to 30 days to attempt to cure such objectionable matter that the City is unable or unwilling to eliminate or modify, or (z) accept such title to the applicable Block as the City can deliver and such objectionable matters will be deemed approved by Developer as Permitted Encumbrances. If Developer elects option (y) immediately above and is unable to so cure such objectionable matter to its reasonable satisfaction with such additional 30 day period then, at the end of such period Developer shall have the right to terminate as to the applicable Block as provided in (x) immediately above or accept title and close as provided in (z) immediately above.

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

4.4 Condemnation.

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

(b) Developer's Role. Provided no Developer Event of Default exists, Developer may intervene in good faith by appropriate proceedings in any such proceedings for the sole purpose of protecting its interests under this Agreement, and, upon request from Developer, the City shall from time to time deliver to Developer written consent to such intervention. In any such condemnation event, this Agreement will remain in full force and effect until completion of such proceedings or as otherwise provided in this Section 4.4.

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

ARTICLE V
PROPERTY TAKEDOWN AND TRANSFER PRICE PAYMENT

5.1 The Takedowns. The Takedowns will take place at the offices of the Title Company on or before the Takedown Dates set forth in Section 4.1(a) hereof or such other time and place mutually agreed upon by the parties. At each Takedown the following will occur, each of which will be a concurrent condition to such Takedown:

(a) The City's Takedown Obligations. At each Takedown, the City shall:

(i) Deliver to the Title Company a duly executed and acknowledged Deed in favor of Developer covering the applicable portion of the Property, subject to the applicable Permitted Encumbrances.

(ii) With respect to the first Takedown, deliver to the Title Company a duly executed and acknowledged Declaration concerning the entire Property.

(iii) Deliver possession of the applicable portion of the Property to Developer, subject to the applicable Permitted Encumbrances.

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

(b) Developer's Takedown Obligations. At each Takedown, Developer shall:

(i) Pay to the City the applicable portion of the Transfer Price.

(ii) Deliver to the Title Company a duly executed and acknowledged counterpart of the Deed.

(iii) Deliver to the City the applicable payments and contributions set forth in ARTICLE VI hereof.

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

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

(d) Closing Costs. Developer will pay all closing costs (e.g., title insurance, survey, inspection fees, Developer's attorney fees, financing fees, recording fees and escrow fees) in connection with each Takedown, except the City's legal fees and financial obligations of any lien the City granted on the Takedown Property, security

interests and other collateral financing interests for which the City is responsible under Section 4.3(c) and any encumbrances created by the City after the Effective Date without Developer's consent. Section 3.1(b) of the ENA provides that Developer will receive a credit against the Transfer Price for certain Developer deposits. As the Improvements are approximately 75% of the overall improvements contemplated in the RFP response and the ENA (the other 25% being covered in the ECC Master Development Agreement), at the Takedown, Developer will receive a credit against the Transfer Price for 75% of the deposits referenced in Section 3.1 of the ENA (i.e., 75% of \$50,000 + 3% interest accruing from April 30, 2008 [RFP response submission date] plus 75% of \$100,000 + 3% interest accruing from August 11, 2008 [ENA effective date]), apportioned based on the Transfer Price for each Block compared to the sum of all Transfer Prices.

ARTICLE VI DEVELOPER'S PAYMENTS AND CONTRIBUTIONS

6.1 Shoal Creek Improvements. Developer shall contribute \$62,500 cash to the City to fund improvements in that portion of Shoal Creek adjacent to the Property on or before the Takedown of each Block (for a total contribution of \$250,000). With respect to the improvements constructed with the funds delivered under this section, City will provide advance notice and the opportunity for a representative(s) of Developer to attend all planning/design public meetings concerning such improvements with the intent that City exercise due regard and consideration for Developer's input regarding such improvements. Developer acknowledges that the City may, in its discretion, utilize such funds for the reimbursement of past expenses related to improvements in Shoal Creek.

6.2 Arts in Public Places. Contemporaneously with the Takedown of each Block, Developer shall contribute \$93,750 to the Arts in Public Places program (for a total contribution of \$375,000). Such contribution will be used to pay for public art, and for the installation of public art on the Property. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance notice and the opportunity for a representative(s) of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design, construction and use of the Property or any portion thereof. Any such public art project and the installation thereof may not adversely impact Developer's design, construction and use of the Property or any portion thereof.

6.3 Public Music. Contemporaneously with the Takedown of each Block, Developer shall contribute \$37,500 to the Music Division of the City's Economic Growth and Redevelopment Services Office (or its successor) to program music performances on the Property (for a total contribution of \$150,000). With respect to the selection of such public music under this section (a) Developer shall advise City during the process of selection as to Developer's plans as a guiding principle in such selection, and (b) City will provide advance notice and the opportunity for a representative(s) of Developer to attend all music selection

meetings, with the intent that City not negatively impact Developer's planned use of the Property.

6.4 Excess Environmental Remediation Costs. Contemporaneously with the Takedown of Block 23, Developer shall pay to the City all costs of the Environmental Remediation incurred by the City in excess of \$3,100,000, if any.

ARTICLE VII INSURANCE AND INDEMNITY

7.1 Insurance.

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

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

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

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

(iv) Intentionally Omitted.

(v) For contractors/subcontractors providing professional services under this Agreement, Engineers' Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. If coverage is written on a claims made basis, the retroactive date shall be coincident with the date the professional service provider commences its work and the certificate of insurance shall state that the coverage is claims made and the retroactive date shall be shown. The contractor shall maintain coverage for a two year period following the end of this Agreement.

The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

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

A. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any Hazardous Materials or pollution and shall provide "occurrence" coverage without a sunset clause. This policy cannot exclude asbestos or any Hazardous Materials or pollution except for exclusions as are typical in the insurance marketplace and approved by City Risk Management. The policy shall provide "occurrence" coverage without a sunset clause.

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

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

(b) Special Requirements. Developer will not cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. With respect to the insurance coverage required under this Article VII, such coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of B+VII or better or otherwise acceptable to the City. Additionally with respect to Sections 7.1(a)(i), (ii) and (iii), all policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Legal Requirements, and

will be endorsed to provide the City with a 30-day notice of cancellation or other appropriate documentation as acceptable to the City. The City will be an additional insured as its interests may appear on the Commercial General, Automobile Liability and Pollution policies. The “other” insurance clause shall not apply to the City where the City is an additional insured on any policy. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Developer will submit a certificate of insurance to the City providing evidence of insurance coverage required by this Agreement. Developer will be responsible for (i) overseeing its contractors with respect to such contractors’ obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors’ insurance certificates and other documentation evidencing the insurance coverages required hereunder.

(c) Additional Insured. The certificate of insurance and all endorsements i.e. additional insured, waiver of subrogation, and thirty day notice of cancellation (or appropriate documentation as acceptable to the City) shall indicate: City of Austin, Economic Growth and Redevelopment Services Office, Attn: Director, P.O. Box 1088, Austin, Texas 78767.

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

7.2 Indemnity and Release.

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

(b) Claims. If the City notifies Developer of any Claim, Developer shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Developer but reasonably satisfactory to the City; provided, that the City has the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Developer and the City, and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Developer, then the City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Developer shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Developer fails to assume within 20 days after being notified of the Claim the defense of the City, then the City may contest (or settle, with the prior written consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Developer's expense using counsel selected by the City; provided, that if any such failure by Developer continues for 30 days or more after Developer is notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Developer's consent and without releasing Developer from any obligations to the City under this Section so long as, in the written opinion of reputable counsel to the City, the settlement or payment in full is clearly advisable. So long as Developer does not admit liability or agree to affirmative obligations on behalf of the City, Developer is authorized to settle a Claim for itself and the City.

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

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

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

(f) Other Development Documents. Developer commits an event of default under any of the Other Development Documents which continues past any applicable grace, notice or cure period(s).

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

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

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

(a) Termination. With respect to any Block which has not been Takendown, the City may terminate all or a portion of Developer's rights under (i) this Agreement and/or (ii) the Declaration upon written notice to Developer. Additionally, the City may cause Developer to assign to another Person all or a portion of its rights and obligations without any representations or warranties under this Agreement (with an appropriate apportionment, as determined by the City, of rights and obligations between that portion of the Property that has been Takendown by Developer and that portion of the Property which has not been Takendown by the Developer). If the assignee assumes such rights, Developer has no further rights or obligations hereunder or thereunder as of the date of such assumption as to the rights and obligations so assigned. In connection with any such termination or assignment, City may also terminate that portion of the Public Improvements City Plans License that concerns the obligations of the MDA to be so assigned or terminated.

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

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

(d) Intentionally Omitted.

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

(f) Tolling of Other Obligations. The City may toll performance of its obligations under this Agreement and the Other Development Documents (other than the obligation to reimburse Developer for development costs under a Community Facility Agreement) and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(g) Remedies Under Other Development Documents. The City may exercise any remedy provided to the City under the Other Development Documents.

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

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

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

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

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

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

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

(f) Other Development Documents. City commits an event of default under any of the Other Development Documents which continues past any applicable grace, notice or cure period(s).

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

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

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

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

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

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

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

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

ARTICLE IX MISCELLANEOUS PROVISIONS

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

Developer: TC Green Water Master Developer, LLC

100 Congress Avenue, Ste. 225
Austin, TX 78701
Attention: Aaron Thielhorn and Adam Nims

with a copy to: Trammell Crow Company
2100 McKinney Avenue
Suite 800
Dallas, TX 75201
Attention: Scott Dyche

with a copy to: Constructive Ventures, Inc.
1000 East 8th Street
Austin, TX 78702
Attention: Larry Warshaw

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

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

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

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

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

and: Thompson & Knight L.L.P.
98 San Jacinto, Suite 1900

Austin, Texas 78701
Attention: James E. Cousar and Andrew Ingram

or to such other address or to the attention of such other Person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

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

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

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

9.5 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Developer and the City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

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

9.7 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

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

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

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

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

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

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

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

other than as set forth in the certificate, and may not be relied upon by any Person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

9.15 Successors and Assigns.

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

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

(c) Developer Assignment. Developer shall not assign (including without limitation, by transfer or pledge of a majority of [or controlling] ownership interests, merger, or dissolution, which transfer or pledge of majority interest of [or controlling] ownership interests, merger, or dissolution shall be deemed an assignment), transfer or hypothecate all or any interest (a “**Transfer**”) in this Agreement, without the City’s prior written consent, provided however, (i) without the City’s prior consent (but with prior written notice to the City) Developer may Transfer its interest in this Agreement to another wholly owned Affiliate of Trammell Crow Company provided that such Affiliate is owned and controlled by the Persons that own and control Developer as of the Effective Date, and (ii) without the City’s prior consent (but with prior written notice to the City) Developer may Transfer its interest in this Agreement to a wholly owned Affiliate of CVI provided that such Affiliate is owned and controlled by the Persons that own and control CVI as of the Effective Date. In each such case, the transferee must assume the obligations of Developer in writing. The City Council authorizes the City Manager of the City to approve any Transfer.

(d) Developer Assignment. Prior to the date which is three months following Completion of Construction of the Improvements on a Block of the Property, Developer shall not Transfer all or any interest in such Block, without the City’s prior written consent (which consent must be requested in writing through the Director of the City’s Economic Growth & Redevelopment Services Office [or successor position or department] and will not be unreasonably withheld or conditioned) provided however, in connection with any such approved Transfer, such transferee, the Developer and the City enter into a Master Development Agreement Joinder in the form attached hereto as Exhibit I (which the City Council authorizes the City Manager to execute).

Notwithstanding the previous sentence, if any lender or investor requires that the applicable Block be owned and developed by a single asset entity (an “**SAE Developer**”) following a Takedown, Developer, without the prior consent of the City, may Transfer its interest in such Block to an SAE Developer provided that (i) the Developer must control the SAE Developer through a managing member, manager, general partner or similar interest, and (ii) the SAE Developer, the Developer and the City enter into a Master Development Agreement Joinder in the form attached hereto as Exhibit I (which the City Council authorizes the City Manager to execute). The City Council authorizes the City Manager of the City to approve any Transfer.

(e) Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Developer (or its successor in interest hereunder) is permitted to assign this Agreement in disregard of the restrictions contained in this Article (or if this Agreement shall be assumed by a trustee for such Person), the trustee or assignee shall cure any Event of Default under this Agreement and shall provide adequate assurance of future performance by the trustee or assignee, including (i) the source of performance of Developer’s obligations under this Agreement for which adequate assurance shall mean the deposit of cash or equivalent security with the City in an amount equal to the sum of 20% of Developer’s estimated remaining monetary obligations under this Agreement, which deposit shall be held by City, without interest, as security for the full and faithful performance of all of the obligations under this Agreement on the part of Developer yet to be performed; (ii) that the trustee’s or assignee’s development expertise with respect to mixed use urban developments is at least equal to that of Developer as of the Effective Date, and (iii) that the use of the Property shall be in accordance with the terms hereof and, further, shall in no way diminish the reputation of the Property as a “Class A” mixed use urban development or impose any additional burden upon the Property or increase the services to be provided by City. If all Events of Defaults are not cured and such adequate assurance is not provided within ninety (90) days after there has been an order for relief under Applicable Bankruptcy Law, then this Agreement shall be deemed rejected, Developer or any other Person in possession shall immediately vacate the Property and the City shall have no further liability to Developer or any Person claiming through Developer or any trustee under this Agreement.

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

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

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

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

provided however, an affected party will not be permitted to benefit from a delay which was a direct result of such affected party's acts or omissions.

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

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

9.20 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Developer, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

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

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

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

CITY:

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

By: _____
Marc A. Ott, City Manager

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

THOMPSON & KNIGHT L.L.P.

DEVELOPER:

TC GREEN WATER MASTER DEVELOPER,
LLC, a Delaware limited liability company

By: TC AUSTIN DEVELOPMENT, INC, a
Delaware corporation, its Managing
Member

By: _____
Name: _____
Title: _____

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

TC AUSTIN DEVELOPMENT, INC, a Delaware
corporation

By: _____
Name: _____
Title: _____

CVI consents to the terms and conditions of this Agreement and agrees that this Agreement may be modified, amended or terminated without its consent except that the provisions of Section 9.15(c) regarding assignment to CVI shall not be modified or amended without CVI's prior written consent.

CONSTRUCTIVE VENTURES, INC., a Texas corporation

By: _____
Name: _____
Title: _____